20 YEARS OF
Business & Human Rights Resource Centre

From mining to renewable energy

LESSONS LEARNT FROM BENEFIT SHARING LEGISLATION FOR A JUST TRANSITION IN AFRICA

AUGUST 2024

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Executive summary

As the world rushes to meet the challenge of the climate crisis, global renewable energy capacity – and the transition mineral mining required to power it – is expanding at pace across all geographies. So too are increasing calls for a global transition to renewable energy that is not only fast but also fair: a shift that includes the creation of shared prosperity between state, private sector, and the frontline communities being asked to host vast renewable energy installations and transition mineral mines. This goes beyond traditional corporate social responsibility efforts and compensation for harms – long hallmarks of extractive industries – to direct benefit sharing mechanisms and initiatives, mandated by regulation. A number of countries in Africa have led the way, with governments and policy-makers embedding benefit-sharing models in laws governing both the mining and renewable energy sectors, from which states around the world – and perhaps particularly the Global South – can learn and take inspiration.

The existence of such models is of critical importance. Evidence increasingly suggests the global energy shift currently risks veering dangerously off course from delivering a transition that is just and equitable. Across the renewable energy value chain, numerous instances of land and resource dispossession, displacement, livelihood destruction, community disintegration, criminalisation of leaders, and disempowerment of women and youth are surfacing, as documented by the Business & Human Rights Resource Centre's (the Resource Centre) Transition Minerals Tracker, Just Transition Litigation Tracking Tool, and the Renewable Energy and Human Rights Benchmark.

But a renewable energy value chain that respects and even promotes human rights through commitment to shared prosperity is possible, benefiting communities, companies and investors while enabling the urgent energy transition our planet needs.

This briefing explores the relevant legislative frameworks from six African countries key to the global transition to renewable energy which seek to make mandatory private sector commitment to shared prosperity: **Ghana**, **Kenya**, **Sierra Leone**, **South Africa**, **Tanzania** and **Zimbabwe**. The frameworks span both mining and renewable energy, and include mechanisms such as community development agreements, community development funds and co-ownership agreements.

Key takeaways:

- Clear frameworks for community benefit sharing in the mining and renewable energy sectors – which go beyond governments' basic social and economic obligations – are essential. These should include clear requirements of the private sector, beyond voluntary corporate social responsibility initiatives. Governments should introduce regulatory interventions and make such benefit sharing mandatory, as well as monitor enforcement.

- Laws should require safe, inclusive community participation in all stages of a project, from conception to implementation, and ensure full integration of communities into governance structures and administrative procedures.

- Legal frameworks should be capable of ensuring that benefit-sharing arrangements are truly responsive to community needs, and able to confer material and other benefits, as defined by communities, including on women.

- Communities must have access to proper technical and financial support to create appropriate legal entities and negotiate meaningful benefit sharing agreements that truly address community needs.

- Legislative initiatives which enhance local land control are critical, such as Sierra Leone's ground-breaking 2023 laws that enshrines the right to community consent in the context of industrial developments. Recognition of Indigenous Peoples' right to free, prior and informed consent (FPIC) is an essential starting point where the projects are on or near Indigenous Peoples' lands and territories.

Impacts of the laws for communities in these countries highlighted in this analysis appear to vary. This demonstrates that even well-designed benefit-sharing frameworks can fail without proper enforcement. This requires capacitated and committed agencies, and transparency around revenues earmarked for local community development. There is also a need to define the role of traditional leaders in benefit sharing negotiations and engagements with the state and corporations and to guard against common risks like elite capture and misappropriation of funds.

Nevertheless, these examples from the African continent demonstrate the potential of existing legislative frameworks – and others like them – to contribute to an energy transition that is genuinely equitable, sustainable, and just – in Africa and beyond. As national pledges to triple renewable capacity by the end of the decade encourage rapid renewable energy installation and buoy global demand for transition minerals, this is not a moment too soon. The recent launch of the UN Secretary-General's Panel on Critical Energy Transition Minerals in April 2024 is instructive, with a goal to "develop a set of common and voluntary principles to build trust, guide the transition and accelerate the race to renewables," while ensuring resource-rich countries and communities "benefit the most" from the extraction of transition minerals. Legislation that ensures the protection and empowerment of vulnerable populations and fosters shared prosperity can help ensure such outcomes.

Scope of the briefing

This briefing focuses on legal frameworks for direct benefit-sharing mechanisms with local communities, that go beyond voluntary corporate social responsibility (CSR) efforts by businesses, which are typically insufficient to deliver sustainable benefits to affected communities. It does not focus on other mechanisms which enhance local value addition (such as local processing/refining of raw materials) and does not fully review mining fiscal regimes – which can be prone to tax justice concerns, indirectly impacting benefits received by communities.

The following types of mechanisms were considered:

- **Community Development Agreements (CDAs):** legal arrangements between companies and communities to govern the relationship and provide opportunities for communities to secure benefits such as direct tax payments, infrastructure development or other forms of social benefit. While many CDAs remain confidential, Open Community Contracts is an online repository of CDAs.

- **Community Development Funds:** pools of money that can be funded through direct contribution by the company or indirectly through allocation of national revenues. These are sometimes associated with CDAs, have varying governance structures and can be used to develop community projects.

- **Co-ownership agreement:** business structure that involves a community as a meaningful financial partner in a renewable energy or mining project, for example where ownership is shared equally between an Indigenous Peoples' community and a renewable energy developer, with shared decision-making, co-management and equally distributed earnings.

- **Land management:** community directly earns revenues from land leasing for the project at issue.

Introduction

The world has woken up to the reality of the need for a transition to renewable energy – and Africa is no exception. The continent is home to massive transition mineral resource bases (such as the cobalt, zinc and copper that are essential to renewable energy technologies) and enormous renewable energy potential, given its vast tracts of open land and favourable solar and wind conditions.

However, both ends of the renewable energy value chain – mining transition minerals and implementing renewable energy projects – have seen numerous instances of land and resource dispossession, displacement, livelihood destruction, community disintegration, criminalisation of leaders, and disempowerment of women and youth. Our Transition Minerals Tracker documented at least 130 allegations of human rights abuse linked to the extraction of six transition minerals in Africa and the Middle East (21% of all cases) between 2010 and 2023. By May 2024, our Just Transition Litigation Tracking Tool documented 60 lawsuits launched worldwide by Indigenous Peoples, other communities and workers or their representatives who have been directly impacted by human rights harms associated with the renewable energy value chain. Emblematic cases from Africa include lawsuits related to alleged abuse at Lake Turkana and Bubisa wind farms. In addition, our Renewable Energy and Human Rights Benchmark reveals most major global renewable energy companies lack adequate human rights policies and processes.

Yet, a renewable energy sector that respects human rights and generates shared prosperity is possible. Renewable energy projects, primarily in Canada, New Zealand, USA and Australia, have facilitated productive, profitable and equitable relationships between companies and Indigenous Peoples, while examples of cooperation with other local communities, such as in Scotland, have resulted in similar outcomes. This includes creating opportunities for shared benefit through co-ownership, made much more likely where governments have committed to create enabling conditions through robust legal and policy frameworks that mandate corporate commitment to shared prosperity.

Importantly, these legislative and regulatory frameworks are also well-established outside of the Global North. Various forms of benefit-sharing models and methods have long been available in provisions of mining legislation across Africa – with varying impacts for local communities, and substantial lessons to be learnt for the nascent renewable energy legislative frameworks and sectors beginning to emerge on the continent. This briefing explores some of these existing legal provisions from six countries – **Ghana**, **Kenya**, **Sierra Leone**, **South Africa**, **Tanzania** and **Zimbabwe**,[1] based on literature review, legal research, and interviews with local experts, including legal practitioners, scholars, policy advisers, and paralegals supporting communities affected by mining or renewable energy projects. Each of these countries will play a crucial role in the global transition to renewable energy, either due to their transition mineral mining industries (Ghana, Sierra Leone, Zimbabwe and Tanzania) or their potential for renewable energy generation (South Africa and Kenya).

This analysis extracts key principles and learnings from these existing legislative frameworks that have the potential to contribute to an energy transition that is genuinely equitable, sustainable and just – in Africa and beyond. It also distils these learnings into key elements of a model law on benefit sharing for the just energy transition.

1 Other countries in Africa with benefit sharing frameworks have also been analysed by others (Zambia, Nigeria, Uganda, Botswana, DR Congo, Senegal).

Overview of existing benefit sharing legislation

Ghana

Ghana approved a Green Minerals Policy in 2023 to ensure it can benefit fully from the exploitation of transition minerals. The country is also a large gold producer and has a robust benefit-sharing legal and policy framework in place for the extractive sector. Extractive activities are generally covered by a wide range of legislation: the 1992 Constitution, the 2006 Minerals and Mining Act 703 and the Minerals Commission Act 450 of 1993, the Minerals Development Fund Act 912 of 2016, the 2012 Minerals and Mining (Compensation and Resettlement) Regulations, L.I 2175, and the 2020 Minerals and Mining (Local Content and Local Participation) Regulations L.I 2431. The Mineral Development Fund Act of 2016 establishes a national Mineral Development Fund (the Fund) whose purpose is to provide financial resources to mining communities. The Fund receives 20% of royalties paid by mining companies to the national treasury, which is distributed between different stakeholders. This includes a community-level Mining Community Development Scheme which gets 20% of the Fund to compensate mining communities whose economic and social rights are impacted negatively by mining operations.

During interviews, one expert highlighted that mining companies operating in Ghana had historically used common law trusts to create benefit-sharing agreements with communities affected by mining projects before it was required by law. These include the 2012 AngloGold Ashanti Obuasi Community Trust Fund and the 2008 Newmont Ahafo Development Foundation (NADef), set up as a result of CDAs signed by communities in the Brong Ahafo region of Ghana with mining company Newmont.

Evaluations of these initiatives are mixed. Some assessments highlight the trust fund approach has generally delivered social and economic development for communities that goes beyond CSR. However, other reviews of the Obuasi Community Trust Fund and of the NADef have pointed to a disconnect between the project deliverables and local context due to poor planning and assessment, business interests taking over genuine efforts to create sustained benefits, and the need for this model to empower communities directly. Tensions and replications of existing power imbalances have also accompanied direct agreements signed between communities and Newmont.

The expert interviewed on Ghana's benefit sharing agreements – mandatory and other – noted their effectiveness and pointed to other enabling conditions, such as robust local and traditional institutions, good governance, transparency and community participation. The expert nevertheless pointed out some common challenges related to the role and accountability of traditional leaders with respect to such agreements.

Ghana does not yet have a similar explicit benefit sharing framework for renewable energy projects, but the expert pointed out a key policy framework related to the maximisation of benefits from bauxite, manganese and lithium that could serve as an inspiration.

Kenya

While Kenya's economy is not dependent on mining, the mining sector has gradually developed, including legislation and policies on natural resources. The renewable energy sector – primarily wind – is advanced. The 2016 Mining Act (the Act) gives landowners the discretion to consent, prospect or mine. It provides that any mining project in the country needs to have a licence in accordance with mining legislation and relevant natural resources and environmental legislation. Section 109(1) of the Act mandates mining companies conclude a Community Development Agreement (CDA) with communities located where the project will be developed. The Mining Community Development Agreement Regulations of 2017 offers detailed guidelines on CDAs. A Community Development Agreement Committee (CDAC), made up of 14 elected members including community members, oversees the implementation of the CDA to ensure the benefits of the mining project are shared equitably between the company and local communities. CDAs require the mining company to contribute 1% of the company's gross annual revenue into a community development fund. The CDAC decides how the allocated funds will be used. This usually includes scholarships, the development of roads and hospitals, and projects to empower young people, women and local businesses economically. There are several CDAC examples in Kenya, such as the one between Base Titanium Limited and the Msambweni, Lungalunga and Likoni communities. The 2016 Community Land Act also creates opportunities for benefit sharing as it grants communities the right to equal benefit from community land. Communities agree on how community land is used and developed after a "free, open and consultative process." Kenya's Constitution lists the State's obligations regarding respect for the environment and promotes equal access to natural resources. The Act echoes this with provisions related to benefit sharing. For instance, it requires companies engaged in small-scale mining operations have at least 60% of ownership by Kenyan citizens. The Act also entitles communities to 10% of royalties, the government to 70% and the county to 20%. However, concerns over the effective redistribution of funds at local levels have emerged.

The experts interviewed also expressed the view that while existing mining-related benefit sharing frameworks are robust, in reality they are met with mixed outcomes. Gender analyses have highlighted reservations on their potential to promote the socio-economic rights of women. The experts also shared concerns that CDAs have now largely become a box-ticking exercise for companies – which goes against the essence of CDAs aiming to surpass CSR and the government's constitutional obligations to ensure that communities receive a fair share of the benefits generated by mining activities.

Kenya continues to lead on benefit sharing legislation – and the draft proposed Natural Resources (Benefit Sharing) Bill, 2022 could start to fill the gap as far as renewable energy projects are concerned. This bill aims to establish a system of benefit sharing in resource exploitation between companies, national government, county government and local communities. It is expected that by offering a formal negotiation mechanism recognised by affected communities and by having county assemblies approve benefit sharing agreements, projects will be perceived as more legitimate and less likely to be interrupted. A Benefit Sharing Authority will coordinate benefit sharing agreements between different stakeholders. Attention should also be paid to the 2019 Energy Act that provides for payment of royalties from geothermal resources between (national and local) government and local communities (5% for local communities, paid into and managed by a Trust). While developing legal and policy frameworks for renewable energy deployment, Kenya could consider whether mandating CDAs would be an asset for communities, considering lessons learnt from mining-related CDAs.

Sierra Leone

Benefit sharing arrangements in Sierra Leone stem from the 2022 Mines and Minerals Act that mandates CDAs and the creation of a local development fund for mining projects. Communities benefit in two key ways:

- The fund, as part of the agreement, receives 1% of revenue from companies involved in the projects. The law also requires a regular review of plans allocating the distribution of revenues from leased lands.
- 70% of land leasing rental revenue is distributed to communities.

Experts interviewed highlighted that in practice, this legislation has facilitated a shift of economic and social power from historically paramount chiefs to community members. Communities are increasingly empowered and can negotiate directly with companies, while the government facilitates discussion. Nevertheless, experts pointed to some issues with corruption and embezzlement of community development funds.

The country also has in place some specific frameworks for renewable energy projects: the Renewable Energy Policy of 2016 (updated in 2019), Rural Renewable Energy Project (RREP) of 2016 (updated in 2022) and an Off-Grid Solar Energy Strategy (2020). The frameworks do not provide for benefit sharing as they do in the mining sector. However, as RE projects also require significant land use, the country's Customary Land Rights Act of 2022 may be applicable. This critically important act grants all land-owning and land-using communities the right to exercise FPIC for any industrial projects proposed on their territories. Additionally, the National Land Commission Act establishes that local land use committees should be set up to ensure comprehensive land management, with a requirement that at least 30 % of committee members be women.

South Africa

In South Africa, benefit sharing legislation exists for both mining and renewable energy sectors. The South African extractives industry is governed by the Minerals and Petroleum Resources Development Act 28 of 2002 (MPRDA) and regulations made in terms thereof providing for community benefit sharing. Benefit sharing is built into the Social and Labour Plan (SLP) which is a prerequisite plan developed and lodged with the application for a mining licence. SLPs set out how the company intends to share some of the benefits that flow from mining. These include, for example, initiatives for developing the skills of their employees; upgrading local schools and roads; as well as providing housing, water and sanitation in the area. The SLP is entirely driven and managed by the mining company. Once a company is awarded a mining right, the SLP they submitted becomes a legally binding document. The mining legislative framework governs the mining of all minerals without any special treatment of transition minerals. While the benefit sharing arrangements for the mining sector are significant in South Africa, there is poor implementation and enforcement of SLPs and any benefit sharing arrangements of the mining sector. There is widespread failure by mining companies to deliver on their undertaking in SLPs, with impunity. The government and communities do not enforce implementation of SLPs and often if communities do not raise the alarm, the government does not hold mining companies to their promises.

The mining legislation also provides for the development of a Mining Charter which is supposed to serve as the national blueprint for transforming the mining sector and promote the participation of historically disadvantaged individuals as well as a robust environmental legal framework. The latter mandates environmental authorisation processes for mining-related activities, and requires analysis of social, economic, and cultural impacts – including benefits to accrue from the mining activities to communities affected by these mining activities. It has been challenged in courts several times and in 2021 the court held in *Minerals Council of South Africa v The Minister of Mineral Resources and Energy and Thirteen Others* that the Mining Charter is a policy and not a legally binding instrument. Therefore, several key provisions were set aside, such as the re-empowerment regarding existing mining rights upon transfer.

South Africa's renewable energy sector is governed from a procurement perspective by its Electricity Regulations on New Generation Capacity (2009). Under these arrangements, bids submitted by Independent Power Producers (IPPs) are evaluated according to legally set criteria: the price per kWh (70%) and economic development (30%). The latter provides scope for the development of community benefit sharing arrangements supported by mandatory community ownership, however, since the government is solely responsible for determining whether new electricity generation capacity is required, from which sources, in what quantity, and who will be the off-taker, the complexity of navigating this government-led structure poses challenges for communities deciding to enter co-ownership agreements. Moreover, the law defines a local community as anyone within a 50-kilometre radius of the renewable energy project, which has sometimes caused challenges where it does not align with political and district boundaries. These projects also require huge capital up front, as well as specialist knowledge, which in turn poses a serious challenge. Despite these obstacles, many projects have nonetheless involved participation by local communities through community share ownership schemes, whereby communities constitute themselves into trusts through special purposes vehicles. Equity levels vary from project to project, but the typical ownership percentage does not exceed 10%. The Tsitsikamma Community Wind Farm (RF) Pty Ltd (TCWF) and the Amakhala Emoyeni RE Project 01 (RF) Pty Ltd (AE01) are examples. One concern expressed by the expert interviewed is the dominance of traditional leaders in negotiations and engagements with the state and corporations in benefit sharing arrangements for both mining and renewable energy projects.

While barriers exist, the Renewable Energy Independent Power Producer Procurement Programme (REIPPPP) offers a unique opportunity to advance energy justice and communities' social and economic development in South Africa. This leading vision has generated momentum towards a people-centred just transition in South Africa, bolstered by the creation of the INSPIRE (Initiative for Social Performance in Renewable Energy) platform.

Tanzania

Tanzania is rich in minerals needed for the energy transition, such as nickel, copper and cobalt. Mining activities are regulated by the 2010 Mining Act, which requires companies to conclude a Development Agreement with the government. This is a notable difference from examples of CDAs in Kenya, for example, where communities are more involved as the CDA is concluded with impacted communities. Benefit sharing agreements in Tanzania are happening at the national level, with the government playing a central role of representing its citizens in negotiations with companies and investors, consistent with the Ujamaa ideology, commonly translated as "familyhood", introduced by President Nyerere in the 1950s, where communitarianism, egalitarianism and participation are key. Companies obtaining a mining licence must also carry out relocation and compensate communities displaced by the project when required, but there is no mention of direct benefit to communities in the law. Local government also levies a fee of 0.3% of the annual turnover of a company to finance development programmes at the local level. However, experts interviewed highlighted communities are not able to check if the levy actually occurred, nor the amount collected. There is also no public information about how affected communities can access this revenue, highlighting the leading role of the government in the area.

The 2015 National Energy Policy, the 2008 Electricity Act and 2019 Electricity Rules do not provide for benefit sharing agreements for renewable energy projects, which are in their early days in the country. Overall, the country's general energy sector is state-led but the private sector and civil society increasingly play a role in the deployment of renewable energy. Indeed, very small hydroelectric projects or grids operated by IPPs (contributing to 40% of electricity), small power producers, and other private companies, as well as NGOs and faith-based organisations, are on the rise. For instance, the Tulila Hydroelectric Plant, owned and operated by the Benedictine Sisters of St Agnes, provides electricity to more than 27,000 homes in the local area. The project is funded by a private donor and the Sisters can sell electricity surplus to community and local business users for a fee. According to the expert interviewed, this type of project enables social and economic growth within a community, and benefits in the long term. However, such forms of benefit sharing agreements entail capital contribution, which is inaccessible to communities without international, government or other forms of funding support.

Zimbabwe

Zimbabwe's mining sector is regulated by the Mines and Minerals Act (Chapter 21:05), Minerals Marketing Corporation of Zimbabwe Act (Chapter 21:04) and the Zimbabwe Mining Development Corporation Act (Chapter 21:08) that do not stipulate specific benefit sharing agreements.

In recent years, Zimbabwe placed an emphasis on the economic empowerment of Zimbabweans, notably in the mining sector. The Indigenisation and Economic Empowerment (Chapter 14:33) contained provisions for benefit sharing arrangements through local equity. Indigenisation Regulations that amended this Act required companies operating in certain sectors, including mining, to have 49% shareholding, while Zimbabweans have 51%. To comply with this legislation, some mining companies concluded agreements with local communities giving them 10% of equity through Community Share Ownership Trusts (CSOTs) to distribute the revenue to communities' development projects. The remaining 41% would be then distributed as shareholding for Zimbabweans. Few CSOTs were created using this model. Communities saw some notable social and economic benefits thanks to some CSOTs – along with drawbacks caused by failure to disclose the way the trust funds were managed and inadequate choice of development projects due to lack of consultation with affected communities.

The government abandoned the 51% mandatory local shareholding in 2018 and repealed the Indigenisation and Economic Empowerment Law in 2023. Currently, companies no longer need the establishment of CSOTs – which means there is no longer a legal framework for community benefit sharing in Zimbabwe. Experts noted that companies operating through CSOTs started to look for legal options to withdraw from the no-longer-mandatory agreements. On paper, however, CSOTs are a good potential tool for effective benefit sharing, if their implementation is transparent. Some studies explore how there is no standard approach to CSOTs across the world, but one critical condition for success is adaptation to the local context. Adaptation is presented in three distinct components: complexity, context and integration.

Regarding Zimbabwe's renewable energy sector, the interviewed expert shared that there is no legal framework requiring benefit sharing, whether with communities or government, nor any mention of how communities can benefit from renewable energy projects. There are some policies in place to govern renewable energy generally, such as National Renewable Energy Policy (2019), but as yet no law has been enacted in respect of the policy.

Focus on Indigenous Peoples

An estimated 50% of global transition mineral reserves are located on Indigenous Peoples' territories, and a large portion of renewable energy potential is located on marginalised rural communities' land, especially that of Indigenous Peoples. The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognises Indigenous Peoples' rights to their lands, territories and resources, including rights to those lands, territories and resources traditionally held by Indigenous Peoples but now controlled by others as a matter of fact and law. However, in many countries, the collective rights of Indigenous Peoples are either unrecognised or inadequately supported through essential procedures like resource mapping, demarcation and land titling. Even when Indigenous Peoples' communities secure legal protection or title deeds for their lands and resources, inconsistent law enforcement and conflicting legislation often lead to a practical denial of their rights. Moreover, states or companies frequently proceed with projects, including transition mineral mining and renewable energy development, without securing the FPIC of Indigenous Peoples affected. Such projects have so far led to numerous violations of Indigenous Peoples' rights worldwide. Analysis for our 2024 Transition Minerals Tracker update also confirms that Indigenous Peoples continue to be disproportionately affected by the harmful impacts of transition mineral mining operations, including alleged violations of their right to FPIC. It is therefore essential for governments to legally recognise, respect, guarantee and protect Indigenous Peoples' rights as enshrined in the UNDRIP, including in the context of renewable energy and extraction of transition minerals, and for them to require corporations to respect Indigenous Peoples' rights, including mandatory FPIC. Companies in turn must recognise and respect the right to FPIC, which also means the right to say "no" to projects, in their policies, procedures and practices and in all projects, recognising and emphasising the self-determined development of Indigenous Peoples.

In Africa, discussion around indigeneity is particularly complex: only Republic of the Congo and Sierra Leone have legally recognised Indigenous Peoples. Notably, in 2011 Republic of the Congo became the first African country to adopt a specific law on the rights of Indigenous Peoples, including the preservation of pre-existing land tenure of Indigenous Peoples in the absence of land titles. In other African countries including Tanzania, peoples who self-identify as Indigenous Peoples, but are not officially recognised as such, are evicted from their lands and receive meagre compensation for their ancestral lands. Often, they do not have access to energy and are driven to make space for energy projects violating their rights, or from which they will not benefit.

Out of the laws reviewed that are currently in force, only one law in Democratic Republic of the Congo (DRC) mentions the word "indigenous" explicitly. DRC's Forest Law n°33-2020 of 8 July 2020, states that "contractual specifications must be negotiated directly with local and indigenous communities before logging commences". There are no explicit provisions mentioned for benefit sharing with Indigenous Peoples, and the law does not relate to renewable energy or mining projects. The recent Declaration of Indigenous Peoples' Participants in the 2024 Conference on Indigenous Peoples and the Just Transition summarises key demands from Indigenous Peoples from all seven socio-geographic regions: respect for Indigenous Peoples' rights, full participation and shared prosperity in the energy transition.

Guidance for governments and policy-makers

The encouraging trend of legislation for benefit sharing in key African countries bodes well for contributing to a just transition which centres shared prosperity between state, private sector and frontline communities. Nevertheless, as set out above, challenges are evident in these approaches, yielding critical learnings for the development of other legislative frameworks seeking to embed commitment to shared benefit. Best practice recommendations for government derived from analysis of these existing frameworks in Ghana, Kenya, Sierra Leone, South Africa, Tanzania and Zimbabwe include following steps:

- Create **clear frameworks for community benefit sharing** in the mining and renewable energy sectors that go beyond government's basic social and economic obligations, with clear corporate accountability requirements, underpinned by capacitated agencies to ensure implementation. Ensure transparency on transfer and use of revenues collected for local community development.

- Recognise and support the **rights of Indigenous Peoples** in domestic law. As made clear in the recent statement by Indigenous Peoples from around the world including Africa, rights recognition is a critical starting point for Indigenous Peoples. While this is a challenge in many African jurisdictions, states should ensure that all renewable energy and mining projects licensing is conditional upon community consultation and securing FPIC from Indigenous Peoples, with plans in place to deliver shared prosperity for both workers and impacted communities.

- Ensure legal frameworks governing benefit-sharing arrangements genuinely respond to **community needs** and provide tangible benefits, including for women.

- Ensure legislation governing public renewable energy auctions **requires** that any bidder has benefit-sharing frameworks in place.

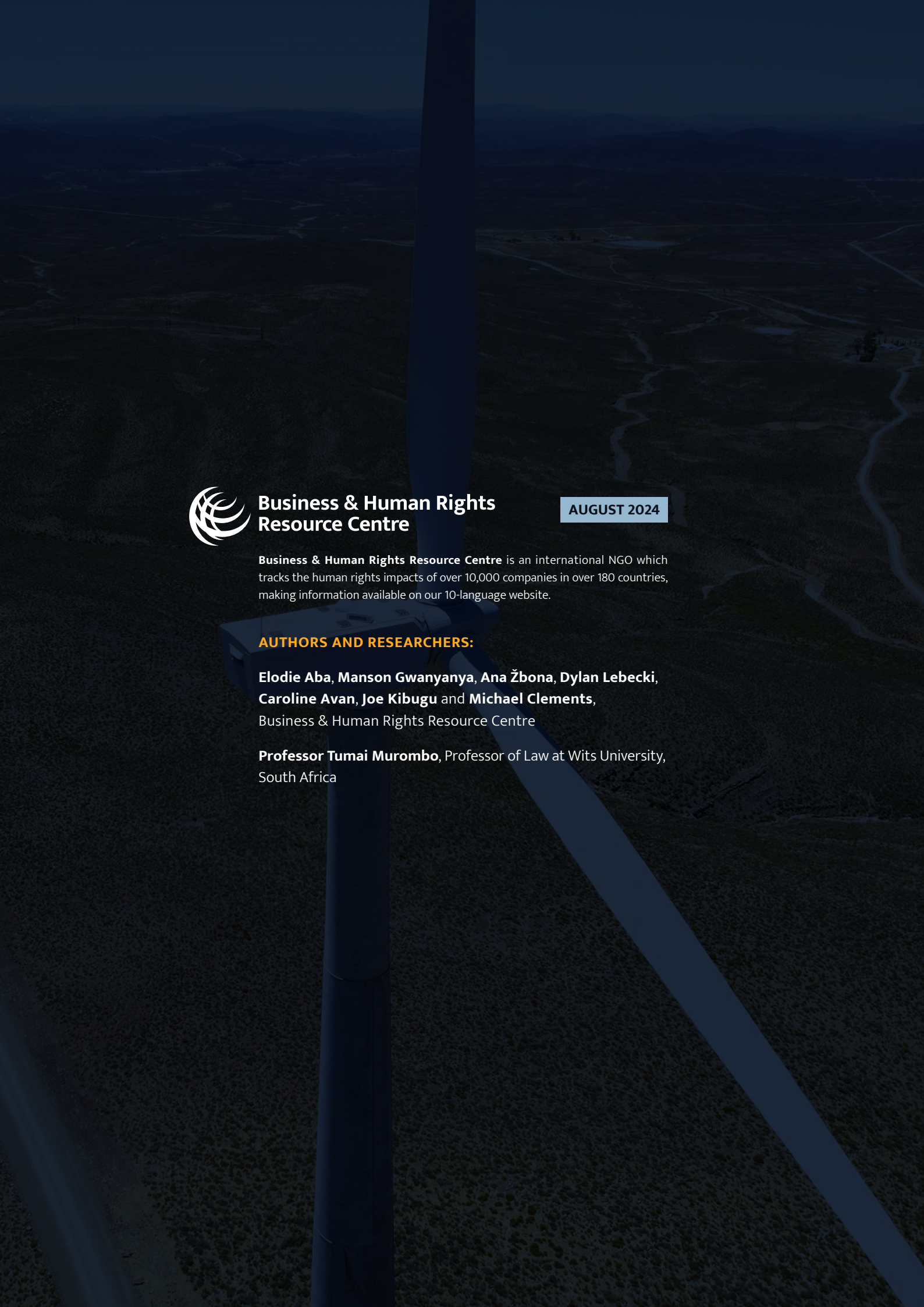
- Provide **technical and financial support** for communities to participate in the renewable energy and transition mineral mining sectors by negotiating meaningful benefit sharing agreements that suit community needs and creating appropriate legal entities recognising that some models require complex corporate structures and investments. Provide infrastructure and facilitate community access to energy from state-owned energy projects.

As renewable energy installations and extraction of transition minerals surge, now is the moment for governments everywhere to build on these lessons and learn from Africa's leadership – and ensure equitable and effective direct benefit-sharing mechanisms with communities are a key element of the just energy transition going forward.

Elements of a model benefit sharing framework for a just transition

Benefit sharing policy frameworks for renewable energy projects should include the following elements:

- Community participation in all stages of the project, from conception to implementation and integrate communities fully into governance structures and administrative procedures. The role of traditional leaders must be carefully considered.
- Clear definition of benefits and design of benefit sharing arrangements, ensuring they are distinct from and additional to any corporate social responsibility or voluntary responsible investment initiatives.
- Provision for various participation arrangements (full ownership, co-ownership, rent payments for leased land, local community-owned economic development enterprises), Community Development Funds and Agreements and clear guidelines ensuring safe, inclusive participation of all communities during negotiations and operations, upholding human rights, environmental safeguards, and Indigenous Peoples' right to FPIC.
- Limitation on the scope and duration of stabilisation clauses in agreements with renewable energy companies, to allow for an increase in direct community benefits resulting from the adoption of more favourable regulatory frameworks.
- Identification of legitimate tenure rights holders, recognition and implementation of FPIC and provisions for just and fair relocation compensation, in accordance with IFC Performance Standards nº5 and nº7. Provisions for landowners to be able to lease their lands to project developers must also be included.
- Mechanisms for financial, technical and legal empowerment of communities for them to acquire knowledge of relevant renewable energy technologies and their suitability. This includes financial support through government guarantees for concessional loans or direct grants, and policy-motivated in-kind contribution to capital (e.g. land value, mineral value, assessed renewable energy capacity [solar and wind]).
- Mandatory information and revenue disclosure, to enable communities to verify transfers and payments of benefits. This should include provisions for governments at all levels and traditional leaders to report on revenue or rentals received, royalties received, amounts distributed and confirmation of compliance with distribution percentages.
- Provision for community capacity building in entrepreneurial skills and business development to ensure long term sustainability.
- Provision for periodic reviews of sharing percentages/ratios, including revaluation of the resource based on inflation, commodity prices, energy costs and revenue potential for renewable energy projects.



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

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