



Indigenous Peoples and Renewable Energy Projects in Kenya

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EXECUTIVE SUMMARY

There is greater need for clean energy as Kenya fosters towards Vision 2030. Energy is both an enabler and driver of the vision. Sustainable Development Goal (SDG) number 7 insists on clean energy use. Use of renewable energies seeks to increase energy for development while eliminating CO₂ from the atmosphere thus creating a clean environment for humanity to live in. Fossil-based fuels emit a lot of gaseous emissions when combusted leading to climate changes which have far-reaching effects to people and their environment. More attention has thus been shifted to renewable energies which are environment friendly. This report seeks to identify, strategize and advocate for a win-win formula for all parties. The report maps out Renewable Energy Projects (REPs) in Indigenous Peoples (IPs) territories and performs a detailed review on the situational analysis of existing laws, policies and institutional frameworks of key REP players. The report also strategizes for advocacy policies towards IPs adequate compensation of wealth, livelihoods, cultures and human rights recognition if moved out of their ancestral lands to pave way for REPs.

- 1.0 Renewable Energy Projects (REPs) in Kenya come both as a blessing and curse in disguise. An uproar towards establishment of REPs resulted from several energy reforms in the late 1990s and 2000s. The Feed-in Tariff (FiT) of March, 2008 allowed independent power producers (IPPs) to generate and directly inject power into the national grid at negotiable Power Purchasing Agreements (PPAs). Further energy reforms liberated the energy market attracting many renewable energy investors from within and outside the country. The scramble towards investing in the 'virgin field' in Kenya was not only for the good of Kenyans but also for the financial satisfaction of the renewable energy 'donors'. Consequently, powerful financial institutions scrambled for IPs' lands which were the potential hotspots of this new resource. Momentarily, human rights and dignity were forgotten as the government watched silently in confusion. The plight of IPs was compounded by their incapacity to fight back. From the forceful evictions of the Ewaso o Nkidong'i clan in Olkaria to the witty displacement of the Sarima villagers of Loiyangalani in Lake Turkana, the tales of IPs were similar.
- 2.0 Despite having numerous policies on energy, land and human rights, up to date there is no single unified definition of IPs. The Kenyan constitution of 2010 does not directly acknowledge of their existence! They are generalized as marginalized communities. This perspective has enabled REPs practitioners to overlook IPs and their rights. The REPs have specialized in tactics that support their ill motifs against IPs even with clear human rights, land and energy policies. Any policy, act or convention that supports their intentions is largely magnified while that which supports IPs rights is de-magnified. Even the institution frameworks in the energy value chain in Kenya appear to read from the same script with REPs. Free, Prior and Informed Consent (FPIC) documents, Environmental and Social Impact Assessment (ESIA) reports, Environmental Impact Assessment (EIA) reports, compensation and benefits-sharing policies and Resettlement Action Plan (RAP) documents which are intended to protect vulnerable IPs from such projects are coined to do the exact opposite.
- 3.0 The fidelity of any REP in fulfilling its human rights commitments lie on its key players. Most energy institutions and REPs have well-structured policies to guide them on human rights. Unfortunately, these policies are only documented and used for formality purposes. The situation is worsened by

the reality of minimal knowledge of these policies, principles and safeguards standards amongst the intended beneficiaries. Due to the wide scope of players involved in REPs, it is difficult to control their individual human rights commitments. Most of the REPs have clear human rights commitments guided by Environment and Social Governance (ESG) policies, International Finance Corporation (IFC) policies, World Bank Guiding Principles amongst other strong documents that seek to leverage for human rights of IPs. Unfortunately, the practicability of these policies is yet to be seen. The only instance this was observed was in 2012 when World Bank withdrew from Lake Turkana Wind Power Project due to the unfair PPA signed with Kenya Power. The deal was unfair to Kenyans and Kenya Power turned a blind eye to this. World Bank tried to leverage for Kenya Power to negotiate for friendlier cost of power in vain. Despite there being evident uncontrolled pollution from geothermal drilling in Olkaria, the REPs still have a clean bill of rights on the same.

- 4.0 The solution to challenges faced by IPs is fully bestowed upon them. They must acknowledge of having the problem and highlight their weaknesses that should be addressed to solve the problem. IPs should be more liberal to embrace the contemporary education system, vocational training and state laws. They should put more efforts in teaming up, pooling resources together and benchmark with other successful IPs in other countries who overcame this plight. This report identifies the key challenges faced by IPs in the context of REPs, offers best management practices and key players to be used against the challenges before highlighting a Strategic Advocacy Action Plan (SAAP). The plan draws its fabric from existing policy documents (FPIC, ESIA, EIA and RAP reports, compensation and benefits-sharing policies). The plan has 3 pillars of: legal frameworks, fiscal policies and social IPs-REPs community schemes at pre-feasibility, initiation and operation stages of REPs all benchmarked from successful IPs in other countries. In the legal framework, the document proposes due recognition of IPs and their customary systems (land tenure, education, and culture) in the constitution so that they can be adequately compensated during resettlement. Legal documents used during resettlement should be reformatted and availed in IPs languages and adequate consultation time allowed. For fiscal analysis, the report recommends more networking between IP communities from within the country and externally. This will enable them to pool resources, monetize them and use them for investment purposes. Monetary value should also be attached to their IP economic activities and cultures for easier compensation plans. Socio community schemes are intended to bridge the rift between IPs and REPs. a Sustainable Value Framework (SVF) for restructuring IPs territories and resources is also proposed. The framework has given more weight to culture and environmental impact vis-à-vis REPs profits as is the current norm.

ACRONYMS

AFD	French Development Agency
ASAL	Arid and Semi-Arid Land
CO ₂	Carbon Dioxide
DDC	Denmark's Development Cooperation
DFC	Development Finance Corporation
EIA	Environmental Impact Assessment
EIB	European Investment Bank
EPRA	Energy and Petroleum Regulation Authority
ERB	Energy Regulatory Board
ERC	Energy Regulatory Commission
ESG	Environmental, Social and Governance
ESIA	Environmental and Social Impact Audits
ESMP	Environmental and Social Management Plan
ET	Energy Tribunal
FiT	Feed in Tariff
FoLT	Friends of Lake Turkana
FPIC	Free Prior Informed Consent
GDC	Geothermal Development Company
GE	General Electric
GIZ	The Deutsche Gesellschaft für Internationale Zusammenarbeit
HEP	Hydro Electric Power
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on economic, social and cultural rights
IDA	International Development Association
IFC	International Finance Corporation
IFU	Investment Fund for Developing Countries
IMPACT	Indigenous Movement for Peace Advancement and Conflict Transformation
IPP	Independent Power Producers
IPs	Indigenous Peoples
IPMG	Indigenous Peoples' Major Group for Sustainable Development
ISO	Independent Power System Operator
IUCN	International Union for conservation of Nature
JBIC	Japan Bank for International Corporation
JICA	Japan International Corporation Agency
JOCV	Japan overseas cooperation Volunteers

KCT	Kipeto Community Trust
KEC	Kamani Engineering Corporation
KEL	Kipeto Energy Limited
KENGEN	Kenya Electricity Generating Company
KEPC	Kipeto Energy Public Company
KESIP	Kenya Electricity System Improvement Project
KETRACO	Kenya Electricity Transmission Company Limited
KPLC	Kenya Power and Lighting Company
KRG	Kedong Ranch Group
KV	Kilovolt
KW	Kilowatts
KWF	Kipeto Wind Farm
KWPP	Kipeto Wind Power Project
LLP	Limited Liability Partnership
LPG	Liquid Petroleum Gas
LSTL	Loiyangalani- Suswa Transmission Line
LTWP	Lake Turkana Wind Power
MHI	Mitsubishi Heavy Industries
MOEP	Ministry of Energy and Petroleum
MtCO ₂ e	Metric tons of Carbon dioxide equivalent
MW	Megawatts
NEMA	National Environmental Management Authority
NHWF	Ngong Hills Wind Farm
NLC	National Land Commission
OHCHR	Office of the High Commission on Human Rights
OPDP	Ogiek Peoples' Development Program
OPIC	Overseas Private Investment Corporation
OSMG	Oloika Solar Mini Grid
PAP	Project Affected Persons
PPA	Power Purchase agreement
RAP	Resettlement Action Plan document
RE	Renewable Energy
REA	Rural Electrification Authority
REPs	Renewable Energy Projects
REREC	Rural Electrification and Renewable Energy Commission
ROW	Right of Way
RPG group	Rama Prasad Geunka Group
SAAP	Strategic Advocacy Action Plan

SDG	Sustainable Development Goal
SME's	Small and Mid-size Enterprise
SPV	Solar Photovoltaic
SVF	Sustainability Value Framework
TSMG	Talek Solar Mini Grid
UNHCR	United Nations High Commissioner for Refugees
UNPRI	United Nations Principles for Responsible Investments
USAID	United States Agency for International Development
USDP	United States Development Program

DEFINITION OF TERMS

<i>Indigenous People (IP):</i>	A group numerically inferior to the rest of the population of a State, and in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religions and language.
<i>Transmission Line:</i>	It is a specialized cable for the transmission of electrical power from generating substation to the various distribution units.
<i>Renewable Energy</i>	Energy collected from resources which are naturally replenished on a human timescale. They include carbon neutral sources like sunlight, wind, rain, tides, waves and geothermal heat.
<i>Geothermal Energy:</i>	Heat derived from the subsurface of the earth, and then carried to the surface of the earth by either water or steam.
<i>Hydropower:</i>	Energy derived from flowing water.
<i>Solar Mini-grid:</i>	A small-scale electricity network fed by solar energy. They are mostly established in areas with little population and are too remote.
<i>Wind power/wind energy:</i>	The use of air flow through wind turbines to generate electricity.
<i>Human Rights Commitments:</i>	A reliable and inclusive approach that allows organizations to identify and manage human rights impacts and reduce potential human rights violation by ensuring that these human rights are executed.
<i>Guiding principles:</i>	A broad philosophy that encompasses beliefs and values and guides an organization throughout its life in all circumstances, irrespective of changes in its goals, strategies or type of work.
<i>Flagship:</i>	The most important thing owned or produced by a company.
<i>Holistic:</i>	The study of the whole, ensuring everything is put into consideration.
<i>Kaizen:</i>	A Japanese business philosophy used to mean continuous improvement of working practices and personal efficiency.
<i>Anzen:</i>	A word of Japanese origin and is used to mean safe and healthy working environment.
<i>Infringements:</i>	Violation of a law, a right, a territory or a property.
<i>Marginalized:</i>	An individual or a group that is considered insignificant or peripheral or excluded socially.
<i>Right of Way:</i>	A legal right of passage over another person's ground.
<i>Social amenities:</i>	The public services provided to the members of the public. Examples of these amenities include hospitals, schools, roads and water.

<i>Trust land:</i>	According to the Kenyan constitution, it is defined as land situated outside Nairobi, the freehold title to which is registered in the name of the county council by virtue of an agreement.
<i>Emparnat:</i>	A permanent residence of The Maasai IPs.
<i>Embargo:</i>	An official ban on trade or other commercial activities with a particular country.
<i>Maji moto:</i>	A settlement in Kenya's Narok County.
<i>Electricity Dangles:</i>	Are live electricity wires that are erected in order to prevent people or animals from trespassing.
<i>Mungiki:</i>	A banned ethnic group in Kenya. The word means a united people or multitude in the Kikuyu language.
<i>Sustainable Development Goals:</i>	Goals aimed to create a better, fairer world by 2030 ensuring the needs of the present generations are met without compromising the ability of future generations to meet their own needs. They are 17 in number.
<i>Ancestral territories:</i>	Domains and lands belonging to indigenous people and is passed on generation after generation.
<i>Socio-economic impacts:</i>	These refer to the positive or negative benefits brought about by the implementation of a certain project in a locality.
<i>Institutional framework:</i>	This term refers to a set of formal organizational structures, rules and informal norms for service provision.
<i>Group ranches:</i>	These were defined as livestock production system where a group of people jointly hold title to land, maintain agreed herd sizes and own livestock individually but herd them together. Boundaries for these group ranches are demarcated and members are registered.

INTRODUCTION

Energy is an enabler towards achievement of Vision 2030 in Kenya¹. There is more need for renewable energies in Kenya to enable an easy transition towards a self-sustainable country. According to the universal Sustainable Development Goals (SDG)² made in 2015, there is more need to replace carbon-fuels with cleaner energies³ (SDG 7). Renewable energies seek to replace carbon fuels with cleaner fuels that reduce CO₂ emission and thus enjoy both national and global support. The Feed-in Tariff (FiT) policy of March, 2008 encouraged private entities to produce renewable energies and directly feed it to the national energy grid^{4,5}. This move which was seen as an incentive to encourage exploitation in renewable energies led to a surge in REPs. Luckily enough for potential REP practitioners, Kenya has vast potential for hydro, geothermal, wind, biomass and solar energies.

While hydro power is very expensive to install and manage, the country still lacks technology for efficient biomass energy production⁶. These two renewable energies are therefore, not common compared to the other three (geothermal, wind and solar). Exploitation of these REPs began long ago (as early as the 1970s). Almost all the geothermal wells are located at the heart of the Rift valley (between Barrier, located south of Lake Turkana to Suswa, located at the foot of Rift Valley) in the vicinity of volcanically active regions⁷. The ancestral inhabitants of these regions are The Ogiek, Turkana, Samburu, Njemps and Maasai, these communities are marginalized and fully qualify to be IPs. This is due to their cultural preservation, nomadic-pastoral and hunter-gatherer economies⁸. Wind potential in Kenya is largest in high-altitude areas with less vegetation cover – characteristically found in Turkana, Marsabit, Samburu, Narok and Kajiado counties. The same areas also serve as hotspots for tapping solar energy.

Unfortunately, these regions with a high potential for geothermal, wind and solar energy production are occupied by IPs⁹. Most of the REPs in the region have deliberately and continuously refused to identify the IPs by this title due to the stringent compensation terms associated with IPs¹⁰. Instead, the REPs have remained adamant that the IPs are 'Project Affected Persons' (PAP), marginalized communities or vulnerable groups. The Kenyan Constitution of 2010 recognizes Indigenous Persons¹⁰ as marginalized communities which have retained and maintained their traditional lifestyles and livelihoods based on

- 1 NewsGhana, (2020). Kenya says to invest in blue economy to attain development agenda. Retrieved from <https://newsghana.com.gh/kenya-says-to-invest-in-blue-economy-to-attain-development-agenda/> Accessed on 3 January, 2021.
- 2 Bhore, Subhash Janardhan. "Global Goals and Global Sustainability." International journal of environmental research and public health vol. 13,10 991. 7 Oct. 2016, doi:10.3390/ijerph13100991
- 3 "Clean energy benefits the climate, the economy and our health." Bulletin of the World Health Organization vol. 94,7 (2016): 489-90. doi:10.2471/BLT.16.030716
- 4 Ministry of Energy. (2011). Feed-in-Tariffs Policy on wind, biomass, small-hydro, geothermal, biogas and solar resource generated electricity. Nairobi.
- 5 Feed-in-Tariffs policy for wind, biomass, small hydros, geothermal, biogas and solar, 2nd revision, December, 2012
- 6 Mugo, F. and Gathui, T. (2010) Biomass energy use in Kenya. A background paper prepared for the International Institute for Environment and Development (IIED) for an international ESPA workshop on biomass energy, 19-21 October 2010, Parliament House Hotel, Edinburgh. Practical Action, Nairobi, Kenya.
- 7 Kengen.co.ke, (2020), Geothermal. Retrieved from <https://kengen.co.ke/index.php/business/power-generation/geothermal.html>. Accessed on 4 January 2021.
- 8 Iwgia.org, (2019), Indigenous people in Kenya. Retrieved from <https://www.iwgia.org/en/kenya/3486-iw2019-kenya.html>. Accessed on 4 January 2021.
- 9 Kanyinke Sena, (2015). Renewable Energy Projects and the Rights of Marginalized/Indigenous Peoples in Kenya, IWGIA Report 21, Pg. 14. ISBN: 978-87-92786-63-0
- 10 IWGIA (2019). The Impacts of Renewable Energy Projects to Indigenous Communities in Kenya. IWGIA Report. Retrieved from https://www.iwgia.org/images/publications/new-publications/IWGIA_report_28_The_impact_of_renewable_energy_projects_on_Indigenous_communities_in_Kenya_Dec_2019.pdf

a nomadic pastoralism or a hunter-gatherer economy¹¹. However, more applicability of this article is needed to alleviate IPs from their current plight. The geographical and economic marginalization of IPs has further fueled their alienation from the rest of the society.

Due to their nomadic pastoralism or hunter-gatherer lifestyles, IPs ancestral lands remain with little interference these areas have been marginalized for decades. The same ecologies are the ones envisaged by REP practitioners for their high potential in producing renewable energy. Therefore, there is a large overlap of interest between IPs ancestral territories and REPs. The REPs take advantage of the 'illiteracy' or lack of 'State knowledge' of IPs to exploit them away from the contested lands; either by forceful eviction or by meagre compensations. The socio-economic rights and cultural beliefs are never fully practiced as per United Nations Human Rights Commission (UNHRC), universal declaration of human rights, The UN declaration of rights of IPs of 1986, World Bank Guiding Principles, World Bank Social and Environmental Standards (ESS)¹², and the Kenyan constitution¹³ of 2010.

The aftermath of these mis-understandings is conflicts and a poor working environment that derails the progress of the two conflicting parties. For example, the Ilmapatapo clan of central Kajiado have delayed commencement of wind power production at Kipeto wind farm project since 1993 because the REPs have been unable to settle on a common compensation scheme for their lands and livelihoods. In Olkaria, Kenya Electricity Generating Company (KENGEN), Geothermal Development Company (GDC) and other affiliate companies were unable to settle on a common ground with the local community regarding Olkaria IV. These REPs have also forcefully evicted the IPs in the regions in very bitter ordeals such as the Narasha evictions and Kedong Valley evictions¹⁴. This has led to an extremely hostile working environment between the two parties. The Gabbra and Rendille communities of Marsabit county have also been adamant on the compensation schemes associated with Bubisa wind power REP. REPs also blame IPs for refusing civilization and 'national goodies' in the form of renewable energy. The REPs use their connection with governments and use state machineries to enforce their operations at the expense of IPs.

At such, both the IPs and REPs practitioners continue to lose. This report seeks to identify, strategize and advocate for a win-win formula for both parties. The report maps out REPs in IPs territories and performs a detailed review on the situational analysis of existing laws, policies and institutional frameworks of key REP players. The report also strategizes for advocacy policies towards IPs adequate compensation of wealth, livelihoods, cultures and human rights recognition if moved out of their ancestral lands to pave way for REPs.

11 The constitution of Kenya, 2010

12 Worldbank.org (2020). Environmental and Social Standards (ESS). Retrieved from <https://www.worldbank.org/en/projects-operations/environmental-and-social-framework/brief/environmental-and-social-standards>. Accessed on 15th February, 2021.

13 Kidane, Won. The culture of international arbitration. Oxford University Press, 2017.

14 Cultural survival.org, (2013). Forceful eviction of the Maasai from Narasha. Retrieved from <https://www.culturalsurvival.org/news/forceful-evictions-maasai-narasha-recipe-tribal-clashes-kenya>. Accessed on; 4 January 2021.

1.1 The journey to Renewable Energy Projects in Kenya

Commercialization of energy in Kenya begun in 1900 with establishment of the Nairobi Power and Lighting Company¹⁵. A similar company was formed in the mid-1900s in Mombasa (Mombasa Power and Lighting Company). They both derived their power from generators. The two later merged to form the East Africa Power and Lighting Company (EAPLC)¹² in 1908. The company relied on imported energy and small Hydro Electric Power (HEPs) for energy. The Companies registration Act of 1954 enabled the formation of a company to oversee generation of energy in the country (Kenya power company, KPC)¹². However, the company was under EAPLC.

More HEPs and geothermal explorations were undertaken and executed in the 1970s, 80s and 90s. The first geothermal exploration¹⁶ began in 1981. 2 years later, EAPLC was restructured to Kenya Power and Lighting Company (KPLC). Due to severe droughts in the 1990s, there was less water in rivers and HEP projects were greatly affected. This coincided with a demand for more energy as the country was recovering from the earlier international trade embargos placed. More energy was needed prompting more energy reforms. The Energy Act of 1996 enabled KPLC to be split into two parts for energy generation (KenGen was formalized in 1997) and for transmission and distribution of the electricity (KPLC)¹⁷. However, these reforms could not fully meet the energy demand due a robustly growing economy. In 2004, the popular Sessional Paper No. 4 of 2004 further made more reforms to the sector. KPLC was further split into two parts; for high voltage power evacuation (Kenya Electricity Transmission Company, KETRACO) and for low voltage power distribution (KPLC). An independent body to regulate it was also formed, Energy Regulation Commission (ERC). More reforms followed up, such as the Energy Act of 2006 but it was the FiT of 2008 that made the greatest strides in the renewable energy realm.

The FiT policy enabled Independent Power Producers (IPPs) to generate electricity and feed it into the national grid at negotiated Power Purchase Agreements (PPAs). Limited power suppliers ensured there was more demand for power thus limited barriers were faced by IPPs. It is thus not difficult for IPPs to negotiate for favorable PPAs with KPLC. Additionally, the energy market was liberated in 2010 and more collaborations between Public and Private Partners (PPPs) encouraged.

These moves attracted renewable energy investors into the country. Before then, there was only 1 large-scale REP owned by KenGen. Ngong' Hills Wind Farm (NHWF) had only 6 Vestas V52 wind turbines, each of capacity 850kW, totaling 5.1MW¹⁸. There was no single large scale IPP that generated power before 2008. Several IPPs had attracted local and international investors and begun construction. To the south

15 KPLC. Co.ke (2020). History and Milestones, Retrieved from <https://www.kplc.co.ke/content/item/61/history-and-milestones>. Accessed on 7th January, 2021

16 Kengen.co.ke (2020). Geothermal. Retrieved from <https://kengen.co.ke/index.php/business/power-generation/geothermal.html>. Accessed on 8th January, 2021

17 Dong, L. and Akihisa, M. Multi-level Analysis of Sustainable Energy Transition in Kenya: Role of Exogenous Actors. International Journal of Energy Economics and Policy, 2017, 7(5), 111-122

18 Thewindpower.net (2020). Ngong'Hills Kenya - wind farm – online access – wind power. Retrieved from https://www.thewindpower.net/windfarm_en_27131_ngong-hills.php. Accessed on 7th January, 2021

of NHWF, the Kipeto Wind Farm had also begun in 1993 after a gift of a single wind turbine by the Belgium government to Kenya¹⁹ (1 each to Ngong' hills and Kipeto). The NHWF was managed by the government and kicked off well. The Kipeto one was left to private developers who faced a lot of opposition from local communities and the project halted. After the reforms of 2008, the investors resurfaced more vibrantly than before to proceed with the estimated 100MW project. Further northwards, Lake Turkana Wind Power Project (LTWPP), which had gradually begun in 2004 was also boosted by more investors. To the westward side of Ngong' Hills, the silent sleeping giant of Olkaria geothermal plants had also been awoken. The volcanic belt consisting of several volcanically active spots which had been abandoned for less exploration finance were now open for both public and private investors.

What followed for the next decade is a two-sided tale; power investors hungry to exploit the energy resources and regain their money back and vulnerable indigenous people unaware of what was developing beyond their boundaries of their ancestral lands. Temporarily, human rights by investors were thrown into the drains. The government and other oversight bodies watched silently, confused on which side to take.

1.2 Mapping out REPs in Kenya: A plight of the Indigenous People and their ancestral lands in Kenya

Location of renewable energy projects require vast and unutilized parcels of land. For example, tapping wind energy require open and elevated lands where there are less wind-breakers such as buildings and other infrastructural projects. Such lands can only be found in regions which are geographically marginalized and alienated. Geothermal wells are located on the foot of the Rift Valley where there is more volcanic activity underneath²⁰. Even tapping of solar energy in large scales require areas with a high intensity for the same and less infrastructure to block sunlight.

Such lands can only be found abundantly far away from human developments and settlements. Unfortunately, these are the exact homes of indigenous peoples. Not only are they geographically marginalized but they are also socially, politically and economically marginalized. They have limited human capita and knowledge of contemporary education system, vocational training or state laws. This makes them vulnerable to attack by more capacitated people such as power investors. Additionally, most of their land is not formally registered. Their customary land tenure systems are not recognized by the Kenyan constitution²¹ or other policies. At such, it is easy to forcefully relocate them to pursue renewable energy which is abundant in their homes. Some of their economic activities are also not defined making them easily overlooked during compensation. Due to these reasons, IPs territories are prey to power developers and their limited capacity makes them vulnerable for easy attack and resettlement without due compensation. Despite the Ministry of Environment developing guidelines for FPIC where projects are applied in IPs territories, their implementation is still a challenge and the plight of IPs is yet to change.

19 Prnewswire.com (2020). 100MW Kipeto wind power project reaches financial close. Retrieved from <https://www.prnewswire.com/news-releases/100mw-kipeto-wind-power-project-reaches-financial-close-300768135.html>. Accessed on 7th January, 2020

20 Hansell AL, Horwell CJ, Oppenheimer C. The health hazards of volcanoes and geothermal areas. *Occup Environ Med.* 2006 Feb;63(2):149-56, 125. doi: 10.1136/oem.2005.022459. PMID: 16421396; PMCID: PMC2078062.

21 Wily, L. A. (2020) The Community Land Act in Kenya Opportunities and Challenges for Communities, *Land* 2018, 7, 12; doi:10.3390/land7010012

Figure 1 illustrates the spread of major REPs in Kenya.

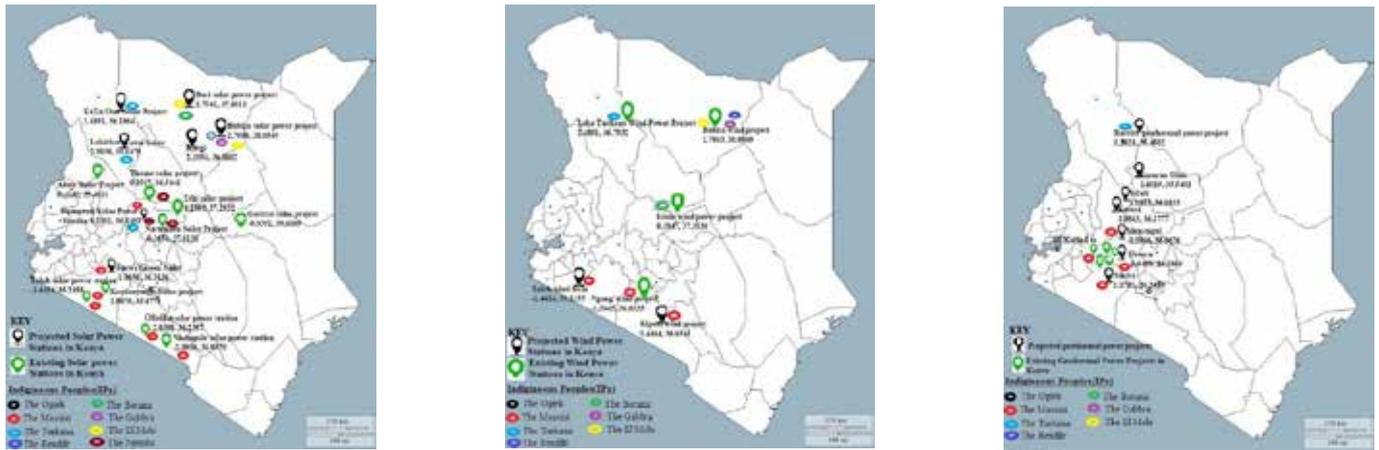


Figure 1: The maps of major solar mini-grid systems (a), wind energy projects (b) and geothermal projects (c) in Kenya (see Appendix 1) (Source: The consultant)

1.2.1 Hydropower

Turkwel Hydropower

Turkwel River located in North Western Kenya, West Pokot County. It was established with an objective of generating hydropower, supply water for irrigation, fisheries and tourism development²². It was constructed between 1986 and 1991, by the Kenyan government and French company (Spie Batignolles), funded by World Bank with a capacity of generating 160MW of electricity²³. Turkwel hydropower has never run on its own since the investors had not ploughed back their investment costs, and none of the 160MW of electricity serves the needs of the local people but instead all flows straight to Nairobi. The power generated is transmitted to Lessos substation via a 220kV transmission line over a distance of 210 km²⁴. The local communities are dependent on firewood and kerosene for heating, they still find it hard to get firewood given that they obtain it from long distance. This problem becomes more adverse during rainy season since they cannot use firewood. The alternative form of heating which is kerosene is too expensive and inefficient. They have never benefited from the electricity from the Turkwel hydropower except the water for domestic use and irrigation.

Given that, the Turkwel dam collects water from rivers originating from Cherangany hills and Mt Elgon region, which is inhabited by the Ogiek and Sengwer communities. The Ogiek have been playing a very important role in environmental conservation ensuring that those rivers draining to the dam are not drying or getting polluted. However, these communities have been frequently evicted from these catchment areas paving way for agricultural activities. This phenomenon has later resulted to increased siltation in the Turkwel Dam²⁵. The said state, if not taken into consideration the lifespan of the dam which had been projected to last for more than 75 years might reduce. Turkwel hydropower management hence need to consider the marginalized communities living in the catchment areas for their unrecognized potential in environmental conservation and also compensate them if they should be evicted from the area.

22 Kengen.co.ke, (2020), Turkwel storage dam. Retrieved from https://kengen.co.ke/index.php/index.php?option=com_content&view=article&id=203:turkwel-storage-dam&catid=33:power-stations. Assessed on 03/01/2021.

23 Karekezi, Stephen, and Donella Mutiso (2000). "Power sector reform: A Kenyan case study." Power Sector Reform in SubSaharan Africa. Palgrave Macmillan, London. Pg No. 83-120.

24 Kengen.co.ke (2020). Turkwel storage dam. Retrieved on https://kengen.co.ke/index.php/index.php?option=com_content&view=article&id=203:turkwel-storage-dam&catid=33:power-stations. Accessed on 15th February, 2021.

25 Feyera A. Hirpa, Ellen Dyer, Rob Hope, Daniel O. Olago, Simon J. Dadson, (2018). Finding sustainable water futures in data-sparse regions under climate change: Insights from the Turkwel River basin, Kenya, Journal of Hydrology: Regional Studies, Volume 19, Pages 124-135, ISSN 2214-5818, <https://doi.org/10.1016/j.ejrh.2018.08.005>.

1.2.2 Geothermal Power stations

Olkaria area is located in Nakuru County South of Lake Naivasha and extends to the border of Narok County, North of Mount Suswa. The area is inhabited by the Maasai communities who are pastoralists in nature.

The area is rich in geothermal power and its first exploration began in 1955. Later in 1959, two wells were drilled in the area with unsuccessful generation of steam. In 1957, more efforts were put in place as the wells were drilled further to increase the depth but still there was no breakthrough as the wells produced less steam. In the early 1970s, more exploration was done in the area by KenGen and United States Development Program (USDP), but it was until 1981 when there was successful generation of sufficient steam that could run turbines.²⁶

1.2.2.1 Olkaria I geothermal plant

The project is located in the Hell's gate eastern edge of Rift valley, Nakuru county with the sister stations; the geothermal power station has five wells with the generation capacity of up to 185MW. Olkaria I geothermal power station is owned by KenGen and the National Government of Kenya of which the Government owns 70% of the shares whereas 30% is shared by private investors and institutions²⁷. The geothermal plant started its operation in 1981 with a Mitsubishi turbine having the capability of generation 15MW. More production was achieved in the year 1982 and 1985 when two Mitsubishi turbines were installed bringing up the power generated to 45MW. In January 2015, additional two turbines were commissioned bringing the total number of turbines to four, the turbines were capable of generating 140MW increasing the plant generation capacity to 185MW. Later in 2015, the first two turbines efficiency decreased and the Kenyan government acquired some debt of Ksh. 9.53 billion to refurbish the old turbines, increasing the turbines generation capacity from 40MW to 50.7MW. The geothermal plant generation capacity increased to 190.7MW.

In December 2018, KenGen started the preparation for installing their 6th turbine which is expected to be completed by 2021 and is projected to increase the station generation capacity to 273.7MW.

1.2.2.2 Olkaria II geothermal Power station

The geothermal is located in Nakuru County adjacent to Hell's Gate National Park, eastern edge of Rift valley. The geothermal power station has five wells with the generation capacity of up to 185MW. The plant is owned by KenGen public company. It began its operations in the year 2003 when KenGen commissioned two Mitsubishi turbines with generation capacity of 35MW from Mitsubishi Heavy Industries. Later in 2010, expansion of Olkaria II was initiated and financed by European Investment Bank (EIB), and International Development Association (IDB), French Development Agency (AFD), and KenGen. During the expansion, a third unit with capacity of 35MW was also established at a cost of US\$100 million bringing the plant's total generating capacity to 105MW²⁸.

1.2.2.3 Olkaria III Geothermal Power Plant

The geothermal plant like Olkaria I and II geothermal is located in Nakuru County adjacent to Hell's Gate National Park, eastern edge of Rift valley. It is the largest plant having its installed turbines generating

26 Mangi, M. P. "Geothermal Exploration in Kenya—Status Report and Updates." Sustainable Development Goals (SDG) Short Course II on Exploration and Development of Geothermal Resources, Lake Bogoria and Naivasha, Kenya, November (2017): pg No. 9-29.

27 Sonal Patel (2015). "Olkaria Geothermal Expansion Project, Rift Valley Province, Kenya". Power Magazine. Retrieved on; 4 January 2021.

28 Kengen.co.ke, (2021). Kengens Geothermal power plants. Retrieved from <https://kengen.co.ke/index.php/business/power-generation/geothermal.html>. Accessed on; 4 January 2021.

up to 139MW. The geothermal plant is owned and operated by Ormat Technologies, a Reno Nevada registered company with production facility in Yavne, Israel.

The company started its operations in the year 2000, running one Ormat plant with generation capacity of 13MW. In January 2009, the company installed new structures, increasing its generation capacity to 35MW. Within the same year Ormat installed another turbine with generating capacity of 36MW. In the year 2012, Ormat technologies sold 503GWh to KPLC, earning Ksh. 3.89 billion until June 2013. Later in 2014, the third turbine with generation capacity of 26MW was commissioned, increasing the plants electricity generation to 110MW. After two years (2016), Ormat commissioned other turbines with generation capacity of 26MW, increasing the firm's electricity generation capacity from 110MW to 139MW.

1.2.2.4 Olkaria IV geothermal power plant

The plant has electricity generating capacity of 140MW and is owned by KenGen with Kenyan National Government taking 70% of the shares while the remaining 30% is owned by private investors and individuals. The plant was commissioned on 22nd October 2014 by Uhuru Kenyatta, it has a generating capacity of 140MW. The Olkaria IV geothermal station establishment was co-funded by World Bank, government of Kenya, EIB, and KenGen²⁹. The turbines and installation equipment were supplied by Hyundai Engineering of South Korea, Toyota Tsusho of Japan and KEC International of India³⁰. This project led to the eviction of the Maasai communities in August 2014 who used to occupy the area before its establishment.

1.2.2.5 Olkaria V Geothermal Power station

The plant generates up to 158MW of power and it is completely owned by KenGen. Olkaria V geothermal station construction began in April 2017 and started its operation in 2019 after completion of its establishment generating a total of 140MW, 18MW less than the projected capacity. Japan International Corporation Agency (JICA) and KenGen funded the project³¹, this involved a consortium of two Japanese firms and one Kenya Company that was selected to provide the necessary equipment and building of the power plant. Mitsubishi Corporation supplied the main equipment.

The plant's generated power was connected to the National grid by 29th June 2019, and its first well has reached full output of 79MW while the second well came over in October 2019 bringing the total electricity generated by the plant to 140MW.

Since the inception of these geothermal plants in Olkaria, the lives of the IPs there has never been the same again. KenGen and GDC have used forceful and dubious means to evict the IPs from their ancestral lands. The worst ordeals of forceful evictions were witnessed in Narasha and Kedong' valley. Here, IPs were chased away from their homesteads at night by hired illegal youth groups and arsonists. Many livestock were killed, houses burnt, people injured and permanently traumatized in the ordeals. Those who accepted to be resettled were not adequately compensated in any form; economically, socially or culturally. The IPs still living in the project areas are exposed to all forms of pollution, threats, intimidation and denied socio-economic necessities. For example, the residents of Mlango Kubwa village, in Olkaria use kerosene lanterns to light their homes despite being at the hub of electricity generation in Kenya.

29 Mitchell, Beverley (2014). "Kenya Opens World's Largest Single Turbine Geothermal Plant". Nairobi: Inhabitat Kenya. Accessed on; 5 January 2021.

30 Iruobe, Emmanuel (2014). "Kenya Launches World's Largest Geothermal Plant". Ventures Africa Magazine. Lagos. Accessed on; 5 January 2021.

31 Iruobe, Emmanuel (2014). "Kenya Launches World's Largest Geothermal Plant". Ventures Africa Magazine. Lagos. Accessed on; 5 January 2021.

1.2.3 Solar Mini-grids

Renewable energy mini-grids offer significant potential for climate change mitigation, if they displace on-grid fossil fuel power plants. Through offsetting the supply of 180-570 GWh of coal-based electricity, mini-grids could contribute to reducing emissions by 0.14-0.48 MtCO₂e (Metric tons of Carbon dioxide equivalent) per year³². This mitigation potential makes mini-grid development an interesting prospect for consideration in climate change mitigation planning processes. It may be possible to attract further support for the implementation of measures through climate-related finance. Also, it will ensure that the IPs are not left out in development plans towards the Big Four Agenda and Vision 2030.

1.2.3.1 Talek Solar Mini-Grid

Talek town is located in Narok County, Narok West Constituency, at the North-Eastern edge of Maasai Mara National Game Reserve. The area is occupied by The Maasai Community who are pastoralists. Before the establishment of Talek town, the communities were travelling to Maji Moto town, 70km away to charge their mobile phones and access other services. The faces of the town changed when it was selected for a Sh. 30 million pro-solar mini-grid pilot project funded by German Government through its development agency GIZ.

The solar mini-grid project was commissioned in the year 2015 on a community land, with a total of 150 solar panels capable of generating 40KW of electricity (**Figure 2a**). During daytime, the power generated is stored in batteries that supply electricity during the night. The mini-grid also has a standby diesel generator that adds 10KW to meet the consumers increasing demands as it serves over 215 households and other social amenities such as schools and hospitals (**Figure 2b**).



Figure 2: Talek solar mini-grid panels (a) and a hospital relying on it for its operation (b) (Source: The consultant)

At the beginning of its commission (2015), the mini-grid used to offer subsidized tariffs to their clients until 2016 when it took some twist after it was handed over to the Narok County Government³³. The county government thereafter, contracted it to Power Gen, a Nairobi based company. To access the power, Power Gen developed a prepaid system similar to the one used by Kenya Power³⁴. The residents of Talek town and business vendors purchase the tokens from the vendor at KCB bank who has access to Power Gen

32 Lhendup, Tshewang. (2008). "Rural Electrification in Bhutan and A Methodology for Evaluation of Distributed Generation System as an Alternative Option for Rural Electrification". Energy for Sustainable Development, vol 12, no. 3, 2008, pp. 13-24. Elsevier BV, doi:10.1016/s0973-0826(08)60434-2.

33 Documents1.Worldbank. Org, 2021, <http://documents1.worldbank.org/curated/en/792001512392701402/pdf/ESM-cKenyaMiniGridsCaseStudyConfEd-PUBLIC.pdf>.

34 The Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH (2015), 'How do we license it? A guide to licensing a mini-grid energy service company in Kenya' (<https://www.giz.de/en/downloads/GIZ2015-ProSolar-Licensing-Guidebook.pdf>) , Accessed on; 5 January 2021.

meter system. Low consumers pay Sh. 75 per unit while High consumers pay Sh. 90 per unit. Owing to an increasing demand of the electricity Narok county government has approved plan to increase the capacity of the plant and has invited bids from contractors.

Ironically, the benefits of the mini-grid are relished by the business communities, County government and private investors. The Maasai community who are the native occupants of the terrain are living in darkness given that the electricity is distributed within the town only. They further assert that they were not given any compensation taking into consideration that the project was built on communal land. Regardless of the promises that they were granted before setting up the project like water, schools, tarmac roads, personal solar, none has ever been fulfilled, they even fear losing their land to politicians who grab without any notification or compensation. One of the village elders expressed his bitterness, claiming that the electricity is too costly and unaffordable for them who run small scale businesses, given that the returns were less than the electricity bills.

" While running our small business-like milk ATM, almost all the profits end up in electricity bill before paying rental charges". Ben Lariam, 3rd December, 2020

One of the local residents was very upset with the charges that seemed to be exploiting the local communities, *"we thought that the project was going to benefit our schools and hospitals around as all our children from the terrain attend their schools and get health services here, but the electricity cost was too expensive and we opt to install our own solar for lighting and pumping water from the borehole for the schools and hospitals, at least we got relieved"* Talek Boys High School Bursar, 3rd December, 2020.

The project has also attracted a larger number of visitors into the area, which is resulting to the gradual cultural erosion of the Maasai culture. There is increased spread of diseases and immorality. These negative impacts have never been assessed and the IPs are at a higher risk of losing their future generation. The IPs are still living in their old ways of using firewood, charcoal threatening deforestation in this ASAL areas.

1.2.3.2 Oloika Solar Mini-Grid

Oloika is located in Kajiado County, Kajiado West, near Magadi town. The area is inhabited by pastoralist communities from Kenya, the Maasai. It is an ASAL area with low population density but a higher number of tourists who visit Lake Magadi and Shompole hills spent their time in Oloika area. The area has no road networks and the communities trek for long distance to find routes connecting it to Magadi town. The IPs living in the area used to travel to Shompole or Magadi to access essential services before the establishment of Oloika Solar mini-grid.

Oloika solar mini-grid was commissioned in the year 2012, through a joint project between Energy for Development (E4D) who provided the generation costs (University of Southampton), and the Rural Electrification Authority (REA) Kenya, who provided the civic work and distribution of grid³⁵. The mini-grid has a total of 54 solar panels (**Figure 3a**) generating 13.5KW, 24 batteries (**Figure 3b**) capable of storing 38.4KWh and two 5KW inverters. Almost all the households in Oloika Township rely on this solar mini grid for lighting and power.

35 " Oloika, (2019). Kenya - Energy for Development Network". Energyfordevelopment.Net, <https://energyfordevelopment.net/current-projects/oloika/>. Accessed on; 5 January 2021.



Figure 3: The Oloika solar mini-grid panels (a) and some of their batteries used to store the energy before transmission to their clients (b)
(Source: The consultant)

The project was established by university of Southampton with the goal of helping the Kenyan government secure its future energy needs³⁶. Since its establishment, the area has experienced drastic growth with development of schools, hospitals, business activities and various social amenities. Since the project was built on individual land, the IPs were not affected by the development of the project. Some of the locals have been employed in the plant, others benefited from the scholarships from the investors. However, the culture of the Maasai has been eroded with most of the youths contracting skin diseases suspected to have been contracted from tourists visiting the area.

The Oloika Solar project investors were crafty in view that the electricity was distributed to those families that could afford the poles and meters, additionally the electricity tariffs are expensive in comparison to the tariffs used by KPLC. One unit of electricity goes at Sh. 60. Due to negligence of the investors on the maintenance of the mini-grid, it is no longer sustainable as it operates during the day only and goes off at night posing cases of insecurity in the area. Most of the IPs still rely on firewood and charcoal for heating and cooking signifying that the REP did not improve the livelihoods of the IPs in the terrain.

Similarly, Oloika solar mini-grid like Talek solar mini-grid, the power is only distributed to those people within the town for which most are not are IPs. The IPs remain to be deserted in terms of development with poor roads, lack of policies to protect their culture and invasion to their sanctuaries.

1.2.3.3 Mini-grid regulations and licensing

Electricity provision in Kenya is regulated by the EPRA, the successor of the Energy Regulatory Commission (ERC). Among EPRA's obligations is the regulation and licensing of any entity involved in the generation, importation, exportation, transmission, distribution, and/or retail supply of electricity³⁷. The only exceptions are; licensing of nuclear facilities and licensing of persons generating up to 1 MW of electricity for their own use. This is a more stringent requirement compared to the previous law, the 2006 Energy Act, in which license exemptions applied to systems of less than 3 MW capacity³⁸. Part of the licensing process is EPRA's approval of rates and tariffs, to ensure they are just and reasonable. To

36 Southampton.ac.uk, (2018). Southampton supports Kenya government to create National Energy Lab | University of Southampton. Available: <https://www.southampton.ac.uk/news/2018/04/bahaj-kenya-energy.page>. Accessed on; 5 January 2021.

37 Energy Regulatory Commission of Kenya, (2019). Energy and Petroleum Regulatory Authority. Available at: <https://www.epra.go.ke/#:~:text=The%20Energy%20and%20Petroleum%20Regulatory,of%20upstream%20petroleum%20and%20coal>. Accessed on 5 Jan. 2021.

38 Kenyalaw.org, (2006). The Energy Act. Available at: http://kenyalaw.org/kl/fileadmin/pdfdownloads/Acts/EnergyAct_No12of2006.pdf. Accessed on 5 Jan. 2021

this end, the rates are intended to enable licensees to: maintain financial integrity; attract capital; operate efficiently; and compensate investors for the risks assumed. The Act thus allows private sector mini-grid developers to argue for cost-reflective tariffs.

The Draft 2017 Kenya Energy (Mini-Grid) Regulations, prepared with the support of GIZ, was to fill the significant gap in the policy framework for mini-grid installation, operation, and interaction with the centralized grid³⁹. These regulations are expected to reduce the risk for private investors and streamline processes. However, these licensing bodies do not take into consideration the IPs, keeping in mind that the REPs are mostly established in marginalized areas occupied by IPs. The REPs ought to pursue their Corporate Social Responsibilities (CSR) as part of their business mandates in developing the IPs. The FPIC policy and ESIA reports warrants it necessary to duly recognize, consult and compensate IPs before resettling them elsewhere.

1.2.4 Wind Energy

Wind power/wind energy involve the use of air flow through wind turbines to generate electricity. It is believed to be sustainable, clean and renewable source of energy. KenGen Wind Farm in Ngong hills was the first in East Africa.

1.2.4.1 Kipeto Wind Farm

Kipeto is located in Kajiado county, Kajiado North constituency, Keekonyokie division. The area is occupied by the Maasai community (Ilmapatapo clan), whose livelihoods is dependent on livestock rearing. According to their form of life, this community is considered to be marginalized. To access essential services, the IPs travel to Kajiado Town which is about 70Km. Owing to the area being marginalized, the IPs live in a deserted way of life since they have been left out in terms of development. With the establishment of the Kipeto wind farm, locals yearn to see some development in the area.

The Kipeto wind farm station is located in the southern foothills of Ngong hills, originally recognized as rich place of wind resource. The first wind turbine was installed in 1993 as a gift to the Kenya by Belgian government. From that time and over a duration of 18 years, the generation footprint has been slowly growing adding few turbines but remained in small operation. The wind farm was originally owned by consortium investors, financiers and interested groups, including International Finance Corporation (IFC) and local community trust⁴⁰. In 2011, negotiations on new Power Purchase agreement (PPA) began for a large-scale project, with the goal of generating 100MW⁴¹. In July 2015, Kipeto Energy Limited, the operator/owner signed a renewable 20 years PPA with Kenya Power, the national electricity distributor and retailer⁴². However, in the late 2015 the International Union for Conservation of Nature (IUCN) found out that two species of birds (Ruppel's and White-backed Vultures) (**Figure 4b**), raptors native to Kipeto project site were rudimentary to be critically endangered. Owing to this, Actis, Power Africa and USAID/ Kenya helped complete a Biodiversity Action Plan (BAP) to understand, reduce and compensate for the possible effects of the wind turbines on other raptors and Vultures on Kipeto site. Still on the Kipeto Project, General Electric (GE) which was the company responsible for its construction, had promised to

39 Newclimate.org, (2019). Available: <https://newclimate.org/wp-content/uploads/2019/11/The-role-of-renewable-energy-mini-grids-in-Kenya%E2%80%99s-electricity-sector.pdf>. Accessed on 5 January 2021.

40 Gachiri, (2016). *China firm wins Sh22.6 billion tender to build Kipeto wind power plant*. Business Daily Africa, Nairobi. <http://www.chinagoabroad.com/en/article/china-firm-wins-225-million-wind-power-tender-kenya>. Accessed 5 January 2021.

41 Power Africa, (2019). *The Long Road: Bringing Kenya's Second Largest Wind Farm to Financial Close*. <https://medium.com/power-africa/the-long-road-bringing-kenyas-second-largest-wind-farm-to-financial-close-8cecb503f72>. Accessed 5 January 2021.

42 Kplc, (2015). *Kenya Power signs 100 MW power purchase agreement for Kipeto wind energy*. <https://www.kplc.co.ke/content/item/989/kenya-power-signs-100-mw-power-purchase-agreement-for-kipeto-wind-energy>. Accessed 5 January 2021.

share the benefits to the community leaders⁴³.

In December 2018, Actis Capital of the United Kingdom acquired majority shareholding from the Special Purpose Vehicle Company⁴⁴. The project is now funded by equity from Actis Capital (88%) and Kenyan company Craft skills Eind Energy International (12%) alongside senior debt from the Overseas Private Investment Corporation (OPIC), the US Government Development finance institutions⁴⁵. Since the takeover of the project by Actis Capital, the promises given to the community were forgotten.

Through negotiations, a community framework which was tasked to identify the project's area needs, potential partners, and ways forward was established to inform on the creation of community trust. Conversely, the details of the trust were hammered out, new challenges continued to pop up and the high expectations of the community continued as the construction began. The project constructed 60 GE turbines (**Figure 4a**) and 17km (220Kv) PTL for carrying power to Isinya substation, Kajiado county. During this period more than 400 casual jobs and 70 permanent jobs were created⁴⁶. More than 60 plots from individual land were secured from the local communities within the project area for the wind turbines and transmission lines. The land owners were paid different rates without signing the lease agreement with their tittle deeds taken away from them.



Figure 4: The turbines of Kipeto wind power project (a) and a vulture killed by the rotating blades of the wind turbines (b) (Source: The consultant)

The project deemed to not only contribute to Government's Vision 2030 but also impact positively on the local community through creation of jobs and provision of 80 houses. The residents of Keekonyokie division still fear that their grazing land is going to reduce drastically as the project is likely to attract investors into the area. There are also fears that their culture has already been eroded since most of their Moran's have been lured into drug abuse by the construction teams and the larger number of visitors coming into the area. Drug abuse was never experienced before the REP was initiated in the region. They also explain that their livestock have been undergoing through a lot of unrest since the erection of the turbines in the area and a lot of noise pollution affecting both the locals and their animals.

43 Birdlife, (2017). Kipeto Wind Energy Project could wipe out critically endangered birds. <https://www.birdlife.org/africa/news/kipeto-wind-energy-project-could-wipe-out-critically-endangered-birds>. Accessed on; 5 January 2021.

44 Okoth, Edwin (2018). "Actis closes Kipeto Wind power financing deal". Business Daily Africa, Nairobi. Accessed on; 5 January 2021.

45 Act.is. (2018.) 100MW Kipeto Wind Power Project Reaches Financial Close. Available at: <<https://www.act.is/media-centre/press-releases/100mw-kipeto-wind-power-project-reaches-financial-close/>> Accessed on; 6 January 2021.

46 Prnewswire.com. (2018.) 100MW Kipeto Wind Power Project Reaches Financial Close. Available at: <<https://www.prnewswire.com/news-releases/100mw-kipeto-wind-power-project-reaches-financial-close-300768135.html>> Accessed on; 6 January 2021.

1.2.4.2 Ngong Hills Wind Farm

Ngong Hills Wind Farm is located in Northern foothills of Ngong hills, Kajiado County (**Figure 5a**). It is the first Wind Farm in East Africa. The area is inhabited by the Maasai Community, the communities are pastoralists and depend on livestock for living. Due to the hills potential to provide sufficient wind energy, the Belgian government commissioned two turbines as a gift to the Kenyan government in the area in 1993. The land where the wind turbines were installed is deemed to belong to Kenya Forestry Service (KFS). After a duration of 16 years (up to 2009), the two turbines retired, and it was dismantled with installation of new ones. The new turbines had a capacity of generating 5.1MW of electricity. In early 2013, Kenya Electricity Company who are the owners and operators of the wind farm and power station, began adding new turbines. By the end of 2015, the work was completed with the power station generating a total of 25.5MW of electricity⁴⁷. The projects main objective was to increase the generation of RE and reduce the use of fossil fuels. NHWF also aimed at ensuring that country attains its Big Four Agenda and Vision 2030 by provision of more energy.



Figure 5: Ngong' hills wind farm (a) and animal unrest due to rotation of the wind turbines (b) (Source: The consultant)

NHWF has portrayed a lot of negligence to the IP living in the vicinity of the wind farm. Before its establishment, the communities who were nomadic pastoralists used to get their source of living from the forest without any restrictions. The Maasai IPs could also graze their livestock in the forest freely. The communities claim that the land was community land held under native title in terms of article 63(1) and (2) of the constitution of Kenya belonging to the Maasai and other bona fide Maasai residents⁴⁸. The Maasai of Olteyan - sublocation expressed their solely ownership of the 577 hectares of land before it was put under conservation by KFS.

The community live in total darkness, with the electricity generated tapped to different parts of the country. All the benefits go to KenGen, County Government and National Government. The social amenities in the area are majorly private, exploiting the IPs. The IPs feels that their lives were better before the establishment of the third phase of NHWF, noting the poor conditions of the road, lack of clean water. Noise from the turbines is a major hurdle to the IPs who used to live in silent environments with their livestock (**Figure 5b**). Some of the IPs were considering relocating away from the area but their problem was lack of adequate compensation (in case they ever get compensated).

47 Afrik 21, (2019). KENYA: Kengen To Increase Ngong Hills Wind Farm Capacity By 10 MW. Available at: <<https://www.afrik21.africa/en/kenya-kengen-to-increase-ngong-hills-wind-farm-capacity-by-10-mw/>> Accessed 6 January 2021.

48 Kenyalaw.org, (2015). Constitutional Petition 47 of 2010 - Kenya Law. Available at: <<http://kenyalaw.org/caselaw/cases/view/108966>> Accessed on; 6 January 2021.

1.2.4.3 Lake Turkana Wind Power Station

Lake Turkana Wind Project (**Figure 6**) is a wind farm located in Northern Kenya Marsabit County, Loiyangalani District. The area experiences strong winds in the morning in October and weak in the afternoon in February. This attracted the establishment of the wind farm. The area is inhabited by IPs that communally use the land in the area. They include El Molo, Rendille, Samburu, Turkana and other indigenous and pastoralist communities in the South-East of Marsabit County. The wind project was established on a trust land owned by local authorities and inhabited by indigenous pastoralists. The wind farm covers 40,000 acres of land with a capacity of 310 MW that is adequate to supply one million homes. It comprises 365 wind turbines, each with a capacity of 850KW⁴⁹.

The project was commissioned in the year 2006 after discussions made in 2005 between the Kenyan Government and Anset Africa Limited (a company involved in project development and management in the areas of tourism, biogas energy, telecommunications, solid waste management, and road construction) and KP&P (a company that develops and operates wind energy projects). Later in 2007 environmental fieldwork was undertaken which necessitated signing of a Memorandum of Understanding (MOU) between LTWP and Kenya Power on 10 April 2008. The project is owned by LTWP which comprise the consortium of the following entities⁵⁰; Equity Partners, KP&P, BV Africa, Aldwych International Limited, Norfund⁵¹, Investment Fund for Developing Countries (IFU) of Denmark, Finn Fund and other Equity Partners. LTWP establishment was completed in March 2019 with the project capability of generating 33% of the targeted 310MW.



*Figure 6: Lake Turkana wind power project (a) and a camel grazing close to the project (b)
(Source: Roba Godana)*

Until its completion, the project faced a lot of hurdles from both the local communities and the investors. In 2012, World Bank withdrew its support for the project claiming that the electricity produced would outweigh its demand⁵². Additionally, Local Turkana communities filed a lawsuit against LTWP in October 2014 at Meru High Court, Kenya. This was to nullify the titles obtained by the company and return the land to its original status as community land. Sagana, Biriq & Company represented the communities in the court case⁵³. In November 2016 Justice Peter Njoroge of the Meru High Court rejected the application

49 Ltwp.co.ke, (2020). Lake Turkana Wind Power – LTWP. Available at: <<https://ltwp.co.ke/>> Accessed on; 6 January 2021.

50 Ltwp.co.ke, (2021). FAQ – Lake Turkana Wind Power. Available at: <<https://ltwp.co.ke/faq/>> Accessed on; 6 January 2021.

51 Norfund, (2019). Lake Turkana Wind Power Limited – Norfund. Available at: <<https://www.norfund.no/investment/lake-turkana-wind-power-limited/>> Accessed on; 6 January 2021.

52 Windpowermonthly.com. 2012. World Bank Withdraws Support for Lake Turkana Wind Power Project. Available at: <<https://www.windpowermonthly.com/article/1156128/world-bank-withdraws-support-lake-turkana-wind-power-project>> [Accessed on; 6 January 2021].

53 Schilling, Janpeter, and Luise Werland. "4 Interaction between wind energy, climate vulnerability, and violent conflict in Northern Kenya."

filed by Marsabit residents requesting the court to stop the Wind Power project. This motivated the owners who proceeded with the construction of the wind project.

Furthermore, according to the ESIA report conducted, there were a number of potential negative impacts to the locals since to the arrival of the 2,500 workers and the construction work in general⁵⁴. The impacts include: cultural contamination; increased risk of HIV/AIDS and bilharzia; increased insecurity and community conflicts; challenges of labor force management; increased accidents and occupational hazards; increase in antisocial behavior such as theft, alcohol consumption, production of illegal brews, and the introduction of commercial sex; long-term erosion of normal community life; increased demand for wood resources in an area with an already "acute shortage"; sanitation and waste disposal problems as well as decreased livestock grazing area. In addition, the IPs were left in their sidelined state given that most of them were still relying on firewood and charcoal for heating and kerosene for lighting. In the view that most of them were not educated, the jobs in the project site were taken by outsiders, they were only given priority in the security segment and bearing in mind that the area is very insecure, with no effort of providing education to their youths.

1.2.5 KETRACO Power Transmission Lines (PTLs)

Loiyangalani- Suswa PTL (LS-PTL)

The LS-PTL is a transmission line (**Figure 7a**) that traverse Baragoi, Maralal, Rumuruti, Nyahururu, Gilgil, Naivasha and finally to Suswa where the KETRACO substation is located, it traverses a total distance of 428Km⁵⁵. The line starts from Lake Turkana Wind Power Station in Loiyangalani, Marsabit County to Suswa substation, Narok County, transmitting 400kV of electricity. Its construction meant that communities living within the selected route (see **Figure 7b**) were to be affected. The proximity of the PTL near IPs lead to electrical shock upon exposure that kill the IPs and their livestock. Thus, the Environmental and Social Management Plan (ESMP) was involved to provide a framework of operating policies and procedures through which KETRACO had to develop and implement on environmental, social, health and safety management systems. The transmission land is owned by the Government of Kenya and managed by Kenya Electricity Transmission Company (KETRACO).

The transmission line was funded in 2011 by Spanish Government, contracted to Isolux Corsan who won the contract, and insured by International Development Association (IDA)⁵⁶. The actual construction began in November 2015. The goal of the transmission line was to cater for the increasing load growth and to meet the Vision 2030 objectives. In August 2017, KETRACO terminated the contract of Isolux after they ran out of money and filled a bankruptcy in Spain due to 2008-2014 Spanish financial crisis with 30% of the work completed. In February 2018, the Kenyan Government, contracted a consortium of Chinese firms at a cost of US\$96 million to complete the remaining part. The transmission line finally came to completion in September 2018, commissioned in July 2019 by the President of Kenya Hon. Uhuru Kenyatta.

Before its establishment a census survey on the line was carried out in 2010 and reviewed in 2011 to

Climate Change, Security Risks, and Violent Conflicts: Essays from Integrated Climate Research in Hamburg (2020): 67.

54 Olsen, Mette Dalgliesh, and Thomas Westergaard-Kabelmann. (2018). "Socio-economic study of key impacts from Lake Turkana Wind Power (LTWP)."

55 Afd.org, (2011), <https://www.afdb.org/fileadmin/uploads/afdb/Documents/Environmental-and-Social-Assessments/Kenya%20-%20Lake%20Turkana%20Transmission%20Line%20Delay%20Partial%20Risk%20Guarantee%20-%20ESIA%20Summary%20.pdf.S>

56 Documents1.Worldbank. Org, (2012). <http://documents1.worldbank.org/curated/en/840521468041380873/pdf/E29100v60EA0P1020Box367872B00052671.pdf>.

obtain a clear data on the number of people that were likely to be affected by the transmission line. From the survey, it was found that the transmission line was likely to affect more than 1250 titled lands, majority being concentrated in the Southern part (Suswa and Rumuruti). The report found that in the southern section only 21 parcels of land were fully affected and parcels of land with structures amounted to 211. From their statistics, it was assumed that the Northern part was occupied by IPs and a likelihood of only 30 families were to be affected. From their survey, they also indicated that the IPs were living on trust land and relocating them was never a challenge.



Figure 7: The Loiyangalani-Suswa PTL (a) evacuating electricity from Lake Turkana wind power project to the Suswa substation. Part b illustrates some of the families living right next beneath the high-voltage lines, oblivious of the danger involved. (Source: The consultant)

Owing to the transmission lines carrying a larger voltage and cover a total of 2500cm², ESMP concluded that most of the families where the Transmission line was to pass be relocated and compensated. Later on, it was found that most of the families had never been compensated nor relocated.

1.3 Socio-economic impacts of the REPs to IPs

There were no much socio-economic gains by the REPs from the IPs perspectives. The report found out that the negative effects brought about by the REPs far outweighed the few benefits brought to them. The IPs however confessed that the REPs were significant on a national scale level and benefitted other Kenyans. Some of the socio-economic benefits enjoyed by the IPs included informal employment (for security people and other support staff) and provision of some social amenities. For example, provision of clean water, security and roads construction was common in several of the REPs. The Laisamis-Loiyangalani tarmac road which is 200km long is one of the few significant socio-amenuities in IPs territories. In Olkaria I, the REP management provide education bursaries to needy and bright students while meeting some of the teachers' salaries. In Olkaria IV, the REP has drilled boreholes for the communities personal and cattle water needs. A similar case was observed in LTWP at Sarima village.

1.3.1 The energy use patterns by IPs in the REP terrains

There was very little impact of the REPs to the IPs whose territories were used in construction of the REPs as far as energy was concerned. There was no heating energy benefitted to the IPs from the REPS in their territories (**table 1**). Actually, most of the IPs still used traditional and carbon-based sources of energy such as firewood and charcoal for cooking and other heating appliances. Out of the 8 REPs assessed, only IPs in 2 REPs did not rely on firewood for heating. Half of the IPs relied on charcoal as a substitute for firewood, this can be attributed to the high cost of accessing renewable energy from the REPs. This is a violation of the UN Guiding Principles on Business and human rights which advocate for some project benefits to trickle down to the immediate IPs community.

Table 1: The predominant forms of energy used by IPs where there are REPs

REPs	Predominant forms of energy used by IPs							
	For heating				For lighting			
	Firewood	Charcoal	LPG	Project Renewable Energy	Individual solar	Kerosene lantern	National grid power	Project Renewable Energy
Talek solar mini-grid	✓				✓			✓
Olkaria geothermal plants	✓	✓			✓	✓		
Loiyangalani-Suswa PTL	✓	✓				✓		
Kipeto wind farm	✓					✓		
Oloika solar mini-grid		✓			✓			✓
Ngong' hills wind farm		✓	✓				✓	
Turkwel HEP	✓					✓		
Lake Turkana wind farm	✓					✓		

The IPs in the projects areas still rely on kerosene lanterns for lighting purposes. These lanterns are temporal with little lighting capacity. There were very few IPs connected to the national grid further confirming their poor economic status. Only the IPs in Talek and Oloika solar mini-grid REPs were connected to these energy sources; although from an investment point of view. The solar power was also insufficient and quite unreliable. Both charged very expensive tariffs since they were not regulated by ERC.

The sources of energy used for heating and lighting by IPs had several challenges despite their popularity. The IPs claimed that the energy sources were inconsistent and not sustainable. This inadequacy in sources of energy, especially firewood and charcoal resulted from reduction in vegetation cover in their territories. Recently, the Kenyan government imposed a ban on charcoal burning further reducing its availability. The price of the few existing charcoal also increased as demand surpassed supply. Sadly enough, even then none of these two fossil fuels were sustainable. It is worrying to note that the REPs whose primary roles should have been to fill in these gaps do not live to their expectations. The primary goal of REPs should be to substitute and complement fossil fuels in order to mitigate environmental effects. It is therefore ironical when in REP sites the individuals not only lack other forms of fuel but cannot also access that from the REPs. More legislative interventions should be enforced to curb this issue.

1.3.2 The modes of transport used by IPs within the REPs terrains

REPs are always aided at improving the livelihoods of the communities within their vicinities, this is because most of the REPs are located in marginalized areas inhabited by the IPs. Provision of the social amenities in the areas ensures that the marginalized communities get access to essential services and

also transport their products to market. Furthermore, development of good roads in the IPs territories will reduce death rates caused by lack of road networks connecting the area to nearby hospitals. However, from most of REPs the modes of transport in the area are rough and marram roads as indicated in the table below.

In the case of Talek Solar mini grid, (**table 2**) the roads are both marram and rough roads, the marram roads are mainly found within the Talek center whereas its outskirts as you move towards the IPs territories the roads are majorly rough roads full of dust and holes, they are impassable during rainy seasons, this proved that the practitioners of the Talek Solar mini-grid did not consider the IPs needs since the commencement of the REP. With Oloika solar mini-grid, the area where the REP was constructed is in a worse condition given that the roads are rough. The roads are impassable and very difficult to drive through on a dry season, during the rainy season the area becomes a no-go zone and the locals gets back to depend on the footpaths for all services. The project didn't contribute anything in terms of road development.

In the case of Kipeto wind farm (**table 2**), the roads are majorly marram. The provision of the marram roads was as result of the heavy equipment for the installation of the wind turbines. Given that the road was rough before its establishment, the REPs initiated some development in the area in terms of roads even if there were no tarmac roads in the area and most communities are scattered.

From **table 2**, the roads in Ngong Wind farm are majorly marram and rough roads. Considering that the REP was established near the country's capital city, Nairobi, of which it attracts several tourists. The REP practitioners could have considered tarmacking the roads into the area. The rough roads are impassable on rainy season, making the IPs to rely on their ancient modes of transport, creating bad impression towards their roles in human rights commitment.

Around Lake Turkana Wind Power Station which is the biggest wind station in Africa, the roads are majorly marram and rough roads (**table 2**). Given that the area experiences high insecurity cases, the marram and rough roads puts the security personal in danger when making efforts to guard the local communities. The Lake Turkana Wind Power Station practitioners should have considered creating better roads in the IPs territories. Similarly, with Loiyangalani-Suswa PTL, the modes of transport are majorly rough roads one being Nanyuki –Rumuruti road.

Olkaria geothermal power plants roads comprise of both tarmac, marram and rough roads (**table 2**), the tarmac roads were mainly confined in the REPs occupations. The local communities are dependent on the marram roads which connects the power stations and few meters from the IPs territories. The IPs operate on the rough roads which gets washed away during rainy season given that the area is made of loose volcanic soil. The REPs were self-centered, this displayed that they failed to meet the UN and World Bank guidelines on human rights commitment.

Turkwel hydropower area modes of transport are majorly tarmac and marram roads, the roads were initiated by West Pokot county government. From the status of the modes of transport in areas established with REPs, it is clear that the REP practitioners were profit oriented and not concerned on advancing the interests and welfare of the IPs.

Table 2: The types of roads found within the REPs territories

REPs	Types of roads			
	Tarmac	Murram	Rough roads	Footpath
Talek Solar mini-grid		✓	✓	
Oloika solar mini grid			✓	✓
Kipeto wind farm		✓		
Ngong wind farm		✓	✓	
Lake Turkana Wind Farm		✓	✓	
Loiyangalani-Suswa PTL			✓	
Olkaria Geothermal Plants	✓	✓	✓	
Turkwel Hydropower	✓	✓		

1.3.3 Status of schools and health facilities within the REPs terrains

Most renewable energy projects are constructed in indigenous communities' territories. The members of these communities expect that these projects will improve the social amenities such as schools and health facilities (**table 3**).

Table 3: The number of schools and health facilities in the REPs territories

REP	Schools Per REP			Health Facilities Per REP
	Primary	Secondary	Tertiary	
Talek solar mini grid	3	2	0	3
Olkaria Geothermal plants	2	1	0	1
Loiyangalani Suswa PTL	3	2	0	1
Kipeto wind farm	2	1	0	0
Oloika solar mini grid	2	1	0	2
Ngong Hills Wind farm	1	0	0	2
Turkwel hydropower	2	1	0	1
Lake Turkana wind farm	1	0	0	0

From **table 3**, it is evident that some of these projects have contributed to the growth of these social amenities, and have input in them while others have not. Talek has three public primary schools and two public secondary schools, with no tertiary institution. It also has one public hospital and two private hospitals. The Talek solar mini grid provides lighting for these public schools. The public hospital also depends on the project for lighting as back up to the form of energy they use. Olkaria geothermal plants, Loiyangalani Suswa PTL, Kipeto wind farm and Turkwel hydropower have not contributed to any social amenities nor contributed to any lighting for the already existing schools and health facilities. This is in contrast to the promises that the developers of these projects made to them before their construction. Ngong Hills wind farm has contributed to the construction of a private primary school for the community around the project and it also provides lighting for it. The schools and health facilities around Oloika solar mini-grid depend on the project for their source of lighting.

2

Analysis of the law, policy and institutional frameworks for the advancement of indigenous peoples' rights in the context of renewable energy projects

2.0 Introduction

There are several definitions for the term 'Indigenous Peoples' (IPs) in the national and global context. In the global realm, the OHCHR defines IPs as; *'A group numerically inferior to the rest of the population of a State, and in a non-dominant position, whose members – being nationals of the State – possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religions and language.'*⁵⁷

The current Constitution of Kenya does not clearly identify IPs as an independent entity but have them enshrined under marginalized communities in Chapter 17 Article 260 as;

*'an indigenous community that has retained and maintained a traditional lifestyle and livelihood based on a hunter or gatherer economy.'*⁵⁸

Because of their strict participation in their laws and practices to preserve their distinct ethnic identity, these groups are disadvantaged or discriminated in various grounds (Article 27, section 4)^{59, 60}. The baseline of these definitions all portray IPs as a geographically, socially and economically marginalized group of people who are deemed as inferior for lack of State knowledge and priorities. The commonly recognized characteristics of IPs include;

- i. Are geographically marginalized. They have remained in their ancestral lands with little mobility to other areas.
- ii. Strictly adhere to their traditional cultures thus have remained socially and culturally marginalized. IPs have little or no tendency of assimilation to the cultures of their surrounding communities.
- iii. Due to their geographic isolation, have experienced only marginal participation in social and economic lifestyles of the State.
- iv. Participate in traditional economic activities such as nomadic pastoralism or a hunter/gatherer economy.

In Kenya, there are several groups which fully meet these conditions and have been formally or informally identified as IPs. Some of the IPs communities located in areas with REPs in Kenya include; The Ogiek, Njemps, Ilchamus, Sakuye, Maasai, Samburu, Turkana, Rendille and Gabbra clans. Due to their inferiority across almost all spheres of the existing State laws, these communities are oppressed by REPs participating in their territories. The REPs take advantage of the IPs illiteracy and lack of knowledge on state laws to violate their human rights. Additionally, some of the REPs have adamantly refused to recognize these communities as IPs due to the stringent compensation terms associated with this act.

57 ohchr.org (2020). Minorities under International law. Retrieved from <https://www.ohchr.org/EN/Issues/Minorities/Pages/internationallaw.aspx>. Accessed on 15th February, 2021.

58 Kenya Laws, The Constitution of Kenya 2010. Nairobi: National Council for Law Reporting p.162-3

59 Art. 260 on the interpretation of the Constitution of Kenya 2010.

60 Kenya Laws, The Constitution of Kenya 210, Art. 27(4,5)

For example, Lake Turkana Wind Power (LTWP) project only recognize the native Turkana community in the region as 'Project Affected Persons, PAPs'.⁶¹ There are several laws and policies to protect the human rights, land rights, cultural rights as well as many other rights of IPs against oppression by REPs and other projects.

2.1 Laws and Policies for advancement of IPs human rights in the context of REPs

There are several laws, policies, conventions, acts, bills, sessional papers and formal treaties on the human rights of IPs affected by REPs. Some of the common laws and policies for advancement of IPs human rights in the context of REPs in their territories include;

- i. The 1986 declaration on the rights of development (article 2),
- ii. The universal declaration of human rights of minority people,
- iii. The international covenant on economic, social and cultural rights of minority communities of 1986,
- iv. The African charter on human and people rights of 1986,
- v. The UN declaration on the rights of indigenous peoples and
- vi. The Kenyan constitution of 2010 amongst many others^{62,63}.

Some of these laws and policies are described against the REPs affected below.

2.1.1 The Kenyan Constitution of 2010, Chapter 4 (Bill of Rights)

Under article 56, the bill states that, 'the state shall put in place affirmative programs designed to ensure that minorities and marginalized groups participate and are represented in all spheres of life.'⁶⁴ Both the national and county governments have a duty to express respect to minority groups in areas where projects such as REPs are being undertaken. In this regard, there were several REPs where this law was violated in the study areas.

Case study – In almost all the major REPs in Kajiado, Laikipia, West Pokot, Narok and Turkana (including Kipeto and Ngong' hills wind farms, Olkaria geothermal power projects, Talek and Oloika solar mini grids) this law was completely violated. The local IPs whose territories had been invaded by the REPs were never involved at any capacity in the operations of these REPs. Public participation was seldomly done and if done, it was for some reserved individuals. These REPs feared refusal of the projects in the IPs territories. To counter this, some few influential IPs elders or local administrators were sampled and lured with money, land or other incentives to ensure the REPs penetrate into their lands. One of the respondents in Suswa observed, '*some of our elders were taken to some big hotels in Mara for one week. Initially, we had uniformly refused construction of this project here. But after they returned, the elders had changed their stands concerning the matter. They were now in full support of construction of geothermal wells in*

61 Okello, M, O. (2018). Energy Based Involuntary Resettlement, Land Acquisition and Strategies for Livelihood Sustainability (Study of Bilateral Integration of Energy Transmission by Eastern Electricity Highway). Diss. University of Nairobi, 2018.

62 Meier, B, Hanna H, and Caitlin R. (2020)"Analyzing the human rights impacts of national pandemic responses." APHA's 2020 VIRTUAL Annual Meeting and Expo (Oct. 24-28). American Public Health Association, 2020.

63 Lotte H, Daniel R., (2020) Feeling the heat: responses to geothermal development in Kenya's Rift Valley. Journal of Eastern African Studies 14:2, pages 165-184.

64 Constitution of Kenya (2010). Section 56, Minorities and marginalized groups. Retrieved at; <https://www.klrc.go.ke/index.php/constitution-of-kenya/113-chapter-four-the-bill-of-rights/part-3-specific-application-of-rights/222-56-minorities-and-marginalised-groups> Accessed on; 4 January, 2020.

our land.' 6th December, 2020.

Like other citizens, IPs have a right to be involved in all the projects being conducted in their territories. IPs welfare is one of the major motives for the establishment of REPs in marginalized areas. But still, most of the REPs neglect the needs of the IPs by failing to involve them in the ownership of the structures (**Figure 8**). As in the case of Talek Solar mini-grid, the REP is completely owned by Narok county government with a few of the IPs indirectly participating in the ownership through employment and land ownership, without reaping any benefit from the project. The same scenario is observed in Kipeto Wind Farm, Oloika Solar mini grid and Loiyangalani-Suswa Transmission Line where the communities are involved in offering security to the REPs. However, for the case of LTWP, Turkwel Hydropower, Olkaria Geothermal power plant and NHWF, the IPs are not involved in ownership of the structures either directly or indirectly as in the case of other REPs.

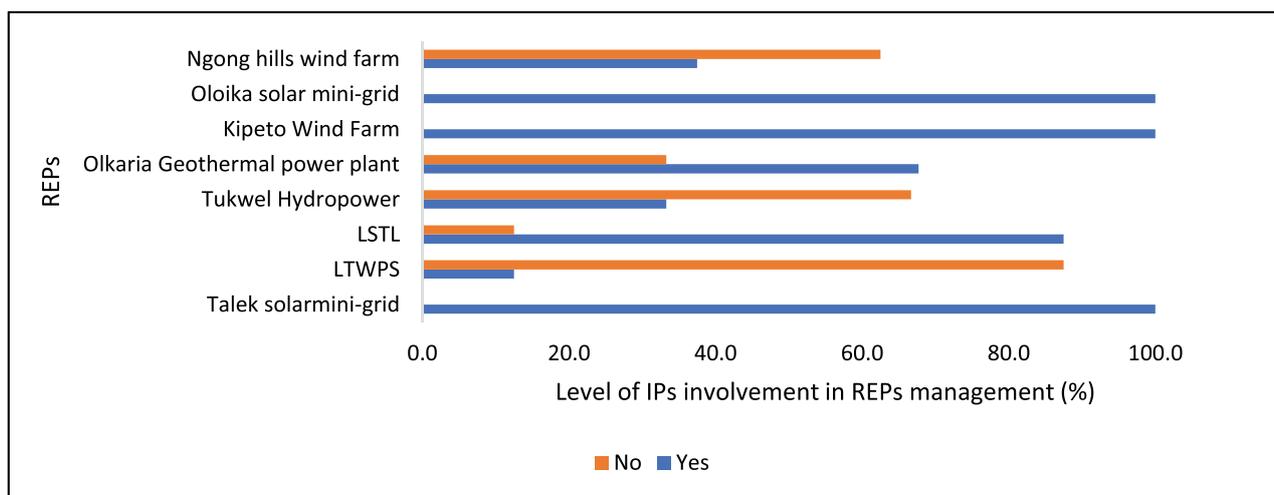


Figure 8: Level of IPs involvement on REPs

2.1.2 The Kenyan Constitution of 2010, Chapter 5 (Land and Environment)

In part 2 of the chapter (the environment and natural resources), section 71 states that, any agreement related to exploitation of natural resources has to be ratified in parliament with the representation of the concerned parties (in this case IPs and the REPs). Parliament should also enact a legislation providing the classes of transactions entered between these parties^{65,66}. There were several REPs which did not abide to this law as indicated below;

Case study – The Kipeto Wind Power Project (KWPP)

The IPs belonging to The Ilmapatapo clan from the Maasai community, confirmed not to be involved at any level in agreement of exploitation of wind energy resource from their environment. One of the clan representatives indicated that there were indeed efforts by KWPP officials to enter into a legislative agreement with the clan but the clan refused until all the compensation and benefits sharing policies were fully discussed. The clan wanted KWPP to formally commit itself to following all policies which are prerequisites for REPs established in IP territories. The KWPP officials found this requirement quite difficult and went ahead with initiation of the REP without the consultation of the Ilmapatapo clan. Due to these misunderstandings, the KWFP officials opted not to approach the IPs through the representatives

65 The Natural Resources (Classes of Transactions Subject to Ratification) Bill, 2015

66 Oraro, (2020). The New Ratification Requirements for Natural Resources Transactions (The Natural Resources (Classes of Transactions Subject to Ratification) Act, 2016). Retrieved at; <https://www.oraro.co.ke/2018/08/13/the-new-ratification-requirements-for-natural-resources-transactions-the-natural-resources-classes-of-transactions-subject-to-ratification-act-2016/>. Accessed on; 4 January, 2020.

but instead went for the individual land owners. This led to a rift between the individuals since some IPs members agreed to the compensation terms while others obliged to the offers tabled by KWPP. The aftermath was community rivalry, hatred and increased conflicts amongst the communities and between the opposing IPs and KWPP. These conflicts were further fueled by a change in social and economic lifestyles of the members who liaised with KWPP against those who didn't. **Figure 9** illustrates a contrast in the shelters of these two rivalry groups of the same indigenous community brought about by KWPP.



Figure 9: The shelters of different members of IPs in Kipeto. The IPs who did not lease their land to KWPP have semi-permanent houses (a) while those who leased have permanent houses (b) (Source: The consultant)

2.1.3 The International Covenant on Civil and Political Rights of the UN

Article 8 (4) of the covenant restrict activities contrary to the principles of UN, including sovereign equality, territorial integrity and political independence of states with regard to minority people⁶⁷. Case study - This covenant was violated by Geothermal Development Company (GDC), one of the REP practitioners in their pursuit for geothermal wells in Narasha village and Kedong valley in Olkaria. GDC and other REP practitioners involved in setting up and running Olkaria IV geothermal REP contravened this covenant by forcefully evicting the IPs in this area. The Ewuaso o Nkidong'i clan of Maasai community were reluctant in moving out of their ancestral territories without due consent and full compensation of their economic, social and cultural lives.

2.1.4 The Free, Prior and Informed Consent (FPIC) policy

The principle states that corporations willing to undertake projects in areas with other inhabitants should pursue meaningful; consultations in good faith with the potentially affected groups and other relevant stakeholders⁶⁸. Most of the potential locations for REPs in Kenya are inhabited by IPs. By this virtue, the IPs become the subjects to this law. Like other communities, the IPs should be adequately consulted freely on their opinion regarding REPs and the compensation schemes if they are to be relocated. Some of the REPs have detailed documentations of records of meeting with the IPs which was not actually the case. Some REPs did not adequately involve the IPs in their decision to initiate the REPs. For example, in the case of LTWP, the Sarima villagers (IPs) were simply relocated elsewhere without being given reasons for the relocation. A similar ordeal has been happening in Suswa, where there is potential for geothermal exploration. Here, GDC agents acquire land from the local IPs using false reasons for the land use and later use the land to drill geothermal energy.

67 Ohchr, (2021). The Universal Declaration of Human Rights: A Magna Carta for all humanity, United Nations. Retrieved <https://www.ohchr.org/documents/publications/compilation1.1en.pdf>. Accessed on; 4 January, 2021.

68 Hanna, P., and Frank V., (2013). "Human rights, Indigenous peoples and the concept of Free, Prior and Informed Consent." Impact Assessment and Project Appraisal 31.2 (2013): 146-157.

According to the Land Policy of Kenya, The Land Act of 2012, section (5) The notice under subsection (4) notification shall be sent to other known interested parties including, but not limited to, adjoining landowners, persons in actual occupation of the land including- (a) marginalized communities and groups living in the general vicinity of the public lands being proposed for allocation⁶⁹. The REP practitioners for Talek Solar mini grid, Oloika Solar min grid and Kipeto Wind Farm adhered to the Land Act to the letter, all the respondents living within the REPs acknowledged that they were notified before the actual construction began (**Figure 10**). The other REPs practitioners which include; Lake Turkana Wind Plant Station, Ngong Hills wind Farm, Turkwel Hydropower, and Loiyangalani-Suswa PTL failed to adhere to the land policy as many of the IPs occupying those areas were not given notification before the establishment of the REPs.

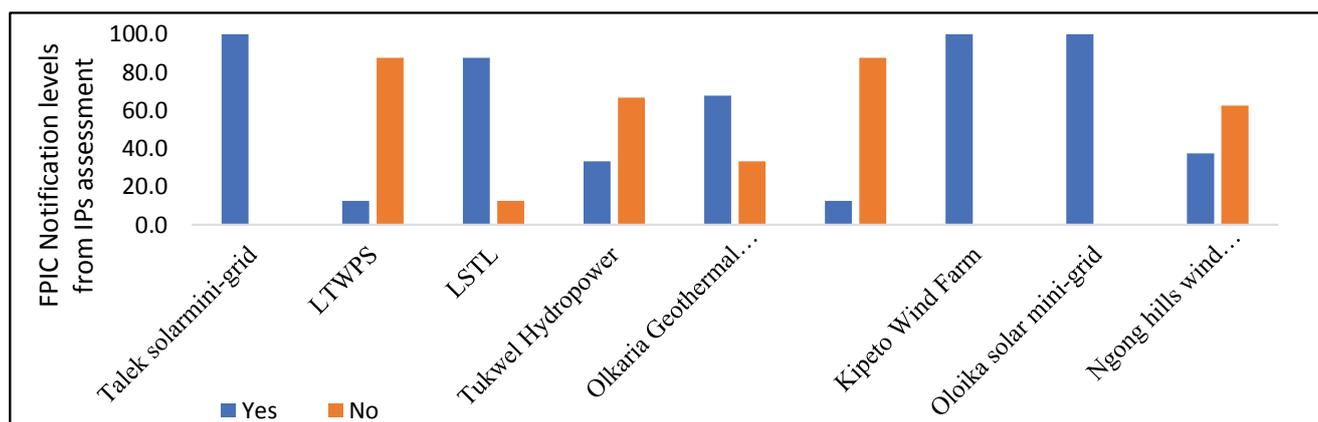


Figure 10: The levels of notification of the REPs to the IPs

For free consultation to take place, the IPs should be given adequate time for the same. **Table 4** illustrates the durations of notification that various REPs in the territories of IPs allowed them before commencement of the projects.

Table 4: The approximate consultation time that REPs give to IPs before commencement of REP operations

REP	IPs in the REP niche	Duration of notification (from IPs views)
Kipeto Wind Power Project	Maasai	4-6 months
Oloika solar mini-grid	Maasai	9-12 months
Olkaria geothermal plants	Maasai and Ogiek	4-6 months
Ngong Hills Wind Farm	Maasai	4 – 6 months
Turkwel hydroelectric	Pokot, Ogiek and Turkana	Over a year
Talek solar mini-grid	Maasai	4-6 months
Lake Turkana Wind Power	Gabbara, Ol Molo, Rendille	-
Loiyangalani-Suswa PTL	Maasai, Turkana, Njemps, Rendile, El molo	-
Bubisa wind power (projected)	Gabbara, Rendille, Boni	-

From **table 4**, it is evident that there was no adequate time for compensation in several of the REPs. Majority of IPs in the REP-infested regions were allowed 4-6 months to consult and indicate whether they were ready to be resettled into alternative lands. While most of the interviewed members confirmed that they were given 4-6 months and it was sufficient, some IPs were given less than 3 months for the same task. According to the Kenyan Constitution of 2010, the threshold period of consultation before

69 Kenya Laws, The Land Act, 2012 No. 6 of 2012, Section 5(4) a.

land resettlement by government project practitioners is 30 days⁷⁰. Using this metrics, it can be argued that most of the IPs were given time for consultation. This is needless to say that some of the information used to convince the IPs was not true. The information was also passed on in a language that most of the IPs could not comprehend and the few who could understand it were bribed. The IPs had various types of representatives to petition with REPs. These representatives were involved in signing of the eventual memorandum of understanding as well as other compensation related matters with the REPs.

There was a memorandum of understanding signed before the commencement of most of the projects, according to the individuals' response. Out of the 8 REPs assessed, only 3 REPs claimed that there was no signing. This is in accordance to the UN Human Rights Convention, which advocates for participation and involvement of the locals before a REP is constructed⁷¹.

Table 5: Signatories for memorandum of understanding signed between IPs and REPs

REP	Signatory				
	Individuals	Committee chairpersons	Legal persons	Local administrators	Politicians
Talek solar mini grid	✓	✓		✓	
Olkaria Geothermal plants	✓	✓			
Loiyangalani Suswa PTL	✓	✓			✓
Kipeto wind farm	✓	✓			
Oloika solar mini grid	✓	✓	✓	✓	
Ngong Hills Wind farm	✓	✓		✓	
Turkwel hydropower	✓	✓			
Lake Turkana wind farm					

From **table 5**, different signatories were involved in the process. Among these signatories included; community individuals, committee chairpersons, legal persons, local administrators and politicians. According to the respondents' perspective, in all the REPs assessed, different individuals and committee chairpersons were involved in the process. Only Oloika solar mini-grid involved legal persons in the signing process. Loiyangalani-Suswa PTL, together with the individuals and committee chairpersons involved politicians in the signing of the memorandum of understanding.

2.1.5 The International Financial Corporation (IFC) of World Bank Group performance standard 7 on indigenous people

Guidance note 7 of IFC recognized indigenous people as social groups with identities that are distinct from the mainstream groups in national societies. The note further recommends that these IPs should be allowed to consult and participate in all projects through well-defined community structures^{72, 73}.

Case study – the Rerina and Sarima village indigenous people's lands forum in Loiyangalani wanted to know whether FPIC around the project area of LTWP was undertaken⁷⁴. Consequently, a case was filed

70 Kenya Laws of, The Constitution of Kenya: 2010.

71 UN (United Nations)., (2007). "United Nations Declaration on the Rights of Indigenous Peoples." Geneva, UN,

. Retrieved http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf Accessed on; 4 January 2021.

72 World Bank. 2005. "Indigenous Peoples." Operational Policy 4.10, World Bank, Washington, DC.

<http://pubdocs.worldbank.org/en/972151530217132480/ESF-GN7-June-2018.pdf>. Accessed 4 January, 2021.

73 Griffiths, T., (2005). Indigenous Peoples and the World Bank: experiences with participation.

74 Sarima Indigenous Peoples' Land Forum, Community Organization and Response to LTWP at <http://siplf.org/en/Background/>.

in court in October 2014 against the REP to stop its construction until the matter was resolved⁷⁵. This delayed the progress of the REP for some time but the matter was eventually resolved.

2.1.6 The Kenyan Constitution of 2010, Chapter 4, Article 35

Article 35 of the Kenyan constitution is about the right to information. This law guarantees all citizens (including IPs) access to public information. In this context, IPs should be made aware of all the information pertaining REPs being undertaken in their territories verbally and in writing (for the literate members)⁷⁶. This has however not been the case in several REPs.

Case study:

In the projected Suswa geothermal REP, the IPs indicated that REP practitioners did not reveal to them their intentions while purchasing parcels of land from individuals. One of the IPs human rights activist, Mr. Peter Kasimoto notes, 'REP practitioners associated with Olkaria wells are very cunning to our people. They pretend to be interested in taking our land for farming or for human settlement. They approach our people with lots of money such that our people are unable to resist the money. Once they have acquired the land, they then commence drilling of geothermal wells to the fury of neighbors. The neighbors are never made aware of the intentions of these REP practitioners. Needless to say, it is the neighbors who will suffer most from emission of toxic gases while the REP is in operation'

5th December, 2020

2.1.7 Minority Rights: International standards and guidance for implementation, 2010

This convention advocates for the rights of the minority to effectively participate in and be consulted on development and economic projects as well as the impacts of such projects to be assessed. The convention further indicates that there should be promotion and protection of minority peoples' views regarding all development projects in their territories. Before designing of the projects, the targeted beneficiaries should be adequately consulted⁷⁷.

In the REPs undertaken in IPs territories in Kenya, there were projects in which the IPs were neither consulted nor involved in the initiation stages of the REPs. They include Ngong Hills Wind Farm (NHWF), KWPP and the geothermal plants in Olkaria (I to V). It is not surprising that these were the most affected REPs in terms of REPs-IPs conflicts. In the other REPs where the IPs were involved during the initiation stages, there was mutual co-existence between the two parties. For example, the solar mini-grids of Oloika and Talek did not face a lot of resistance from the neighboring IPs since they were involved at the initiation stages.

2.2 Laws and Policies for advancement of IPs land rights in the context of REPs

Land is the major bone of contention in the conflicts arising between REPs and IPs. This is because most of the renewable energy hotspots in Kenya are located in the ecology niches of IPs. These IPs are also

75 SeeingConflict (2020). Lake Turkana-Seeing Conflict at the margins. Retrieved <https://seeingconflict.org/lake-turkana>. Accessed on 4 January, 2021.

76 Article 35, Kenya Constitution of 2010.

77 UN Office of the High Commissioner for Human Rights (OHCHR), Minority Rights: International Standards and Guidance for Implementation, 2010, HR/PUB/10/3, available at: <https://www.refworld.org/docid/4db80ca52.html>. Accessed 4 January 2021.

shy of interacting with other communities and refrain from relocating from their territories. Resettlement of IPs is not easy since the IPs have cultures, traditions and rites enshrined onto their ancestral lands. For example, the Ogiek depend on a hunter-gatherer economy⁷⁸. These communities have specific trees and other geographical features which have been intimate to them for many generations in provision of honey or game meat. Such trees and geographical features do not have any monetary attachments and are considered as invaluable⁷⁹, with their fidelity holistically bestowed onto the community leaders. The sovereignty of these communities and territorial integrity depends on such features. It is therefore very difficult to relocate IPs from their ancestral lands in order to tap renewable energy.

Even if relocation is to be done, these IPs still have intimate attachments with their former land and frequent visiting the areas. This does not augur well with REPs who confiscate land allotments and title deeds after resettling IPs (as is the case with KWPP in Kipeto). IPs wishing to revisit their former lands are seen as trespassers who violate State laws on land issues. In the geothermal REPs in Olkaria, lack of formal land documents such as title deeds has been the main challenge for REPs wishing to invest in the area. This has led to bloody evictions with many casualties and a strained working relationship between REPs and the neighboring IPs. Some of the laws and policies required to leverage for IPs land rights in the context of REPs include;

- i. The land act of 2012, number 6, section 4
- ii. The land act of 2012, number 6, section 77
- iii. The land act of 2012, number 6, section 111
- iv. The land act of 2012, number 6, section 134
- v. The land act of 2012, number 6, section 160
- vi. The community land act of 2016, section 36
- vii. The Kenyan constitution of 2010, section 40
- viii. UN guiding principle 18
- ix. The geothermal resources act number 12 of 1982, section 19
- x. The geothermal resources act number 12 of 1982, section 20

2.2.1 The Land Act of 2012, Number 6, Section 160

Section 160 of the act mandates the National Land Commission (NLC) to make regulations to secure the land rights of minority communities to individually or collectively access and use land and land-based resources⁸⁰. This implies that IPs have the freedom to do whatever they wish with their land and land-based resources as long as it does not infringe into other persons or property's rights. IPs should therefore not be pushed or coerced into leasing away their lands to REPs for operating traditional economic activities such as nomadic pastoralism and hunter-gatherer economies. There were persistent complains by Maasai IPs around Suswa during the time of the study regarding REP representatives disregarding their land use. The IPs cited that this was a tactic to demoralize IPs so that they can easily lease away their land to REPs. Some of the REPs practitioners used false promises to lure the IPs and

78 Minority Rights Group International, World Directory of Minorities and Indigenous Peoples - Kenya: Hunter-gatherers, January 2018, available at: <https://www.refworld.org/docid/49749cf84a.html>. Accessed 4 January 2021.

79 Sindiga, I. (1994). "Indigenous (medical) knowledge of the Maasai." *Indigenous Knowledge and Development Monitor* 2.1 (1994): 16-18.

80 Kenya: Land Act (No. 6), of 2012.

their representatives to accept the projects.

According to the Land Act 2012, when community land is acquired for projects, just compensation should be paid in full to those people whose land interests have been affected. The compensation should be adequate enough to cover all affected issues; economically, politically, culturally, religiously and socially. Before commencement of most REPs, the developers promised the residents different forms of compensation⁸¹. Out of all these promises, not all were fulfilled. Among these promises included; land, money, house construction, free energy, employment and social amenities (**table 6**).

Table 6: Compensation promised and compensation given

REPs	Compensation to IPs		
	Compensation promised	Compensation fulfilled	IPs perspectives comments
Talek solar mini grid	Land, money	Nothing	IPs felt the REP begun well but was converted into a profit-making entity once the donors (GIZ) left.
Olkaria Geothermal plants	Houses, money, land	A few houses	IPs felt that the REPs forcefully evicted them from their ancestral lands and the few compensations were only meant to console them.
Loiyangalani-Suswa power transmission line	Free energy, social amenities, resettlement	House construction, money, employment	IPs felt that just mapping was not done to identify the rightful beneficiaries of the REP.
Kipeto Wind Power Project	Houses	Money, house construction	IPs felt that the compensation was forceful. It was a take-or-leave matter and there was no option for refusal. The few IPs who refused were tormented and pressurized to surrender their lands. The title deeds of those who leased their land were confiscated.
Oloika solar mini grid	Money, land, employment, free energy	Nothing	IPs felt that the REP was a profit-based entity intending to squeeze their meagre coffers.
Ngong Hills Wind farm	Social amenities	Nothing	The IPs felt that the REP was militarized and there were minimal channels to complain over it.
Turkwel HEP	Land, money	Resettlement	The IPs were totally unaware of their rights
Lake Turkana wind farm	Land	Resettlement	The IPs felt that the REP cheated them by displacing them without due compensation

From **table 6**, only half of the REPs assessed fulfilled the promises of compensation. However, some projects provided compensation for few members of the community while others were left out. For

81 Kenya Laws, Kenyan Constitution of 2010. Article 40(3),

instance, Olkaria geothermal plants, compensated people that were not indigenous to the land, although it is still continuous. Kipeto Wind Farm compensated money and constructed permanent houses for the people who accepted to give their land. This compensation was done in lump sum and through installments. Turkwel HEP and Lake Turkana Wind Farm offered resettlement for the communities that were displaced. This is different from the promises they had given, but it's better than failing to compensate. This compensation was done through installments. Loiyangalani-Suswa PTL offered money, house compensation and employment for members of the communities around the project.

2.2.2 The Land Act of 2012, Number 6, Section 4

Section 4 of the Act is about guiding values and principles. Part (k) of the section urges investors to minimize discrimination while encouraging marginalized communities to participate in any projects being undertaken in their territories. The section also advocates for protection of marginalized communities as they seek to participate in these projects⁸². This policy was holistically violated by almost all the REPs in the IPs territories. Instead of viewing them as partners in the sector, the IPs are seen as barriers towards obtaining profits from their natural resources. The REPs would thus strategize to remove the IPs from their areas as fast as possible and proceed with their corporate ventures.

2.2.3 The Land Act of 2012, Number 6, Section 134

Section 134 of the Act mandated NLC to establish a settlement program for all developing projects. Following this act, land settlement funds to IPs should be regulated by NLC⁸³. This has not been the case with many REPs being undertaken in IPs territories.

Case study 1:

In Kipeto, the resettlement and compensation of the IPs is fully controlled by the REPs themselves. NLC have not shown any significant input in the process. This has led to oppression of IPs in the region since the REPs exercise compensation irregularly and unfairly. Resettlement and compensation have been structured to be done as a case-by-case basis leading to irrational compensations. One of the IPs village leaders' notes, 'there are no specific criteria of payment. Some families have been adequately compensated with a three-bedroom house, others with a two-bedroom house while others are compensated in money. Even then, the amounts of money is not even. This has resulted into enmity within the clan.'

12th December, 2020

82 Kenya Laws, Kenya Land Act, Section 6 of 2012.

83 Kenya Laws, Kenya Land Act, Section 134 of 2012.

Case study 2:

In the projected geothermal project in Suswa, the IPs claim that there are 'land brokers' who approach IPs and negotiate on behalf of the REP about their land. The NLC is also not involved in the process and the IPs never get to see any NLC officials; before, during and after leasing away their lands. One of the IPs community activists, Mr. Peter Kasimoto notes, 'GDC use land brokers to lure our people into selling their land. These brokers approach us as people who have been working in the city (Nairobi) and wish to settle here after they have retired. They do not indicate to us that they are affiliated to GDC and other REP practitioners. Immediately after the land is leased to them, they disappear and only REP officials later appear. We have never seen any NLC official or representative.'

6th December, 2020

2.2.4 The Land Act of 2012, Number 6, Section 111

If land is acquired compulsorily, then just compensation should be paid promptly and in full to all persons whose interests in the land have been determined. The NLC should also make rules to regulate the assessment of just compensation.

Case study:

This act was violated by GDC and other affiliate practitioners during establishment of Olkaria REP. One of the IPs representatives in Narasha village (Olkaria) observes; 'The IPs in Narasha village have never been fully compensated. We were forced to sell our land to GDC and other REP investors. GDC and the other companies then gave us meagre compensation which could not suffice our needs. We have tried to appeal through several legal processes unsuccessfully. There are several cases filed in court regarding the same but they always seem to win since they have superior lawyers.'

Mr. Jackson Ole Shaa, 6th December, 2020

Majority of the IPs thought that they were not satisfied with compensation by the REPs (**Figure 11**). Actually, only a few IPs in Oloika, Turkwel and LTWP were convinced that they were adequately compensated. From **Figure 11**, the IPs in Kipeto and LTWP felt cheated by the REPs which they believed only came to displace them and reap from their resources. A group of Rendille IPs led by the area Senator, Mr. Gordana Hargura actually recommend for immediate termination of LTWP until the views of the local IPs are considered and factored in the benefits sharing policies.

The Senator notes; *'LTWP practitioners have been taking us cycles every time we request for due consideration of IPs recognition and subsequent compensation. We have filed several cases in court but the REP always seems to win due to national support. This project has not benefitted us in any way and the IPs are very resentful about it.'*

10th December, 2020

Majority of the IPs in Talek, the Loiyangalani-Suswa PTL, Oloika and Ngong' hills were not even sure whether the compensations were adequate.

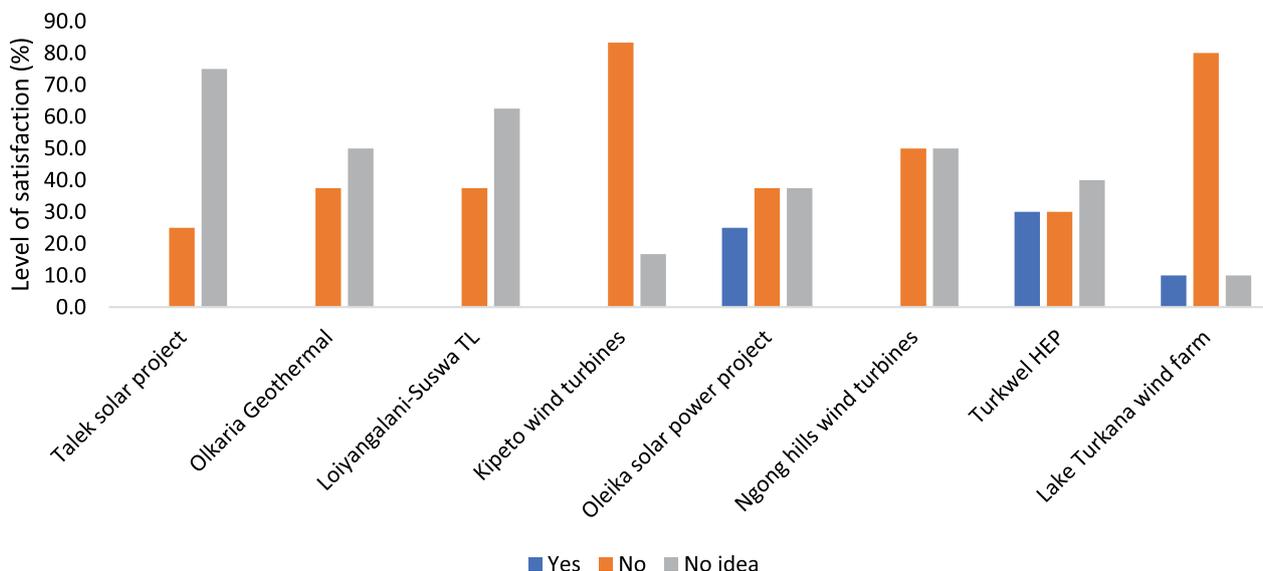


Figure 11: The compensation satisfaction levels the perspective of IPs

2.2.5 The Community Land Act of 2016, Section 36

Subject to a written law or agreement relating to investment in community land, the land shall be availed and contain provisions on; (those affecting IPs in the context of REPs only)

- i. An environment, social, cultural and economic impact assessment
- ii. Stakeholders consultations and involvement of the community
- iii. Continuous monitoring and evaluation of the impacts of the investment to the community
- iv. Payment of compensation and project royalties
- v. Measures to mitigate any negative effects of the project
- vi. Capacity building and transfer of technology to the community

It was observed that several of these provisions were not met by various REPs existing in IPs territories.

Case study 1:

The social and culture of the Ilpurko clan of Talek, (around Talek solar mini grid, TSMG) and Damaart clan of Oloika, (around Oloika solar mini grid, OSMG) have been continuously eroded by other socio-economic aspects affiliated to the REP. Prior to commencement of the REPs, these regions were rich in their cultural heritage and tourism activities were vibrant. The cultural ambassador to the Maasai community, Mr. Salankat Ole Ntutu, observes, 'we (the IPs around Talek) would receive an average of 10 tourists on a daily basis. The tourists came to see our culture, especially now that we are close to Maasai Mara Game Reserve. The tourists were mesmerized by our lighting and heating devices. However, since operationalization of TSMG, some of the tourists no longer regard us as being indigenous people and the number of visits has drastically reduced. There is still no cultural impact assessment that has been done by the REP so far.'

4th December, 2020

Case study 2:

The Rerina and Sarima communities living around LTWP have constantly requested to be involved in some of the affairs of the wind project. However, their pleas have never been considered up to date.

4th December, 2020

Case study 3:

The IPs of NHWF have never been involved with the affairs of the REP. The REP is considered as foreign in the land and envisaged in the same manner. The IPs around NHWF indicate that the REP is never involved in any social and corporate responsibility to them and is only after their wind resource. This is despite causing numerous side effects such as interference with rainfall patterns, noise pollution and causing respiratory diseases. The REP did not have any mitigation measures towards these negative effects. Additionally, there was no monitoring and evaluation of these impacts caused to the IPs around.

4th December, 2020

2.2.6 The Land Act of 2012, Number 6, Section 77

Section 77 of this act is about unlawful eviction of IPs and other vulnerable groups from their communal lands. The section indicates that any lessee evicted from whole or part of a leased land, contrary to the express or implied terms and conditions of a lease shall immediately be relieved of all obligations which should be taken up by the lessor⁸⁴.

Case study:

During the initiation and construction of Olkaria IV geothermal REP, the IPs residing in Kedong valley which had been projected as the main site of the REP refused to move away from their land. The Ewaso o Nkidong'i clan had been occupying the land on a 'trust basis' since the formal documents of the land were with the Kedong Ranch Group (KRG), who comprised of investors (who did not belong to the Ewaso o Nkidong'i clan or the community). KRG knew and understood the value of the land and leased it away without involving the Ewaso o Nkidong'i clan. They perceived them to be squatters who had simply been assisted with a settlement land.

The Ewaso o Nkidong'i clan was thus expected to move out to other areas. The REP practitioners offered them a marginalized land where they would resettle. However, the Ewaso o Nkidong'i clan refused the offer on various grounds. They cited several reasons including; attachment to their ancestral lands, poor compensation, lack of benefit sharing policies, little or no involvement in the REPs, environmental side effects arising from geothermal energy mining operations amongst others. After a tussle over the issue for a considerably lot of time, KRG and the REP practitioners decided to forcefully evict the IPs.

On one Sunday night (26th July, 2013), a group of hired arsonists (alleged to belong to Mungiki sect) accompanied by police officers invaded these IPs at the wee hours and started torching their houses

⁸⁴ Kenya Laws, Community Land Act 2016, Section 77.

while brutalizing them with all sorts of weapons. The hired arsonists did not spare the vulnerable, children or women and even livestock. Over 100 houses and other property were burnt. Over 100 cattle amongst other livestock were also killed in the process. Many people were injured in the process. The Ewaso o Nkidong'i clan IPs were successfully evicted from the land without any compensation. This ordeal is famously known as the 'Kedong valley evictions' and is one of the worst evictions in Kenya.

2.2.7 The Kenyan Constitution of 2010, Article 40

Part 4 of Article 40 entails compensation of land. The section states that necessary provisions should be made for compensation to be paid to occupants in good faith for land acquired for parties without and titles. The compensation formulae are bestowed on the two parties (lessee and lessor) in the presence of witness and a legal representative⁸⁵. Several REPs violated this rule while leasing land from IPs, possibly due to the naivety of IPs on state laws. For example, in the projected geothermal wells of Silali, Paka and Kerosi in Baringo County, the Njemps and Dorobo IPs were easily pushed out of these areas by mere threats that the REPs would kill their cattle. The IPs simply moved away for fear of death of their livestock. The few who remained behind were also served with other threats and some few promises. There was no compensation for these IPs. In Kipeto, there was no adequate compensation of the natives' land. The IPs who leased away portions of their lands were compensated in different ways and formulae. Compensation was not rational to all the lessees increasing tension in the area. Even though compensation is usually not uniform due to the different aspects warranting it (which can vary with individuals living in the same vicinity), more transparency in the process was necessary. The IPs also deserved more civic education to elaborate on the different aspects being compensated and their monetary equivalents, if present.

2.2.8 UN Guiding Principle 18

The land rights of all people (irrespective of any metrics used to classify them) should be recognized and respected in equal measures by other parties⁸⁶. It is common for REPs to assume that IPs do not have any law to directly or indirectly grab their land for REPs. In some cases, REPs and their affiliates assumed that IPs did not have any laws and violated the rule.

Case study - the land in Loiyangalani (Marsabit) where LTWP is located in a region with several groups living around. The land is registered as trust land and was given to the local government to manage it on behalf of the local communities. The IPs community cannot lease away or do any project on the land. The leaders of the local governments entered into a legal agreement with LTWP management without informing the IPs. This led to strained working relationships between the project and the community.

2.2.9 The Geothermal Resources Act Number 12 of 1982, Section 19

Section 19 of this act regards payments for compensation to land owners and occupiers near geothermal resources. Part (a) of the section states that 'whenever in the course of searching or boring for geothermal resources, any disturbance, nuisance or damage of land, land-based resources, trees or crops of the land owners or occupiers should be compensated fairly and reasonably. Part (b) of the section further describes that should there be a breach of this act, or dissatisfaction by the land owners or occupiers, these persons should proceed to The High court to demand for the compensation⁸⁷.

Case study – The residents of Narasha village in Olkaria are definitely oblivious of this policy while the

85 Kenya Laws, Kenyan Constitution of 2010, section 40

86 The UN Guiding Principles 18.

87 Laws of Kenya, Geothermal Resources Act No. 12 of 1982, Section 19.

REPs in their vicinity take full advantage of their ignorance. **Figure 12a** illustrates a village set up of IPs living in abject poverty adjacent to a geothermal well generating geothermal resource from their vicinity. There is extremely no form of compensation by the REPs to the IPs. The REP directly emits gaseous pollutants which are toxic to both the IPs and their cattle. **Figure 12b** illustrates a cow whose death has been caused by consumption of toxic chemicals produced during boring of geothermal wells. Despite these damages, the IPs are left whining and cursing due to little knowledge of state laws or power to advocate for them. On the other hand, REPs continue taking advantage of their shortcomings. According to the policy ⁷⁵, the REP should compensate these IPs as they (IPs) deem adequate or face legal charges in High court.



Figure 12: A homestead of IPs on the background of a geothermal well in Olkaria (a) and a cow whose death has been caused by consumption of toxic compounds from geothermal wells (b)(Source: Jackson Ole Shaa)

2.2.10 The Geothermal Resources Act Number 12 of 1982, section 20

The section describes that notice should be given to private land owners near a geothermal exploration site. When a REP intends to occupy or disturb the surface of any particular area or private land with crops, trees, buildings or other land-based resources, he/she should give a 21-day notice in writing to the visible and immediate land occupants affected. If this is not the case, the land owners or occupiers should be adequately compensated⁸⁸. This policy has never been implemented in the REP areas in Olkaria. The project practitioners never consider the IPs as important to alert whenever they wish to undertake their operations. Since no formal complaint has been raised by the IPs on the same, no changes are expected on the same.

2.3 Laws and Policies for advancement of IPs energy rights in the context of REPs

There are several laws and policies governing renewable energy generation, transmission, distribution, oversight and regulation. However, despite being geographically, operationally and institutionally located at the heart of IPs territories, it is unfortunate that there are very few policies on the rights of these communities. Majority of the REPs and energy institutions policies do not recognize IPs neither incorporate any of their rights. Several of the nationally recognized renewable energy policies (such as the sessional paper number 4 of 2004, The energy act number 12 of 2006, The Feed-in Tariff (FiT) of 2008 (revised 2010 and 2012) and the energy (complaints and disputes resolution) regulations act of 2012) do not even mention indigenous, minority or marginalized community in their policies. Other national renewable energy policies do not directly attribute IPs but have them bracketed under 'marginalized people'. Some of the laws and policies with energy rights of IPs in the context of REPs include:

⁸⁸ Laws of Kenya, Geothermal Resources Act No. 12 of 1982, Section 20.

2.3.1 The Energy Act Number 1 of 2019

Section 25 of this act describes the formation of an energy and petroleum tribunal to solve disputes arising from all energy matters in the country. The act identifies marginalized communities as a key stakeholder of the tribunal and should thus have representatives in it⁸⁹. However, this is not the current situation in the tribunal. Information from IPs as well as the Ministry of Energy indicate lack of representation of nearly all identified IPs. On the contrary, other ‘stronger’ communities have been overrepresented for ‘having more people to represent’. The energy issues facing IPs whose land and other resources is being used to generate energy are thus never fully discussed and solved. Energy projects undertaken in mutual lands should have mutual benefits to the nation, the REP itself and the local communities. Some of the REPs were only interested in pursuing their own interests instead of benefitting the local IPs.

From the REPs practitioner’s view (**Figure 13**) it was clear that most of the REPs stakeholders established the structures in marginalized areas with the motive of benefiting themselves and the government. A few of the REPs practitioners however, were putting efforts to ensure that the communities and everyone was benefiting from the project. Similarly, most of the benefits were distributed directly, through the people that were close to the REPs, others through local administrators, and some through committee chairman.

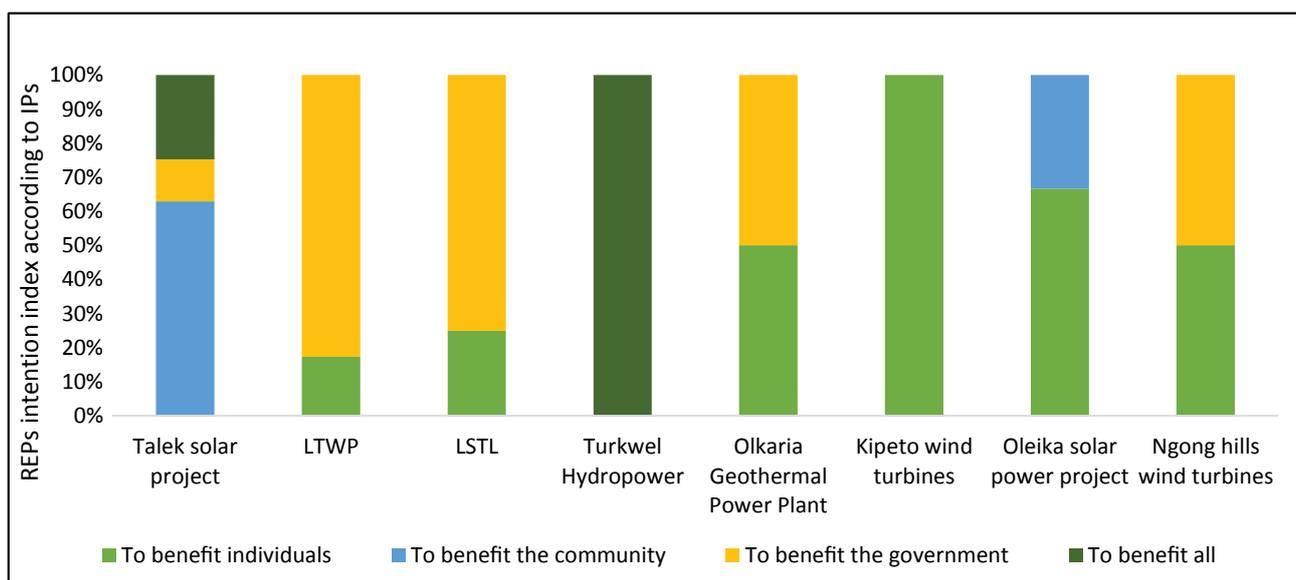


Figure 13: The IPs views on the motifs of REPs constructed in their territories

2.3.2 The National Energy Policy of 2014

Chapter 4.6 of this policy describes all cross-cutting issues related to the country’s energy policies. It directs that the Energy Regulatory Commission (ERC) shall ensure that during energy contracting processes, regulated asset base composition, return on equity for energy entities and processes of designing electricity tariffs, there should be a properly defined schedule to cater for marginalized groups. The schedule should accommodate the views, skills and capacity of marginalized people in their activities⁹⁰.

89 Kenya Laws, Energy Act No.1 of 2009, Section 25.

90 Kenya Laws, The National Energy Policy of 2014, Chapter 4.6.

Case study 1:

Representation of IPs in most of the REPs is very demoralizing. REPs insist that IPs are illiterate and incapacitated to benefit the REPs in any manner. Mr. Salantome, an engineering graduate who works as a security person in Orpower (a private affiliate of GDC in Olkaria) notes; 'I am a qualified electrical engineer from one of the local universities. However, due to my marginalized background, the company cannot entrust me with technical jobs. I am engaged as a security person just like most of my village mates working in the company. The company does not trust technicians from our ethnic community at all.'

6th December, 2020

From Mr. Salantome's views, it is evident that ERC has not regulated REPs to ensure participation of this policy.

Case study 2:

TSMG and OSMG are two solar power stations located in Talek and Oloika regions (in Narok and Kajiado counties respectively). The two are very identical in terms of energy provision to their clients (IPs). They are analogous to the proverbial oasis in a desert since they are the only electricity stations in lands, miles away and feasibly challenging for Kenya Power and Lighting Company (KPLC) and Rural Electrification Authority (REA) to join them to the main national grid. Both derive their energy from solar, store the energy and provide it to their local clients at very expensive tariffs. The management of the two solar power stations is both foreign to the local IPs (Talek is managed by Narok county government while Oloika is managed by the University of Southampton, REA and Chloride Exide Limited Company). Despite acquiring solar energy from the local IPs and experiencing very minimal operation costs, the two companies charge electricity at supernormal tariffs to the locals. Both charge Ksh. 100 for a single electricity unit with a client base of 261 and 71 households/organizations/businesses for Talek and Oloika respectively. The two REPs enjoy monopolistic benefits. Some of the respondents alleged that the REPs colluded with KPLC and REA not to connect them with the national power grid so that they can continue enjoying these benefits. It is thus evident that the National Energy Policy has not yet involved IPs and other marginalized communities in designing electricity tariffs to their residents.

Case study 3:

Despite being the hub of electricity production, the residents of Mlango Ndogo village in Olkaria literary live 'in the dark'. The return on equity as far as energy production is nearly zero. Most of the IPs in this region indicated that they use firewood for heating and kerosene lanterns for lighting. Electricity connection was merely a dream to them as GDC and other affiliates tapped power and transmitted it to KenGen who distributed it to 'other more economically viable' areas.

2.3.3 KETRACO Corporate Social Responsibility (CSR) Policy and Guidelines of 2008

One of KETRACO's CSR policy statements is ensuring safety regulations are implemented while transmitting electricity within the country⁹¹. There are several KETRACO power cables and pylons passing through IPs in Samburu and Laikipia counties. These power lines transmit electricity from REPs in Marsabit to the national distribution centers located in Suswa. The power lines convey high voltage electricity which pose a major risk to the residents⁹². Nevertheless, the IPs whose land is used for this transmission are never compensated in any manner. **Figure 14** illustrates a high-voltage KETRACO power line passing above livestock belonging to IPs in Laikipia County. The IPs are completely oblivious of the danger this power lines can cause to them and their livestock. The few IPs who know this are incapacitated to file legal cases against the economically and legally stronger REPs and thus simply let it go.



Figure 14: A 3-way pylon system transmitting electricity above livestock belonging to IPs (Source: The consultant)

2.3.4 The Marsabit County Energy Act of 2019

Marsabit County is a key source of renewable energy in Kenya. LTWP and Bubisa (projected) are both located in the county and feed over 300MW of electricity to the national grid⁹³. Owing to devolution, the county has sovereign powers to make and enact energy regulations for its citizens. In section 13 of the county energy act, the county department of energy is directed to adopt legal regulatory measures to ensure good governance and transparency in the exploitation of renewable energy resources through

91 Documents1.worldbank.org. (2021). <<http://documents1.worldbank.org/curated/en/773421555407282347/text/Environmental-and-Social-Management-Framework.txt>>/. Accessed 5 January 2021.

92 Electrical Notes & Articles. (2021). Effects of High Voltage Transmission Lines on Humans and Plants. Available at: <<https://electricalnotes.wordpress.com/2012/02/17/effects-of-high-voltage-transmission-lines-on-humans-and-plants/>>. Accessed 5 January 2021.

93 Ltwp (2021). Marsabit County to Benefit from Dutch Grant for LTWP – Lake Turkana Wind Power. Available at: <<https://ltwp.co.ke/marsabit-county-to-benefit-from-dutch-grant-for-ltwp/>>. Accessed 5 January 2021.

community level participation⁹⁴. Most of the communities in question are IPs despite LTWP refusing to acknowledge them as indigenous. The representation of IPs in the REP is next to zero. The REP only allows IPs to take up casual roles in their premises.

2.3.5 KETRACO Occupational Safety and Health Act of 2007

This act seeks to guarantee safety to all individuals located within and around KETRACO's power lines and other electricity transmission appliances. The act indicates that the company is committed to ensuring that the company's operations do not place the public at risk of injury, illness or damage to their property⁹⁵. However, this has not always been the case in several of the IPs territories in Laikipia and Samburu. The Northern part of Laikipia County is populated with animal conservancies and livestock ranches⁹⁶. The owners of this entities liaise with KETRACO to provide security for their cattle and wild life without prioritizing human safety. For example, electricity danglers (see **Figure 15**) to prevent movement of elephants into their ranches are popular within the region despite having high IPs movements. It is obvious that the ranches, KETRACO and KPLC do not care about the safety of IPs who are really at risk when they contact these live wires during their hunter-gatherer or pastoralist practices.



Figure 15: Electricity danglers erected by ranches and other conservancies to reduce animal movement in IPs lands (Source: The consultant)

2.3.6 Sessional Paper Number 4 of 2004

Section 1.3 of this paper describes the environmental and health practices to be observed by energy generators, transmitters and distributors. The paper main aim is promoting energy efficient and conservation while protecting and conserving the environment⁹⁷. This policy has not been fully observed

94 Kenya Laws, The Marsabit County Energy Development Act, 2016 No.2 Of 2016, Section 13.

95 Kenya Laws, Ketracos' Occupational Safety and Health Act, 2007.

96 Mwangi, V., Owuor, S., Kiteme, B. and Giger, M., (2020). Beef Production in the Rangelands: A Comparative Assessment between Pastoralism and Large-Scale Ranching in Laikipia County, Kenya. *Agriculture*, 10(9), p.399.

97 Kenya Laws, Sessional paper No. 4 of 2004, Section 1.3.

by some of the REPs in IPs territories. In Kipeto, there was a Vulture migration corridor (**Figure 16**) linking Kajiado and Kona Baridi (both in Kajiado county)⁹⁸. In 2015, 2 species of raptors native to Kipeto were listed in the world's highest category of endangered species on red alert; Critically Endangered on the International Union for the Conservation of Nature (IUCN)⁹⁹. The two species were the White-backed and the Rüppell's vultures¹⁰⁰. The two were only found in Kipeto, in Kenya.



Figure 16: Highly endangered species of White-backed vultures and a Marabou stock flying in Kipeto, their endangered homeland (Source: The consultant)

KWPP was built on this corridor thus interfering with the vultures. Consequently, very many vultures have been killed by the blades of the wind turbines or their environmental effect. The residents note that this is yet to be compensated. A similar scenario was described by Mr. Salaton Ole Ntutu (Maasai cultural ambassador), *"There is a projected wind REP to be constructed on the hills of Maji Moto by some German developers. The feasibility tests were done and negotiations on compensation as well as benefits sharing policy discussed with the local IPs. However, we were unable to agree with them about compensation of our birds. Maji Moto area has a bird corridor of hundreds of bird species that contribute immensely in terms of tourism revenue in Maasai Mara Game Reserve. Since asking for this wild life compensation, the investors fled away."*

4th December, 2020

98 International, B., (2021). Kipeto Wind Energy Project Could Wipe Out Critically Endangered Birds. BirdLife. Available at: <<https://www.birdlife.org/africa/news/kipeto-wind-energy-project-could-wipe-out-critically-endangered-birds>>. Accessed 5 January 2021.

99 BirdLife International (2017). "Gyps rueppelli". IUCN Red List of Threatened Species. 2017: e.T22695207A118595083. > Accessed 5 January 2021.

100 Habitatinfo, (2021). [online] Available at: <http://www.habitatinfo.com/vultures/Vulture_A1_Poster_Artwork.pdf> Accessed 5 January 2021.

2.4 Analysis of Institutional Frameworks in the context of REPs

2.4.1 A historical overview of the emergence of energy institutions in Kenya

Energy sectors and institutions in Kenya began way back in the early 1900s¹⁰¹. The first formal energy institution was The Nairobi Electrical Power and Lighting Company established by Clement Hirtzel¹⁰² in 1906. Hirtzel established the company on a purely commercial basis to sell power and light to residents and businesses in Nairobi. In 1908, a wealthy merchant known as Hassanali Esmailjee bought an electricity generating company from The Electricity Company of Zanzibar and rebranded it as Mombasa Electric Light and Power Company Limited⁹⁰. The two companies from Nairobi and Mombasa later merged in 1922 as The East Africa Power and Lighting Company (EAP&L). The company progressed on gradually covering the East African territory and was limited to Kenyan territory after independence¹⁰³.

In 1983, it was rebranded as Kenya Power and Lighting Company (KPLC)¹⁰⁴. The name was later changed to Kenya Power in 2011, though the acronym KPLC continued being used¹⁰⁵. There were several energy reforms that happened between 1983 and 2011 that fully transformed the energy sector in Kenya¹⁰⁶. The late 1980s saw the Kenyan economy shrink due to massive government looting, corruption and a dictatorial regime (after a failed coup in 1982)¹⁰⁷. Consequently, many international bodies placed an aid embargo to Kenya. The embargoes were reviewed and gradually removed after Kenya adopted a multi-party-political system¹⁰⁸ in 1992. To adapt to a fast-moving economic world that had overtaken Kenya in the 1980s, several economic reforms were put in place. The energy sector being a key enabler and driver to the economy was also subjected to reforms¹⁰⁹.

Up to the mid-1990s, Kenya relied on hydropower for electricity generation. However, droughts in the 1990s coupled by the demand for economic reforms prompted for initiation policies to source power from other sources¹¹⁰. The Electricity Power Act of 1997 enabled it to split KPLC into two sectors; one to oversee power generation (KenGen) and another to oversee its transmission and distribution (KPLC). The Act also stipulated the government's (Ministry of Energy and Petroleum) function as solely a policy formulator¹¹¹. The regulatory functions previously held by the government were transferred to an Energy Regulatory Board (ERB)¹¹² in 1998. Electricity production and supply improved but only marginally. This called for other more stringent reforms.

101 O'Keefe, P., Raskin, P. and Bernow, S., (1984). *Energy and Development in Kenya*. Stockholm. P.51

102 Kazimierczuk, A., (2019). Wind energy in Kenya: A status and policy framework review. *Renewable and Sustainable Energy Reviews*, 107, pp.434-445.

103 Power, K., (2021). History and Milestones. Available at: <<https://www.kplc.co.ke/content/item/61/history-and-milestones>> Accessed 5 January 2021.

104 KPLC (2021). "Information Memorandum to The Kenya Power & Lighting Company Limited Shareholders: 2010 Rights Issue" (PDF) The Kenya Power & Lighting Company (KPLC). Archived from the original (PDF) on 4 March 2016. Accessed on 5 January 2021.

105 National Energy Policy (2012). Retrieved at; http://www.kplc.co.ke/img/full/bWXFzkYGyS97_National_Energy_Policy_-_Third_Draft_-_May_11_2012.pdf. Accessed 5 January 2021.

106 Energy Subsidy Reform in Sub-Saharan Africa:(2013). <https://www.imf.org/external/pubs/ft/dp/2013/afr1302.pdf>. Accessed 5 Jan. 2021.

107 Atieno E. S., (1987). 'Democracy and the ideology of order in Kenya' in Michael Schatzberg, *The Political Economy of Kenya* (Praeger, New York, 1987), pp. 177–201.

108 Throup, W. and Charles, H., (1998). *Multi-Party Politics in Kenya: The Kenyatta and Moi States and the Triumph of the System in the 1992 Election* (Oxford, United Kingdom: James Currey Ltd.).

109 Economic and Social Challenges and Opportunities (2020). https://www.Un.Org/Development/Desa/En/Wp-Content/Uploads/2020/07/Recover_Better_0722-1.Pdf. Accessed 5 Jan. 2021.

110 Bertani, R. (2012). Geothermal Power Generation in the World, 2005–2010 Update Report. *Geothermics*, 41: 1–29

111 Kenya Laws, The Electric Power Act, No 11 Of 1997

112 World Bank group, (2019). Learning from Power Sector Reform: The Case of Kenya. <http://documents1.worldbank.org/curated/en/451561555435655366/pdf/Learning-from-Power-Sector-Reform-The-Case-of-Kenya.pdf>. Accessed 5 Jan. 2021.

In 2004, further reforms were instituted through the National Energy Policy (Sessional Paper number 4es. of 2004) and subsequently acted upon by the Energy Act^{113,114} of 2006. The reforms reorganized the sector by establishing The Rural Electrification Authority (REA) and restructuring ERB to Energy Regulatory Commission (ERC)¹¹⁵. The Geothermal Development Company (GDC) was also established to promote geothermal developments while KPLC was further subdivided into two sectors; one to concentrate on high-voltage power transmission from the producers (Kenya Electricity Transmission Company, KETRACO) and the other to concentrate on power distribution (KPLC)¹¹⁶.

There were numerous economic reforms in the 2000s prompting for more power to run the economy. The Vision 2030 long-term goal launched within this period also necessitated for more power to drive it. The government encouraged for more Public-Private Partnerships (PPPs)¹¹⁷. ERC liberated power production enabling the private sector to chip in and complement power from the public sector (KenGen). This led to more power production by Independent Power Producers (IPPs). The Feed-in Tarff (FiT) of March, 2008 enabled IPPs to produce power and inject it into the national grid through open tendering processes regulated by ERC. This liberated the power market even though KenGen was still the largest and cheapest power producer. The PPP Act of 2013 further encouraged and liberated Power Purchase Agreements (PPAs). A competitive market structure was thereafter proposed by the National Energy and Petroleum Policy and Energy Bill¹¹⁸ of 2015.

It was through these reforms that more private investors emerged to support REPs in Kenya. Some of the REPs had begun long ago (such as the Olkaria geothermal plants, Ngong' Hills Wind Farm, Turkwel HEP amongst others). However, most of the REPs currently under study (such as Talek and Oloika Solar mini-grid power stations, Lake Turkana Wind Power, Kipeto Wind Power which had been initiated in 1993 but failed to take off¹¹⁹, Bubisa Wind Power Project, Garissa Solar Power, Isiolo Wind Power amongst others) were initiated and constructed within this era. The REPs are classified under power producers in the institutional framework of energy in the country as indicated by **Figure 17**.

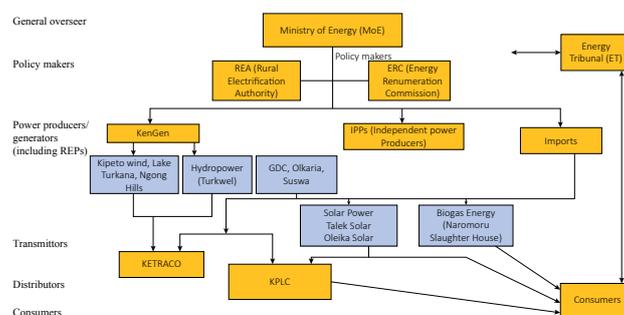


Figure 17: The institutional framework of energy in the context of REPs in Kenya (Source: The consultant)

Key: Orange charts- energy institutions, Blue charts – REPs in IPs territories

113 Kenya Laws, National Energy Policy (Sessional Paper No. 4 of 2004)

114 Lexology, (2020). Electricity Regulation in Kenya - Lexology. <https://www.lexology.com/library/detail.aspx?g=a60ba402-d259-4894-a495-da0c9bf85fcb>. Accessed 5 Jan. 2021.

115 World Bank, (2020). World Bank Document, Retrieved; <https://library.pppknowledgehub.org/documents/3549/download>. Accessed 5 Jan. 2021.

116 Theguides, (2020). Power Transform Kenya. Retrieved, http://admin.theguides.org/Media/Documents/Kenya_Energy_Prospectus.pdf. Accessed 5 Jan. 2021.

117 SDG 7.1.1(2017). Kenya Sustainable Development the United Nations Access to Electricity. Retrieved in, <https://www.oecd-ilibrary.org/sites/e6a2a7bd-en/index.html?itemId=/content/component/e6a2a7bd-en>. Accessed 5 January 2021.

118 Ketraco, (2015). Energy and Petroleum Policy and Legislation. https://www.ketraco.co.ke/sites/default/files/downloads/Energy_and_Petroleum_Policy_and_Legislation.pdf. Accessed 5 Jan. 2021.

119 PowerAfrica, (2019). The Long Road: Bringing Kenya. <https://medium.com/power-africa/the-long-road-bringing-kenyas-second-largest-wind-farm-to-financial-close-8cecb503f72>. Accessed 5 January 2021.

2.4.2 The situational analysis of objectives, main roles and policies covered by energy institutions in the context of IPs

The situational analysis of the objectives, main roles and policies of the Ministry of Energy and Petroleum (MoEP), ERC, REA, the National Energy Tribunal, KenGen, KETRACO and KPLC are summarized in **table 7**.

Table 7: The objectives, major roles and key guiding policies of the energy institutions in Kenya

Energy institution	Objectives	Major roles	Key Guiding policies	Policies in regards to IPs
MoEP	<p>Ensure universal access to electricity by 2022,</p> <p>Ensuring sustainable, affordable, reliable, sufficient and safe supply of energy,</p> <p>Exploration and development of geothermal and geo-energy resources.</p> <p>Optimize utilization of both human and financial resources</p>	<p>National energy policy development and management,</p> <p>Energy regulation, security and conservation,</p> <p>Rural electrification programmes,</p> <p>Development of renewable and non-renewable energy projects</p>	<p>The Kenyan Constitution 2010,</p> <p>Energy Act no. 12 of 2006 which gave mandates, functions and power to ERC,</p> <p>The Energy Tribunal and REA,</p> <p>The Geothermal Resources Act no. 12 of 1982 to control geo-based resources,</p> <p>The Petroleum (Exploration and Production) Act number 308 of Kenyan Laws to explore, produce, transport and develop petroleum.</p>	<p>The Kenyan Constitution of 2010 (ensure promotion and protection of interests of minority groups in their operations)</p>
ERC/EPRA	<p>To enforce rules, regulations and issuance of energy permits and licenses,</p> <p>To promote energy consumer interest,</p> <p>To become a dynamic organization of professional people with the highest degree of technical competence and integrity.</p>	<p>Economic and technical regulation of power,</p> <p>Regulation of renewable energy and petroleum sub-sector developments,</p> <p>Setting electricity tariffs,</p> <p>Review, licensing and enforcement of PPAs and network services contracts</p>	<p>The Energy Act of 2006 mandated its functions</p> <p>The Energy Act of 2019 reconstructed it to Energy and Petroleum Regulation Authority (EPRA) with new functions</p>	None

Energy institution	Objectives	Major roles	Key Guiding policies	Policies in regards to IPs
The Energy Tribunal/ EPT	Listen to appeals against decisions of ERC	Settle all matters with disputes in the MoEP	The Energy Act of 2006 mandated its functions The Energy Act of 2019 reconstructed it to Energy and Petroleum Tribunal with new functions	Energy Act of 2019 (ensure equal opportunities for marginalized communities)
REA/ REREC	To streamline the implementation of the rural electrification program so as to facilitate the achievement of national development goals.	Extending electricity coverage to rural areas, Managing rural electrification funds, Promoting the development and use of renewable energy in rural areas	The Energy Act of 2006, section 66 (mandated its functions) The Energy Act of 2019 which reconstructed it to Rural Electrification and Renewable Energy Corporation (REREC)	None
KenGen	To generate electricity power for the country	Generate electricity power for the country	The Energy Act of 1997 (mandated its functions)	Policies devolved to GDC and other IPPs under KenGen. (No direct policy by KenGen to IPs).
KETRACO	To plan, design, construct, own, operate and maintain the nation's high voltage electricity transmission grid and regional power interconnectors	Develop, maintain and operate the national electricity transmission grid network, Facilitate regional power trade	The Sessional paper no. 4 of 2004, The Energy Act of 2006 (mandated its functions)	Kenya Electricity System Improvement Project (KESIP)/ KETRACO strategic plan document on vulnerable and marginalized groups of 2019

Energy institution	Objectives	Major roles	Key Guiding policies	Policies in regards to IPs
KPLC	To plan for sufficient electricity generation and transmission capacity to meet demand; build and maintain the power distribution and transmission network and retail electricity to its customers	Purchase power from KenGen and other power producers, transmit and distribute it to consumers	The Energy Bill of 2015 which mandated KPLC to devolve some of its functions to ERA, REA and the Energy Tribunal The National Energy Policy of 2014 which enabled devolvement of energy functions from national to county levels	KESIP/KPLC strategic plan document on vulnerable and marginalized groups of 2019

MoEP is responsible for overall policy coordination and development in the energy sector in Kenya, sets up policy upon receipt of advice from the ERC and Energy Tribunal (ET)¹²⁰. Kenya's development blueprint aims at transforming the country into a newly industrializing, middle income country providing a high-quality life to all citizens by 2030 in a clean and secure environment¹²¹. However, the access to electricity by low-income persons and IPs is in question. These IPs from 14 counties represents 72% of the total country's land and 20% of the population with their energy accessibility unaddressed. Only a single policy, which was too general and enshrined in The Kenyan Constitution of 2010 was identified to address the plight of IPs by the MoEP. Hon. Simon Kachapin, Chief Administrative Secretary of the MoEP notes, *"it is evident that for the country to achieve access to clean energy and make tangible contributions to climate change mitigation, we must address the issues of energy access in totality by ensuring we are in front line in promoting adoption of clean cooking technologies for the citizens, specifically among the rural households"*¹²².

From the statement, the IPs are not recognized but instead generalized with other people in rural areas.

ERC was established under energy Act of 2006, to hear appeals from decisions made in the energy sector, it was restructured to EPRA in 2019 to aid the MoEP in formulation of national policy with statistics and information as necessary¹²³. ERC is the single sector regulatory agency responsible for economic and technical regulation of electric power, renewable energy, and downstream petroleum sub-sectors, including tariff setting and review, licensing enforcement, dispute settlement, and approval of power purchase and network service contracts¹²⁴. It oversees pricing and plays a role in negotiation of PPAs between KPLC and the power producers as private entities. ERC is responsible for moderation of tariffs by REPs to IPs in the country. However, this role has been totally neglected in solar mini-grid stations

120 Energy, (2018). State Departments-Ministry of Energy. Retrieved, https://energy.go.ke/?page_id=528. Accessed on 5 January 2021.

121 Vision2030, (2008). Kenya Vision 2030. Retrieved; <https://vision2030.go.ke/>. Accessed on 5 January 2021.

122 Energia, (2019). International Network on Gender and Sustainable Development. <https://www.energia.org/kenyan-ministry-of-energy-launches-first-national-gender-policy-in-the-energy-sector-ever/> Accessed on 5 January 2021.

123 Iea, (2007). Energy Regulatory Commission. <https://www.iea.org/policies/2264-energy-regulatory-commission-established>. Accessed 5 January 2021.

124 Epra, (2019). Role of EPRA in the Electricity Subsector. <https://www.epra.go.ke/services/electricity/regulation-of-the-electricity-supply-industry/>. Accessed on 5 January 2021.

located in IPs territories such as in Talek and Oloika. Here, REPs practitioners have converted the REPs into a lucrative business, squeezing money from vulnerable IPs who have no option but to play prey to the REPs in order to access electricity. IPs are being overcharged on the electricity bill of Kshs.60-75 compared to Kshs.15-20 per unit by KPLC. Surprisingly, there was no single policy by ERC that is directly related to IPs, and their plight in quest for justice arising from interference by REPs,^{125, 126}.

The Energy Tribunal (currently restructured to Energy and Petroleum Tribunal after the Energy Act of 2019) acts as the ombudsman in the energy sector. Conflicts, disputes and other cases within the energy sector are arbitrated here. Decisions made by other regulatory bodies such as ERC and REA can also be appealed by the energy tribunal¹²⁷. Due to its judicial role, the Energy Tribunal is best positioned to listen to all the compensations and social injustices faced by IPs during construction of REPs by other energy institutions in their territories. More reforms are required to this regulatory body to properly define, demarcate and protect all the rights of IPs. The Tribunal should be made aware that majority of the IPs are illiterate and have little knowledge of state laws that can assist them arbitrate on their own in legal institutions. They should therefore step up their mandates to leverage for their rights against the stronger REPs. More policies should be formulated to complement the single Energy Act policy of 2019 which simply advocates for equal distribution of energy opportunities to marginalized communities¹²⁸.

REA was set up in 2007 before modifications to Rural Electrification and Renewable Energy Corporation (REREC) in 2019¹²⁹. Its main task is implementation of Rural Electrification Program, which involves planning and commissioning power plants in off-grid areas. Its aim is to accelerate the pace of rural electrification in order to promote sustainable socio-economic development. Under the Energy Act of 2006, the REA is mandated to perform the following functions¹³⁰:

- i. Managing the Rural Electrification Program Fund.
- ii. Developing and updating the rural electrification master plan.
- iii. Promoting the use of renewable energy sources including small hydro installations, wind, solar biomass, geothermal, hybrid systems and oil-fired components, taking into account the specific needs of certain areas including the potential use of electricity for irrigation and in support of non-farm income-generating activities.
- iv. Implementing and sourcing additional funds for the rural electrification program.
- v. Managing the delineation, tendering and award of contracts for licenses and permits for rural electrification.

It is expected that since REA/REREC performs its operations in rural areas and is in full control of REPs, then it is likely to address the plights of IPs holistically. This is yet to be seen. At the time this report was

125 Kplc, (2018). Schedule of Tariff. Retrieved at; https://kplc.co.ke/img/full/R6kP4e4oBapV_Schedule%20of%20Tariff%20-%202018.pdf. Accessed on 6 January 2021.

126 WorldBank, (2017). Mini Grids in Kenya. Retrieved at; <http://documents1.worldbank.org/curated/en/792001512392701402/pdf/ESM-cKenyaMiniGridsCaseStudyConfEd-PUBLIC.pdf>. Accessed on 6 January 2021.

127 Lexology, (2018). Electricity regulatory in Kenya. Retrieved at; <https://www.lexology.com/library/detail.aspx?g=a60ba402-d259-4894-a495-da0c9bf85fcb>. Accessed on 6 January 2021.

128 Roedl, (2019). Highlights of Kenya's Energy Act 2019. Retrieved at; <https://www.roedl.com/insights/renewable-energy/2019-05/highlights-of-kenyas-energy-act-2019>. Accessed on 6 January 2021.

129 Rerec, (2020). Rural Electrification & Renewable Corporation http://www.rerec.co.ke/index.php?option=com_phocadownload&view=category&download=1019:expression-of-interest-baseline-study&id=191:expression-of-interest-baseline-stud&Itemid=209. Accessed on 6 January 2021.

130 World Bank, (2017). Mini Grids in Kenya. Retrieved at; <http://documents1.worldbank.org/curated/en/792001512392701402/pdf/ESM-cKenyaMiniGridsCaseStudyConfEd-PUBLIC.pdf>. Accessed on 6 January 2021.

being compiled, there was no single policy by REA/REREC directly addressing IPs in the context of REPs. In Turkwel hydropower, Ngong Wind Farm, Kipeto Wind Farm, REA has failed the IPs since the power generated is transmitted and used elsewhere or even exported. The localities are living in abject darkness despite electricity being generated from their terrains. Most of these areas lack street lights instigating more insecurity in the area.

KenGen is Kenya's largest power producer and operates hydro, geothermal, thermal and gas- and diesel-fired power plants. The company's output accounts for 72% of the electricity consumed in the country. KenGen is 70% state-owned with the remaining 30% being held by private investors.¹³¹ Most of KenGen's activities are practiced in the territories of IPs through their REPs. The institution thus has a mandate, directly or indirectly through its affiliate companies to ensure that the rights of IPs are not violated in the pursuit of energy. Regarding IPs, KenGen seeks to identify the best structures and methods to provide communities with balanced and objective information on proposed power projects and community development initiatives in order to obtain their feedback, seek their input, attain and maintain a "social contract", integrate considerations for marginalized groups within the community, including ethnic minorities, persons with disabilities, vulnerable women, and children, establish a mechanism for effective and timely resolution of community grievances, continuously improve KenGen's community engagement practices through monitoring and evaluation of activities¹³². However, in most of its activities or operations, the IPs are not involved. This portrays how these REPs lure the IPs with lots of unfulfillable promises so that they can pave way for their projects. This phenomenon is replicated in many REPs.

KETRACO and KPLC work closely to ensure power is transmitted from the power sources to the consumers. KETRACO plans, designs, builds, operates and maintains all new transmission lines above 132 kV¹³³. To fulfill its commitments, they actively engaged in: meeting, setting targets to surpass all applicable legal and regulatory safety, health and environmental requirements, policies and codes of practice; seeking to partner with stakeholders in appropriate community development programs within the laid down procedures governing such ventures; ensuring that their contractors use sustainable processes, practices, procedures and materials that avoid adverse effects on air, water and soil and maintain the environmental health of the communities in which they we operate; and consulting with stakeholders in matters that affect them¹³⁴. Due to such requirements as well as the set safety standards associated with electricity transmission, as a practice, KETRACO ensures that all projects include the following procedures: advertise the intention to undertake a project, conduct feasibility studies, ensure that any adverse effects arising from the line are adequately brought to the fore and mitigation measures accepted, conduct ESIA reports, engage communities affected to gain their consent, support and goodwill, ensure a Resettlement Action Plan is in place¹³⁵.

On the other hand, KPLC is the main off-taker in the power sector. The publicly-listed utility signs PPAs with KenGen and all Independent Power Producers looking to inject electricity into the national grid. It is

131 KenGen, (2021). Final Energy Report Kenya. Retrieved at; <https://www.kengen.co.ke/>. Accessed on 6 January 2021.

132 Theageo, (2018). Sharing Best Practices in Community Engagement for Geothermal Development. Retrieved at;

<http://theageo.org/fullpapers/C7/Sharing%20Best%20Practices%20in%20Community%20Engagement%20forGeothermal%20Development-converted.pdf>. Accessed on 6 January 2021.

133 Ketraco, (2016). Kenya Electricity Transmission. Retrieved at; http://www.ketraco.co.ke/news/2016/Projects_on_course.html. Accessed on 6 January 2021

134 Ketraco, (2015). KETRACO Corporate Social Responsibility (CSR) Policy & Guidelines. Retrieved at; <https://www.ketraco.co.ke/sites/default/files/downloads/CSR%20Policy%2018-09-2017.pdf>. Accessed on 6 January 2021.

135 USAID, (2018). Guide to Community Engagement for Power Projects In Kenya. Retrieved at; https://www.usaid.gov/sites/default/files/documents/1860/FINAL_Guide_to_Community_Engagement_-_Jan_17_2018_508-compressed.pdf. Accessed on 6 January 2021.

responsible for power transmission and distribution as well as supplies to consumers. Kenya Power's mandate is expected to decline as the ERC plans to create an Independent System Operator (ISO)¹³⁶. The entity is intended to operate as a middleman between the distributor, transmitter and generator in order to ensure that only the cheapest energy available in the market is fed into the power grid.

Both KETRACO and KPLC have a well-structured policy to address IPs rights. The two have a joint policy regulatory framework that clearly defines IPs, their territories and socio-economic lives. The 'KESIP/KPLC/KETRACO strategic plan document on vulnerable and marginalized groups of 2019' has clearly elaborated on all the legal frameworks to guide the two energy institutions while penetrating IPs territories including; their mode of communications, meetings, compensation formulae, benefits, ESIA amongst others¹³⁷. Unfortunately, the document's agenda are yet to be implemented, especially in Laikipia and Samburu counties where high voltage power lines pass over the territories of IPs without any safety precautions, compensations or benefits.

2.4.3 The situational analysis of REPs Policies in the context IPs

A crucial part of the energy sector (not mentioned in **section 2.4.2**) is the IPPs. IPPs were created to complement inadequate power from the public sector (KenGen)¹³⁸. Although KenGen contributed immensely in terms of energy through GDC, thermal and hydroelectric power (HEP) plants in the country, there was still need for more energy to run the Kenyan economy. Appropriate energy reforms enabled the emergence of several IPPs. Some of the IPPs used renewable sources to generate renewable energy (the REPs). The REPs gradually started increasing with more liberation of the power market and the FiT¹³⁹ of 2008. However, these REPs could only be situated at the hotspots of the renewable energy sources to maximize on their potential (the territories of IPs). Additionally, the REPs required a lot of funds to invest; which could only be realized by foreign investors who had no idea of the cultural beliefs of the IPs. Numerous conflicts arose leading to a loss-loss situation between REPs investors and IPs. For example, the Kipeto Wind Power Project was initiated in 1993 but has taken almost 30 years to commence operations due to these conflicts⁶². It was therefore necessary to formulate policies that could streamline the transfer of land and other renewable resources from IPs to REPs with little conflicts and for the long-term mutual benefits of the two parties. **Table 8** illustrates the objectives/roles of REPs against their current policies placed in pursuit of leveraging for the human rights of IPs. Most of the REPs were found to indeed have guiding policies in the context of IPs (though generalized as the marginalized/minority communities in most of the policies). However, implementation of these policies was very poor. The REPs with more REP-community conflicts based on the report were Olkaria Geothermal Plants (especially IV), Kipeto Wind Power and LTWP despite having well documented guiding policies¹⁴⁰.

136 Get-invest, (2020). Governmental Framework. Retrieved at; <https://www.get-invest.eu/market-information/kenya/governmental-framework/>. Accessed on 6 January 2021.

137 World Bank, (2019). Kenya Electricity Transmission Company. Retrieved at; <http://documents.worldbank.org/curated/pt/885391556658647523/text/Vulnerable-and-Marginalized-Groups-Framework.txt>. Accessed on 6 January 2021.

138 Gsb, (2014). Kenya: enabling private-sector participation in electricity generation. Retrieved at; <http://www.gsb.uct.ac.za/files/kenya.pdf>. Accessed on 6 January 2021.

139 Afriportal, (2015). Situational Analysis of Energy Industry, Policy and Strategy for Kenya. Retrieved at; https://media.africaportal.org/documents/Situational-Analysis-of-Energy-Industry-Policy-and--Strategy-for-Kenya_1.pdf. Accessed on 6 January 2021.

140 Medium, (2018). Communities in Kenya Demand Better Engagement on Geothermal Power Plant Project. Retrieved at; <https://accountability.medium.com/communities-in-kenya-demand-better-engagement-on-geothermal-power-plant-project-4290f7f32194>. Accessed on 6 January 2021.

Table 8: The situational analysis of REPs policies in the context of IPs

REPs	Key Objectives/ Roles	Policies in regard to IPs			
		Resettlement Scheme	Compensation policy	Environmental & Social Impact Assessment (ESIA) policy	Benefits-sharing policy
Olkaria I, II, III, IV & V Geothermal plants	To install geo-based turbines producing electricity of up to 45 + 70 + 48 + 140 + 158 MW; for Olkaria I, II, III, IV and V respectively (potentially up to 7,000MW). To produce renewable energy that will replace carbon-based fuels	The Land Acquisition Act Chapter 295 African Development Bank (AfDB) policies Japan Bank for International Corporation (JBIC or JICA) Kenya Lands Policy, section 175	World Bank Guiding Policies African Development Bank (AfDB) policies Japan Bank for International Corporation (JBIC or JICA) policies	Occupational Safety and Health Act Geothermal Resources Act of 1982 Environment Impact Assessment and Audit Regulations of 2003 World Bank Environmental Assessment Policies Amongst others	World Bank Guiding policies AfDB projects policies
Lake Turkana wind power	To construct 365 V52 wind turbines (each of capacity 0.85MW, total 310 MW) and connect them to the 400kV double phase KETRACO transmission line from Loiyangalani to Suswa. The REP aims at increasing the country's renewable energy for a minimum of 25 years	The Resettlement Action Plan (RAP) was guided by World Bank Operation Policies and International Finance Corporation (IFC) Performance Standards	No policy. LTWP agreed with IPs in Sarima and local politicians to drill 3 boreholes and built a 200km road between Laisamis and Loiyangalani. No land compensation since the land was Trust land. Guided by The Land Acquisition Act, Chapter 295, Registered Land Act, Chapter 300, The Land Adjudication Act, Chapter 95 and The Physical Planning Act No. 6 of 1996	Wildlife conservation and Management Act, Cap 376, Lakes and Rivers Act, Chapter 409, The Water Act, chapter 372, The Environmental Coordination and Management Act of 1999 and The Wayleaves Act, Chapter 292 (for permitting trespass of KETRACO power lines)	None

REPs	Key Objectives/ Roles	Policies in regard to IPs			
		Resettlement Scheme	Compensation policy	Environmental & Social Impact Assessment (ESIA) policy	Benefits-sharing policy
Bubisa proposed wind and solar power project	Proposed to generate 300MW of wind power and 50MW of solar power	The investors (Gitson Energy Ltd) had taken the land claiming it was unused community land without necessitating RAP. However, the local communities took the matter to court and the project was halted	None	None	None
Turkwel HEP	Was constructed to assist in the country's power production (in early 1980's). The REP produces around 106MW of HEP and is the third HEP producer in Kenya.	None	None	None	None
Kipeto wind power	Intends to inject 100MW of clean and renewable energy into the national grid	World Bank OP policies, AfDB projects policies IFC policies	World Bank OP policies	The Environmental Coordination and Management Act of 1999, Wildlife conservation and Management Act, Cap 376, Environment Impact Assessment and Audit Regulations of 2003 World Bank Environmental Assessment Policies	Through The Kipeto Community Trust

REPs	Key Objectives/ Roles	Policies in regard to IPs			
		Resettlement Scheme	Compensation policy	Environmental & Social Impact Assessment (ESIA) policy	Benefits-sharing policy
Ngong' hills wind farm	Provide 25.5MW of wind energy to KenGen	Not necessary. The land belonged to the government	None	The Environmental Coordination and Management Act of 1999 Environment Impact Assessment and Audit Regulations of 2003 World Bank Environmental Assessment Policies	None
KETRACO Loiyangalani-Suswa Transmission Line through Laikipia & Samburu counties	Evacuate power generated from LTWP and connect it to the Suswa substation for redistribution to the national grid	World Bank OP policies, The Wayleaves Act, Chapter 292	World Bank OP policies, The Wayleaves Act, Chapter 292 The Physical Planning Act No. 6 of 1996	The Environmental Coordination and Management Act of 1999 Environment Impact Assessment and Audit Regulations of 2003 World Bank Environmental Assessment Policies	None
Talek solar mini-grid station	A type III mini-grid intended to provide electric power to the residents of Talek, in Mara, Narok	None	None	None	None
Oloika solar mini-grid station	A type III mini-grid intended to provide power to the marginalized town of Oloika in Magadi	None	None	None	None

The report notes that the well-documented policies in the Olkaria Geothermal Projects were only for formality purposes and to meet the regulatory bodies demands while practicability was very poor¹⁴¹. The REP was only followed to evacuate the IPs from the project land so that the REPs would proceed

141 Heinrich, B, S. (2017). The Road from Paris to Sustainable Development - Effectively Integrating Human Rights and Gender Equality into Climate Actions of EU Institutions. Retrieved on; <https://eu.boell.org/en/2018/03/12/olkaria-projects-case-study-geothermal-energy-and-indigenous-communities-kenya>. Accessed on January 2021.

with their core business of tapping energy. This was evidenced by lack of adequate consultations with the local IPs regarding their choice of resettlement land and social and economic integration into the host communities thereafter. Despite Olkaria fulfilling the major part of the resettlement policy i.e., relocating them elsewhere and building permanent houses for the IPs, no follow ups were done to ensure satisfaction of these IPs¹⁴². Resettlement and land compensation did also not follow World Bank Guiding OPs for the vulnerable members of the community. Any other member deemed by Olkaria not to qualify for compensation was equally left out.

Resettlement in the Olkaria domes (Olkaria IV) was the unruliest one. The REPs collaborated with some private investors by the name Kedong Ranch Ltd to literary compulsorily evict the IPs who by the WBs Guiding OP policies deserved due compensation. The REP and Kedong Ranch Ltd. Relied on Kenya Lands Act, which nullifies any historically acquired land on mere basis of inheritance as the IPs purported¹⁴³. On the other hand, the IPs indicated that they had been in that land for many generations and it was their 'Embarnat' (permanent residence). A similar case still tussling over the same parcel of land (L.R No. 2662, 1380, 8398/2 and 8396, which is a 76,000 acre of land) had ruled in their (the IPs) favor in 2004 against Ngatia Farmers' Co-operative Society¹⁴⁴ in 2004. This ruling had re-assured the IPs that the land was indeed theirs. However, after numerous mis-understandings between Olkaria REPs and these IPs, the REPs decided to evict the IPs. Little legal justice was thereafter pursued and Olkaria IV was constructed. The IPs are still not contended with this social injustice and a very tense atmosphere exists between them and Olkaria IV practitioners.

The ESIA report conducted was moderately practiced with the cultural practices of the IPs still not compensated¹⁴⁵. At the time of writing this report, the residents were still demanding for a fresh Environmental Impact Assessment (EIA) by an independent body (preferably NEMA). This is because there were all forms of pollutants in their relocated lands. Noise resulting from the geothermal wells operations were clearly above the recommended limits, particulate matter levels were visibly high reducing visibility to a few meters away, the indigenous plants belonging to IPs had long gone extinct and were replaced by other toxic ones and the general odor of the villages were that of rotten eggs (possibly H₂S gases)¹⁴⁶. There was no practicability in the benefits-sharing policy well documented by Olkaria geothermal plants. It was sad noting that despite being at the hub of electricity generation, residents of Mlango Kubwa village in Olkaria depended on kerosene for their basic light. The only social amenity given to them was a single borehole of water.

LTWP also had well documented policies aimed at protecting IPs¹⁴⁷. This was however not followed to the latter. It is unsurprising that the local residents of Sarima (near Loiyangalani) have severally (through their leaders) tried to halt the project in court¹⁹. The local IPs claim that their grazing land was taken away by the REP in the name of 'Trust land' in the process denying them their vastly rich pasture land. The 150,000 acres of land was also a gateway for their livestock to access water during dry seasons. The IPs

142 World Bank, (2019). Resettlement Policy Framework. Retrieved on; <http://documents1.worldbank.org/curated/en/711031567746568673/pdf/Resettlement-Policy-Framework.pdf>. Accessed on January 2021.

143 Kenya Laws, Land Act No.6 of 2012

144 Kenyalaw, (2019). Environment and Land Case 222 of 2018. Retrieved at; <http://kenyalaw.org/caselaw/cases/view/179048/>. Accessed on January 2021

145 World Bank, (2018). Environmental and Social Management Framework. Retrieved at; <https://documents.worldbank.org/curated/en/683141519642635894/pdf/SFG4077-EA-REVISED-P166071-PUBLIC-Discovered-5-15-2018.pdf>. Accessed on 6 January 2021.

146 Rochette et al, (2008). [Hydrogen sulfide (H₂S), an endogenous gas with odor of rotten eggs might be a cardiovascular function regulator]. *Annales de cardiologie et d'angiologie* vol. 57,3 (2008): 136-8. doi:10.1016/j.ancard.2008.02.014

147 Achiba, G., 2019. Navigating Contested Winds: Development Visions and Anti-Politics of Wind Energy in Northern Kenya. *Land*, 8(1), p.7.

heavily questioned why LTWP secured a 150,000 parcel of land for the project yet only used 40,000 acres. The other 110,000 acres was titled to LTWP and was still not in use neither classified as a corridor nor a wind cushion to the REP¹⁴⁸. The IPs suspected mischief by LTWP. On the other hand, LTWP practitioners claim that the land was merely out of use and not registered as a community land. Additionally, they did not fence the land and thus claimed that the IPs were free to graze their cattle in the project area (practically impossible).

As far as compensation was concerned, the ESIA report conducted by LTWP left out land as a compensation proponent¹⁴⁹. Instead, they focused on culture, tourism activities and the economic activities of the Sarima village pastoralists and stop over sites that the IPs used to stop vehicles and solicit for water and food. Compensation for pastoralism was poorly done since pastoralism has not yet been fully defined as a major economic activity by the REPs guiding policies on compensation. LTWP drilled 3 boreholes and constructed a 200km road between Laisamis-Namerai-Illaut-Arge-Korgi-Loiyangalani¹⁵⁰. Even though the IPs claimed the road was built to assist safe transfer of LTWP construction materials, the amenity was identified as a mutual and permanent one to the IPs even after the REP period expires. The road had significantly reduced travelling time from Laisamis to Loiyangalani from 2-3 days to merely 4 hours. In the process, more economic activities have been realized¹⁵¹. Regarding the ESIA report, it is worthwhile noting that World Bank pulled out of LTWP in 2012, claiming that the negotiated PPA between LTWP and KPLC was too expensive for Kenyans to afford, and would significantly affect KPLC's financial ability¹⁵². The claims have never been attended to by the time of writing this report, by which time the project had already been commissioned. There were no benefits-sharing policies by LTWP.

The projected REPs at Bubisa, Marsabit would see an injection of 300MW of wind energy and 50MW injection of solar energy to the national grid¹⁵³. Sadly, the project is still battling for its survival and possible birth in court. A private investor company, Gitson Energy Ltd (owned by Kenyans in diaspora) had promised to spent approximately Ksh. 71 billion on the project¹⁵⁴. However, poor relations with the local IPs and an unlawful process of grabbing community land for the REP has halted it. There are no documented policies in the context of IPs by Bubisa neither is the project cleared to conduct an ESIA study. It is highly likely that the residents of Bubisa must have learnt from the tale of LTWP (both are in the same county) and prepared themselves to stop it early enough.

Turkwel HEP was constructed¹⁵⁴ between 1986 and 1991. By this period, there were few human rights policies, especially in regards to REPs and IPs. Most of the RAP, compensation policies, ESIA report guidelines and benefits-sharing policies had not been formulated by the time of its inception. However, it is notable that the vicinal neighbors of the national project do not enjoy this commodity. There is

148 Rapidtransition, (2020). A different Wind of Change – harnessing Africa's largest wind project for climate action. Retrieved at; <https://www.rapidtransition.org/stories/a-different-wind-of-change-harnessing-africas-largest-wind-project-for-climate-action/>. Accessed on 6 January 2021.

149 World Bank, (2009). Lake Turkana Wind Power project, Environmental and Social Impact Assessment Study Report Retrieved at; <http://documents.worldbank.org/curated/pt/149151468272057129/pdf/E29100v10EAOP10pdated0Windfarm0ESIA.pdf>. Accessed on 6 January 2021.

150 Achiba, G, A. (2019). "Navigating Contested Winds: Development Visions and Anti-Politics of Wind Energy in Northern Kenya." Land 8.1 (2019): 7.

151 Cormack, Z, and Abdikadir K. (2018). "The changing value of land in Northern Kenya: the case of Lake Turkana Wind Power." Critical African Studies 10.1 (2018): 89-107.

152 Karan, C., (2013). "To Be Dropped, Kenya: Lake Turkana Wind Project". Washington, DC: The World Bank. Accessed on; 6 January 2021.

153 Ndula, W, I. (2012). The influence of wind power generation on development opportunities: a case of Ngong and Marsabit wind farms in Kenya. Diss. University of Nairobi, Kenya. P.22-28.

154 Cochet, P. (1991). The Turkwel multipurpose scheme reaches commissioning in Kenya. International water power & dam construction, 43(3), 22-28.

dire need of a benefits-sharing policy for Turkwel HEP. Until 2010, Turkana County, the second largest county in Kenya and the nearest one to Turkwel HEP was off-grid!¹⁵⁵ Despite its strategic economic and administrative position, the county and its numerous towns and population relied on individual solar panels and diesel-powered generators for electricity. This significantly marginalized the county as far as economic development was concerned. The water that feeds the Turkwel gorge originate from Mt. Elgon, Sigor River and River Weiwei are key distributaries to The Turkwel River and their banks are heavily populated by The Ogiek and Pokot IPs¹⁵⁶. Despite the water passing through their territories, these IPs live in abject poverty. They observe a hunter-gatherer or nomadic pastoralism economy which are not properly defined economic activities by regulatory bodies to prompt for compensation. The substation linked to Turkwel HEP is only 1.3 km away from Nasolot Game Reserve¹⁵⁷. However, there are no guiding policies to regulate the power transmission from electrocuting the game in that Reserve.

Despite numerous conflicts with the neighboring community which have significantly delayed its commencement, KWPP is well documented with policies in the context of IPs. This is partly due to the magnitude of the REP as well as the ownership structure which involve many international companies. The economic feasibility of the project as envisaged by these foreign investors is yet to be seen by the local IPs¹⁵⁸. KWPP is projected to produce 100MW of wind energy to the national grid and consecutively eliminate a CO₂ equivalent of 254,000 metric tonnes per annum¹⁰¹. The REP has already signed a 20-year PPA with KPLC¹⁵⁹. Having failed on a RAP to relocate the IPs elsewhere, the Kipeto Energy Limited (KEL) who are the developers of KWPP reached a consensus with the PAPs to build wind turbines in the homesteads of the IPs¹⁶⁰. This was the genesis of a series of cases, in and out of court. However, KWPP have the backing of WB guiding policies as well as AFDB operating policies on the same¹⁰³.

Compensation has also been based on these policies. There have been irregular compensation of individuals spiking more hatred within the IPs and creating a tense working environment for the REP. The amount of compensation is not equal due to;

- i. Different magnitudes of affected property,
- ii. Types and value of project-affected property,
- iii. Representatives (middle-men in case they present) of the IPs and
- iv. Literacy level of PAPs. Some IPs are literate enough to arbitrate for their compensation adequately while others are not.
- v. Unity. Some PAPs are united and organized enough thus can pool resources together and hire a qualified arbitrator.

155 World Bank, (2016). Refugee Impacts on Turkana Hosts. Retrieved at; <https://documents.worldbank.org/curated/en/359161482490953624/pdf/111309-REVISED-PUBLIC-Turkana-Social-Impact-Analysis-December-2016.pdf>. Accessed on; 6 January 2021.

156 Abdl, U. M. A. R. (2000). Herding into The New Millennium-Continuity and Change in The Pastoral Areas of Kenya. Traditional Occupations of Indigenous and Tribal Peoples: Emerging Trends, 39.

157 Nema, (2017). Turkwel Lodwar Transmission Line. Retrieved at; https://www.nema.go.ke/images/Docs/EIA_13901391/ESIA_1391_Turkwel%20Lodwar%20Transmission%20Line.pdf. Accessed on; 6 January 2021.

158 Ifad, (2016). Kipeto Wind Energy Project. A case study on best practice in community engagement in energy projects. Retrieved at; <https://www.ifad.org/documents/36783902/40281004/Kanyinke+Sena%2C+Director%2C+Indigenous+Peoples+Africa+Coord.+Committee+Kenya.pdf/53b1cc61-0ee5-457c-88fa-b5371dff4ffb>. Accessed on; 6 January 2021.

159 Kplc, (2015). Kenya Power signs 100 MW power purchase agreement for Kipeto wind energy. Retrieved at; <https://www.kplc.co.ke/content/item/989/kenya-power-signs-100-mw-power-purchase-agreement-for-kipeto-wind-energy>. Accessed on; 6 January 2021.

160 Kazimierczuk, A. H. (2019). Wind energy in Kenya: A status and policy framework review. Renewable and Sustainable Energy Reviews, 107, 434-445.

There is presence of an endangered vulture species in the locality, who happen to have a migratory corridor in the midst of the REP is also of great concern. Even though the REP claim to practice The Wildlife Conservation and Management Act, Cap 376, the negative impacts of the rotating wind turbine blades on the birds is still felt. The ESIA report conducted indicates that all is well and the project can proceed¹⁶¹. Luckily enough for the IPs, there is a benefit-sharing policy signed by The Kipeto Community Trust (KCT) on their behalf. KCT will receive and transfer to the community 5% of the REPs benefits once they start flowing¹⁶². The group alleges to be a non-profit entity and it is interesting to observe its legitimacy once the benefits start trickling.

NHWF is owned by KenGen, a National Energy Institution¹⁶³. The land where the wind turbines are located was acquired from another government organ, Kenya Forest Service, (KFS). The REP has thus followed all possible policies, which can only be reviewed by the government¹⁶⁴. There are no significant conflicts between the REP and local IPs albeit there being little social amenities in their territories. There are also claims of interference in weather patterns, especially rainfall patterns to the neighboring farmers. An EIA should be done and its findings well discussed in public to these IPs to avoid a tense working environment. The IPs claim of increased respiratory diseases fueled by the REP as well as noise above the recommended limits.

The Loiyangalani-Suswa PTL covers 428km while conveying 400kV of electric power from LTWP to Suswa substation¹⁶⁵. The PTL passes through several areas inhabited by IPs including Baragoi (Samburu, Turkana and Njemps), Maralal (Samburu) Rumuruti (Turkana, Maasai) to Suswa (Maasai). The PTL has well documented policies governing these IPs from any harm or interference that occur during its construction and operations¹⁶⁶. During the construction of the PTL, the privacy of the IPs was rightly interfered with as the REPs erected PTL materials on their lands. The REPs pegged their nuisance to The Wayleaves Act, Chapter 292 without explaining it to the 'illiterate' IPs. The REPs claimed to have a Right of Way (ROW) into the IPs lands without necessarily consulting them¹⁶⁷. This was clearly a deliberate mis-interpretation of the policy to take advantage of IPs lack of State laws.

From its ESIA report, the PTL will trespass over 1,250 titled parcels of land¹¹¹. It is however unfair to note that out of these, majority of the resettlement will only be done to persons who are not IPs (mostly southern of Rumuruti, between Rumuruti, Nyahururu, Gilgil and Naivasha). The justification for these is that the vast area covered (see **Figure 18**) by the PTL in the territories of IPs does not have formal land documents. The ESIA report terms this land as being 'Trust land'. Only 30 structures (primarily Manyattas and livestock corrals) were marked for compensation! The report further identified that only 21 parcels of land belonging to IPs were fully affected and fit for compensation according to the national and

161 Kinyua, B. (2013). The Wildlife Conservation and Management in Kenya: Implementing the Framework Law. Available at SSRN 2353319.

162 Renewablesnow, (2016). Kipeto wind farm inks power purchase contract with Kenya Power. Retrieved at: <https://renewablesnow.com/news/kipeto-wind-farm-inks-power-purchase-contract-with-kenya-power-527469/>. Accessed on; 6 January 2021.

163 Mwangi, James, Nicholas K., and Maina M., (2013). "Renewable Energy Governance in Kenya: Plugging into the Grid 'Plugging into Progress'." Renewable Energy Governance. Springer, London, 2013. 119-135.

164 Ogwen, D. O., P. S. Opanga, and Alex O. Obara. (2008). "Forest Landscape and Kenya's Vision 2030." Proceedings of the 3rd Annual Forestry Society of Kenya (FSK) Conference and Annual General Meeting held at the Sunset Hotel, Kisumu. 30th September-3rd October. 2008.

165 Cormack, Z., & Kurewa, A. (2018). The changing value of land in Northern Kenya: the case of Lake Turkana Wind Power. *Critical African Studies*, 10(1), 89-107.

166 Nema, (2017). Environmental and Social Impact Assessment for Proposed Loiyangalani-Marsabit 150km, 400kv Transmission Line. https://www.nema.go.ke/images/Docs/EIA_1330-1339/ESIA_1333%20for%20Loiyangalani-Marsabit%20400kV%20150km%20Transmission%20Line_Jan%202017.pdf. Accessed on; 6 January 2021.

167 Munubi, S, L. (2006). High voltage transmission line wayleave problems and strategies: a case study of Kenya Power and Lighting Company limited. PhD diss., 2006.

3

Mapping of the Key Players in the Renewable Energy Projects Value Chain and a Brief Overview of their Human Rights Commitments

3.0 Introduction

The fidelity of any REP in fulfilling its human rights commitments lies on its key players. If a REP is supported by key players with dubious character towards human rights, then it is likely that its overall response to human rights would be questionable. All the players have to work as a team for the mutual growth of the REP. Their human rights commitments should also not conflict with each other. Some of the key players in any REP value chain have been identified as;

- i) Government representatives offering support. Usually, a Letter of Support is written to this effect or a PPA committed.
- ii) Land owners. This is one of the toughest parts of any REP and the initial owners of the land have to be adequately involved as per the FPIC consent. A legal representative might be used depending on the agreements entered.
- iii) The developers. They are the ones involved with all logistics of a REP before, during construction, operation and on termination of the REP.
- iv) The constructors. They provide engineering, operational and maintenance services during the construction and possibly throughout the REPs operation period.
- v) Financers. They offer finance to develop the REP and can arbitrate for its insurance.
- vi) Shareholders. They own a certain percentage of the REP but are not involved with the daily operation of the REPs like the developers.

Several multinational REP developers and funders have very stringent terms towards human rights. They follow organizational, national and international guiding policies towards human rights and those who leverage for them. Most REPs require an Environmental, Social and Governance (ESG) policy by the players as a commitment. The common human rights commitments for international benchmark used are IFC Standard Policies, Office of the High Commissioner for Human Rights (OHCHR) policies, UN Declaration of Human Rights and World Bank's Guiding Principles on Business and Human Rights¹⁷². The easiest way to react to a REP that is not adhering to human rights commitments is to back out. For example, The World Bank has been pulling out of several projects that it deems to violate their human rights commitments policies. In 2012, World Bank pulled out of LTWP project for entering into a PPA with KPLC that it deemed to violate the human rights of Kenyans¹⁷³. This section of the report lucidly examines whether the commitments advocated by REP key players are indeed to help the minority in the project site or for merely attracting investments. The key players in the REPs and their human rights commitments are as described below:

¹⁷² Davis, R. (2012). The UN Guiding Principles on Business and Human Rights and conflict-affected areas: state obligations and business responsibilities. *Int'l Rev. Red Cross*, 94, 961.

¹⁷³ Cormack, Z., & Kurewa, A. (2018). The changing value of land in Northern Kenya: the case of Lake Turkana Wind Power. *Critical African Studies*, 10(1), 89-107.

3.1 Lake Turkana Wind Power (LTWP) Project

Due to the magnitude of this project, LTWP had several key players from the local and international arena. The project was perceived to provide 15-20% of Kenya's energy and surely surpassed this limit by providing 17% of the country's daytime power and 30% of the country's nighttime power. The LTWP consortium comprised of amongst many others;¹⁷⁴

- a) Two key developers i.e., Aldwych International company (33% ownership) and KP & P, Africa B.V Ltd Company (25% ownership).
- b) Funders such as; Investment Fund for Developing Countries, Finnish Fund for Industrial Corporation Ltd, Norfund Investments Ltd, Danish IFU, African Development Bank, European Investment Bank amongst others.
- c) Constructors involving Vestas East Africa Ltd and Sandpiper Ltd.

The information regarding some of these key players and their human rights commitments are illustrated below;

3.1.1 Norfund Investments Ltd

This is a Norwegian investment fund for developing countries established by the Norwegian parliament ¹¹⁹ in 1997. It is the government's main instrument for combatting poverty in developing countries through private sector development. Its funds are obtained from Norway's development assistance budget. Norfund mainly invests in Eastern and Southern Africa. It strictly adheres to Norway's development cooperation policy¹⁷⁵.

Human Rights Commitments

Norfund's human rights commitments are enshrined in the Norfund ESG policy. The policy is guided by; (i) IFC Performance Standards for environmental and social sustainability and (ii) World Bank Environmental, Health and Safety guidelines as its main standards of operation. Norfund also strictly adheres to Norway's development policy which identifies human rights as cross-cutting issues relevant to development. Norfund also acknowledges corporate responsibilities to respect human rights. They use the UN Guiding Principles on Business and Human Rights to achieve this. When investing in fragile and conflict-affected areas, Norfund performs a full human rights due diligence based on IFC Performance Standards. Norfund also advocates for grievance solving mechanisms through a holistic approach¹⁷⁶.

3.1.2 Aldwych International Ltd

It is the major shareholder of LTWP with about 30% of the shares¹⁷⁷. The firm is based in London, UK and is committed to growing the energy potential of developing nations in Africa. Aldwych was established in 2004 to develop and operate power generation, transmission and distribution in emerging economies. Currently, it has financed over 20 power projects globally¹⁷⁸.

174 Klagge, B., & Nweke-Eze, C. (2020). Financing large-scale renewable-energy projects in Kenya: investor types, international connections, and financialization. *Geografiska Annaler: Series B, Human Geography*, 102(1), 61-83.

175 Mithika, D. (2014). Culture and investment decisions at Norwegian investment fund for developing countries, Nairobi office (Doctoral dissertation, University of Nairobi).

176 Norfund, (2020). Environment and Society. Retrieved at: <https://www.norfund.no/responsible-investor/environmental-social-risk/>. Accessed on; 7 January 2021.

177 Itwp, (2017). Press-Page 4-Lake Turkana Wind Power. Retrieved at: <https://itwp.co.ke/category/press/page/4/>. Accessed on; 7 January 2021.

178 Aldwych-international, (2010). Overview of Aldwych International. Retrieved at: https://www.aldwych-international.com/about_us-

There are no clear human rights commitments by Aldwych.

3.1.3 Danish Industrial Fund for Developing Countries (IFU)

Danish IFU was founded by in 1967 and joined the Denmark Finance Institute in 1992. It is however self-governing despite being established by the Danish government¹⁷⁹. The board members and CEO of the fund are nominated by Denmark's Minister of Foreign Affairs. IFU has been investing in Asia, Africa, Latin America and Ukraine (in Europe). It mainly focuses on finance and infrastructure.

Human rights commitments

IFU adhere to the 'Strategy for Denmark's Development Cooperation' guidelines on human rights which highly prioritize human rights and democracy. IFU also obeys the International Development Cooperation Act which is banked on the UNs Charter, the Universal Declaration of human rights and UNs convention on human rights. IFU aims to advance their interests in a peaceful, stable and equity-driven world¹⁸⁰. Through Denmark's Development Cooperation, IFU aims to;

- i) Apply human rights as a core value in all partnerships, using the principle of non-discrimination, public participation and accountability.
- ii) Leverage for all forms of human rights with special focus on women.
- iii) Strengthen the capacity of public authorities, civil societies and rights holders.
- iv) Strengthen the participation of developing nations in development of international legal orders.

DDC has really leveraged for the rights of IPs in Bolivia with great success.

3.1.4 Vestas East Africa Ltd

This is a branch to Vestas Wind Systems, a specialist in wind energy systems. Vestas have delivered wind energy in 74 countries with more than 71GW of cumulative installed wind energy capacity. Vestas is the World's largest company as far as wind energy systems are concerned. It began producing wind turbines¹⁸¹ in 1979. It is a Danish company whose headquarters are situated in Aarhus, Denmark¹²⁵.

Human rights commitments

The company strictly adhere to its Vestas human rights policy. The company commits to respecting human rights and is a signatory to the UN Global Compact, since 2009. Vestas is committed to the UN Guiding Principles on Business and Human rights¹⁸². It commits to respect all internationally recognized human rights including but not limited to;

- i) The ILO Declarations on Fundamental Principles and Rights at Work
- ii) The Universal Declaration on Human rights
- iii) ILO Conventions on Labor standards

[overview.html](#). Accessed on; 7 January 2021.

179 Efdi, (2019). The Investment Fund for Developing Countries. Retrieved at; <https://www.edfi.eu/member/ifu/>. Accessed on; 7 January 2021.

180 Humanrights, (2017). Enhancing human rights impacts of development finance. Retrieved at; <https://www.humanrights.dk/news/enhancing-human-rights-impacts-development-finance>. Accessed on; 7 January 2021.

181 Itwp, (2018). Project Partners-Lake Turkana Wind Power. Retrieved at; <https://itwp.co.ke/project-partners/>. Accessed on; 7 January 2021.

182 Vestas, (2020). Sustainability at Vestas. Retrieved at; <https://www.vestas.com/en/about/sustainability#un-global-compact>. Accessed on; 7 January 2021.

iv) OHCHR policies

Vestas seeks to identify and engage with stakeholders whose human rights are potentially impacted during their operations. They do not tolerate threats, intimidation or physical and legal attacks to human rights defenders¹⁸³.

3.1.5 European Investment Bank (EIB)

The EIB is a publicly owned international finance institution. The EU members are the major shareholders in EIB. The company was established in 1958 and its headquarters are located in Kirchberg, Luxembourg. The bank has been investing in infrastructural development projects to assist developing nations globally¹⁸⁴.

Human rights commitments

EIB strive to create financial stabilities backed on the respect for human rights. They ensure their projects obey all human rights policies and commitments as per UN declarations, OHCHR's, World Bank's Guiding Principles of Business and Human rights as well as IFC Performance Standards. EIB uphold all the EU objectives on human rights including freedom, democracy, equality and equal rule of law for all including the minorities. As a commitment, EIB only fund projects that strictly respect human rights¹⁸⁵. They are guided by the following human rights policies;

- i) The European Charter for Fundamental Right
- ii) ILO Declaration on Fundamental Principles and Rights at Work
- iii) UN Declarations on the rights of IPs

EIB support human rights by; (i) regularly assessing the impacts of the projects on human rights, (ii) requiring their clients to obey all human rights, (iii) standing with human rights defenders and (iv) listening to citizens' concerns in the areas of their funded projects.¹²⁹

3.2 Kipeto Wind Power Project (KWPP)

The KWPP is one of the promising high impact REPs in Kenya. Upon completion, the project will inject 100MW of clean power to the national grid, develop the Kipeto community and provide jobs to many Kenyans. KWPP has a well-regulated structure comprising of local and foreign investors¹⁸⁶. The key players in KWPP value chain include¹⁸⁷;

1. The government. Through ERC and KPLC, KWPP has full governments support. KWPP signed a 20-year PPA with KPLC.
2. Construction. KWPP was constructed by General Electrica, GE who provided operations and maintenance services. China Machinery Engineering Corporation (CMEC) provide engineering,

183 Vestas, (2019). The Vestas Human Rights Policy. Retrieved at; https://www.vestas.com/~/_/media/vestas/about/sustainability/pdfs/vestas%20human%20rights%20policy%202019%20signed.pdf. Accessed on; 7 January 2021.

184 Europa, (2020). European Investment Bank. Retrieved at; https://europa.eu/european-union/about-eu/institutions-bodies/european-investment-bank_en. Accessed on; 7 January 2021.

185 Horng, D. C. (2003). The human rights clause in the European Union's external trade and development agreements. *European Law Journal*, 9(5), 677-701.

186 Prnewswire, (2018). 100MW Kipeto wind power project reaches financial close. Retrieved at; <https://www.ifad.org/documents/36783902/40281004/Kanyinke+Sena%2C+Director%2C+Indigenous+Peoples+Africa+Coord.+Committee+Kenya.pdf/53b1cc61-0ee5-457c-88fa-b5371dff4ffb>. Accessed on; 7 January 2021.

187 Kipetoenergy, (2009). Kipeto Energy. Retrieved at; <https://www.investopedia.com/terms/e/europeaninvestmentbank.asp>. Accessed on; 7 January 2021.

procurement and construction services.

3. Financing. KWPP is supported by Overseas Private Investment Corporation (OPIC). OPIC has committed USD 233 million to the REP. Two shareholders have committed USD 88 million to the REP i.e., Actis (88%) and Craft skills Energy International, CEIL (12%). AIIM and IFC are also major financiers to the REP¹⁸⁸.
4. Development. Development of KWPP is undertaken by the Kipeto Energy Public Company (KEPC) who have liaised with the community on matters land and other communal issues.

3.2.1 Kipeto Energy Public Company

KEPC was developed as a Special Purpose Vehicle (SPV) to fast-track the development of KWPP. KEPC seeks to inject Ksh. 20 million to Kipeto community through KCT. KEPC will also ensure that 5% of the REPs benefits are transferred to KCT who will then take the money to the community. KEPC has leased more than 60 parcels of lands within the project area for wind turbines footprints and a KETRACO transmission line for evacuating the energy generated through 'voluntary participation of land owners'¹⁸⁹.

Human rights commitments

KEPC adheres to IFCs Performance Standards on human rights. KEPC also commits to maintain a close link with the community PAPs through several Community Social Responsibility (CSR) programs¹⁹⁰.

3.2.2 Actis Capita LLP

It is a British company based in Nairobi, Kenya. Actis was founded in 2004 and has 17 offices globally. Actis invests in renewable energy projects and its growth has spread across Africa, Asia and Latin America¹⁹¹.

Human rights commitments

Actis projects follow their ESG policy. The social policy of Actis ESG guidelines are based on¹⁹²;

- i. Full compliance with ILO Fundamental Conventions
- ii. The UN Declarations on human rights
- iii. IFC Performance Standard number 2: Labor and working environment
- iv. The UK Modern Slavery Act of 2015

3.2.3 Craft Skills Wind Energy International Limited (CS)

CS firm is based in Nairobi, Kenya. It is a fully Kenyan-owned company that begun in 2008. It purposes to develop renewable power sources in Africa to generate electricity. CS was behind the idea of registering

188 Victor O., (2018). Socio-economic and environmental analysis of wind power projects as viable renewable energy resources in Kenya, African Journal of Science, Technology, Innovation and Development, 10:5, 525-538, DOI: 10.1080/20421338.2017.1366132

189 Ifad, (2016). Kipeto Wind Energy Project. A case study on best practice in community engagement in energy projects. Retrieved at; <https://www.ifad.org/documents/36783902/40281004/Kanyinke+Sena%2C+Director%2C+Indigenous+Peoples+Africa+Coord.+Committee+Kenya.pdf/53b1cc61-0ee5-457c-88fa-b5371dff4ffb>. Accessed on; 6 January 2021.

190 Unescap, (2010). Convergence and Coherence in International CSR Instruments Retrieved at; https://www.unescap.org/sites/default/files/8%20%20Chapter%20IV_Convergence%20and%20coherence%20CSR%20instruments_0.pdf. Accessed on; 6 January 2021.

191 Actis, (2017). Actis - African Private Equity and Venture Capital Association. Retrieved at; <https://www.avca-africa.org/media/1811/avca-member-profile-actis-october-2017.pdf>. Accessed on; 6 January 2021.

192 Acti, (2004). The Actis Responsible Investment Report 2014 View document. Retrieved at; <https://www.act.is/media/1043/responsibleinvestingreport.pdf>. Accessed on; 7 January 2021.

the SPV, Kipeto Energy Limited (KEL) to develop the wind farm¹⁹³.

Human rights commitments

CS has no clear human rights commitments

3.2.4 General Electrica (GE)

It is an American company based in New York and Boston, USA. The company begun in 1892 and operates a range of projects including renewable energy¹⁹⁴. It is quite fundamental in KWPP, especially in the sector of construction. It has supplied 60 wind turbines and provided a 220-kV high voltage line that will be used to transport electricity from the project site to Isinya substation (also in Kajiado).

Human rights commitments

GE promotes respect for fundamental rights in all project countries it covers. GE strongly supports the principles advocated in the Universal Declaration of Human Rights and is committed to ensuring their strict adherence. GE also endeavors to advance the respects for fundamental human rights by leading as an example in the business community. In the Management capacity, GE strongly commits to follow ILO's Declaration on Fundamental Principles and Rights at Work including inclusivity and non-discrimination. GE is also guided by the Voluntary Principles on Security and Human Rights. At the business capacity, GE commits to support human needs at all possible levels¹⁹⁵.

3.2.5 AIIM

AIIM is a member of the Old Mutual Alternative Investment which has been investing in Africa since 2000. It is a South African company which was founded in 1845. AIIM has assets of over USD 2.1 billion in 15 countries in East, South and West Africa. Its cumulative installed energy capacity is 3.3GW¹⁹⁶.

Human rights commitments

AIIM has an ESG policy guided by the following legislations¹⁹⁷;

- i. The UN Guiding Principles on Business and human rights
- ii. UN Universal Declaration on human rights
- iii. UN Global Compact
- iv. ILO Core conventions
- v. UN Principles for Responsible Investments (UNPRI)
- vi. King IV code of Corporate governance

3.2.6 Overseas Private Investment Corporation (OPIC)

OPIC is based in Washington DC, on USA. It begun its operations in 1971. OPIC was the US's government

193 Aiimafrica, (2016). Kipeto Energy signs 100MW purchase power agreement in Nairobi. Retrieved at; http://www.aiimafrica.com/media/1340/press-release_kipeto-energy-signs-100mw-purchase-power-agreement-in-nairobi.pdf. Accessed on; 7 January 2021.

194 Egan, M., (2018). "Inside the dismantling of GE". CNN. Retrieved at; <https://money.cnn.com/interactive/news/GE-dismantling-interactive/>. Accessed on; 7 January 2021.

195 Ilo, (2009). ILO Declaration on Fundamental Principles and Rights at Work. Retrieved at; https://www.ilo.org/wcmsp5/groups/public/---ed_norm/declaration/documents/normative_instrument/wcms_716594.pdf. Accessed on; 7 January 2021.

196 Aiimafrica, (2016). Kipeto Energy signs 100MW purchase power agreement in Nairobi. Retrieved at; http://www.aiimafrica.com/media/1340/press-release_kipeto-energy-signs-100mw-purchase-power-agreement-in-nairobi.pdf. Accessed on; 7 January 2021.

197 Allianz, (2021). Human Rights. Retrieved at; <https://www.allianz.com/en/sustainability/articles/human-rights.html>. Accessed on; 7 January 2021.

development finance institution until it merged with Development Credit Authority to form Development Finance Corporation (DFC). OPIC supports a range of investment projects including energy, agriculture and finance¹⁹⁸.

Human rights commitments

OPIC is required to take into account a full audit of the human rights of individuals where it is to fund a project. The audit should be guided by the US Secretary of State's office. All the information regarding human rights is well scrutinized before committing itself into the project. OPIC commits to note and act upon all the effects on human rights encountered during its operations¹⁴².

3.3 Ngong' Hills Wind Farm (NHWF)

NHWF is purely owned by the government of Kenya through KenGen. Therefore, KenGen is the sole player in this REP. KenGen was incorporated under the Companies Act in 1954¹⁹⁹. Until then, it was still under the East Africa Power & Lighting Company, EAPLC which was reconstructed to KPLC in 1983. Under the energy reforms of 1997, KenGen was fully chartered to oversee all the generation of energy affairs in Kenya while KPLC concentrated on power transmission and distribution²⁰⁰. KenGen is the leading electricity producer in East Africa.

Human rights commitments

KenGen recognizes social safeguard policies as essential tools while undertaking all their projects. However, there are no clear human rights commitments by KenGen as guided by national and global legislations²⁰¹.

3.4 Turkwel Hydro-Electric Power

3.4.1 SPIE Batiognolles

SPIE Batiognolles is French Construction Company that deal with building and infrastructural construction, it is based in Neuilly-sur-Seine. The SPIE Company acquired part of *Société de Construction des Batiognolles* (SCB's) capital in 1954, later in 1968 the two companies merged to form Spie Batiognolles²⁰². The construction company has its operating headquarters in France, Germany, Switzerland, The United Kingdom, Spain and Portugal. It participated in construction of Turkwel Hydropower which commenced in 1986 and completed in 1991¹⁴⁶.

SPIE Batiognolles employees works closely with industries, educators and researchers in different fields to advance on light-based technologies for betterment of human conditions. The company serves more than 255,000 constituents located in 183 countries. Its visions are accomplished through; company's events organization, advocacy and outreach, technical publications, career development and training, community service, conferences, exhibitions and forums.

198 Devex, (2021). Overseas Private Investment Corporation (OPIC). Retrieved at; <https://www.devex.com/organizations/overseas-private-investment-corporation-opic-united-states-44419>. Accessed on; 7 January 2021.

199 KenGen, (2016). KenGen Rights Issue 2016 Information Memorandum. Retrieved at; <https://www.kengen.co.ke/index.php/about-us/right-issues.html?download=3:rights-issue-information-memorandum>. Accessed on; 7 January 2021.

200 World Bank, (1996). World Bank Documents. Retrieved at; <http://documents.worldbank.org/curated/en/539421468773731695/pdf/multi0page.pdf>. Accessed on; 7 January 2021.

201 Koissaba, B. R. O., (2018). Geothermal Energy and Indigenous Communities.p.27

202 Spie Batiognolles, (2009). History". Retrieved at; <https://www.spiebatignolles.fr/>. Accessed on; 7 January 2021.

SPIE Batiognollies on human rights commitments

The company ensures that all its employees, volunteers, and participants are entitled to respectful treatment and protected from any form of bullying, discrimination, harassment, sexual or otherwise. The policy applies to all statutes, events, Spie business and in all locations.

Also, its board of directors and management ensures that all individuals are treated with respect and dignity. Any form of harassment based on religion, national origin or race, age, genetic information, veteran status, sexual orientation, and disability are never tolerated²⁰³.

3.4.2 World Bank

It was established in 1944 at Bretton Woods Monetary Conference in Bretton Woods. It was developed with the aim of helping rebuild European countries devastated by World War II. The first loan was given to France in 1947. Later, the Bank shifted its attention to Latin America, Asia and Africa, in 1970 it shifted its attention towards poverty eradication²⁰⁴. World Bank undertook various funding roles in REPs in Kenya Marginalize areas.

Human rights commitments

World Bank has been striving to put some efforts to ensure that it commits itself towards human rights commitment. However, despite the Bank's affiliation with UN, the bank lost in its commitment on human rights and other values but focused on economic development and poverty alleviation. From its institutional charter, World Bank is prohibited from promotion or protection of human rights since the bank was not created as a right promoting agency and therefore denies that it has a duty and neither is it bound by the resolutions of the United Nations General Assembly.

However, from several critics by human rights organization on the Bank's actions, World Bank has therefore outlined some efforts on its commitments towards human rights, these includes²⁰⁵;

- a. Right to development as adopted in United Nations Resolution 41/128
- b. Right to be free from poverty, as per Article 1 of the International Covenant on economic, social and cultural rights (ICESCR).
- c. Also, right to education as stated in Article 13 of (ICESCR).
- d. Right to health, as contained in Article 25 of the Universal Declaration of Human Rights.
- e. The human rights of women, as addressed in the convention of the Elimination of all forms of discrimination against women.
- f. The Banks policy for projects that potentially displace people, the bank has adhered to the right not to be subject to involuntary resettlement without compensation and other safeguards.
- g. Environmental rights, as adopted from the 1972 UN Conference on Human Environmental Conference's.
- h. The Bank also adheres to all rights of refugees.
- i. ESS7 and the Inspection Panel as available grievance redress mechanism of the Bank.

203 Humanrights, (2015). Workplace discrimination and harassment policy template. Retrieved at; https://www.humanrights.gov.au/sites/default/files/GPGB_workplace_discrimination_harassment_policy_template.docx. Accessed on; 7 January 2021.

204 World Bank, (2021). History-The World Bank. Retrieved at; <https://www.worldbank.org/en/about/archives/history>. Accessed on; 7 January 2021.

205 Hrw, (2013). How the World Bank Should Safeguard Against Human Rights. Retrieved at; <https://www.hrw.org/report/2013/07/22/abuse-free-development/how-world-bank-should-safeguard-against-human-rights>. Accessed on; 7 January 2021.

3.5 Olkaria Geothermal Power Station

Olkaria is the country power house, it generates 51% of the country's total electricity in the national grid. Due to an intense number of geothermal power plant stationed in Olkaria, the project attracted a larger number of investors from different parts of the world²⁰⁶. The main key players in Olkaria projects are²⁰⁷;

Olkaria I

Mitsubishi Heavy Industries (MHI) and Kenya Generation Company (KenGen)

Olkaria II

Mitsubishi Heavy Industries (MHI), Kenya Generation Company (KenGen), European Investment Bank (EIB), International Development Association (IDA), French Development agency (ADF), KEC International India, and World Bank.

Olkaria III

Ormat Technologies Inc. limited

Olkaria IV

Hyundai Engineering, Toyota Tsusho of Japan, European Investment Bank (EIB), Government of Kenya, World Bank and Kenya Generation Company (KenGen)

Olkaria V

Mitsubishi Heavy Industries (MHI), Government of Kenya, World Bank, and Japan International Cooperation Agency (JICA)

3.5.1 Mitsubishi Heavy Industries (MHI)

Mitsubishi is traced back to 1884 when it was founded by Yataro Iwasaki who took a lease out of a Government owned Nagasaki Shipyard and named it Nagasaki-Shipyard and Machinery works for full scale Shipbuilding. Later in 1934, it advanced and changed its name to Mitsubishi Shipbuilding Company Limited and finally to Mitsubishi Heavy Industries (MHI) involved in heavy machinery, airplanes, railroad cars and ship manufacturing²⁰⁸. The MHI was involved in the construction of Olkaria I, II, and V geothermal power plants.

Human rights commitment

MHI is largely committed in respecting human rights and employees work rights as stipulated by International treaties of human rights. In May 2015, MHI established a common global code of conduct as a standard of its group with reference to US guiding principles on business and human rights. Through the code of conduct MHI believes in cultivating a single, shared corporate culture that is routed in mutual trust and efforts, dignity and respect to all employees²⁰⁹. MHI also values individual contribution irrespective of marital status, disability, age, race, color, religion, political convictions, gender, nationality or sexual orientation, furthermore, any form of discrimination is not allowed by MHI group¹⁵³.

206 KenGen, (2020). KenGens Geothermal Power Plants. Retrieved at; <https://www.kengen.co.ke/index.php/business/power-generation/geothermal.html>. Accessed on; 7 January 2021.

207 Boell, (2018). The Olkaria projects: A case study of geothermal energy and indigenous communities in Kenya. Retrieved at; <https://eu.boell.org/en/2018/03/12/olkaria-projects-case-study-geothermal-energy-and-indigenouscommunitieskenya#:~:text=The%20key%20stakeholders%20were%20Kenya,%2C%20Kajiado%2C%20and%20Nakuru%20Counties>. Accessed on; 7 January 2021.

208 Mitsubishi, (2013). History - Mitsubishi Heavy Industries Marine Machinery. Retrieved at; https://www.mitsubishielectric.com/en/about/history/overview/group_history.page. Accessed on; 7 January 2021.

209 Mhi, (2018). Human Rights - Mitsubishi Heavy Industries. Retrieved at; <https://www.mhi.com/csr/social/humanrights.html>. Accessed on; 7 January 2021.

MHI also formulated a policy that ensures that all stakeholders are respectful and contribute to development for sustainable society in line with UN guiding principles. In addition to these, MHI conducts training in work place with the aim of promoting human rights awareness. MHI has also made a lot of efforts by taking part in subcommittee activities of the Mitsubishi Human Rights Enlightenment Council, launched in 1983, to allow for mutual exchange between Mitsubishi Group companies so that they can learn about the foremost examples of human rights issues, and to upgrade their efforts on human rights¹⁵².

3.5.2 Japan International cooperation Agency (JICA)

Japan International cooperation Agency (JICA) started in 1965 as a dispatch of Japan overseas cooperation Volunteers (JOCV). Later in 1974, it changed its name to Japan International cooperation Agency (JICA), tasked with implementation for technical cooperation of Japan's Official Development Assistance (ODA)²¹⁰. The agency helped in funding Olkaria V geothermal power station.

Human rights commitments

JICA enhances disasters management capacity and damage reduction caused by diseases that require adequate capacity to take action in phases (mitigation and preparedness), response, recovery and reconstruction²¹¹. The agency has been in operation in several countries with the effort of achieving the following goals towards human rights commitment by: Creating and strengthen national institutional and legislative frameworks. Assessing, developing and allocating resources. Promoting community participation in disaster risk reduction, strengthening policy, technical and institutional capabilities in regional, national and local disaster management, and also promoting and supporting dialogue, exchange of information and coordination among all levels of agencies and institutions concerned with early warning systems. Disaster risk reduction, disaster response, and development, preparing and periodically updating disaster preparedness and contingency plans and policies at all levels so as to promote regular disaster preparedness exercises, including evacuation drills, with a view to ensuring rapid and effective disaster response and access to essential food and non-food relief supplies, as appropriate, to local needs¹⁵⁵.

3.5.3 Ormat Technologies Inc. Limited

The technological company is based in Naveda, Israel and was established by Bronicki family in 1965 with a bold vision to export breakthrough technology in the renewable energy sector. During its establishment, Ormat focused in turbine designs that was capable for generating electricity from low enthalpy energy resources, later it started manufacturing power generation equipment²¹². The company are the Key players in the construction, funding and ownership of Olkaria III geothermal power plant.

Human rights commitments

Ormat Technologies Inc. recognizes the responsibility of respecting human rights by ensuring that there are no infringements of human rights. The company's commitments to human rights are guided by the universal declaration of human rights, the International covenant on civil and political rights and the

210 Jica, (2008). The History of JBIC (OECE). Retrieved at; <https://www.jica.go.jp/english/about/history/index.html>. Accessed on; 7 January 2021.

211 Jica, (2019). Disaster Risk Reduction. Retrieved at; https://www.jica.go.jp/english/our_work/thematic_issues/disaster/activity.html. Accessed on; 7 January 2021.

212 Ormat, (2019). History-Ormat Technologies. Retrieved at; <https://www.ormat.com/en/company/welcome/history/#:~:text=Ormat%20was%20established%20in%201965,from%20low%20enthalpy%20energy%20resources>. Accessed on; 7 January 2021.

international labor organizations (ILO), also it is guided by the eight labor conventions including the declaration on fundamental principles and rights at work²¹³.

Ormat also commits itself by ensuring that it complies with applicable laws and human rights commitments as well as honoring and recognizing internationally accepted human rights principles, especially when faced with conflicting requirements presented in local laws and regulation. To ensure that it doesn't go against human rights, the company also develops and implements due diligence process to identify, prevent, mitigate and account for any potential adverse human rights impacts associated with its operations¹⁵⁷.

In addition to its policies and International laws on human rights, Ormat works extensively in assigning particular importance to upholding and complying labor and social standards by ensuring that it; avoids child labor practices, compulsory labor practices, acknowledging and respecting employees' right to the freedom of association and collective bargaining, providing and securing all relevant and essential employment rights, working to eliminate discrimination with regards to employment, including all forms of harassment and abuse, ensuring essential health and safety standards and practices in the workplace by developing risk awareness and encouraging responsible behavior among employees, respecting the rights of local communities by promoting free and informed consultation activities, with particular regard for vulnerable communities, such as tribal or indigenous peoples, demonstrating zero tolerance for corruption, according to the principles outlined in Ormat's Anti-Corruption Policy, respecting the right to privacy of all stakeholders including the correct use of information and data²¹⁴.

3.5.4 International Development Association (IDA)

IDA is a France based organization that was established in 1960 to complement the existing International Bank for reconstruction and development. It is an international financial institution which offers concessional loans and grants to the world's poorest developing countries that suffer from lowest gross national income²¹⁵. The development association took part in funding the construction of Olkaria II geothermal power plant together with other financial organizations. Its mission is to reduce poverty.

Human rights commitments

The IDA commits itself in the fight against extreme poverty, and helps developing countries invest in the needs of their people, boost economic resilience to climatic shocks and natural disasters. It also assists in the reinforcing its support to job creation and economic transformation, good governance and accountable institution. On human rights it helps the developing countries to deal with challenges posed by climate change, gender inequality and situational fragility, conflict and violence in accordance to UN and US human rights principles²¹⁶.

3.5.5 European Investment Bank (EIB)

EIB was found in Brussels in 1958 when Treaty of Roma was signed. The bank later relocated to Luxembourg in 1968. In 2000, EIB group was formed and comprised EIB and European Investment Fund

213 Ormat, (2018). human rights & labor policy. Retrieved at; <https://www.ormat.com/Warehouse/userUploadFiles/Image/Ormat%20Human%20Rights%20Policy.pdf>. Accessed on; 7 January 2021.

214 Ohchr, (2016). Human Rights. Retrieved at; <https://www.ohchr.org/documents/publications/handbookparliamentarians.pdf>. Accessed on; 7 January 2021.

215 World Bank, (2021). About International Development Association. Retrieved at; <http://ida.worldbank.org/about/what-is-ida>. Accessed on; 7 January 2021.

216 World Bank, (2016). Global Community Makes Record \$75 Billion Commitment to End Extreme Poverty Retrieved at; <https://www.worldbank.org/en/news/press-release/2016/12/15/global-community-commitment-end-poverty-ida18>. Accessed on; 7 January 2021.

(EIF), EU's venture capital organization that provides finance and provide guarantees for SME's²¹⁷. The EIB played a key role in funding the expansion of Olkaria II geothermal power station.

Human rights commitments

EIB stands to protect human rights in everything that they do since their fundamental core value is to ensure that there is equality and human dignity. The bank has been working around the globe to support economies and societies while striving to contribute to the achievement of United Nations' Sustainable Development Goals (UN SDG), and create financial instruments to help countries meet the UN SDG and ensure that the projects respect human rights²¹⁸. In their activities they uphold freedom, democracy, equality and the rule of law for everyone including the minorities, and only finance projects that respect human rights.

EIB activities are guided by international human rights principles, including the International Labor Organization Declaration on Fundamental Principles²¹⁹ and Rights at Work and the UN Declaration on the Rights of Indigenous Peoples.

3.5.6 French Development Agency (AFD)

France Development Agency (AFD) was founded in 1998 and its headquarters is located in Roland-Barthels, Paris France. It is a public financial institution that implements policy defined by French government. The agency works to fight poverty and promote sustainable development. It participated in funding the expansion of Olkaria II geothermal Power station.

Human rights commitments

AFD works closely with human rights institutions and organization to uphold and protect human rights in its activities. The agency works according to the office of the High Commissioner for Human rights (OHCHR) which ensures that there is universal enjoyment of all human rights, and also works to promote the effective and comprehensive dissemination and implementation of the guiding principles on business and human rights as per the United Nations guidelines.

3.5.7 Hyundai Engineering

Hyundai Engineering was founded in 1974 and is based in Seoul, South Korean. The company provides comprehensive engineering and construction services for plant and infrastructure projects including building and housing work. The engineering company supplied the installation equipment for Olkaria IV geothermal power plant during its expansion.

Human rights commitments

As a global premier engineering partner, Hyundai engineering whose management philosophy promotes human rights protection built upon their sincerity and trust²²⁰. They also uphold the dreams of humankind by creating a new future through ingenious thinking and continuously challenging new frontiers by committing themselves towards fundamental improvements in the human rights issues that confront to their officers, employees, and stakeholders.

217 Eib.Org, (2008), <https://www.eib.org/attachments/documents/eib-buildings-1958-2008.pdf>. Accessed 7 Jan 2021.

218 EIB.Org, (2021). "Human Rights and the EIB". <https://www.eib.org/en/about/cr/human-rights/index.htm>. Accessed 7 Jan 2021.

219 Ilo.Org, (2017). https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_549949.pdf. Accessed 7 Jan 2021.

220 Hec.Co.Kr, (2011), https://www.hec.co.kr/upload/sustainable-management/report/20102011_HEC_Sustainability_Report_ENG.pdf. Accessed 7 Jan 2021.

3.5.8 Toyota Tsusho of Japan

Toyota Tsusho was established in 1936 with main activity was to provide sales and financing for Toyota automobiles²²¹. Later in 2000, Toyota Tsusho expended its operations and started encompassing on infrastructure, chemicals and food. The company took part in the expansion of Olkaria IV geothermal power station by supplying turbines and equipment installation.

Human rights commitments

Toyota Tsusho is deeply rooted in their Groups' fundamental Philosophy where they do not tolerate any violation of human rights whatsoever. The company does this by adhering to Global Code of conduct and Ethics (COCE) creeds²²². These creeds include;

1. Commitment to "ANZEN" to create a safe and healthy work environment.
2. Complying to all applicable laws and regulations; including anti-corruption, anti-trust, competition law and trade laws and regulations.
3. Committed to accurate financial reporting.
4. Accountability for compliance with all company rules.
5. Acting with integrity, honesty and transparency and protect and develop trust among all stakeholders.
6. Contributing to sustainable development of society.
7. Promote and pursue environmentally friendly corporate activities.
8. Adding value through innovation and "Kaizen" (continuous improvement)
9. Respecting human rights by ensuring that; they don't participate in any business that violates personal dignity, condone any form of discrimination on the basis of race, skin color, sex, creed or neutrality, won't tolerate child labor, human trafficking or any other form of compulsory labor, do not tolerate any type of harassment whatsoever, they do not conduct any business or be involved with persons (including corporations and associations) engaging or associated with violations of human rights.
10. Embracing diversity and inclusion in their company and society.

3.5.9 Kamani Engineering Corporation (KEC) International of India

KEC international is a flagship company of the RPG Group, its headquarters are based in Mumbai, India. It deals with infrastructure sectors such as; Power Transmission and construction, urban infrastructure, solar, railways, civil, smart infrastructure and many other²²³. The company is driven by the holistic empowerment of their stakeholders at the core of incorporating philosophy. They are committed in creating maximum positive impact by envisioning a bright future for the communities they operate in line with the RPG Group's, CSR vision that is aimed at facilitating development and sustainable development in communities through initiatives focusing on entrepreneurship, education, environment and health.

KEC International was also involved in the expansion of Olkaria IV geothermal power plant¹⁸.

221 "History". Toyota Tsusho, 2021, <https://www.toyota-tsusho.com/english/company/history.html>. Accessed 7 Jan 2021.

222 Toyota-Tsusho.Com, (2018)."Global Code of Conduct & Ethics (10 Creeds)"., <https://www.toyota-tsusho.com/english/common-files/modal/vision01.html>. Accessed 7 Jan 2021.

223 Kecrpg.Com, (2019)"Company - [Https://Www.Kecrpg.Com](https://www.kecrpg.com)". <https://www.kecrpg.com/company>. Accessed 7 Jan 2021.

Human rights commitment

On issues with human rights the KEC International is spearheaded by the RPG Code of Corporate Governance & Ethics ("RPG Code") that is applicable to all the company's Directors and employees²²⁴. In accordance on sexual harassment, Act, 2013, the Company has adopted a Policy on Prevention of Sexual Harassment at Workplace²²⁵ In accordance to KEC international part four, Section E: Principle-wise performance, KEC is fully committed to human rights.

3.6 Loiyangalani- Suswa Power Transmission Line

There were several key players involved with this PTL including;

- i. KETRACO - It took part in over heading the transmission line and overseeing implementation of both construction and all operations.
- ii. Isolux Corsan -Took part in the funding and construction of the transmission line.
- iii. Consortium of NARI Corporation, and Power China Guizhou Engineering Company -Intervened in the construction and funding of the transmission line after Isolux Corsan was declared bankrupt.

3.6.1 Isolux Corsan

The company was established in 1928, with its headquarters at European Union (EU). It is a global company that deals with concessions, energy, construction and industrial service. It operates its activities in more than 35 countries²²⁶. The company took crucial part in the construction of LS-PTL before declaring bankruptcy.

Human Rights Commitments

Isolux Corsan monitors and controls its code of ethics and implements it in all countries where it operates in. Regarding human rights commitments the company signed a treaty and adhered to the United Nations global compact. Isolux also promotes CSR in its commitments to the employees, the surroundings and the environment.

3.6.2 NARI Corporation, and Power China Guizhou Engineering Company

The company is based in China and it is the largest whole supplier of electric power equipment²²⁷. It is dedicated in providing technologies products and services and other products for industrial control, energy, railway, transportation etc. It participated in the supply of equipment and construction of LS-PTL.

Human rights commitment

NARI Corporation, and Power China Guizhou Engineering Company has no clear policies or guiding principles on human rights commitment.

3.6.3 KETRACO

KETRACO, is a parastatal company founded in 2008 and serves as the Transmission System Operator in Kenya²²⁸. The company took part in several energy projects in Kenya including the LS-PTL construction.

224 Kecrpg.Com, (2018). "Code of Corporate Ethics and Governance"., <https://www.kecrpg.com/KEC%20data/Investor%20relations/RPG%20Code%20of%20Corporate%20Governance%20and%20Ethics.pdf>. Accessed 7 Jan 2021.

225 EconomicTimes.Indiatimes. Com, (2019). "KEC International Directors Report | KEC International Director Details - The Economic Times". <https://economictimes.indiatimes.com/kec-international-ltd/directorsreport/companyid-16054.cms>. Accessed 7 Jan 2021.

226 Isolux-Corsan, (2016). <https://www.crunchbase.com/organization/isolux-corsan>. Accessed 8 Jan 2021.

227 Devex.Com, (2021). "NARI Group Corporation Devex"., <https://www.devex.com/organizations/nari-group-corporation-69549>. Accessed 7 Jan 2021.

228 Phoebe Calver (2020). "Profile of Kenya Electricity Transmission Co. Ltd (KETRACO)". Norwich, Norfolk, United Kingdom. Retrieved 7th

Human rights commitment

The company's main core values are; to ensure human dignity, equity, social justice, inclusiveness, equality, human rights, non-discrimination and protection of the marginalized, good governance, integrity, transparency and accountability; and Sustainable development²²⁹. Apart from the company's core values there are no clear policies and guiding principles on human rights commitment.

January 2021.

229 Ketraco.Co.Ke, (2021). "Welcome to Kenya Electricity Transmission Co. Ltd | Kenya Electricity Transmission Co. Ltd", <https://www.ketraco.co.ke/>. Accessed on 7th January 2021.

4

To Develop an Advocacy Strategy to Strengthen the Recognition, Respect and Fulfillment of IPs Rights in the Context of REPs

4.0 Introduction

It is possible to have a low-carbon future while still maintaining harmony between REPs investors and IPs. Both parties converge at a similar focal of minimizing carbon and other greenhouse gases, GHGs emissions. REPs provide an alternative to carbon-based fuels by promoting energy autonomy²³⁰. On the other hand, IPs preserve the natural ecosystem by ensuring that there is less exploitation of virgin territories which they deem sovereign. With such a common base, then the two entities can be regulated to work together in harmony for their mutual benefit. However, conflicts in interests and poor grievances resolution strategies between the two parties. The current energy tribunal has failed to address these conflicts. There is therefore a need for a comprehensive and holistic strategic advocacy plan to restore the legitimacy of REPs and IPs in maintaining a low-carbon future.

For this to happen, it is necessary to prepare a strategy framework with a balance for both parties to secure a socio-economic balance while maintaining their individual sovereignty. REPs have an obligation to develop the indigenous terrains occupied by IPs through provision of social amenities, capacity building ('green collar skills') and employment of IPs. These benefits should be administered both formally (through appropriate benefits-sharing policies) and informally (through the REPs corporate social responsibilities, CSR). The two strategies are mutual to each other. While the latter can be improved by well-structured community reforms between REPs and IPs, the formal route require a stringent legal framework with a base support from the government, funders and international human rights organizations.

To achieve the mutual co-existence of REPs and IPs, a three-layered strategic advocacy framework is proposed. The key pillars of these reforms are: stringent legal frameworks, a well-integrated community-governments-human rights organization scheme and shrewd financial policies. The legal frameworks should leverage for respect of IPs territories and their customary land tenure system while streamlining other pre-requisite policies relevant for operation of REPs in IPs territories. These frameworks need adequate support from community leaders, county and national governments as well as international organizations. There is also a need for transparent ESIA and EIA reports concerning the progress of REPs during initiation, construction and operation stages. Human rights commitments by REPs and other key players in the renewable energy value chain should also be streamlined and regulated by an independent REPs oversight body. The report proposes a comprehensive financial policy by IPs in the affected territories. This can only be achieved by pooling of their resources with other IPs tribes in the region and globally. There is also need to develop 'strong yet customary' fiscal policies with money lenders, other NGOs, private investors and the government. It is also possible and mutually beneficial to have IPs have a shareholding agreement with REPs. In this case, the IPs can donate land and the REPs manage the daily operations of the venture.

Several countries with IPs have walked through this path successfully. Some of these IPs (sampled by a stratified random method basing on the type of REP and their success stories) include The Danish

²³⁰ Steg L, Perlaviciute G, van der Werff E. Understanding the human dimensions of a sustainable energy transition. *Front Psychol.* 2015;6:805. Published 2015 Jun 17. doi:10.3389/fpsyg.2015.00805

Saami, 'First Nations Peoples' of Canada, Aborigines of Western Australia and Maori of New Zealand are some of the IPs whose territories were invaded by REPs and have developed a mutual working strategy with them. It is thus viable to benchmark with these countries while optimizing on the current legal frameworks and community engagements between REPs and IPs. In this chapter, we take a quick glance towards the situational analysis of other REPs globally, identify some of the IPs challenges that enable REPs to oppress them, their best management practices, define and elaborate a strategic advocacy plan then provide some solutions while revisiting some of the successful REPs which have walked through the same path in the context of IPs.

4.1 A situational analysis of REPs in IPs territories in other countries

REPs seem essentially progressive in benefiting the local communities. However, they can displace IPs from their territories and interrupt with their traditions and livelihoods. Despite the increasing investment in renewable energy projects, most developers do not commit to following the internationally set standards in the UN Declaration on the rights of IPs²³¹. These standards prohibit resource extraction, developing projects on IPs territories without Free Prior Informed Consent of the indigenous community.

4.1.1 Power Transmission Lines (PTL) located in IPs territories

4.1.1.1 Brazil's Amazon PTL

The Roraima state in Brazil has never been connected to the country's main grid due its far location and marginalization due to the great Amazon forest²³². The state is dependent on Venezuela's Guri HEP for power. However, due to socio-economic and political chaos in Venezuela, the power transmission to Roraima state has been significantly affected prompting for an alternative. The Brazilian government have thus proposed a 750km Tucuruí-PTL to connect Manaus and Boa Vista, the capital of this state²²⁷. 125km of this PTL will be through Waimiri Atriori IPs territories. These IPs have long resisted this move fearing for their natural ecosystem and wildlife. This IPs depend on hunting for food. The IPs of Roraima have given the Brazilian government an alternative of wind and solar energy, which are abundant there but the government has strongly refused this option. Right of Way negotiations with federal authorities have been ongoing though with little success. The Waimiri Atriori IPs (**Figure 19**) are also afraid that the PTL will simply carry power over their lands without providing it to them, in violation to the Right to Consultation (ILO's 169th convention).

231 Un.org (2019). United Nations Declaration on the Rights of Indigenous Peoples. Retrieved from <https://www.un.org/development/desa/indigenouspeoples/declaration-on-the-rights-of-indigenous-peoples.html>. Accessed on 8th January, 2021.

232 Alexandre Magno Alves Diniz et Elisângela Gonçalves Lacerda, « The Colonization of Roraima State, Brazil: an Analysis of its Major Migration Flows (1970 to 2010) », Espace populations sociétés [En ligne], 2014/2-3 | 2015, mis en ligne le 01 décembre 2014, consulté le 12 janvier 2021. URL : <http://journals.openedition.org/eps/5817> ; DOI : <https://doi.org/10.4000/eps.5817>

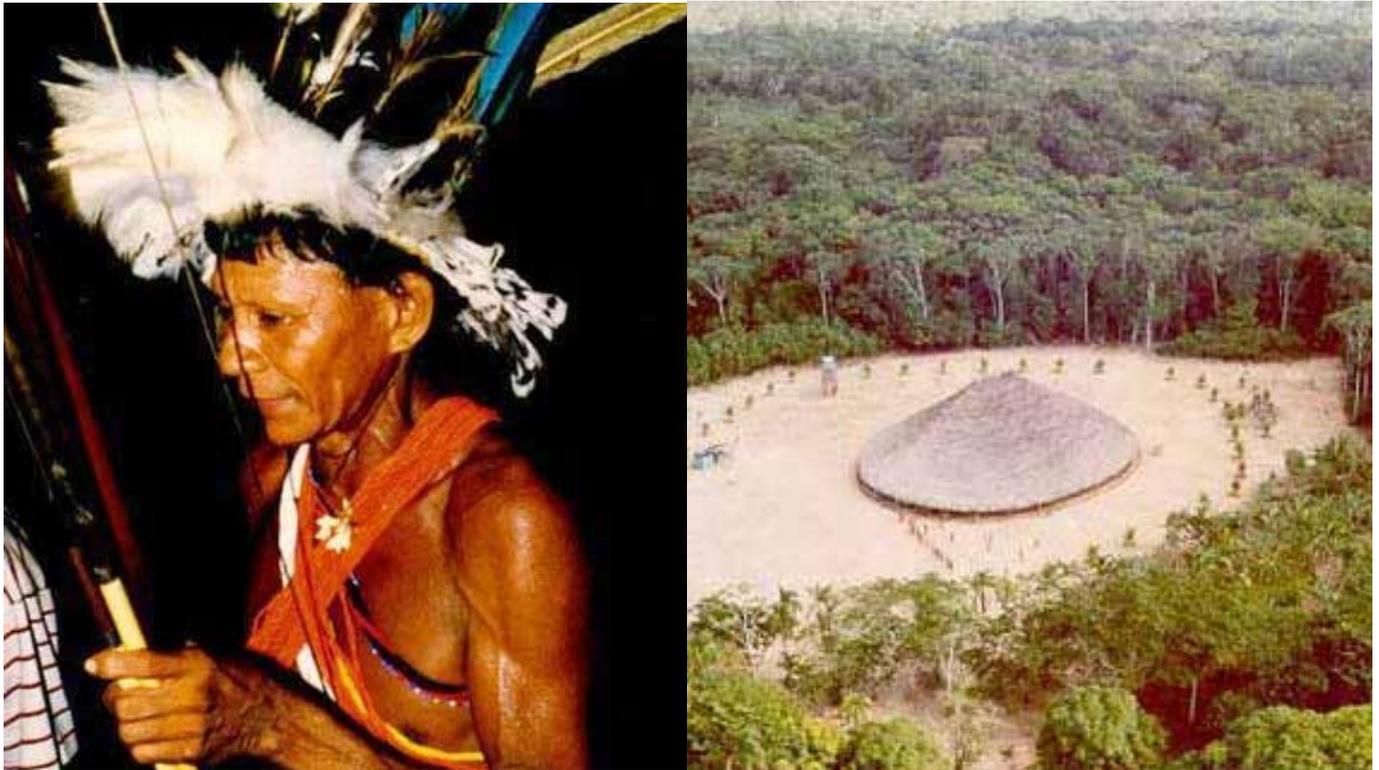


Figure 19: The Waimiri Atraori IPs (a) and their communities located in Amazon forest (b) where the PTL is planned to pass (Source: Twadja Joanico/ISA)

4.1.1.2 The West Kalimantan PTL in Indonesia

The 150km PTL commenced construction in 2011 between Benkayang-Nyabon-Tayan including 2 substations at Ngaband and Tayan in West Kalimantan²³³. The REP was funded by the government of Indonesia and Asian Development Bank and can convey up to 275kV of electricity. The REP demand a Right of Way through an IPs territory (the Diyak community)²²⁸. Through their communal leaders, the Kepala Desa's, the IPs insist that they were never fully consulted in the exercise. The Diyak community deem the land where the PTL will pass as sacred and demanded rituals to be done before leasing the land away. The REPs took long to agree to these demands significantly delaying construction. After consultation meetings with the Kepala Desa's construction begun and the REPs obeyed all the IPs rights including a benefits-sharing policy²²⁸.

4.1.2 Wind power projects in IPs territories from other parts of the world

4.1.2.1 Projected wind power project in Saami IPs territories in Norway

The Saami community of Jillen Njaarke in the upper corridor between Norway, Finland, Sweden and Russia²³⁴ (**Figure 20**) are reindeer herding community. However, this region has vast territories with a high potential for wind energy. The projected new wind turbines are located on the routes of reindeers. The German wind company Eolus Vind, financed by Aquia Capital want to build a REP at Saepwie, where there is a high population of Saami IPs²²⁹.

233 Draft Resettlement, Ethnic Minority and Development Plan (2011). INO: Strengthening West Kalimantan Power Grid. Retrieved on <https://www.adb.org/sites/default/files/project-document/61151/41074-013-ino-remdp-draft-02.pdf>. Accessed on 8th January, 2021.

234 Aljazeera.com (2020). 'Green' colonialism is ruining Indigenous lives in Norway. Retrieved from <https://www.aljazeera.com/opinions/2020/8/1/green-colonialism-is-ruining-indigenous-lives-in-norway>. Accessed on 8th January, 2021



Figure 20: Reindeers herding in the Saami IPs region in Norway where the projected wind energy is to be located (Source, Heihka Kappfjell)

There exists a conflict between Norwegian authorities, REP developers and Saami IPs. It is a well-known fact that reindeer avoid grazing in areas where they can see or hear wind turbines. When the REP is constructed, it will disrupt their migration especially during winter when they are pregnant or weak. The Norwegian Reindeer Herding Act should provide legal protection but this has not been the case. The Saami IPs considers this program to be 'green colonialism'.

4.1.2.2 Wind energy project in the Isthmus IPs territories in Oaxaca, Mexico

The desire to harness wind energy led to negative ramifications of the original inhabitants of Isthmus of Tehuantepec in Oaxaca State, Mexico²³⁵. Oaxaca is in the southeast border of Mexico and has a long coastline on the Pacific Ocean. Wind production began in 1994 with 7 wind turbines (capacity of 1.575MW) financed by World Bank and has gradually grown to a cumulative capacity of over 600MW by several public and private investors²³⁰. The REPs have been accused of not meeting Free, Prior and Informed Consent from the Isthmus IPs. The government did not also avail the information to the IPs in their indigenous language for them to fully comprehend its intention. The IPs claim not to be considered whenever a new REP plant is to be added and have been gradually moved out of their ancestral lands. Mexico's expansive energy policy conflict with the rights of the IPs and there is little if any legislative measures taken to safeguard the IPs from the powerful REPs. For example, the IPs complain of exploitation using unfair bargaining tactics by the REPs. There exists a very tense relation between the REPs and IPs in the area.

235 HAMISTER, Laura. Wind Development of Oaxaca, Mexico's Isthmus of Tehuantepec: Energy Efficient or Human Rights Deficient?. *Mex. law rev*, México, v. 5, n. 1, p. 151-179, dic. 2012. Disponible en <http://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1870-05782012000200005&lng=es&nrm=iso>. accedido en 11 enero 2021.

4.1.3 Hydropower projects in the IPs territories from other parts of the world

There is a notable increase in growth of hydropower projects in the world. These projects, if poorly constructed and sited, can have adverse environmental impacts and social impacts particularly on the indigenous communities and territories where they are set up.

4.1.3.1 Santa Rita hydropower dam in Guatemala

The Mayan communities in Guatemala have been displaced from their lands by the large hydroelectric projects constructed in their territories²³⁶. These hydropower dams fuel gross human rights violation. Human rights groups claim that the construction of the Santa Rita dam was done without the free, prior and informed consent of the Mayan indigenous community that reside in the area. Violence and forceful evictions against the protesting communities was used. The construction took away the communities' land and limits their access to the natural resources in the area. The Icbolay River which they depended upon for drinking water and agriculture, had limited access²³¹. Nothing was given in return as a form of compensation. Most of the people in this community do not have access to electricity and despite the construction of this project, they still do not benefit since the power is fed into the national grid.

4.1.3.2 Hydropower REPs in First Nations People in Canada

The Keeyask HEP was developed by the province of Manitoba and four Manitoba First Nations communities in Canada²³⁷. Agreements between the government, REP practitioners and IPs provided options to those First Nation groups in respect of the construction, ownership and operation of the 695MW Keeyask Dam project in Manitoba²³². Individual adverse effects agreements which identify potential impacts of this project and possible mitigation measures were also discussed. Where adverse effects cannot be mitigated, adequate compensation strategies have been put into place. Ownership of these energy projects, in Canada, have evolved from the insignificant amounts paid by the project developers to indigenous people through benefits agreements. This has ensured that the rights of the indigenous communities are not violated and that they are not exploited, with adequate compensation. Ownership and involvement of these indigenous communities in these projects furthers reconciliation and is a step towards indigenous peoples' economic self-sufficiency.

4.1.4 Solar mini-grid projects (utility-scales) in Aboriginal lands of Western Australia

The Western Australia state regions of Kimberley and Pilbara have a large population of Aborigine IPs²³⁸. These regions are not connected to the main power grid and each town operate on their own microgrids. Most of the microgrids have been powered by diesel though there is a change towards using solar systems. The mini-grids installation capacity range between 30-660MW. The tariffs of solar mini-grids are regulated by the owners of these REPs and each mini-grid operate on its own. The REPs are fully owned and operated by the Aborigines. Since their inception, there have been little land-related conflicts indicating IPs positive attitude towards REPs. There are several of these solar micro-grids and this is envisaged to be the future of REPs in Western Australia.

236 Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2015 - Guatemala, 2 July 2015, available at: <https://www.refworld.org/docid/55a4fa5631.html> [accessed 12 January 2021]

237 Manitobawildlands.org (2020). Manitoba hydro projects. Retrieved from http://manitobawildlands.org/develop_future_keeyask.htm. Accessed on 8th January, 2021

238 Healthinonet.ecu.edu.au (2020). Western Australia. Retrieved from <https://healthinonet.ecu.edu.au/learn/locations/wa/>. Accessed on 8th January, 2021

4.1.5 Geothermal REPs in Philippines

In 1991, severe siltation of Lamao and Agus rivers and prolonged droughts drastically reduced the power produced by HEPs from 90% to 50%²³⁹. This led to up to 18% hours blackout a day and a loss in economic gains equivalent to 6.8 billion pesos. This prompted for other more reliable sources of energy. The region around Mt Apo is volcanically active with a high potential for geothermal energy. The Mt Apo/Mindapo geothermal REP was then constructed by Philippines Energy Program and Philippines National Oil Company – Energy Development Corporation²³⁴. The REP faced a lot of rejection by the IPs who are the natives of Mt Apo leading to delays of 2 years before the project begun (in 1988)²³⁴. The project is located in a national park and a heritage area for the local IPs to observe their customary rituals. Actually, Mt Apo itself is considered to be a sacred place as this is where the IPs god lives. It was only after the REP practitioners endorsed the IPs requirements of the area that the project proceeded. Two major requirements were fronted; (i) that the REP endorse an ancestral domain law to recognize their god and (ii) the REPs to fully compensate them for loss of their sacred site. A benefit sharing policy was also fronted and approved by the REP practitioners before they were allowed to proceed with the construction.

4.2 Challenges faced by IPs that make them vulnerable to oppression by REPs

IPs are oppressed due to their vulnerability in regard to many contemporary issues. While it is indeed wrong for these social and economic injustices to happen, their self-alienation from the rest of the society makes them marginalized and more prone to oppression. The REPs and other practitioners in REPs value chain know too well of these IP challenges and optimize on them. Some of the common challenges that IPs face that undermine their capacity to leverage for their rights in the context of REPs in their territories include:

1. Their strict adherence to customary laws instead of the contemporary state laws. While it is not advisable to abandon their cultural laws, it is wise for IPs to learn and practice state laws. With little or no knowledge for state laws, then REPs comfortably intrude into their territories and proceed to exploit their resources with little legal resistance. The REPs are usually well-armed with legislative support, some of which is manipulated to favor their activities. For example, the Right-Of-Way policy has been severally abused by REPs seeking to evacuate power through IPs territories. The Loiyangalani-Suswa KETRACO PTL is a good example of violation of this law due to state law illiteracy by the affected IPs. On the other hand, LTWP was able to comfortably displace the Sarima community from the project site since the IPs had little knowledge of relocation and compensation of people in Trust lands.
2. Illiteracy in the context of the national education curriculum. Most of the IPs do not observe the states existing education pedagogy. They have their own education systems based on ancestral knowledge and traditional practices. Education is passed on to children as they grow by their guardians while at home and practically as they go about their daily economic activities. Learning is also undertaken during cultural rituals and ceremonies. Such learning has no room for contemporary issues such as renewable energy, human rights and legal institutions to arbitrate for justice from external oppressors. It is for such instances that the Ogiek and Turkana people around Turkwel live in the dark while their resources are used to generate electricity to power other areas. On contrary, IPs in westernized countries have more knowledge on their national education

239 Leonardo M. Ote and Agnes C. de Jesus. (1991). Mt. APO GEOTHERMAL PROJECT: A LEARNING EXPERIENCE IN

SUSTAINABLE DEVELOPMENT. Retrieved from <https://www.osti.gov/etdeweb/servlets/purl/620606>. Accessed on 8th January, 2021

system. Such IPs are able to exploit the energy resources within their territories to benefit them. For example, the Saami of Denmark (wind), the Navajo Nations tribes around Missouri river in USA (HEP), the Maori of New Zealand (HEP) and the Aborigines of Australia (solar) have all benefitted from their energy resources without waiting for external REP practitioners.

3. Limited economic capacity due to participation of 'backward' economic activities. IPs participate in economic activities with little turnover thus do not yield a lot of income. Their activities are actually for survival and sustenance. Some of the economic activities undertaken by IPs are not captured in the contemporary policies and acts to warrant compensation. For example, nomadic pastoralism, the main economic activity of the Njemps and Samburu are not legally recognized. This omission fueled their non-compensation by KETRACO and other REP practitioners during construction of the Loiyangalani-Suswa KETRACO PTL. Actually, the bulk of the PTL which was inhabited by these IPs (north of Rumuruti town) was not compensated. On contrary, many households south of Rumuruti practicing peasant farming on small parcels of land where the PTL passed were handsomely paid.
4. Geographic marginalization. Despite their self-alienation, most IPs in Kenya are also geographically marginalized. They are found in regions with few infrastructural developments or in forests limiting other human encroachment into these lands. Their locations are also deemed to have little potential for other land-based economic activities such as arable soils for crop-farming or mining. Due to limitation of other major economic activities, infrastructural development or populated human settlement, these lands pose perfect sites to exploit renewable energy which require such vast and bare lands. Consequently, IPs lands fall prey to REPs investments and exploitation. In the Kenyan realm, all the IPs are geographically marginalized.
5. Undefined institutions and community set-up that makes it difficult to generalize IPs. This cause alienation of IPs from the government and within each other. Up to date, there is no clear definition of Indigenous Peoples. Most of the literature simply categorize them together with minority groups, vulnerable groups or marginalized communities. This is due to difference in community set-ups by different IPs. There are only limited similarities as each community seeks to identify with their ancestors only. There is no single term to describe IPs and different names such as 'First Nations Peoples', the Aborigines amongst others are used.
6. Informal land tenure systems. The land tenure system of most IP communities is informal (customary). According to the Kenyan constitution of 2010, such lands are either classified as communal land, trust land or national government land. For example, the Ogiek live in forests which are demarcated government forest lands under KFW or KWS. There are limited provisions for compensation of people living in such lands. Actually, most RAP only recognize communal lands whereas IPs living in Trust lands or government lands have no policies to leverage for their compensation during resettlement.
7. Lack of due recognition and respect by their neighboring societies, governments and REPs as a marginalized group requiring attention. Instead of recognizing and implementing policies that advocate for IPs rights, the government fully support REPs with little oversight of their activities. Documents meant to protect IPs and their resources are generated and approved by the same REPs, instead of an independent body. Implementation of CSR by REPs is also never monitored.

4.3 Best Management Practices against IPs weaknesses leading to oppression by REPs

The narrative 'best management practices' is relative and has consequently faced a lot of critique. However, the term has been used to describe some of the most viable solutions towards challenges. The following practices are envisaged to curb some of the challenges that IPs face due to exploitation by REPs practitioners in their territories. Most of the practices are drawn from other IPs in different countries who were faced by similar challenges and successfully overcame them through the mentioned methods (**table 9**).

Table 9: Best management practices for IP challenges in the context of REPs in their territories

Stage of challenge	Challenge	Best management practice	Key players for success of the practice
Pre-feasibility studies	Government allocation of resources based on population and other economic activities not in the realm of IPs territories	Leverage for restructuring of resource allocation formulae to fully capture and value IPs economic activities	Community leaders IPs political representatives
Pre-feasibility/ Initiation	Low recognized economic participation of IPs which have reduced their education and skills	Mobilization and community awareness to encourage IPs to invest and participate in the contemporary education system and vocational training	Community leaders to mobilize their subjects to participate in education system and vocational training. Government to build more learning infrastructure and provide learning resources (teachers, books etc) REPs to support the government and community by giving bursaries or other learning resources
	IPs population are geographically marginalized and dispersed	Formation of links and IPs societies between all IPs in Kenya. This will help to address their problems uniformly as a body	Community leaders
	Low human capital in IPs communities	Formation of links and IPs societies between different IPs	Community leaders

Stage of challenge	Challenge	Best management practice	Key players for success of the practice
Initiation	IPs land titles/rights are in a unique land tenure system (customary and communal). Some of the land is gazetted as Trust land leased to county councils on behalf of the IPs without their knowledge	Registration of all IPs land either as communal land with a common land title deed or subdivision into small parcels for each family with a title deed	Community leaders Political leaders County governments Ministry of lands
	Few arbitrators with knowledge on state laws especially regarding matters of resettlement and compensation	More embracing of state laws and education pedagogy. Sponsoring a few elite persons to pursue state laws	Community members REPs practitioners Human rights movements and NGOs
Operational	Their institutional capacity is not robust enough to properly implement agreements reached with developers	Team up with closely located IPs to meet the threshold for implementing agreements reached with REPs Develop their capacity to handle external affairs through state education and training	REPs and human rights groups to help communities in capacity building Government to help IPs by developing education infrastructure and resources
	Socio-economic resources of IPs are generally limited as is their capacity to co-invest in conventional institutes	Advocate IP communities to embrace contemporary economic activities and trade with other communities	Community leaders. REPs to facilitate IPs in capacity building through trainings and workshops
Operational/ Post-project	REPs do not fulfill the negotiated beneficial agreements with IPs due to; i) Weak IPs organizations ii) IPs are unable to represent the diversity of their membership iii) Statutory and agreements defined conditions on the flow of benefits. IPs cannot comprehend these statutes and agreements properly. iv) Impact of agreement on role of state as a service provider v) Nature of indigenous autonomy over agreement benefits	IPs to pool resources and hire the services of a strong advocate. IPs communities to team up and reach out to the government and other human rights regulatory bodies on their plight	Community leaders. Human rights movements

The current resources allocation formulae to different regions of the country do not consider some of IPs economic activities. For example, nomadic pastoralism is not considered as a significant national economic activity. On the other hand, some cultural activities and sites in the IPs territories are yet to be gazetted as national heritage activities or sites for tourist attraction. Omission of these activities have largely disadvantaged the IPs and their lands. At such, they are seen as squatters and their territories considered to be bare and unproductive lands warranting less resource allocation. The IPs therefore

continue to be marginalized in terms of infrastructural development, education, security, health facilities amongst other social amenities. A more holistic resource allocation formulae which will incorporate all the IPs activities is thus pertinent.

The literacy level of most IPs is increasingly changing over time. Most IP communities who had been adamant towards western education system are now preferring contemporary education systems. Unfortunately, employment opportunities, regional and national governance, capacity building and resource mobilization in the national realm does not consider their initial education systems. The IPs are thus alienated in terms of national development. They have few, if any representatives to air their plight in the national 'cake-sharing table'. Most of the notifications for development of REPs are written in national languages and put up as billboards or through pamphlets, gazette notices or in newspapers. Due to the illiteracy of IPs, the notices do not reach them and the free, prior and informed consent to pave way for construction of REPs is not justified. During construction, lack of state knowledge enables other communities to take up the employment opportunities which would have otherwise benefitted the local IPs. Some REPs are involved with providing education bursaries to IPs. For example, in Narasha village found in Olkaria, GDC in collaboration with KenGen and Ormat companies have teamed up to employ and meet the salaries of teachers while providing bursaries for needy IPs children.

Due to geographical alienations and marginalization, there need to be strong links and societies between the respective IP communities. The societies can be formed by choosing representatives from each of the IPs. The societies can be able to mobilize for pooling resources from each of the communities to create a kitty. From the kitty, the societies can be able to hire the services of advocates and approach human rights movements to leverage for their rights. Through these societies, the IPs can be capacitated to lobby adequately with REPs and demand for thorough following of all protocols before setting up of REPs and due and adequate diligence in compensation without fear or intimidation. The societies also need to be independent from the REPs. This report notes that while there exists such a society in KWPP, (Kipeto Community Trust), the society is closer to the REPs than the IPs and work to please the REPs leaving the IPs with grievances. Therefore, the plight of IPs in Kipeto is far from over, especially when there is unequal compensation between IPs in the same neighborhood.

The land tenure system of IPs also need to be addressed for just compensations to be done during resettlement. Most of the IPs peg their cases on lack of formalized land parcels by IPs and thus easily relocate the IPs with little, if any compensation. This is a matter of urgent concern and should be prioritized in the Strategic Advocacy Action Plan (SAAP) of IPs. IPs need to identify political leaders and government administrators to help them in formalizing their territories. The IPs institutional framework is not capacitated to leverage, demand or implement most of the policies necessary for just compensation by REPs. There exists a gap in this process which requires filling. For example, one of the benefits sharing policies involves capacity building of IPs by REPs. However, most of the IPs are adamant towards western education system and vocational training thus refuse the initiatives. The REPs are therefore forced to cancel out this initiative creating more conflict between them and human rights movements. During relocation of IPs in Olkaria II, the REPs built new permanent houses for the IPs and helped to secure some jobs for them in the nearby Hell's Gate tourism destination site. However, this move conflicted with the IPs since they were not used to their new environment and practices. One of the interviewees was quoted, *"They relocated us from our comfortable Manyatta's and brought us to this big stone-walled building with many rooms. Now I can no longer sleep with my livestock since the floor is very cold for them."*

Additionally, the house is too big for my little belongings. It appears weird to me. My children are also a laughing stock in the village due to our mode of dressing. We feel dejected and would love to go back to our ancestral homes in Olkaria", 6th December, 2020

From the IPs plea above, it is obvious that the capacity of IPs is not yet standardized to the contemporary ones for just compensation to be realized. Despite the REPs spending a lot on IPs, there is still no satisfaction by the IPs and more social bridging is needed. A more holistic compensation policy that fully addresses the cultures of IPs need to be discussed and adopted with the help of their community leaders, human rights groups and the REPs.

4.4 Strategic Advocacy Action Plan; Policies, Frameworks and Schemes to solve IPs challenges

To comprehensively cover all the economic and social injustices perpetrated on IPs by REPs, a legislative strategic advocacy action plan (SAAP) is proposed. The plan entails policies, frameworks and schemes by several REP players and IPs regarding the rights of IPs. The goal of the plan is to form a win-win scenario for both parties as they all work towards reducing carbon emissions, wealth generation from renewable resources and social development of people. All this is practically feasible even in the harshest IPs-REPs societies like those existing in Olkaria, Lake Turkana and Kipeto.

To achieve this, a more holistic SAAP that puts more balance towards IPs is proposed. Several IPs components have been overlooked by previous such documents including:

- i. FPIC reports in IPs language
- ii. Inalienable lands, sacred sites or geographic features which cannot be monetized in compensation policy documents
- iii. Cultural and societal shock especially due to change of regions is not captured in most RAP documents
- iv. Definition and monetization of IPs economic activities such as nomadic pastoralism is yet to be monetized by most compensation policy documents
- v. ESIA and EIA reports are not conducted on the new localities where IPs are resettled
- vi. The Energy Tribunal committee base their rulings on these documents, other existing Acts and Conventions as well as the Kenyan Constitution of 2010. In all these documents, there is no single unified definition of indigenous people which enables other interested parties like REP practitioners to bias their interpretations and oppress IPs.

It is therefore pertinent to have a more comprehensive plan that will integrate all these injustices in a single simplified document that can be easily adapted and implemented by the concerned authorities. While the plan is guided by the previous documents such as FPIC reports, compensation and benefits-sharing policies and acts, RAP documents, ESIA and EIA reports as well as the Kenyan constitution of 2010, it has drawn its fabric on 3 key pillars of society; legal frameworks, fiscal policies and community social schemes (**Appendix 2**). The plan was derived from other IP-REPs which took the same route before attaining their current states (arguably successful). The plan is structured to be implemented in a three-year cycle.

It is evident from the SAAP that IPs themselves are the key determiners to how they will turn the REPs from a curse to a blessing. They have the potential to regroup and team up with other IPs (both locally

and globally), capacity build and face the REPs with facts to demand for their rights. This can be done at whichever stage of REP time. IPs in lands deemed to lack other national economic activities should learn from other IPs and know that their lands are potential sites for tapping energy such as wind, geothermal or solar. They should then organize themselves and team up with other IPs to protect their territories before it is too late. For example, there are projections that several spots within the foot of Rift Valley have the potential to generate geothermal energy. Several spots in Baringo, Samburu, Nakuru, Narok (Suswa) and Magadi are bare and inhabited by IPs. These IPs should not wait for REPs to beckon for them to start crying foul. Instead, from the SAAP, they should team up, pool resources together, hire the services of advocates and human rights practitioners and possibly invest in their resources. Consequently, they can turn their story from the cries of The Ewuaso o Nkidong'i clan of Olkaria to the joy of the Maori of New Zealand.

The SAAP uses three approaches to meet its key objectives (**Appendix 2**). One of these approaches is by use of legal frameworks. Several policies need to be revisited and other formulated as a legal measure to curb IP-REPs conflicts. The Sustainability Value Framework (SVF) need to be restructured to accommodate IPs culture, sacred sites and features. With this in place, then it is easy and possible to attach monetary value to them. Several legal documents do not have appropriate monetary attachment to IPs cultural activities thus leading to unfair compensation, or a total overlook of the same. More holistic compensation approaches can be generated with adequate benchmarking from those of other successful nations. IPs customary land tenure systems should also be recognized and registered in land laws; for adequate compensation when need arises. There is also need for independent oversight of the prerequisite resettlement, compensation and monitoring documents by human rights bodies. The UN human rights bodies should have more say in governments and the final word towards establishment of a REP in IPs territories. This will reduce the bias that nations attach to REPs that they perceive will increase their economic status. As a rule of thumb, all REPs should compulsorily and willingly power the households of all IPs from which their operations are being undertaken. This should be the least CSR that REPs can give to their displaced IPs which is not a very difficult task to fulfil.

Another SAAP approach towards sustainable REP-IPs co-existence and mutual gains is by fiscal reforms. Majority of IPs still use the barter trade system. This implies there are abundant commodities for trade. The commodities can be pooled together and monetized. Money collected, within an individual IP or between IPs with close economic activities can be used to develop their communities, invest in contemporary businesses, including establishment of REPs or to hire advocates who will arbitrate for their rights. This is a possible route which some IPs, such as the Navajo Nations of Missouri, USA and Aborigines of Australia have successfully pursued. IPs should also leverage for fiscal policies that will monetize their property and culture. This will enable adequate compensation during resettlement.

Some IPs such as the First Nations Peoples of Canada have created a financial institution (First Nations Clean Energy Fund). The fund draws money from contribution of its members. The funds are then used to invest in energy projects, making IPs the REP practitioners. This way, there is no interruption in their sacred sites and resettlement is organized within the members. There is more need for IPs insurance policies, whereby IPs customary practices, cultures and sacred sites can be insured from destruction by REPs. This way, REPs would fear destroying IPs activities and sites due to the financial penalties attached, thus opt for other methods (hopefully by consensus). It is also viable to have an IP Community Trust Fund (CTF). The CTF can be tasked to collect benefits from REP activities, bank them and advise on appropriate investments that the IPs can pursue. The Kipeto WPP has such a CTF (even though IPs

lament that it is controlled by Kipeto REP practitioners). There is need for more independent CFTs in REPs with IPs.

Another key element of the SAAP document is the IP-REP community social schemes. The fabric of the other two approaches (legal and fiscal) are all based on the social human interactions between the two parties. To bring the two to a common ground, more civic education coupled with contemporary education system to IPs children is proposed (**Appendix 2**). On their part, REPs should also strive to understand and appreciate IPs cultures and the significance it plays in their lives. At this point, interactions between the two parties can be beefed up with their reasoning capacities almost similar. This would lead to more social community activities such as games and sports, cultural festivals amongst others, financed by the REPs. It is through these activities that the other two approaches can be fast-tracked, streamlined, leveraged and implemented.

A key part of this transition lies on capacity building. IPs should embrace contemporary education, vocational training and knowledge of state laws. It is only then that their capacity to leverage for their rights can be realized. Without this knowledge, the IPs cannot communicate well with other IPs in different regions, plan on a level ground and lobby for finances to protect or invest in their resources. The skills to manage and operate REPs are also found through embracing contemporary education systems and vocational training. Even the employability index in REPs managed by private investors is likely to increase should the locals have the necessary skills. Increased literacy levels will also enable IPs to contest for regional and national political and administrative positions, thus increase their representability in resource allocation and protection.

From the SAAP, a new resource-allocation-formulae with more weight on IPs culture is proposed. The Maori IPs of New Zealand successfully leveraged for this move which led to more gains by IPs during compensation by REPs. The SAAP proposes a shift in clustered weights from the contemporary sustainability value framework, SVF parameters towards culture (**table 10**).

Table 10: The proposed sustainability value framework

Parameter	Metrics	Contemporary evaluation	Proposed IPs evaluation
National economy	high economic impact to country, wealth generation, far-fetched high employability index	+4	+4
Profits	Net profit value, investment return rate, profitability index, payback period, community employment	+3	+1
Social	Owned communally, human interactions, ability to attract more social activities e.g tourists, sports	+1	+1
Environment	Preservation of natural resources, ability to remove CO ₂ -equivalents from atmosphere	+2	+2
Culture	Preservation of traditions, rituals, sacred sites etc.	Nil	+2

Key: +4 – excellent, +3 – very strong, +2 – strong, +1 – relatively strong, Nil – weak

From the SVF, more weight is shifted from the REPs profit to preservation of IPs culture. The REPs profits are in turn covered by the national economic profits. Though this might discourage private investors, the move will strengthen IPs who from the fiscal policies (in SAAP, **figure 21**) can pool resources and plough them into REPs. This is the exact situation that happened with the First Nations Peoples of Canada's HEP projects, the Saami's wind projects of Denmark, Navajo Nations tribes (Red Indians) of Missouri

river (USA) and their HEPs, the Maori of New Zealand HEP projects and the Aborigines of Australia's solar microgrid systems. In all these REPs, the IPs are the major shareholders. The government only procure some of the project construction material and negotiate with power regulators on the most viable PPAs on behalf of IPs.

The lesson that can be learned from other REPs in different parts of the world is that there is more success and harmony when REP practitioners involve IPs. IPs are ready to embrace the REPs in their territories as long as their culture is respected and just compensation carried out. Alternatively, the IPs can be considered as partners in the REPs whereby they donate land and REP practitioners manage the ventures (see the Aborigines of Kimberley, Australia and Navajo Peoples of Missouri, USA in **Table 10**). IPs can also lease their territories but have their ancestral features respected and they be allowed to visit them, as long as it is done in a secure and respectful manner (consider the case of Mt. Apo in Philippines, see **Table 10**). This way, a mutual co-existence is possible as has been proven in other regions globally.

While some REPs have respected and worked closely with IPs, others still dictate their way in IP territories. Such REPs include; the Oaxaca wind power project of Mexico, the Santa Rita HEP of Guatemala, the projected Amazon/Tucuruí PTL of Brazil and the wind power projects to be established in Saamis' reindeer territories in Norway. These REPs should learn from the successful ones and adequately involve IPs to fully reap the efforts of their renewable energy pursuit. However, use of dubious and forceful means to displace REPs away from their territories only lead to a tense working environment for REPs. The report is yet to identify a REP which have succeeded in its operations for a long time after evicting IPs to use their natural energy resources.

Table 11: A summary the situational analysis of REPs from other parts of the world

Type of REP	Situational Analysis			
	REP	IPs	REP Approach	Current situation
Wind power, WP	The projected Saami WP of Norway	Saami	Witful approach without considering Saami's reindeer herding grounds	Strong opposition from these IPs have derailed the REPs startup
	The Oaxaca WP of Mexico	The Isthmus	Forceful colonialization of IPs territories	A tense environment still exists between REPs and IPs
Solar mini-grids, SM	The SM of Kimberley, W. Australia	Aborigines	REPs co-owned by IPs	Mutual gains, IPs strongly embrace the REPs, more growth in renewable energy for its potential exportation
	The SM of New Zealand	Maori	IPs donated land for REP development and involved in their decisions	REPs have continuously supported IPs, IPs ancestral languages, features and other sites preserved for tourism activities with help of REPs
Geothermal power, GP	Mt Apo GP	Mindapo	REP respected IPs demand of honoring their sacred sites and permitted them to be visiting the sites	REP has tremendously grown and enjoy a good working environment with the IPs

Type of REP	Situational Analysis			
	REP	IPs	REP Approach	Current situation
HEP	Keeyask HEP of Canada	First Nations People	IPs have shares in the REPs	The REPs are successful business ventures which have significantly reduced the carbon emissions in Canada
	Santa Rita HEP of Guatemala	Mayan	REPs forcefully evicted IPs from their territories	Tense working relation between REP and IPs, constant demonstrations and interference between the two parties
PTL	Projected Amazon/ Tukurui PTL of Brazil	Waimiri Atriori	Forceful approach by the government, IP pleas not considered	Tense environment already there
	West Kalimantan PTL of Indonesia	Divak	Adequate involvement of IPs in feasibility studies, consultations and compensation	REP performing well without any interference, IPs contented with their new localities

CONCLUSION

Renewable energies have been pointed as the key source of surplus energy to drive the economy while also maintaining a low-carbon environment. Most of the REPs in Kenya begun operations after liberation of the energy sector in 2008. The field attracted many local and foreign investors; some with questionable human rights characters. Even then, energy institutions were unable to regulate these players or reprimand them when they violated human rights policies. Unsurprisingly, the REPs went ahead to violate all forms of human rights accorded to indigenous people during project developments. This is despite the REPs having clear and detailed documents on human rights, energy and land policies to guide them. Unlawful eviction, unfair compensation, doctored ESIA reports and unfollowed benefit-sharing policies have been witnessed.

The illiteracy of IPs to contemporary education system, lack of state knowledge and low economic capacity have been pointed as the key challenges of IPs in their quest for justice. The report has identified these weaknesses and proposed a strategic advocacy action plan. The plan highlights the key players involved using already established policy documents while benchmarking on successful IPs who walked through the same paths. Should the plan be realized, then the plight of IPs can be significantly resolved.

Until then, all mercies are left to The Lord!

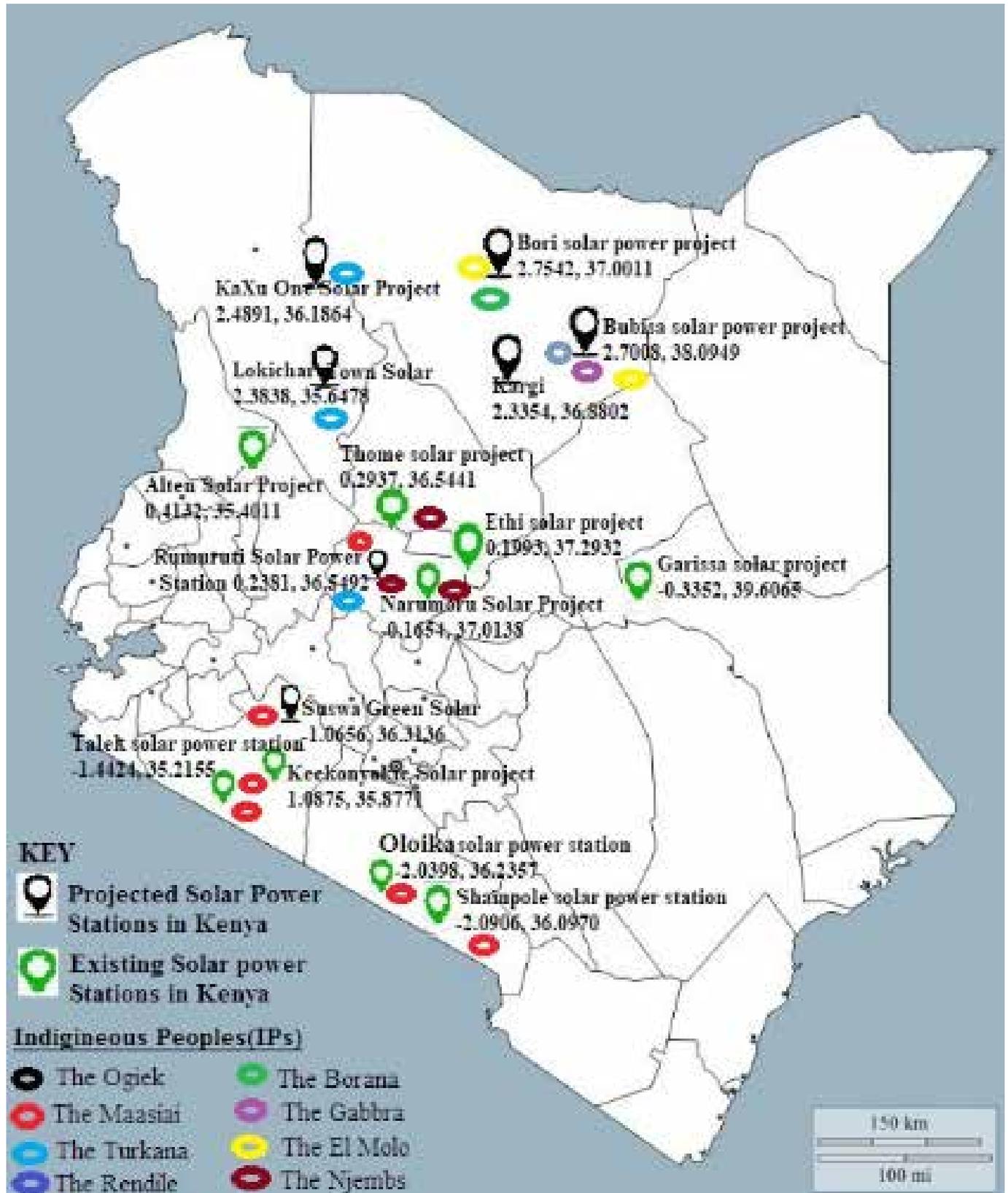
Recommendations

The report recommends;

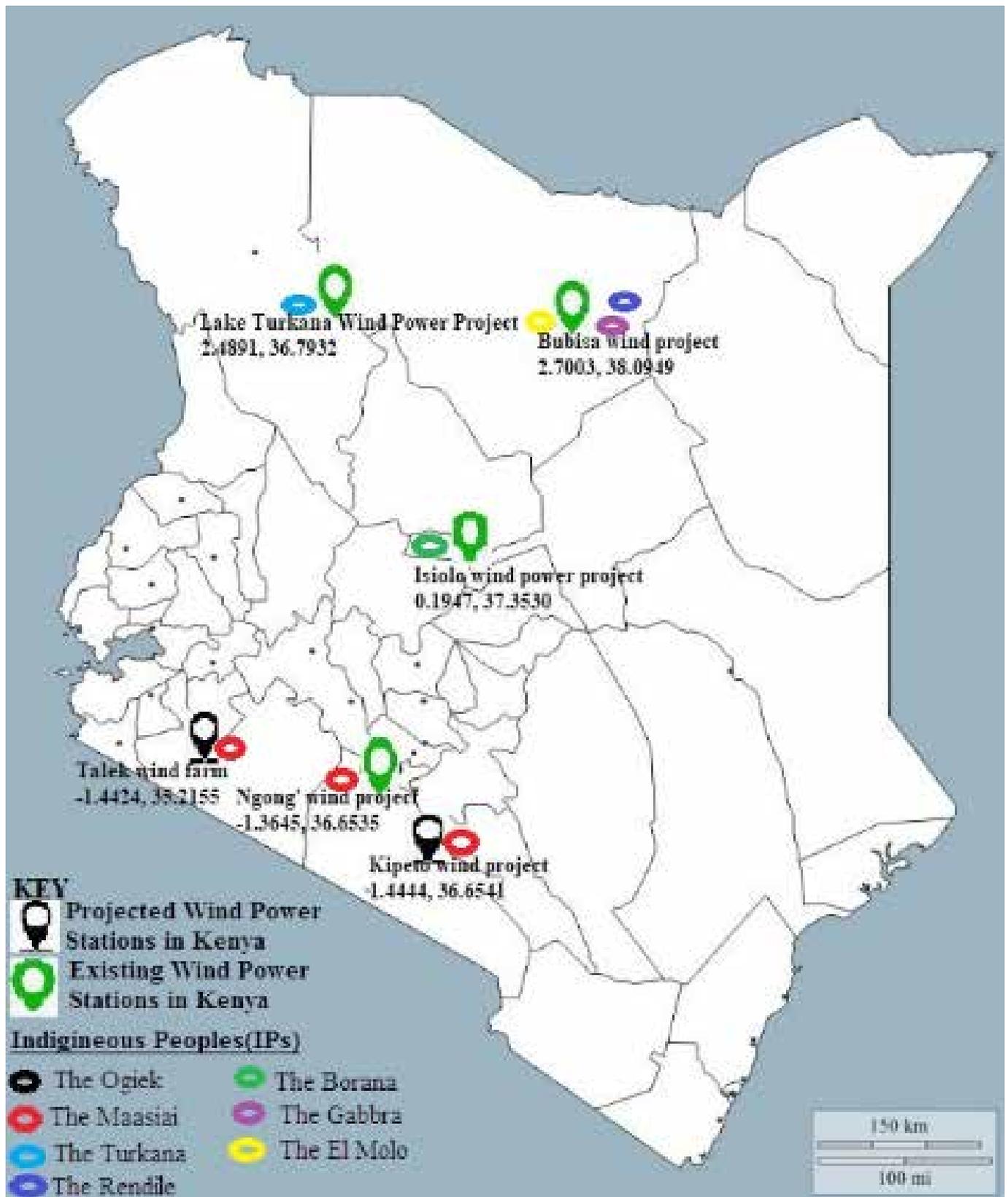
- i. IPs to unite within themselves within and outside the country for stronger defense mechanisms against REPs.
- ii. IPs to pool resources within themselves and monetize it, then invest in contemporary ventures; including REPs which are abundant in their territories.
- iii. The government and other policy makers to recognize and register IPs customary activities, sacred sites and features as well as their customary land tenure systems for adequate compensation during resettlement.
- iv. Restructuring of the contemporary Sustainability Value Framework to encompass and give more weight to IPs culture against REPs economic gains.
- v. Provision for an independent oversight and monitoring body to inspect IP-REPs situation, without the government's interference.
- vi. Requirement for REPs to power IPs homesteads in their areas of operation.
- vii. Creation of IPs financial institutions, insurance policies and community funds that will strengthen their fiscal muscles.

APPENDICES

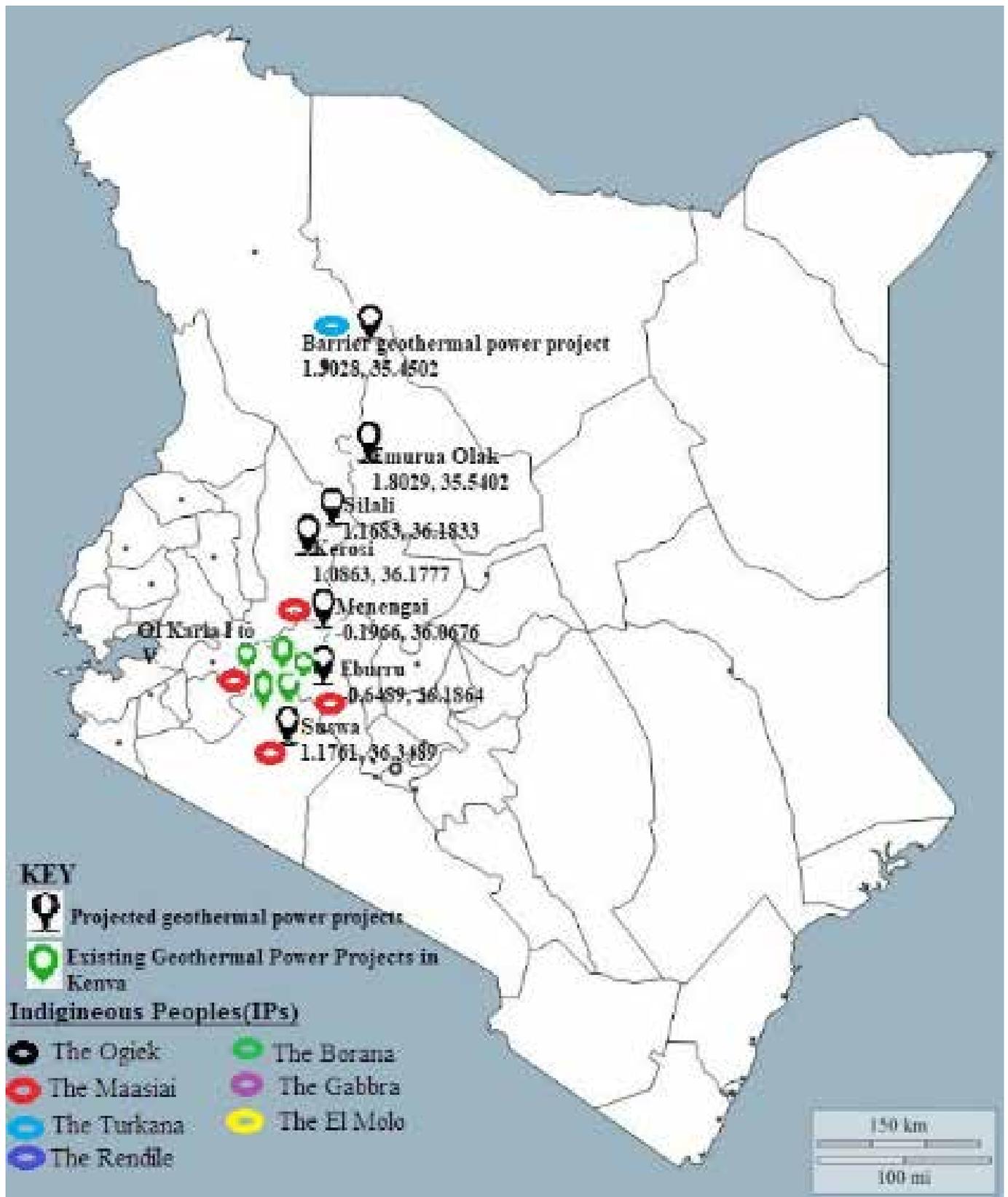
Appendix 1: The Maps of the REPs



Appendix 1.1: Map of solar grids and mini-grids in IPs territories in Kenya



Appendix 1.2: Map of major wind energy projects in IPs regions in Kenya



Appendix 1.3: Geothermal projects in IPs territories in Kenya

Appendix 2: The Strategic Advocacy Action Plan

	Policies/Frameworks/Schemes	Key players	Successful case studies
Legal frameworks	Restructuring of govt. resource allocation formulae Due registration of all IP communities and their rights enshrined in the Kenyan constitution Recognition of IP tribes as a special group warranting monthly govt subsistence Due recognition of IP customary land tenure system	County & National govt. administrators, Local politicians	The First Nations Peoples of Canada
	Formation of a more holistic compensation policy Modification of FPIC to a comprehensive awareness strategies pre-requisite report approved by all IP families in a language that they understand prior to REP construction Requirement for independent oversight of RAP and compensation process by a representative from UN Revisit the Employment Act for REPs to increase the number of IPs and ensure capacity building process is oversighted by an independent body	REPs, human rights movements, govt. administrators	The First Nations Peoples of Canada, The Navajo Nations tribes (Red Indians) of Missouri, USA
	Restructure the current ESIA report formats to have more provisions for IPs cultural issues Restructure the current EIA report formats to be more holistic to the new environments of relocated IPs Independent oversight of benefits-sharing policies by UN agencies Mandatory requirement for REPs to power all affected IPs households at subsidized or free tariffs	REPs, human rights movements, govt. administrators	The First Nations Peoples of Canada
Fiscal policies	Creation of a financial kitty by IPs pooled from different economic activities for their own development and protection e.g. to hire services of advocates and human rights 'watch dogs' Leverage for a policy that can monetize IPs property, culture and attachment to ancestral lands and sacred sites (based on time-value) for adequate compensation Creation of IPs financial institutions such as The First Nations Clean Energy Fund	IP communities, government	The First Nations Peoples of Canada, Aborigines of Australia, Saami of Denmark
	Leverage for an insurance policy to be covered by REPs against any society or cultural shock that IPs suffer during relocation to new territories	REPs, government	None
	Formation of a Community Trust Fund fully managed by IPs to collect benefits from REPs, invest and advise IPs on viable financial and other contemporary development projects	IP communities, government	The First Nations Peoples of Canada, The Maori of New Zealand
IP communities-REPs social schemes	Formation of strong inter-IPs communities links and societies to leverage for all their human rights Publicize all meetings and awareness programs between existing 'IPs community representatives' and REPs. If possible, a major overhaul is required to choose new community representatives	IP communities	The First Nations Peoples of Canada
	Registration of independent ESIA study audit teams conducted by IPs and independent oversight bodies (preferably from UN) with a strong influence on the continuity of REPs Creation of a policy that will permit IPs to visit their ancestral lands in project sites after resettlement elsewhere to perform their cultural rituals if it is safe to do so	IP communities, Human rights groups	None
	Lobby for REPs to sponsor regular IPs cultural events as a scheme for their social interaction with them Ensure quarterly meetings with REPs to update IPs on REPs progress while assessing the welfare of IPs	IP communities, REPs	None

Key: Pre-feasibility stage Initiation stage Project operation stage

Appendix 3: NOTE FROM MARSABIT COUNTY SENATOR (GODANA HARGURA MZALENDO')A DEEPER INSIGHT INTO THE LAKE TURKANA WIND POWER PROJECT FROM A POLITICAL ANGLE

"Lake Turkana Wind Power (LTWP) is a private entity. The County council had been entrusted on the land by the community, with several tribes of Indigenous Peoples (IPs). The land was therefore a Trust Land. The project acquired land from Marsabit County council without due protocol. The local community was totally unaware of this development. The Trust Land Act that mandated the lessors to have public participation with the local community before procuring Trust land was never followed. Instead of using the Land Board to negotiate with the community, the private developers used a self-chosen 'committee'. The meetings would take place in hotels in Nairobi. Out of the procured 150,000 acres of land, only 40,000 acres was used by the REP. This is despite the private developers having documents for the entire 150,000 acres of land.

The community went to court to stop the injustice without much success. Instead, a County committee was formed to mediate the process but the LTWP investors failed to honor it since they had national support. After several failed mediation processes, the case was taken back to court but the community lost. The land was therefore legally lost (though temporarily as the matter is still in court) from the community to the private developers. The community members could no longer freely utilize the land. Construction of the project then resumed. The IPs were affected in several ways;

- i. Their economic activities were interfered as they could no longer graze their cattle in the land or fish near the project.*
- ii. They were displaced off their lands.*
- iii. The only employment considered for them was security, despite having the potential for other jobs.*
- iv. The Community Social Responsibility (CSR) created allocated a very meagre kitty (of Ksh. 60 million per annum against a generated Ksh. 15 billion per annum). The CSR was also controlled by the REP without involving the locals and only used for little infrastructural programs.*
- v. The REP did not build the capacity of the locals.*
- vi. Power was evacuated directly to Suswa substation without stepping down any of it to the locals. The local community continue to use kerosene lanterns for lighting. Even Marsabit town, the capital of the county is powered with diesel generators while Moyale, the county's second largest town derive its power from Ethiopia. This is despite the REP generating about 300MW of power to the country.*

World Bank identified issues with the REP and gave a signal. It was particularly concerned with the power transmission lines constructed. A Spanish company had been retendered with another Chinese firm which had gone bankrupt. The constructed power lines were also underutilized. They were intended to evacuate 310 MW of power yet the company constructed power lines to carry a capacity of 1200MW of power. This has even prompted KenGen to construct another wind energy project to utilize the unused power line. There are 365 wind turbines, each with a capacity of producing 850kW (totaling 310MW). The effective capacity is however 300MW and an annual target capacity of 55% (165MW). The constructed power line is a double line, yet one part of it is idle despite costing Ksh. 30 billion.

Eventually, World Bank stepped out because;

- a. *Partial risk guarantees since construction came from European Banks*
- b. *Lack of equity since most of the shareholders were foreigners*
- c. *The county generation has a capacity of less than 165MW*
- d. *Installation was done to only a few dependents*
- e. *To evacuate for 26 members, Kenya power had to pay for power which would not be utilized, thus increasing electricity tariffs cost. The burden would be passed down to Kenyans.*
- f. *Kenya power lacked the experience to manage wind power hence it is more costly.*

The local IPs community are not against the REP. Instead, they want to be engaged in its affairs, especially those that touch on their welfare. Several IPs human rights policies were violated including; the Free, Prior and Informed Consent (FPIC) report and UN charter for human rights. There was no compensation policy followed and compensation was only through a little money to few individuals. The following interventions have been proposed;

1. *Proper engagement with the people. REPs should deal with the community not individuals.*
2. *FPIC should be performed justly.*
3. *The land must be acquired with the community's approval.*
4. *Community should be stakeholders in the project since it is in their land.*
5. *Land should be given to a legal entity in which the community has shareholding.*
6. *The community should have their land as the equity entity in the company which is the value of their land.*
7. *The community itself should be organized so that participation benefits are inclusive. In the current scenarios, some leaders secretly work with the companies away from the community.*
8. *Employing community elders as liaison person on salaries.*
9. *Install hybrid system solar and wind systems for the community.*
10. *Recognition of community members as part of the REP.*

The proposed REP at Bubisa in North Horr constituency also has 150,000 acres. The REP developers got consent from the county government but it was intercepted, MPs and elders went to court and the project was stopped. The County government as a respondent is not in the program.

The Community wanted to produce wind power near Bubisa to install some turbines to power their homes. The land is also held in trust, like that in Loiyangalani by county government until the land is registered.

Several laws are openly violated by REPs without any fear. They include;

1. *Trust land act was clear but was not being followed.*
2. *Indigenous communities' laws that are recognized internationally are not considered here. UN laws that have been domesticated should be clearly implemented in Kenya.*
3. *World bank IPF social framework.*
4. *Public participation- constitution 2010.*

Several renowned journalists have broadcasted the plight of the IPs in the community without much success (e.g Allan Namu- African focus documentary on Lake Turkana Wind power). There is also an ongoing petition by popular advocates to leverage for the plight of the IPs (e.g. Human Rights Activist Okiya Omtata is working on the Lake Turkana wind power case)."

Godana Hargura, 16th December, 2020



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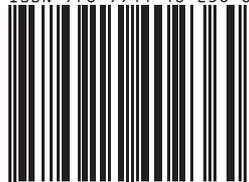
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