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Towards a Human Rights-based Approach to Energy Transition in Africa

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Abstract

African countries have increasingly emphasized adopting lower carbon, more efficient and environmentally responsible energy systems. Despite these efforts, little progress has been made in addressing the adverse human rights impacts of energy transition programs and projects, and the responsibilities of extractive sector corporations and operators. Existing legal and institutional frameworks supporting human rights face hindrances in adapting to local contexts to pursue clean energy transition and energy justice. Through the lens of community engagement, gender equality and other rights-based approaches, this article argues that socially excluding vulnerable groups in accessing energy markets is primarily a function of consolidating energy delivery in a way that navigates current discrimination and responds to the central roles played by different actors. The article explores how energy is produced, extracted, distributed and shared to help outline a future agenda for shaping discussions on just transitions in Africa, emphasizing the prioritization of fairness in these efforts.

Keywords: Africa; energy transition; human rights-based approach; just transition

I. Introduction

Access to modern and sustainable energy is central to driving development and progress, particularly in Africa, where millions of people still lack reliable electricity and other sources of energy.[1] While the energy transition in Africa is designed to shift toward renewable energy to combat climate change, concerns have also emerged about how the transition is resulting in significant challenges such as land grabs, greenwashing, procedural and distributive injustice, modern slavery, child labour and the rush for critical minerals. These concerns underscore the complex balancing act between the shift to renewable energies and maintaining environmental goals and social justice, particularly in regions

[1] Other sources include BLEENS (biogas, LPG [liquified petroleum gas], electricity, ethanol, natural gas and solar power), see https://energypedia.info/wiki/BLEENS__Biogas,_Liquefied_Petroleum_Gas,_Electricity,_Ethanol,_Natural_Gas,_and_Solarracism (accessed 25 September 2024). See also Walter Leal Filho et al, 'Energy Poverty in African Countries: An Assessment of Trends and Policies' (2024) 117 *Energy Research & Social Science*, 103664.

with weak regulatory frameworks and vulnerable populations.[2] For example, the Lake Turkana Wind Project in Kenya, the largest in Africa, has been criticized for land grabs,[3] with local pastoralist communities claiming inadequate consultation and unfair compensation for land traditionally used for grazing.[4] Similarly, in Uganda, foreign investors promoting 'green energy' and carbon offset projects have displaced communities for eucalyptus plantations, leading to the disenfranchisement of local populations and loss of fertile land.[5]

Across several of these projects, greenwashing, the deceptive promotion of environmentally friendly initiatives that mask negative impacts, is rampant. For instance, Ethiopia's large-scale hydroelectric projects, such as the Grand Ethiopian Renaissance Dam,[6] are touted as green energy solutions but have caused significant environmental degradation and community displacement.[7] In countries like Mozambique,[8] and Kenya,[9] international investors establish tree plantations or forest conservation projects under carbon-offset schemes,[10] which have been linked to deforestation, displacement and ecological harm, misleadingly labelled as sustainable.[11]

Furthermore, the global demand for critical minerals—such as cobalt, lithium and rare earth elements—essential for renewable energy technologies, has led to a resource rush in Africa,[12] escalating social and environmental issues. The Democratic Republic of Congo (DRC), which holds around 60 per cent of the world's cobalt reserves, has become a focal point for the energy transition.[13] However, the surge in mining has exacerbated land conflicts, environmental degradation and human rights abuses, with little benefit to local

[2] Sofien Tiba and Fateh Bélaïd, 'Modeling the Nexus between Sustainable Development and Renewable Energy: The African Perspectives' (2020) 35:1 *Journal of Economic Surveys* 307. See also Damilola Olawuyi, 'Energy (and Human Rights) for All: Addressing Human Rights Risks in Energy Access Projects,' in Raya Salter, Carmen G Gonzalez, and Elizabeth Kronk Warner, *Energy Justice: US and International Perspectives* (Edward Elgar, 2018) 73–104.

[3] Lake Turkana Wind Power, 'Powering Kenya with Affordable and Clean Energy' https://ltwp.co.ke (accessed 30 June 2024).

[4] Ibid.

[5] World Rainforest Movement and Timberwatch Coalition, 'Industrial Tree Plantations Invading Eastern and Southern Africa,' 14, https://www.wrm.org.uy/wp-content/uploads/2016/10/2016-10-Plantations-in-ES-Africa-TW-WRM-med-screen.pdf (accessed 15 July 2024).

[6] Yohannes Woldemariam and Genevieve Donnellon-May, 'The Politics of the Grand Ethiopian Renaissance Dam' (2 February 2024), https://climate-diplomacy.org/magazine/conflict/politics-grand-ethiopian-renaissance-dam (accessed 10 August 2024).

[7] International Rivers, Field Visit Report on the Grand Ethiopian Renaissance Dam, https://riverresourcehub.org/wp-content/uploads/files/attached-files/grandren_ethiopia_2013.pdf (10 August 2024).

[8] Laura Fumagalli and Thomas Martin, Child Labor Among Farm Households in Mozambique and the Role of Reciprocal Adult Labor (2023) 161 World Development, 106095; Andrew Wasike and Magdalene Mukami, Kenya: Children Descend into Hard Earth to Dig for Gold (12 June 2019), https://www.aa.com.tr/en/africa/kenya-children-descend-into-hard-earth-to-dig-for-gold/1501861 (accessed 20 July 2024).

[9] Chloe Farand, 'Kenya Banks on Carbon Credits - but at What Cost to Communities?,' *Reuters* (29 March 2023), https://www.reuters.com/article/markets/oil/kenya-banks-on-carbon-credits-but-at-what-cost-to-communities-idUSL8N35N4EJ/ (accessed 12 July 2024).

[10] Ibid.

[11] The Nature Conservancy, 'Catalyzing Carbon Projects in Africa' (26 October 2022), https://www.nature.org/en-us/what-we-do/our-priorities/tackle-climate-change/climate-change-stories/africa-forest-carbon-projects-interview/#:~:text=One%20that%20really%20excites%20me,is%20chronically%20under%20invested%20in (accessed 12 July 2024).

[12] James Boafo et al, 'The Race for Critical Minerals in Africa: A Blessing or Another Resource Curse?' (2024) 93 *Resources Policy* 105046.

[13] Ntebatse Rachidi et al, 'Assessing Cobalt Supply Sustainability through Production Forecasting and Implications for Green Energy Policies (2021) 74 *Resources Policy* 102423.

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communities.[14] More precarious is the participation of artisanal miners in lithium extraction which has fuelled conflicts with multinational corporations (MNCs), as illegal operations clash with corporate interests.[15] For example, Zimbabwe's lithium mining sector has expanded to meet global demand, but this expansion has led to land dispossession, inadequate compensation and environmental damage,[16] raising questions about the longterm benefits for African nations. In Ghana, communities near the Ewoyaa Lithium Project have raised concerns over farmland destruction due to prospecting activities and inadequate compensation.[17] In the DRC's Lualaba province, cobalt and copper mining for electric vehicle batteries has led to forced evictions, lack of consultation and insufficient compensation for affected communities.[18] Human rights violations, such as excessive use of force during evictions, lack of participation and consultation and inadequate valuation and compensations are common and the environmental toll of poorly regulated industry practices undermines the 'clean' image of these technologies.[19]

Without addressing persistent legal and policy shortcomings in the energy transition, ongoing efforts toward energy justice risk further setbacks. Although a few studies have highlighted the consistent shortcomings of energy transition policies,[20] in-depth analysis of the energy justice gaps hindering a rights-based approach has been lacking, while the absence of a rights-based framework for energy transition legislation undermines human rights in Africa. This article addresses this gap by exploring a human rights-centred approach to energy transition in Africa, arguing that the prevalent energy injustices across the continent largely stem from the concentrated distribution of energy resources and benefits in ways that reinforce existing inequalities historically associated with the fossil fuel sector. Addressing these challenges requires a systemic restructuring of energy laws and policies to embed human rights and ensure that both states and corporations fulfil their human rights responsibilities more equitably.

The rest of this article is structured as follows: after this introduction, Section 2 establishes the context for business and human rights (BHRs) by providing background on the United Nations Guiding Principles (UNGPs) and their potential to support a just transition and energy justice in Africa. The third section examines the legal and governance frameworks that guide energy transitions in Africa, highlighting national and continental policies that can ensure a just transition. The fourth section analyzes the benefits of a rights-based approach to achieving a just and equitable energy transition. It outlines the essential components of this approach, grounded in a realistic framework while addressing the challenges and opportunities associated with advancing energy justice. Section five

[14] James Boafo, et al, note 12.

[15] Zimbabwe Environmental Law Association, 'Chinese Dominance in Zimbabwe's Lithium Mines: Potential Risks, Vulnerabilities and Opportunities in the Critical Minerals Sector' (20 September 2023), https://ipisresearch.be/weekly-briefing/chinese-dominance-in-zimbabwes-lithium-mines-potential-risks-vulnerabilities-and-opportunities-in-the-critical-minerals-sector/ (accessed 15 July 2024).

[16] African Liberty, 'Zimbabwe's Lithium: The Future of an ailing Economy?' (21 February 2023), https://www.africanliberty.org/2023/02/21/zimbabwes-lithium-the-future-of-an-ailing-economy/ (accessed 15 July 2024).

[17] Jack Wolf, Alix Smidman and Noel Konan, 'How Lithium Rush in West Africa is Harming Rural Communities, openDemocracy (2023), https://www.opendemocracy.net/en/how-the-lithium-rush-in-west-africa-is-harming-rural-communities/ (accessed 20 October 2024).

[18] Amnesty International, 'Powering Change or Business as Usual?' (12 September 2023), https://www.amnesty.org/en/latest/news/2023/09/drc-cobalt-and-copper-mining-for-batteries-leading-to-human-rights-abuses/ (accessed 20 July 2024).

[19] Ibid.

[20] Annalisa Savaresi and Margaretha Wewerinke-Singh, 'A Just Transition?: Investigating the Role of Human Rights in the Transition Towards Net Zero Societies' (2024) *EUI LAW, AEL, Working Paper*, 2024/09.

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outlines a future agenda for shaping discussions on just transitions in Africa, emphasizing the importance of prioritizing fairness in these efforts. Section six concludes the article.

II. Contextualizing Business, Human Rights and Energy Transition in Africa

A. *Energy Justice Debates in Africa*

Conceptually, energy justice aims to address the adverse impacts on industries, communities and workers as societies shift toward sustainable and renewable energy sources, ensuring that no one—particularly marginalized communities and workers—is left behind.[21] This concept emphasizes the fair distribution of the benefits, responsibilities and impacts of energy production and consumption across all segments of society.[22] It ensures that no group bears a disproportionate share of the costs associated with energy systems while equitably sharing the benefits of energy access.[23] While existing debates have largely focused on states' duty to guarantee equitable energy access, a growing body of the energy justice discourse reflects ongoing global debates on the responsibility of businesses across sectors to respect, protect and fulfil human rights throughout their operations.[24]

The energy justice literature identifies five core dimensions of energy justice: distributive, procedural, restorative, recognition and cosmopolitan.[25] Failures in energy transition laws and policies exacerbate injustices across each of these areas. First, distributive justice debates contest the unequal distribution of energy project benefits and burdens across communities and regions.[26] Thus, energy transition failures exemplify the disproportionate social and environmental impacts inflicted on individuals and communities. For example, in the DRC, cobalt is mined under hazardous conditions, where local miners face poor wages and health risks.[27] Meanwhile, the profits largely benefit foreign corporations, and mining activities lead to significant environmental damage. Similarly, the Lesotho Highlands Water Project displaced numerous Basotho people and caused considerable environmental degradation.[28] In Ethiopia, the Grand Ethiopian Renaissance Dam created tensions with Sudan and Egypt over water allocation and downstream impacts. In Nigeria's Niger Delta, decades of oil and gas exploration have caused environmental degradation, air and water pollution and poor public infrastructure, disproportionately affecting women reliant on the land for subsistence.[29] Additionally, the search for minerals like lithium and copper to power renewable energy technologies places

[21] International Labour Organization, 'Green Works to Support a Just Transition,' ILO (7 November 2022), https://www.ilo.org/wcmsp5/groups/public/—ed_emp/—emp_ent/documents/publication/wcms_860571.pdf) (accessed 18 October 2024).

[22] Oyeniyi Abe and Victor Azubike, 'Reexamining Energy Justice and Energy Security in Africa' (2024) 42(3) *Journal of Energy and Resources Law* 279.

[23] Ibid.

[24] Afe Babalola and Damilola Olawuyi, 'Overcoming Regulatory Failure in the Design and Implementation of Gas Flaring Policies: The Potential and Promise of an Energy Justice Approach' (2024) 14 *Sustainability* 6800.

[25] Maciej Sokołowski and Raphael Heffron, 'Defining and Conceptualizing Energy Policy Failure: The When, Where, Why, and How' (2022) 161 *Energy Policy* 112745.

[26] Annalisa Savaresi et al, 'Conceptualizing Just Transition Litigation' (2024) 7 *Nature Sustainability* 1379, https://www.nature.com/articles/s41893-024-01439-y (accessed 10 October 2024).

[27] Xintong Cao, Maria Sharmina and Rosa M Cuellar-Franca, 'Sourcing Cobalt in the Democratic Republic of the Congo for a Responsible Net-Zero Transition: Incentives, Risks and Stakeholders (2024) 95 *Resources Policy* 105149.

[28] Amnesty International, 'Lesotho: Polihali Dam Construction puts nearly 8,000 people at risk of Displacement' (February 6, 2020), https://www.amnesty.org/en/latest/news/2020/02/lesotho-polihali-dam-construction-puts-nearly-8000-people-at-risk-of-displacement/ (accessed 8 October 2024).

[29] Adeshina Temitayo Bello and Treasure Nwaeke, 'Impacts of Oil Exploration (Oil and Gas Conflicts; Niger Delta as a Case Study)' (2023) 11(3) *Journal of Geoscience and Environment Protection* 189.

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communities in Southern Africa at risk, as they face land degradation, water pollution and displacement, with the benefits primarily accruing to international corporations and local elites.[30] Without an energy justice lens integrating human rights language, policies addressing energy transitions in underserved communities risk overlooking the acute vulnerabilities of marginalized groups, who often suffer disproportionate impacts.[31]

Second, procedural injustice occurs when communities are excluded from meaningful participation in energy project decision-making, leading to inequitable outcomes. For instance, in Kenya's Lamu coal project, indigenous representatives raised concerns about inadequate impact assessments and lack of government oversight. The Marikana incident in South Africa reveals how extractive projects often disregard local voices, sometimes with tragic consequences.[32] In Nigeria's Ogoni region, where communities face severe impacts from oil production, the absence of meaningful participation highlights procedural inequities affecting marginalized and vulnerable groups. The transition away from fossil fuels has yet to address these historical injustices, often replicating them in new forms.

Third, recognition justice considers whose interests and perspectives are included in decision-making processes. In contrast, recognition injustice occurs when marginalized communities affected by energy developments are excluded, disregarding their identities, rights and voices.[33] In Sierra Leone, renewable energy megaprojects have raised issues of recognition injustice. For example, categorizing firewood as a 'problematic fuel' creates a socio-economic cost for the country, especially for women and children who handle it most frequently.[34] When the voices of local and marginalized groups are ignored, these communities are more likely to resist energy projects, undermining their success and reinforcing existing inequalities. Emphasizing the inclusion of diverse perspectives in energy decision-making, laws and policies helps avoid fragmentation at the local level and participatory approaches are proven to yield more equitable outcomes and stronger community support.

Fourth, restorative injustice emerges when policies for remediation or restoration are insufficient, inconsistently applied or absent.[35] The Lake Turkana Wind Project in Kenya, one of Africa's largest wind farms, was initially celebrated for its renewable energy impact but later faced significant opposition due to alleged failures in remediation, community consultation, unresolved land disputes and exclusion of the indigenous Turkana community.[36] Addressing such energy transition failures requires benefit-sharing agreements, reparations for land-related grievances and meaningful dialogues to restore community trust. Similarly, Uganda's Karuma Hydropower Project faced criticism from local communities concerned about displacement and ecological harm.[37] A rights-based

[30] Joshua Matanzima, '"Disempowered by the Transition": Manipulated and Coerced Agency in Displacements induced by Accelerated Extraction of Energy Transition Minerals in Zimbabwe' (2024) 117 *Energy Research and Social Science* 103727.

[31] Babalola and Olawuyi, note 24, 6804.

[32] Isabelle Soifer, 'The "Marikana Massacre" and the Reactions of South Africans' (2012) Independent Study Project (ISP) Collection, 1409.

[33] Savaresi et al, note 26.

[34] Shankar Sankaran et al, 'Energy Justice issues in Renewable Energy Megaprojects: Implications for a Socioeconomic Evaluation of Megaprojects' (2022) 15(4) *International Journal of Managing Projects in Business* 701–18.

[35] Babalola and Olawuyi, note 24.

[36] Right Energy Partnership, 'The Impact of the Lake Turkana Wind Power Project on Kenya's Indigenous Peoples,' https://rightenergypartnership.org/the-impact-of-the-lake-turkana-wind-power-project-on-kenyas-indigenous-peoples/ (accessed 5 October 2024).

[37] Just Finance, 'Ugandan Families Displaced and Left to Struggle by China's Mega Dam' https://justfinanceinternational.org/2023/06/13/ugandan-families-displaced-and-left-to-struggle-by-chinass-mega-dam/ (accessed 5 October 2024).

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restorative justice approach here would include transparent and ongoing consultations, fair compensation plans and support systems for affected communities to rebuild their livelihoods.[38] Fostering dialogue, committing to reparative actions and ensuring accountability can help resolve grievances, establish fair treatment and create stronger, more equitable partnerships between communities and project developers.

Fifth, cosmopolitan injustice arises when energy transition disregards global responsibilities and the collective duty to protect the environment and uphold human rights. This concept calls for energy policies that not only focus on local benefits but also align with broader commitments to social justice, human rights and sustainable development.[39] Applying a cosmopolitan justice approach to the DRC example above would mean that international corporations sourcing cobalt should adhere to rigorous human rights standards, adopt sustainable mining practices and contribute to the development of local communities. As global demand for green energy resources like cobalt increases, it is imperative that the transition to clean energy does not come at the expense of vulnerable communities. Cosmopolitan justice, therefore, advocates for a shared responsibility to ensure that the benefits of a green energy future are achieved without exploitation.

While the concept of energy justice and its focus on addressing the adverse impacts on industries, communities and workers are essential to achieving a rights-based approach, it is equally important to critically analyze how energy justice intersects with the broader theme of BHRs. Such an analysis is crucial for understanding the significance of a rights-based framework in advancing energy transitions in Africa. The next section examines these connections.

B. Energy Justice, Business and Human Rights

Integrating the core dimensions of energy justice into legal frameworks and National Action Plans (NAPs) can mitigate human rights abuses, prevent environmental degradation affecting local communities and protect community rights from corporate capture, thus reducing marginalization within broader societal structures. In several African countries, corporate influence significantly shapes government policy and regulation, often compromising human rights protections, especially in sectors like mining and agriculture. Here, companies are frequently involved in land grabs, forced evictions and exploitative labour practices.[40] Corporate complicity in such abuses often goes unchallenged due to the power imbalance between companies and local communities. For example, large agribusinesses in Mozambique and Ethiopia have been accused of displacing local farmers without adequate compensation or consultation.[41] Similar dynamics occur in various renewable energy projects which, despite their sustainability aims, frequently overlook community rights and perpetuate historical injustices.[42] Addressing these challenges requires socially responsible frameworks like the UNGPs on BHRs,[43] which establish normative standards for ethical business conduct.

[38] Babalola and Olawuyi, note 24, 6803.

[39] Ibid.

[40] E Aabø AND T Kring, 'The Political Economy of Large-Scale Agricultural Land Acquisitions: Implications for Food Security and Livelihoods/Employment Creation, Rural Mozambique' United Nations Development Programme, (2012) Working Paper 4, 1–61.

[41] Ibid.

[42] D Cambou, 'Uncovering Injustices in the Green Transition: Sámi Rights in the Development of Wind Energy in Sweden' (2020) 11 *Arctic Review on Law and Politics* 310–33.

[43] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,' A/HRC/17/31 (21 March 2011) ('UNGPs').

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As energy systems evolve, the application of the UNGPs can help mitigate potential injustices that may arise from the implementation of renewable energy projects, thus promoting a more equitable distribution of benefits associated with energy production and consumption.[44] The 'Protect, Respect, and Remedy' framework outlined in the UNGPs specifies the responsibilities of states and corporations in upholding human rights, emphasizing the state's duty to protect human rights from abuses involving businesses, the corporate responsibility to respect human rights by preventing violations of local community rights and collective duty to provide adequate remedial mechanisms—both judicial and non-judicial—for those who have been harmed.[45] These principles emphasize the importance of and require companies to engage in meaningful consultations with potentially affected groups and other relevant stakeholders, tailored to the size of the business and the nature and context of its operations.[46] Consultation obviates many challenges inherent in just transition. It reduces tension with host communities, facilitates social legitimacy, builds community trust in development companies in the face of dwindling resources, and prioritizes respect for ethical behaviour and local community initiatives.[47]

Fundamentally, the concept of a just transition calls for a policy and paradigm shift. It demands moving beyond viewing consultation and participation as mere procedural requirements,[48] instead recognizing them as moral and strategic necessities. While the energy transition holds great potential to drive positive change, this can only be realized through a genuine commitment to engagement and empowerment.[49] Thus, when assessing human rights risks in an energy project, businesses must evaluate their 'actual or potential human rights impacts' through 'meaningful consultation with potentially affected groups.'[50]

The Just Transition Report highlights how states, businesses and stakeholders in the energy and extractive sectors can design and implement just and human rights-based energy transition programs in line with the UNGPs.[51] As energy transition programmes scale up, the report raises several key issues and challenges on human rights abuses related to the extraction and sourcing of transition minerals for energy transition programmes and impacts on workers and communities. Scaling up mining of 'transition minerals' like lithium and cobalt for renewable energy could exacerbate human rights issues like land grabs, community displacement and environmental degradation,[52] potential health and safety risks in new renewable energy sectors,[53] lack of clear, comprehensive regulatory

[44] Benjamin Sovacool, Benjamin Jones and Roman Sidorstov, *Energy Security, Equality and Justice* (Routledge, 2013).

[45] IHRB, 'Just Transitions for All: Business, Human Rights, and Climate Action' (15 November 2020), https://www.ihrb.org/resources/report-just-transitions-for-all (accessed 19 April 2024).

[46] Principle 18 (b) of the UNGPs.

[47] Oyeniyi Abe, *Implementing Business and Human Rights Norms in Africa: Law and Policy Interventions* (Routledge, 2022); Baskut Tuncak, 'Lessons from the Samarco Disaster' (2017) 2(1) *Business and Human Rights Journal*, 161.

[48] Ann M Eisenberg, 'Just Transitions' (2019) 92(2) *Southern California Law Review* 273; Elizabeth J Kennedy, 'Equitable, Sustainable, and Just: A Transition Framework' (2022) 64 *Arizona Law Review* 1044.

[49] WEF, 'Power with the People: Communities must be Empowered to Drive Energy Transition' (17 January 2024), https://www.weforum.org/agenda/2024/01/communities-must-be-empowered-to-drive-energy-transition/ (accessed 15 April 2024); Nelson S Chipangamate and Glen T Nwaila, 'Assessment of Challenges and Strategies for Driving Energy Transitions in Emerging Markets: A Socio-Technological Systems Perspective' (2024) 5(2) *Energy Geoscience* 100257.

[50] See Principles 18 and 24 of the UNGPs.

[51] Human Rights Council, 'Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Extractive Sector, Just Transition and Human Rights,' A/78/155, (11 July 2023) [Just Transition Report].

[52] Ibid, 3.

[53] Ibid, 4.

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frameworks,[54] lack of meaningful participation and inadequate involvement of affected communities and indigenous peoples in decision-making processes.[55] Indeed, ensuring a just transition in the energy sector involves fairly distributing the benefits and burdens of energy transition programs, integrating human rights standards and providing access to remedies for human rights abuses throughout the value chain. However, challenges due to imbalances, fragmentation and inconsistency in programme design and implementation, as well as lack of regulatory clarity complicate the delivery of equitable clean energy access and efficient just transition paradigm.[56]

Current energy legal regimes in most African countries do not address the integration of human rights language in renewable energy distribution and generation,[57] making it difficult to ascertain how these energy services will impact or benefit the citizens, especially vulnerable and historically disadvantaged groups. The current energy landscape in Africa is characterized by a heavy dependence on 'traditional biomass, such as wood and charcoal, for cooking and heating.'[58] This has significant health and environmental implications, particularly for women and children disproportionately exposed to indoor air pollution. Thus, transition within this context poses risks, if not approached with a justice lens. Vulnerable communities, such as those in remote rural areas or informal settlements, may be left behind, further deepening energy poverty and social inequities. Therefore, addressing these challenges through a robust and comprehensive legal framework that ensures an inclusive, equitable and beneficial just energy transition for all in Africa is essential.

III. Legal and Policy Framework

A holistic legal and policy framework that mainstreams human rights into energy transition policies must recognize the need for these countries to pursue sustainable development while simultaneously working to reduce carbon intensity, by integrating rights-based approaches into policy-making processes, ensuring that the voices of marginalized communities are included in discussions about energy transitions.[59] However, evidence has shown that existing energy transition laws and policies have failed to integrate a human rights dimension in their net zero policies. Moreover, the few countries that have adopted an NAP on BHRs—Liberia,[60] Kenya,[61] Uganda[62] and Nigeria,[63]—are silent on issues of gender

[54] Ibid, 5.

[55] Ibid, 10.

[56] Jörg Radtke and Ortwin Renn, 'Participation in Energy Transitions: A Comparison of Policy Styles' (2024) 118 *Energy Research and Social Science*, 103743.

[57] Olusola Olujobi, 'The Legal Sustainability of Energy Substitution in Nigeria's Electric Power Sector: Renewable Energy as Alternative' (2020) 5 *Protection and Control of Modern Power Systems* 32; Siphesihle Nene and Henrietta Nagy, 'Legal Regulations and Policy Barriers to Development of Renewable Energy Sources in South Africa' (2021) 26 *Jelgava* 234.

[58] UN, Reducing Indoor Air Pollution from Traditional Biomass Fuels, https://sdgs.un.org/statements/major-group-business-industry-10141 (accessed 23 May 2024).

[59] Obobi Ume Onwuka and Akinsola Adu, 'Balancing Hydrocarbon Recovery with Carbon Neutrality Strategies for Prospect Maturation in the ccs era' (2024) 6(2) *International Journal of Frontiers in Science and Technology Research* 021–30.

[60] Liberia, NAP on BHRs 2024-2028, https://www.ohchr.org/sites/default/files/documents/issues/business/nationalplans/LIBERIA-NAP-BHR.pdf (accessed 19 April 2024)

[61] Kenya, NAP on BHRs, https://www.ohchr.org/sites/default/files/Documents/Issues/Business/NationalPlans/2019_FINAL_BHR_NAP.PDF (accessed 19 April 2024).

[62] Uganda, NAP on BHRs, https://globalnaps.org/wp-content/uploads/2024/01/NAP-Uganda-2021-2026-English.pdf (accessed 19 April 2024).

[63] Nigeria, NAP on BHRs, https://globalnaps.org/wp-content/uploads/2024/02/NAP-Nigeria-2024-2028-English.pdf (accessed 19 May 2024).

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inclusion, modern, slavery and transparent reporting, and these issues are exacerbating unjust transition. Liberia's NAP on BHRs does not refer to energy transition or energy justice. Apart from briefly mentioning gender mainstreaming, it lacks concrete plans or targets for empowering women in health and education or for addressing land displacement, which disproportionately affects women. The Plan omits any discussion of modern slavery, particularly in light of labour subcontracting practices that often exploit women. While many countries have pledged to achieve net-zero emissions by mid-century, Liberia has neither set an official deadline for net zero nor enacted specific legislation toward this goal. Instead, the country's priorities focus on overcoming significant energy access challenges: less than 10 per cent of the population has reliable electricity and a vast majority still lack clean cooking options.[64]

Kenya, the first country to adopt an NAP on BHRs does not address energy justice or a just transition in its Plan. While it recognizes rights-based approaches like participation and transparency as solutions to challenges related to land, natural resource development and business, the Plan lacks a clear framework for addressing gendered impacts, especially those concerning decision-making processes and inclusion in energy projects. Kenya's National Climate Change Action Plan III (2023-2027) outlines its low-emissions development strategy, prioritizing renewable energy, climate-smart agriculture and biodiversity conservation in alignment with climate goals but without explicit human rights language. The Climate Change Amendment Act 2023 advances Kenya's carbon reduction targets, supporting its net-zero ambition by 2050 through mechanisms like carbon markets, where emissions allowances are traded to promote sustainable practices.[65] However, despite these ambitious policies, they lack explicit human rights integration in their approach to achieving transition goals. For instance, there is no specific plan ensuring that renewable energy projects, such as dams and highways, will not exacerbate human rights challenges. Also, this recent amendment faced strong criticism for its lack of transparency and failure to ensure democratic participation, particularly from Indigenous and other marginalized communities.[66] Additionally, the absence of a standalone energy transition and net-zero law may hinder enforceability and coordinated implementation. A dedicated law could clarify legal obligations, establish binding targets across sectors and more effectively align all policies toward Kenya's 2050 net-zero ambition. Without a standalone net-zero law mandating human rights integration, accountability structures and enforcement mechanisms, Kenya's approach may appear more strategic than regulatory.

Uganda adopted its NAP on BHRs in August 2021. While this plan lacks specific energy justice indicators and measures to promote gender parity in the energy transition, it created a pathway to the human rights dimension through reference to the Energy Transition Plan. However, unlike some other countries, Uganda has yet to establish a binding net-zero law. Key elements of the Plan include expanding renewable energy, reducing dependence on biomass for cooking and improving energy efficiency across sectors. These specific objectives demonstrate Uganda's proactive approach, even in the absence of a formal net-zero law that would integrate human rights considerations into the design and

[64] Howard Kesselly et al, 'A Comprehensive Review of Liberia's Energy Scenario: Advancing Energy Access, Sustainability, and Policy Implications' (2024) 51 *Energy Strategy Reviews* 101295.

[65] See also the Climate Change (Carbon Markets) Regulations 2024, Climate Change Policy, 2016, Climate Change Amendment Energy Act, 2019, which supports renewable energy initiatives.

[66] IBON International, A CSO Review of Kenya's Amended Climate Change Act (6 October 2023), https://iboninternational.org/2023/10/06/a-cso-review-of-kenyas-amended-climate-change-act/#:~:text=While%20the%20primary%20objective%20of,of%20people%20and%20the%20environment (accessed 9 June 2024); see also 'National Action Plans in Africa must be Inclusive and Participatory,' https://www.industriall-union.org/national-action-plans-in-africa-must-be-inclusive-and-participatory (accessed 18 August 2024).

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implementation of renewable energy projects. Such a law would help prevent numerous human rights violations, including inadequate environmental and social impact assessments, failure to guarantee fair compensation for affected communities and insufficient implementation of mitigation measures—issues that have plagued Uganda's energy projects.[67]

Nigeria's comprehensive NAP on BHRs lacks reference to energy justice, a just transition, or safeguards to ensure that the shift toward energy justice does not replicate or exacerbate past injustices. Additionally, it does not address the prevalence of modern slavery in global supply chains, particularly in the oil and gas sector. Nigeria's Energy Transition Plan (ETP, 2022) outlines a roadmap for achieving net-zero emissions by 2060, aiming to tackle both energy poverty and emissions by promoting renewable energy, enhancing efficiency and reducing fossil fuel reliance. The ETP sets ambitious targets: 65 per cent of energy from renewables by 2030 and 10 per cent by 2025,[68] with a goal of carbon neutrality by 2060. Further supporting these efforts, the Climate Change Act (2021) underscores Nigeria's commitment to net-zero goals by establishing governance structures for emissions reduction aligned with economic and developmental priorities. The Electricity Act (2023) also defines specific targets for renewable energy and carbon neutrality, promoting clean and energy-efficient technologies. While the ETP highlights the need for clean energy, it lacks a strong human rights framework, including protections for communities affected by energy projects. There is little mention of procedural or recognition justice, which would help include local communities in decision-making and ensure equitable access to resources and energy benefits. Furthermore, the Plans require more detailed guidance on regulatory compliance and incentives for the private sector to ensure widespread adoption of renewable technologies. Robust and consistent frameworks are vital for creating a stable regulatory environment to attract investment and drive the energy transition. Additionally, significant challenges like gas flaring, threaten these frameworks. Nigeria has a long-standing issue with gas flaring,[69] a practice that not only increases greenhouse gas (GHG) emissions but also wastes valuable energy resources. Persistent emissions from oil and gas, agriculture and transportation sectors further complicate the attainment of energy justice.[70] Addressing gas flaring, enhancing infrastructure and managing socio-economic impacts are essential for meeting Nigeria's energy transition goals. Effective implementation, consistent policies and substantial investment will be critical to realizing Nigeria's ambitions for a just and sustainable energy future.

Several African countries are advancing net-zero and energy transition initiatives, supported to varying degrees by legislation and policy. For example, South Africa has set ambitious goals for establishing a low-carbon, climate-resilient society through programs like the Renewable Energy Independent Power Producer Procurement Program (REIPPPP), the Just Energy Transition Investment Plan (JET IP) and the Climate Change Act of 2024, which aims to reduce greenhouse gas emissions and support climate adaptation efforts.

[67] Centre for Public Impact, 'The Bujagali Dam Project in Uganda' (July 28, 2017), https://centreforpublicimpact.org/public-impact-fundamentals/the-bujagali-dam-project-in-uganda/#:~:text=The%20project%20faced%20numerous%20economic,between%20its%20approval%20and%20completion (accessed 19 September 2024).

[68] Ivie Ehanmo and Oghosa Erhahon, 'Legal and Regulatory Pathways for Sub-Saharan Africa's Energy Access and Energy Transition Agenda' in Ishmael Ackah and Charly Gatete, (eds.), *Energy Regulation in Africa* (Springer Publishing 2024).

[69] World Bank, 'Background and the Role of Reductions in Meeting Environmental and Economic Objectives,' https://flaringventingregulations.worldbank.org/nigeria (accessed 5 June 2024); Muhammed Ladan, 'A Review of Nigeria's 2021 Climate Change Act: Potential for Increased Climate Litigation' *IUCN* (28 March 2022), https://www.iucn.org/news/commission-environmental-economic-and-social-policy/202203/a-review-nigerias-2021-climate-change-act-potential-increased-climate-litigation (accessed 6 June 2024).

[70] Ibid.

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Both the REIPPPP and JET IP target substantial emission reductions by 2030, aligning with South Africa's Nationally Determined Contribution (NDC) and prioritizing a just transition.[71] This focus on resilience and social preparedness is commendable; however, there are concerns regarding transparency, stakeholder engagement and attention to the fairness of the transition,[72] complicated by the absence of human rights language. South Africa's heavy reliance on coal and challenges within its primary utility, Eskom, complicates progress. The transition plan includes a shift toward renewables and restructuring Eskom's generation, transmission and distribution functions to boost private-sector involvement.[73] Yet, rapid movement away from coal faces regulatory delays, logistical issues and social concerns about economic impacts on coal-reliant regions. Decommissioning Eskom's coal plants is a gradual process complicated by community opposition due to potential job losses, and the expansion of renewable capacity is hindered by inadequate transmission infrastructure and regulatory delays.[74] Furthermore, the JET IP seeks to promote social justice by creating jobs in renewable energy sectors and mitigating the impact on coal-dependent communities. However, achieving equitable outcomes and energy security requires overcoming financial, operational and social challenges, expanding renewable infrastructure and ensuring policy coherence across sectors. The transition frameworks currently lack clear equity principles addressing human rights concerns like gender inclusion and modern slavery. Additionally, enhanced community engagement can help build a robust framework that not only supports a low-carbon economy but also aligns with the interests of all stakeholders involved.

Morocco's Renewable Energy Law No 58-15 emphasizes the development of various renewable energy sources such as solar, wind, geothermal, biomass, waste and biogas, while excluding hydraulic energy projects with installed power above 30MW.[75] This regulatory framework aligns with Morocco's ambitious NDC, which has increased emissions reduction targets to 45.5 per cent by 2030 from a baseline scenario of 42 per cent.[76] However, excluding hydraulic energy projects above 30MW would limit opportunities for large-scale hydroelectric projects, which could be a significant renewable energy source. Furthermore, an ambitious emissions reduction target from 42 to 45.5 per cent will require substantial investment, strong human rights language, robust policies and consistent implementation. Morocco faces obstacles such as limited infrastructure for renewable energy, regulatory challenges and the need for substantial adaptation measures to cope with climate impacts. Dust storms, drought and variable precipitation due to climate change particularly impact renewable projects, like solar and hydropower, reducing efficiency and reliability. For example, dust accumulation on solar panels can decrease output by up to 30 per cent if the panels are not regularly maintained, highlighting the importance of resilience strategies in the policy's effectiveness. While Morocco has made substantial progress, ongoing support for grid expansion, clearer and robust regulatory guidelines and climate resilience planning remain essential to fully realize its renewable goals.

[71] Ehanmo and Erhahon, note 68, 107.

[72] Chloe Farand, 'South Africa Approves $8.5bn Energy Transition Investment Plan,' https://www.climatechangenews.com/2022/10/20/south-africa-approves-8-5bn-energy-transition-investment-plan/ (accessed 18 September 2024).

[73] Bruce Baigrie, 'Eskom, Unbundling, and Decarbonization' Phenomenal World (14 February 2022), https://www.phenomenalworld.org/analysis/eskom-unbundling-and-decarbonization/ (accessed 18 September 2024).

[74] Wendell Roelf, 'S.Africa in talks with Climate Backers over Delaying Coal Plant Closures' *Reuters* (21 May 2024), https://www.reuters.com/business/energy/south-africas-eskom-delay-some-coal-plant-closures-ceo-2024-05-21/ (accessed 19 September 2024).

[75] IEA, 'Morocco Net-Metering Legislation (Law n°58-15),' https://www.iea.org/policies/5976-morocco-net-metering-legislation-law-n058-15 (accessed 5 June 2024).

[76] Ehanmo and Erhahon, note 68, 110.

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Indeed, transitioning to renewable energy and meeting high reduction targets could have significant economic and social impacts. However, it is important to ensure that the transition is just and inclusive, providing new opportunities and mitigating adverse effects.

To address these issues, a human rights-based approach to energy transition would provide an integrated and coherent legal strategy, along with an implementation framework, that embeds renewable energy technology within the framework and language of human rights. The next section explores this approach.

IV. The Need for a Human Rights-Based Approach to Energy Transition

A human rights-based approach (HRBA) to energy transition integrates human rights principles into the process of building a more sustainable and equitable society.[77] It emphasizes that protecting and promoting human rights is essential for achieving a fair and inclusive transition that benefits everyone. By embedding human rights considerations into legal and institutional frameworks, an HRBA ensures that transitions are guided by justice, equality and dignity for all.[78] While just transition seeks to address the socio-economic impacts of transitioning from carbon-intensive to sustainable economies, an HRBA ensures that these efforts prioritize the protection, respect and fulfilment of fundamental rights for all, especially vulnerable populations disproportionately affected by climate change and structural inequalities.[79] The HRBA is grounded in international human rights standards and principles, emphasizing the importance of accountability, participation and non-discrimination in development processes. It seeks to empower individuals and communities by recognizing their rights and ensuring that they have a voice in decision-making processes that affect their lives.[80] In the context of just transitions, the HRBA aims to ensure that the benefits of transitioning to a low-carbon economy are equitably distributed and that vulnerable populations are not left behind. By recognizing individuals as rights holders and ensuring their rights are respected, an HRBA fosters a more sustainable and equitable energy transition.

HRBA is essential for several reasons. Africa holds a significant share of the world's platinum, cobalt and lithium reserves, vital for the electronics industry.[81] These resources offer the potential to accelerate development, reduce poverty and create wealth,[82] but realizing these benefits has been challenging. Many countries have failed to capitalize on their resources, leading to conflicts, environmental degradation, increased inequalities,

[77] Raoul Wallenberg Institute, Human Rights Based Approach in Just Energy Transition in Indonesia (2024) Raoul Wallenberg Institute, Jakarta; see also T Kaime and G Agbaitoro, 'An Energy Justice Approach to Resolving the Conflict between the Development of Energy Access Projects and Human Rights Risks and Violations in Africa: Can a Balance be Struck?' (2022) 3(1) *Global Energy Law and Sustainability* 60.

[78] Simona Fanni, 'Theorising a Human Rights-Based Approach to Energy Transition and Its Justiciability in International and Domestic Jurisprudence' in D Iglesias Márquez, C Esteve-Jordà and B Felipe Pérez (eds.) *Legal Challenges at the End of the Fossil Fuel Era* (Palgrave Macmillan 2024); Margaretha Wewerinke-Singh, 'A Human Rights Approach to Energy: Realizing the Rights of Billions within Ecological Limits' (2022) 31:1 *Review of European, Comparative & International Environmental Law* 16.

[79] Nicholas Bainton et al, 'The Energy-Extractives Nexus and the Just Transition' (2021) 29:4 *Sustainable Development* 624.

[80] Kaime and Agbaitoro, note 77.

[81] Zero Carbon Analytics, 'Developing Africa's Mineral Resources: What Needs to Happen' (February 2024), https://zerocarbon-analytics.org/archives/netzero/developing-africas-mineral-resources-what-needs-to-happen accessed 10 June 2024.

[82] Abe, note 47.

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community displacement and weakened governance.[83] However, where resource management has been effective, sustainable and equitable human development has been achieved. The difference between success and failure often lies in the implementation of comprehensive legal and governance frameworks, including strategies to address the socio-economic, human and environmental impacts of resource development. Moreover, several continental initiatives have advocated for integrating and implementing social, environmental and human rights standards in development projects. For example, the Resolution on a Human Rights-Based Approach to the Implementation of the African Continental Free Trade Area Agreement (AfCFTA) urges African states to conduct human rights impact assessments and align fiscal, environmental, labour and human rights regulations with the African Charter.[84] However, several Bilateral Investment Treaties (BITs) lack an HRBA due to the structure of international investment law.[85] While the AfCFTA Agreement recognizes the importance of human rights, it lacks provisions that fully integrate them. Realizing AfCFTA's transformative agenda and achieving sustainable development, incorporating human rights language into trade agreements is essential, providing a clear path to advancing human rights through trade.[86] Thus, energy transition plans must align with states' human rights commitments and climate change objectives to prevent further human and environmental rights violations.[87]

Businesses can proactively address adverse human rights impacts by integrating five interrelated rights-based principles into their project design and development processes:[88] participation and socio-economic inclusion, accountability and transparency,[89] non-discrimination and equality,[90] social dialogue and empowerment and gender inclusion.[91] The next section will explore these principles in an HRBA-to-energy transition context.

A. Elements of an HRBA-to-Energy Transition

Participation and Socio-Economic Inclusion

Ensuring the active and meaningful participation of all stakeholders, including workers, communities and marginalized groups, in decision-making processes related to the transition is the hallmark of a just and fair transition. Socio-economic inclusion requires energy project proponents to mitigate and address any negative socio-economic impacts of the transition, particularly on vulnerable or marginalized groups.[92]

[83] Ibid.

[84] African Commission on Human and Peoples' Rights, 'Resolution on a Human Rights-Based Approach to the Implementation and Monitoring of the African Continental Free Trade Area Agreement,' ACHPR/Res.551 (LXXIV) 2023 (21 March 2023).

[85] See Botswana-China BIT (2000), China-Madagascar BIT (2005), Mauritania-UAE BIT (2015), Kenya – UAE BIT (2014) and Brazil-Angola BIT (2015).

[86] Articles 27 and 29 of the Protocol on Investment to the Agreement Establishing the African Continental Free Trade Area (Zero Draft – November 2021), obliges Member States to promote and enforce 'laws and policies to protect human rights, labour rights and the environment.' Although the Protocol has been adopted, it is not yet fully operational. However, this is a positive step, as it will ensure that investment and informal trade are grounded in the observance of human rights. See also the Morocco - Nigeria BIT (2016). Oyeniyi Abe, Sewagegnehu Taye, 'The 'Flexibility' Standard in the African Union and Its Ramification for the Implementation of the African Continental Free Trade Area (AfCFTA) Agreement' 2021 16:2 *Global Trade and Customs* 80.

[87] Just transition Report, note 51.

[88] Principle 19 of the UNGPs; Kaime and Agbaitoro, note 77, 61.

[89] Principle 21 of the UNGPs.

[90] Principles 3, 26 of the UNGPs.

[91] Principle 7 of the UNGPs.

[92] Marius Korsnes et al, 'Paradoxes of Norway's Energy Transition: Controversies and Justice' (2023) 23:9 *Climate Policy* 1132–50.

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Energy projects in several African regions are deficient in providing ample opportunities for public participation. An illustrative case is the Lake Turkana Wind Power Project (LTWP) in Kenya, acknowledged as Africa's largest wind power project,[93] and a critical source of low-cost renewable energy.[94] Though the project conducted environmental and social impact assessments (ESIA), unfortunately, these assessments overlooked the presence of indigenous peoples and pastoralist communities[95] lacking a policy statement regarding the human rights impact of the project.[96] Failure to address issues like land displacement in development projects poses the risk of becoming an investment liability, potentially leading to opposition from local communities.[97] While the project brings economic advantages such as low-cost power and employment opportunities, it has simultaneously engendered adverse social and physical repercussions for local communities.[98] LTWP foresaw potential physical displacement at the wind farm site due to construction hazards that could harm the community, tourists and pastoralists, but failed to address, prevent and mitigate these human rights hazards.[99] Consequently, the substantial land allocation for the project deprived indigenous people and their livestock of viable means of sustenance. Additionally, LTWP failed to fulfil its commitment to provide high-skilled jobs and did not engage in the process of free, prior and informed consent (FPIC) with the indigenous groups.[100] Legal proceedings related to the project favoured the indigenous communities, as Kenya's High Court denied LTWP's request for an extension of time to rectify the land acquisition process. This decision clears the path for the land to revert to the local communities.[101]

Participation provides the local community with the foundation to shape their future and partake in decisions that impact it.[102] At the core of participation lies consultation,[103] offering the opportunity for active involvement in a free and informed manner, ensuring

[93] Anmar Frangoul, 'The Biggest Wind Farm in Africa is Officially Up and Running' *CNBC* (22 July 2019), https://www.cnbc.com/2019/07/22/the-biggest-wind-farm-in-africa-is-officially-up-and-running.html (accessed 22 August 2023); Energy Central News, 'Multi-Million Turkana Wind Power Project in Limbo; Land Acquired Irregularly' (26 May 2023), https://energycentral.com/news/multi-millionturkana-wind-power-project-limbo-land-acquired-irregularly accessed 25 November 2023.

[94] African Development Bank, 'African Development Bank Helps Power Wind of Change in Kenya,' https://www.afdb.org/en/news-and-events/african-development-bank-helps-power-wind-change-kenya-28239 (accessed 5 September 2023).

[95] Zoe Cormack, 'Kenya's Huge Wind Power Project Might be Great for the Environment but not for Local Communities' *Quartz* (3 September 2019), https://qz.com/africa/1700925/kenyas-huge-wind-power-project-in-turkana-hurts-local-people/ (accessed 29 October 2023).

[96] Updated Environmental and Social Impact Assessment Summary, 'Lake Turkana Wind Power Project, Kenya (2011), https://www.eib.org/attachments/registers/53222536.pdf (accessed 5 September 2023); Kanyinke Sena, 'Renewable Energy Projects and the Rights of Marginalized/Indigenous Communities in Kenya' IWGIA – Report 21 2015, https://www.iwgia.org/images/publications/0725_REPORT21.pdf (accessed 5 September 2023).

[97] Ibid.

[98] Ibid.

[99] Ilse Renkens, 'The Impact of Renewable Energy Projects on Indigenous Communities in Kenya,' IWGIA Report 28 (2019), 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 (accessed 29 September 2023).

[100] Ibid.

[101] Gerald Andae, 'Sh80 Billion Lake Turkana Wind Power Loses Land to Community' *Business Daily* (26 May 2023), https://www.businessdailyafrica.com/bd/markets/commodities/sh80-billion-lake-turkana-wind-power-loses-land-to-community--4247286 (accessed 20 November 2023).

[102] Oyeniyi Abe, 'Between Control and Confrontation: The Pitfalls and Potentials of Corporate-Community Participatory Development in Africa's Energy and Extractive Industries' (2022) 11 *The Extractive Industries and Society* 101095.

[103] Principles 21, 23, 16, 18 of the UNGPs.

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a meaningful exchange.[104] To facilitate a just transition, energy companies must evaluate any existing or potential adverse human rights impacts resulting from their involvement.[105] One approach to assess this impact is through meaningful consultations with affected groups and other stakeholders,[106] offering local communities the opportunity to enthusiastically engage in a free and knowledgeable manner, contributing meaningfully and robustly to energy projects that could impact their social, cultural and environmental rights.[107]

Engaging host communities in the design and implementation of projects significantly contributes to mitigating conflicts and tensions commonly associated with such initiatives.[108] To actualize the social license of business entities to operate, it is crucial to enhance 'local participation' in planning and decision-making, ensure 'transparency and accountability in corporate conduct' and establish 'efficient and effective judicial mechanisms' that empower victims to seek justice when their rights are violated.[109] An additional method of emphasizing participatory rights is employing Environmental, Social and/or Human Rights Impact Assessments (ESHIAs). These assessments are pivotal in scrutinizing potential adverse social and environmental implications of energy projects during their initial stages. By mandating comprehensive and participatory ESHIAs for renewable energy investments, host states can proactively detect, prevent and alleviate human rights abuses and related risks.[110] This approach entails dealing with site-specific impacts, such as those concerning land tenure and cultural rights, prior to concluding any investment agreements.[111]

Social inclusion, at the heart of energy projects, heightens policymakers' understanding regarding the desires and aspirations of local communities. For example, in Namibia, a lengthy investigation sheds light on concerns surrounding the potential impact of an EU-backed green hydrogen megaproject—the Hyphen Hydrogen Energy.[112] Positioned as a transformative initiative for Namibia, green hydrogen production utilizes the country's abundant renewable resources, while meeting the demand for clean fuel in densely populated regions like Europe, South Korea and Japan.[113] However, some Namibians opposed the agreement due to a lack of uncertainties and details about the investment, including uncertainties about benefits for local communities, lack of transparency in the tender process and concerns about the project's impact on fishing, tourism and wildlife in the region.[114] The project further raises concerns about potential interference with people's livelihoods, particularly the pastoralists and nomads.[115]

[104] Ibid.

[105] Ibid.

[106] Ibid.

[107] Franziska Müller, Johanna Tunn and Tobias Kalt, 'Hydrogen Justice' (2022) 17:11 *Environmental Research Letters* 115006.

[108] Chathuranganee Jayakody et al, 'Approaches to Strengthen the Social Cohesion between Displaced and Host Communities' (2022) 14 *Sustainability* 3413.

[109] Ibid.

[110] Grace Brennan, 'Respecting the Rights of Indigenous Peoples and Local Communities Can Advance the Energy Transition' IHRB (25 September 2023), https://www.ihrb.org/focus-areas/just-transitions/respecting-the-rights-of-indigenous-peoples-and-local-communities-can-advance-the-energy-transition (accessed 18 November 2023).

[111] Ibid.

[112] Energy Central News, note 93.

[113] Konrad Adenauer Stiftung, 'The Harambee Prosperity Plan II,' https://www.kas.de/en/web/namibia/single-title/-/content/der-harambee-prosperity-plan-ii (accessed 12 November 2023).

[114] Energy Central News, note 93; John Grobler, Joe Lo and Matteo Civillini, 'Namibia's $10bn Green Hydrogen Project Raises Myriad Concerns' *African Arguments* (16 November 2023), https://africanarguments.org/2023/11/namibia-10bn-green-hydrogen-project-raises-myriad-concerns/ (accessed 15 November 2023).

[115] Müller et al, note 107.

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While green hydrogen can be transformative for local communities, the extent to which large-scale infrastructural projects might interfere with environments and alter traditional socio-cultural relationships remains uncertain. Nonetheless, the lack of a rights-based approach, particularly a lack of participation or public discussion on the potential for such renewable energies further complicates effective service delivery and efficient just transition. Marginalized and discriminated population groups, disproportionately affected by energy poverty, demand recognition in hydrogen policies, labour laws and contracts.[116] Failing to address these aspects systematically poses a risk that the planned hydrogen partnerships might exacerbate existing inequities instead of contributing to a just transition.[117] Furthermore, Namibia's existing legislative acts, such as the Petroleum Products and Energy Act 13 of 1990, and the Minerals (Prospecting and Mining) Act 33 of 1992, are inadequate for governing the green hydrogen industry due to a lack of human rights language and integration of a rights-based approach that is socially inclusive and guarantees participation.[118]

Accountability and Transparency

In Namibia's green hydrogen project, opposition members and civil society groups have raised concerns about the transparency of the tender process overseen by the Namibia Investment Development and Promotion Board.[119] Although the government released a list of bidders, details regarding the content of the bids and the rationale for selecting Hyphen were not disclosed, leading to suspicions of secrecy.[120] Despite the substantial global increase in mineral demand, activists worry that the benefits of this market boom are disproportionately concentrated among a select few.[121]

Transitioning from coal to gas in Africa and shifting from fuelwood to gas for cooking holds the potential to substantially decrease emissions.[122] Nevertheless, there is a critical need for well-defined mechanisms to assess and analyze human rights outcomes both within the company and across the entire business supply chain. This necessitates the incorporation of explicit human rights language and standards in various aspects, such as project planning, employee training, third-party contracts, delivery, closure and post-construction activities. The failure to diligently monitor project compliance with

[116] Ibid.

[117] Ibid.

[118] In *Centre for Minority Rights Development & Others v Kenya* (2009) AHRLR 75 (ACHPR 2009), the African Commission on Human and Peoples' Rights determined that the Kenyan government had violated the human rights of the indigenous Endorois people by displacing them from their land without consultation and providing inadequate compensation. In *Sustaining the Wild Coast NPC and Others v Minister of Mineral Resources and Energy and Others*, Case No. 3491/2021, NGOs in South Africa pursued a court order to prevent seismic surveys along the coast. The High Court ruled that the exploration right had been granted without adequate consultation or assessment of climate impacts. Similarly, in *SDCEA & Groundwork v Minister of Forestry, Fisheries, and the Environment* (2021), a South African NGO contested the approval of a gas-fired power plant, citing insufficient assessment of climate impacts; also see http://climatecasechart.com/non-us-case/sdcea-groundwork-v-minister-of-forestry-fisheries-and-the-environment/ (accessed 22 November 2023).

[119] Energy Central News, note 98.

[120] Ibid. See also Katherine Hearst, 'Liberia to Concede Territory to UAE Firm in Carbon Offset Deal' *Middle East Eye* (28 August 2023), https://www.middleeasteye.net/news/liberia-uae-concede-territory-firm-carbon-offset-deal (accessed 25 November 2023).

[121] Linda Mujuru, 'For Villagers in Zimbabwe, Lithium Boom Might Prove a Bust' *Global Press Journal* (5 September 2023), https://shorturl.at/pyVzg (accessed 19 September 2023).

[122] Kingsley Ighobor, 'A Just Transition to Renewable Energy in Africa (31 October 2022), https://www.un.org/africarenewal/magazine/november-2022/just-transition-renewable-energy-%C2%A0africa (accessed 19 September 2023).

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established objectives and approved accountability measures may have serious implications for the success of just transition initiatives.

A green project anchored on accountability and transparent bidding and development process generates goodwill from local communities,[123] while a lack of transparency could elevate local remonstrations. A just transition under such a process would meet the threshold of corporate accountability to respect the human rights of host communities when investors are confident about the rule of law safeguards, and local communities are satisfied with a rights-based approach to energy development.

Non-Discrimination and Equality

Energy projects must demonstrate that the principles of non-discrimination and equality are adhered to, that is, no individual or group is unfairly impacted by the transition based on characteristics such as gender, race, ethnicity or socioeconomic status. This is essential for vulnerable and marginalized members to be granted equal access to information about the project.[124] This inclusivity extends to providing language access and ensuring access to healthcare and free transportation during the consultation process, especially considering that energy projects are often situated in remote and rural communities.[125] The principle of non-discrimination becomes imperative in these contexts, as businesses should actively work against contributing to discriminatory advantages in project development that violate basic human decency. Addressing discriminatory policies, often influenced by state policies, requires businesses to track the effectiveness of their responses, ensuring that negative outcomes from development projects do not disproportionately affect vulnerable members of society.[126]

Safeguarding non-discriminatory policies involves implementing internal corporate mechanisms in the design, development and selection of project locations. There is a growing need for businesses to establish an internal tracking system to assess the risks and impacts of development projects on gender, poverty, youth and disabled people.[127] Energy projects should carefully consider local community practices related to religion, ethnicity, age and other human rights concerns within the community.[128]

Social Dialogue and Empowerment

A just transition promotes open and inclusive social dialogue among all relevant stakeholders, fostering a collaborative approach to decision-making and problem-solving. Furthermore, it empowers affected individuals and communities by providing them with the necessary information, resources and capacity-building opportunities to actively engage in the transition and make informed choices.

[123] Ibid.

[124] See EGM/EPDM /2005/REPORT, 'Equal Participation of Women and Men in Decision-Making Processes, with Particular Emphasis on Political Participation and Leadership' Report of the Expert Group Meeting, Addis-Ababa, Ethiopia, 24 – 27 October 2005, https://www.un.org/womenwatch/daw/egm/eql-men/FinalReport.pdf (accessed 24 September 2023).

[125] Noelia Romero-Castro, Juan Piñeiro-Chousa and Ada Pérez-Pico, 'Dealing with Heterogeneity and Complexity in the Analysis of the willingness to invest in Community Renewable Energy in Rural Areas' (2021) 173 *Technological Forecasting and Social Change* 121165.

[126] Principle 20 of the UNGPs.

[127] Principles 17, 20 of the UNGPs.

[128] Gary Goggins et al, 'The Role of Culture in Advancing Sustainable Energy Policy and Practice' (2022) 167 *Energy Policy* 113055; Kirsten Jenkins et al, 'Energy Justice: A Conceptual Review' (2016) 11 *Energy Research and Social Science* 174.

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Energy companies are required to openly communicate the methods by which they address their human rights impacts, particularly when local communities express a need to understand the communal implications of their projects.[129] The rights of local communities to seek answers regarding developments in their vicinity should not face limitations. Article 9 of the African Charter on Human and Peoples' Rights asserts that every individual has the right to receive information. Therefore, energy concession and climate change project details, including information on the entity involved, the amount, duration, risk assessment and social and labour plans, must be made publicly available. Any constraints on the right to information create opportunities for manipulating the participatory process.[130]

Corporate reporting serves as a fundamental instrument in ensuring accountability and facilitating effective communication. For example, energy projects in Morocco and Namibia faced criticism for their lack of transparency, prompting protests from host communities.[131] Local communities have a right to access essential information regarding how a project will impact and benefit them. This informed decision-making process is only possible if they are involved in the decision-making proceedings. While the accuracy or truthfulness of such reports from corporate entities may be subject to debate—greenwashing, the act of reporting itself contributes to transparency and accountability.[132] Yet, there is a significant gap in social dialogue surrounding the 'conceptualization and reporting of ambitious, credible and feasible corporate climate transition plans.'[133] This gap raises concerns about greenwashing, as companies may pledge to vague and unclear targets without a clear framework in place.[134] Firms are under strict obligations to ensure that information on energy developments is conveyed in an objective, unblemished and non-misleading manner. Social dialogue enables local communities to assess projects, understand their potential human rights impact and be prepared to address any adverse violations. Denying access to pertinent documents and information fosters mistrust and undermines confidence in the process.[135]

Gender Inclusion and Equality

The prevalent exclusion of vulnerable groups from various spheres of public engagement constitutes an established reality in numerous African societies, primarily stemming from the patriarchal underpinnings inherent in these societies.[136] Of note is the severely restricted participation of women in decision-making processes. The prevailing patriarchal norms dictate that men assume the default position as heads of households, holding decision-making authority and the prerogative to engage in extra-household affairs,

[129] Principle 21 (a) of the UNGPs.

[130] Ibid.

[131] Müller, note 107.

[132] Sebastião Netto et al, 'Concepts and Forms of Greenwashing: A Systematic Review' (2020) 32:19 *Environmental Sciences Europe* 1.

[133] Julia Bingler, Chiara Colesanti Senni and Tobias Schimanski, 'Net Zero Transition Plans: Red Flag Indicators to Assess Inconsistencies and Greenwashing,' (September 2023), https://wwfint.awsassets.panda.org/downloads/red-flag-indicators-for-transition-plan-inconsistencies-and-greenwashing-26-sept.pdf (accessed 22 November 2023).

[134] Drake Bennett, Will Mathis, 'Shell's Grand Plan to Fight Climate Change (and Continue to Cause It)' *Bloomberg* (7 December 2023), https://www.bloomberg.com/news/features/2023-02-08/shell-s-clean-energy-transition-battles-record-oil-profits#xj4y7vzkg (accessed 22 November 2023).

[135] Ibid.

[136] Alex Tamunomiegbam and David Arinze, 'From Tradition to Transformation: Evolving Gender Norms in Contemporary Africa' (2024) 9:3 *American Journal of Public Policy and Administration* 1–36.

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while women are actively dissuaded from involvement in community activities. Yet, empirical findings indicate that few energy projects incorporating consultations specifically with women and socially marginalized groups have effectively mitigated potential social inequities arising from these initiatives.[137] For example, in the rural regions of Kutui and Homa Bay counties in Kenya, solar energy projects have been instrumental in providing reliable and affordable electricity in areas where infrastructure is inadequately maintained. Notably, certain solar projects intentionally integrated women and engaged residents as staff, leading to perceptible shifts in societal attitudes towards women's roles.[138] Conversely, in Tanzania, women in rural areas are not consulted in matters related to energy for reasons that remain unspecified.[139]

Women entrepreneurs, in their pursuit of capital, confront higher interest rates, which negatively impact their ability to provide collateral for a significant portion of the loan and shorter loan periods. This escalation exacerbates the challenge for individuals with limited financial resources, particularly women, in accessing emerging energy technologies.[140] In South Africa, women inhabiting urban informal settlements constitute one-third of the country's female population.[141] However, for those dwelling in the rear sections of more formalized housing, the electricity costs are prohibitively high, compelling them to resort to paraffin candles or kerosene, both of which incur elevated expenses.[142] In townships lacking street lighting, gender-based crime poses a significant challenge, exacerbated by the fact that sanitation facilities are situated at a distance from households.[143]

The Maputo Protocol mandates States Parties to address and counteract discrimination against women through the implementation of suitable legislative, institutional and other measures.[144] This necessitates incorporating a gender perspective into policy decisions, legislation, programmes and activities in energy justice legal frameworks. Women are susceptible to the adverse socio-economic and environmental impacts resulting from corporate activities, encountering challenges such as health issues, sexual exploitation and gender-based violence, particularly prevalent in the extractive and energy sectors.[145] Trade agreements, exemplified by the AfCFTA, should establish robust mechanisms to safeguard the interests of women and other vulnerable members within the informal sector.

There is a noticeable gap in knowledge regarding gender equality and inclusion, particularly in understanding how social inequities impact energy outcomes. This includes a lack of understanding of men's and women's distinct energy service and technology needs and specific barriers to women and other vulnerable individuals accessing and benefiting from energy services. Despite existing policies aimed at expanding energy

[137] Sustainable Energy for All (SEforALL), 'Levers of Change: How Global Trends Impact Gender Equality and Social Inclusion in Access to Sustainable Energy' (2018), https://www.seforall.org/sites/default/files/18_SEforALL_SETrendsReport_0.pdf (accessed 26 November 2023).

[138] Ibid.

[139] Henry M Kigodi and Japhace Poncian, 'The Gender-Energy Nexus in Tanzania: Assessing Rural Electrification in the Context of Gender Mainstreaming among Women' in Paschal Mihyo, in Truphena Mukuna (eds.) *The Gender-Energy Nexus in Eastern and Southern Africa* (Addis Ababa: OSSREA, 2015).

[140] SEforALL, note 137.

[141] Ibid.

[142] Ibid.

[143] Ibid.

[144] African Union, 'Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa' Adopted by the 2nd Ordinary Session of the Assembly of the Union Maputo, Mozambique 11th July 2003. Entry into Force: 25th November 2005.

[145] IOM, Gender, Migration, Environment and Climate Change, https://environmentalmigration.iom.int/gender-migration-environment-and-climate-change#:~:text=They%20are%20also%20more%20exposed%20vulnerable%20to,role%20in%20waste%20management%20and%20in%20the (accessed 4 December 2024).

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access, a discrepancy arises when considering that women in local communities, often relying on wood for cooking, may not fully benefit from these initiatives.[146] To give all stakeholders a voice, it is crucial to recognize women's roles and adopt an intersectional approach that brings together women from diverse backgrounds. This requires creating public spaces with equal opportunities for everyone to express their worries, vulnerabilities and views on a just transition.[147] Promoting gender parity demands equitable participation in decision-making at all levels, empowering women in energy planning organizations and enabling citizens to engage in collective action.

By incorporating an HRBA into a just transition process, policymakers, businesses and other stakeholders can ensure that the process is not only environmentally sustainable but also socially just, considering the well-being and rights of indigenous peoples, protection of workers' rights throughout the transition process, including measures to address job displacement, provide retaining opportunities and facilitate the shift to new employment sectors. The next section offers recommendations on how these rights-based principles can be further formalized.

V. Future Agenda

The foundational building blocks discussed in the preceding section lay the groundwork for a just transition and can help avoid embedding historical injustices into the discourse about a just energy transition. This section expands on that argument, offering clear guidance on policy choices and stakeholder consideration in designing and implementing energy justice laws and policies. Advancing rights-based energy policies is inherently complex, yet a phased approach, as outlined below, offers a strategic framework for addressing its challenges. This framework can help integrate human rights dimensions into designing and implementing energy transition laws and policies.

A. Integrating Human Rights Dimensions into Energy Laws and Policies

While renewable energy is often seen as beneficial for climate goals, the human impacts of such projects deserve equal consideration. The urgency to transition from fossil fuels can sometimes bypass lessons learned from that era, especially regarding the importance of a rights-based approach. Essential elements like a comprehensive energy justice or energy poverty plan incorporating human rights are often absent. This deficiency hinders the effective localization of international principles, resulting in energy institutions implementing policies without addressing justice or human rights concerns.

To advance an effective energy transition, African states must adopt a human rights-based approach within energy legislation, establishing comprehensive policies and regulations that integrate human rights standards into every stage of policy design and implementation. A well-structured energy justice governance framework provides foundational guidance for developing rights-based energy policies that embed core human rights principles, such as participation, transparency, accountability and non-discrimination. Effective energy transition laws and policies must incorporate procedural safeguards and accountability mechanisms that enable meaningful stakeholder participation while adequately addressing community grievances. This approach should include rights-based energy policies, robust legislation and the integration of relevant programs and institutions—all essential for a successful transition. Energy transition policies

[146] Nandana Bhattacharjee, *Gender and Just Transition: Exploring the Opportunities of a Gender-inclusive Transition in India* (Kanpur, Just Transition Research Centre, Indian Institute of Technology Kanpur, 2024).

[147] Ibid.

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must also consider socio-economic disparities to prevent deepening energy poverty and social injustice, as relying solely on existing laws may lead to unjust outcomes if implementing authorities lack knowledge or training in addressing justice gaps. Policies that do not account for the vulnerabilities of specific groups may inadvertently increase inequality. Therefore, energy policy design should account for the unique challenges faced by marginalized communities, ensuring fair and equitable distribution of the transition's benefits.

A well-defined legal framework that mandates corporate accountability to implement BHR principles at all stages of energy operations is essential for addressing key issues of exclusion, non-compliance and limited stakeholder engagement—factors that exacerbate energy injustice.[148] Energy laws must explicitly reference human rights dimensions in line with global BHR principles. Such laws and NAPs must include provisions that regulate the conduct of human rights impact assessments (HRIAs), human rights due diligence (HRDD) and environmental impact assessments (EIA) that would safeguard project proponents to thoroughly assess the potential impacts of energy transition demands on local communities.[149] Comprehensive laws would also encourage investors and other stakeholders to embed human rights requirements into their investment criteria.

B. Enhancing Local and Indigenous Content

For a just and effective transition, local and indigenous content must be strengthened. Overreliance on imported technologies limits the ability of communities to fully engage with or benefit from renewable initiatives. Local content laws must be reformed to integrate gender requirements. Policies must support 'technology absorption,' ensuring that green technology is accessible and usable, backed by local content laws and policies. The usability will require strengthening data collection to improve access to information. The substantial gap in local content within technology transfer mechanisms highlights the need for a more pragmatic approach to enable communities' sustainable use of renewable technologies. Law and policy reforms could set quotas for employment and procurement from local businesses, establishing a legal basis for ongoing training and capacity building. Explicit protections for Indigenous rights, including land use and cultural preservation, would safeguard communities against exploitative practices.

C. Establishing Enforceable Climate and Human Rights Obligations for Corporations

Legislation should hold corporations legally accountable for meeting climate and human rights obligations, including emissions reduction targets and protections for community welfare. Companies would be legally bound to align operations with national and international climate goals, and violations would carry significant penalties, thus incentivizing companies to adopt cleaner technologies and practices that respect local communities and the environment. Furthermore, a rights-based approach mandates that businesses prevent, mitigate and address their projects' land and human rights impacts[150] Land issues, deeply significant in African contexts, require genuine, participatory engagement with affected communities. Engaging local populations in a consultative and

[148] Babalola and Olawuyi, note 24, 6801.

[149] Ibid.

[150] Principles 3, 4, 17 of the UNGPs. Columbia Center on Sustainable Development, 'Enabling a Just Transition: Protecting Human Rights in Renewable Energy Projects' (April 2023), https://ccsi.columbia.edu/sites/default/files/content/docs/publications/final_RenewablesAndHumanRights%20%28Brief%29.pdf (accessed 27 November 2023).

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collaborative process fosters positive responses and empowers communities traditionally marginalized by extractive industries.[151] True community involvement should transcend superficial consultations, involving genuine partnerships that empower community voices to shape the policies and practices impacting their health, environment and livelihoods.

D. Community Benefit-Sharing Legislation

A legal framework for equitable benefit-sharing mechanisms would ensure that local communities receive a fair share of the benefits generated by energy projects. This could take the form of community trusts, royalties or dedicated development funds that directly support local health, education and infrastructure. Laws could also set standards for community ownership stakes in renewable energy projects to economically empower communities. Achieving this requires regulatory certainty and precise policies that establish robust reporting mechanisms, effectively addressing the risks and negative impacts of greenwashing.

VI. Conclusion

The central theme of this article is how to achieve a just and inclusive energy transition that does not exacerbate adverse human rights impacts in local communities. Reckless renewable energy projects that disregard people's rights can spark conflicts and protests. This recklessness often stems from a failure to thoroughly examine the complexities of energy transition, resulting in rushed, poorly considered solutions. Such outcomes can hinder the achievement of just transition goals. Unfair transitions often lead to job losses, particularly in carbon-intensive industries, without adequate support such as retraining or alternative economic opportunities to sustain decent employment and economic growth.

The existing legal frameworks for energy justice are inadequate in addressing these issues, thereby perpetuating social inequalities. Drawing on case studies from diverse regions across the continent, the article explored the fundamental components of a rights-based approach. It delves into the implications for policy coherence in transition policies and practical barriers hindering their effective implementation and proposes innovative approaches to address these barriers. Although the challenges may be intensifying in certain countries, there is a continual and pressing imperative for all African nations to systematically incorporate human rights standards and considerations into every energy transition decision-making process. Legal and policy frameworks must delineate the responsibilities of various agencies and institutions in proactively identifying, addressing and overseeing human rights risks. Additionally, with the establishment of explicit energy justice regulations, businesses can mitigate legal liability and risks associated with the direct and indirect consequences to human rights of their activities. There is a need for strong, robust, unambiguous regulations that are rigorously enforced, with significant penalties for non-compliance. A comprehensive regulatory framework for energy transition must be grounded in justice and human rights principles.

To optimize the potential of energy transition, governments should eliminate obstacles hindering the realization of human rights. These obstacles encompass concerns such as gender inequality, information imbalances, inadequate knowledge-based systems and a lack of human rights language in trade agreements. This article contends that the emerging energy transition discourses must break away from the historical labour and environmental

[151] Diane Ruwhiu and Lynette Carter, 'Negotiating "Meaningful Participation" for Indigenous Peoples in the Context of Mining' (2016) 16(4) *Corporate Governance* 641–54.

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practices typical of traditional mining and industrial sectors. It also offers a nuanced perspective that considers energy, not exclusively derived from fossil fuels, as the driving force behind this change. Fossil fuels, the predominant global energy source, are often singled out due to their widespread use; however, caution is recommended in managing the transition to renewable energy to prevent unintended severe consequences.

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