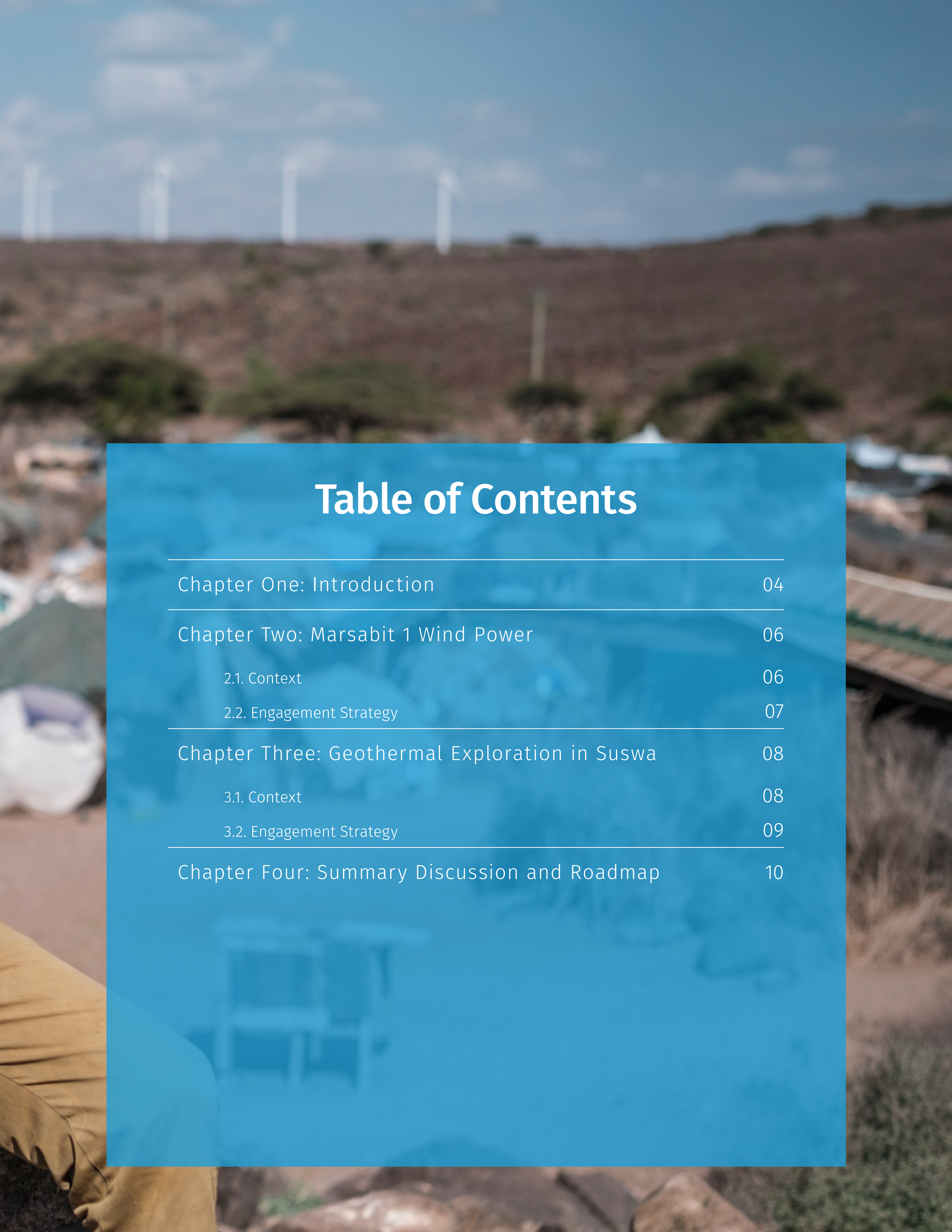
IMPACT

Indigenous Movement For Peace Advancement & Conflict Transformation

MULTI- STAKEHOLDER INVESTOR-STATE-COMMUNITY ENGAGEMENTS ON INDIGENOUS PEOPLES' LANDS

A case study of engagements in the proposed Marsabit 1 Wind Power by Kengen and the proposed geothermal project in Mount Suswa by Geothermal Development Company (GDC)

The most sustainable investments are not built on land alone, but on trust, dialogue, and the recognition of shared humanity.



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Chapter One
INTRODUCTION

Energy justice has emerged as a crucial framework for examining how investments intersect with indigenous peoples' rights. These case studies present an inclusive approach to the prevailing investment and development model in Kenya, one where communities, investors, and state agencies collectively navigate the complex terrain of business and human rights. Therefore, we integrate this concept of energy justice with decoloniality advocating for a more inclusive approach that genuinely respects indigenous sovereignty, recognizes customary trust and ecological wisdom.

Investments on indigenous peoples' lands in Kenya have long been characterized by adversarial relationships between communities and investors with the State being rendered culpable for a failure to protect the rights of these communities as companies continue to operate. The Olkaria geothermal projects exemplify this pattern. The land related dispute in Olkaria Geothermal projects has been litigated twice in cases which have failed to deliver justice to the communities on account of multi- layered prevailing factors. The World Bank, which co-financed the Olkaria Geothermal Projects, conceded in its July 2015 Investigation Report that the projects had insufficiently upheld the rights of indigenous peoples.

Similarly, the Lake Turkana Wind Power (LTWP) project stands as a stark reminder of the systemic failures in fostering cordial and strategic community engagement particularly in land access and acquisition for projects. In a protracted 12-year legal battle, ***Mohammed Itarakwa & 9 Others v. Lake Turkana Wind Power Ltd & 8 Others,*** the High Court declared itself in 2021 vide a landmark judgement that the land titles for the project were illegally acquired, citing procedural irregularities. These two cases illustrate the durability of tensions in the context of investments and communities. The Olkaria case further illustrates the durability of these tensions and yet, despite these protracted legal battles, both Olkaria and LTWP have reached full operational capacity, generating power while communities continue to contest the very foundations upon which these projects were built.

It is against this backdrop that a different approach to engage investments was sought. A series of community dialogues with investors and State agencies facilitated by the Kenya National Commission on Human Rights (KNCHR), a platform of engagement was created; one designed to be accessible, participatory and transparent. These dialogues targeted renewable energy projects spanning across Marsabit, Nakuru, and Narok counties. Specifically, the dialogues targeted the proposed Marsabit 1 Wind Power project to be implemented

by Kenya Electricity Generating Company (KenGen), the proposed geothermal exploration by the Geothermal Development Company (GDC) in Mount Suswa, the proposed solar plant in Narok to be implemented by Green Millenia Energy Limited, and Olkaria Geothermal Projects in Nakuru.

This case study highlights an engagement strategy grounded in community empowerment and institutional trust. It adopts a structured yet nuanced approach that brings together the three essential pillars of any sustainable investment process: the investor, the community, and the state. By acknowledging the historical and contextual complexities unique to indigenous peoples, the strategy creates a platform through which the compounded dynamics of land, livelihoods, development, and socio-cultural identity including customary governance systems, intergenerational knowledge, the spiritual significance of ancestral territories and the delicate coexistence of diverse and dynamic communities sharing landscapes, resources, and cultural space can be openly examined and meaningfully addressed. It further reinforces the key aspect of the right to development where a people must participate in, contribute to and benefit from development projects.

At its core, the approach establishes a space that maps the historical context, community dynamics, administrative realities, and available legal frameworks not as an end, but as a foundation for a principled engagement. The objective is to enable the Kenyan government to pursue its development goals while fostering a healthy business environment in which communities are accorded central consideration. This can only be realized if the communities' engagement is not reduced to pacifying their needs but rather meaningful engagement as rights holders who are central subjects, participants and beneficiaries of development. This case study focuses primarily on the proposed Marsabit 1 Wind Power and geothermal exploration project in Mount Suswa.

Chapter Two

Marsabit 1 Wind Power

2.1. Context

Wind data from the Kenya Meteorological department for the period 2001–2006 confirm the average wind speed studied in Marsabit County range from 10.62 to 11.38 m/s. These are high wind speeds giving power densities suitable for grid connected power generation. This data coincides with an increase in energy demand to support national development goals to complement existing energy resources.

With Marsabit County already home to Africa's largest wind farm, it has increasingly attracted investor interest in wind energy development. In 2024, the Ministry of Energy reported that five firms were actively exploring investment opportunities in the county: Sosian Energy, KenGen, Gitson Energy, Ignite Energy, and Kenya Mudhe Wind Power.

The Marsabit 1 Wind Power Project is a proposed wind energy development to be established at the boundary of Laisamis and North Horr Constituencies in Marsabit County, to be implemented by KenGen. Feasibility studies identified Gas as the project site and established that the existing Loiyangalani–Suswa Transmission Line has the capacity to sustain up to 250MW. The project is conceived as a phased development with an ultimate target of 1,000MW, with the initial phase comprising 200MW generated through 40 turbines .

Laisamis and North Horr are home to diverse indigenous communities, including the Turkana, Rendille, El Molo, Gabra and Samburu peoples. Pastoralism, fishing, and small-scale agriculture are deeply entrenched in their livelihoods and the region's traditions and history. Despite rich cultural heritage, these communities continue to bear the weight of decades of marginalization since independence manifesting in persistent socio-economic challenges such as water scarcity, harsh climates, and periods of food insecurity. While devolved governance was intended to bring services closer to the people, the region's remoteness and underdeveloped infrastructure continues to limit both access to and quality of essential services. For these communities, the relationship with land transcends mere physical occupation. It encompasses livelihood, communal identity, ancestral heritage, and spiritual belonging. Indigenous communities in this region understand the natural environment through sacred and spiritual connections to the land connections that are inseparable from their cultural traditions, belief systems, and ways of life.

The land on which LTWP is situated was considered trust land under the Trust Land Act before the Community Land Act, 2016 was enacted. However, in this region, multiple communities and groups collectively share and use land as each communities' historical territories and livelihoods are tied and overlap for grazing, cultural purposes or water. Despite a legal framework that seeks to secure community tenure rights, a development like LTWP created ambiguity in land use owing to competing and overriding interests. Development projects of this nature inevitably alter the dynamics of collective land use as access to land becomes increasingly mediated by investors and the State, displacing the customary arrangements through which communities have historically governed shared resources.

It was therefore unsurprising that as project preparations for Marsabit 1 Wind Power commenced in 2019, questions and concerns began to surface among potentially affected communities. Central to this was the question of what the project would mean for lands yet to transition formally under the Community Land Act, 2016. Through various complaints mechanism including the Commission on Administrative Justice (CAJ) and Business and Human Rights Centre (BHRC)'s complaints mechanism, concerns regarding the adequacy of public participation and land registration were formally raised and submitted to KenGen for response.

As the complaints were being filed, we explored an opportunity to facilitate structured dialogues as a means of negotiating the issues raised and establishing a credible redress mechanism. This approach was premised on the historical context and lessons drawn from the Lake Turkana Wind Power experience, and was shaped by a broader imperative for development projects to be implemented in a manner that genuinely recognizes historical context, maintaining an environment in which business can operate sustainably, while the State upholds its duty to protect human rights.

2.2. Engagement Strategy

Anchored in the three pillars of the UN Guiding Principles on Business and Human Rights (UNGPs), the engagement strategy employed multiple and complementary approaches. These included mapping exercises to document and analyze emerging issues in relation to the project, a training on business and human rights seminar for renewable energy companies and strategic engagement directly with KenGen. The mapping exercise identified the actual points of disputes as project naming, fear of exclusion from land benefits owing to delayed community land registration, historical inter-community tensions, administrative boundaries disputes and allegations that consultations had occurred away from the communities in inaccessible venues reinforcing gate keeping at the expense of genuine community voices. These foundational steps organically created the conditions for a sustained dialogue process designed not as a one- off engagement, but as an ongoing platform for meaningful and structured interaction between all stakeholders.

In fulfilment of the State's duty to protect under Pillar I of the UNGPs, national and county government agencies were engaged as duty-bearers with direct mandates over the issues at stake. Representation from the Marsabit County Government included the County Executive Committee (CEC) Member responsible for Lands, Energy, Urban Development and Housing, alongside the Directors for Environment, Climate Change and Natural Resources, and the Director of Lands. The Ministry of Interior and National Administration was represented through local administration. Members of the County Assembly from Loiyangalani and North Horr wards also participated, bringing administrative accountability into the forum. The inclusion of State actors transformed the forum into a mechanism of State accountability.

Pillar II of the UNGPs places a corporate responsibility on businesses to respect human rights, requiring investors to move beyond community relations into substantive engagement with the rights implications of their operations. The inclusion of KenGen in this process was designed to fulfil precisely that obligation. On human rights due diligence, KenGen acknowledged that the project land remained unregistered and committed not to advance implementation until registration had been completed. The project proponent also recognized the complexity of the prevailing community dynamics and the existence of inconclusive administrative boundaries as factors requiring deliberate resolution prior to project progression. On remediation, KenGen proposed to work closely with the Ministry of Interior and National Administration to address community tensions, to engage the Independent Electoral and Boundaries Commission (IEBC) in the process of determining legitimate boundaries, and to work alongside partners and the County Government to support the community land registration process.

The project's anticipated co-financing by the World Bank introduces an additional and reinforcing layer of obligation. The World Bank's Environmental and Social Standard 7 (ESS7) establishes a framework for the engagement of Indigenous Peoples in Africa and requires compliance with the Free, Prior and Informed Consent (FPIC) process. The structured community engagement already initiated through this strategy therefore lays the necessary groundwork for a credible and defensible FPIC process.

The strategy also seamlessly implements Pillar III of the UNGPs on access to remedy. The engagement's design was both a dialogue with a feedback loop embedded into the process. Identified specific actions include follow-up meetings between KenGen and community professionals, localized community engagements, dissemination of the draft ESIA report, and the conduct of FPIC processes and exploring benefits sharing tools. KNCHR retained a monitoring and advisory role reporting role to ensure accountability across all commitments made, while the roles and obligations of State agencies were firmly reaffirmed.

Chapter Three
Geothermal Exploration in Suswa

3.1. Context

Kenya is endowed with vast geothermal potential along the East African Rift valley that transects the country from north to south. The Kenyan Rift Valley forms part of the African rift that runs north from Afar junction in Ethiopia to Beira, Mozambique in the South. Prospects along the rift valley are endowed with hydrothermal activity and are envisaged to be rich in geothermal steam. Mapped out areas in Kenya are Lake Magadi, Mount Suswa, Longonot, Olkaria, Eburru, Badlands, Menengai, Arus Bogoria, Lake Baringo, Korosi, Paka, Silali, Emuruangogolak, Namarunu and Barrier.

The Suswa Geothermal Prospect has an estimated potential of 750MW which will be developed by Geothermal Development Company (GDC) in phases. The first three phase will develop a total of 300MW, with each phase developing 100MW.

The land history around Mount Suswa is layered. It has been shaped by Narok County's conservation efforts, the presence of Kedong Ranch, and long- standing historical land claims emanating from the Olkaria region who have experienced land loss, forced evictions, and restricted land use. Therefore, the prospect of geothermal exploration by GDC was met with wariness compounded by communities' experience of piecemeal compensation during the construction of the Nairobi–Suswa Standard Gauge Railway (SGR). The area's exposure to large infrastructure investment did not end there as Green Millenia Energy Limited had been exploring the establishment of a solar energy project, and as the host of Kenya's national grid, the region had also engaged with the Kenya Electricity Transmission Company (Ketraco). These interactions have left their own imprint on community perceptions of investor conduct.

As these concerns arose, a series of community human rights trainings were ongoing to equip them with tools to monitor, document, report and engage investors and state agencies. It was during these trainings that concerns around the proposed geothermal exploration were raised. Specifically, what the exploration process would look like, compensation determination, community engagement, benefit sharing and potential environmental impacts. Following a community exchange visit to GDC's geothermal project sites in the Baringo-Silali area, the communities also pointed questions about the nature of corporate social responsibility commitments. These concerns reflected a broader skepticism rooted in the experience of hosting investments without adequate benefit.

3.2. Engagement strategy

Premised on the imperatives of Kenya's National Action Plan on Business and Human Rights (NAP-BHR) and the foundational need to build awareness of business and human rights principles among all stakeholders, the engagement strategy around Mount Suswa was structured around complementary and mutually reinforcing interventions.

The first part was focused on delivering a series of community awareness and capacity-building sessions to enhance an understanding of land rights, the principles of Free, Prior and Informed Consent (FPIC), and the avenues available for raising concerns and seeking redress. The second strand engaged the GDC directly as a duty-bearer as a state- owned enterprise with duty to protect under Pillar I whose corporate responsibility under Pillar II of the UNGPs is to respect human rights. In a human rights training for GDC officers, the focus was to strengthen an understanding and practical application of business and human rights standards, with particular emphasis on FPIC and the design and operation of effective community- led grievance mechanisms. The third strand of the strategy was the development and launch of a Community-Led Grievance Redress Mechanism (CGRM) alongside county officers in Narok County; a tool designed to address the structural inadequacies of existing grievance frameworks in the renewable energy sector.

Summarily, the three- pronged strategy; community empowerment, investor capacity-building, and an accessible grievance mechanism constitute an integrated approach that addresses the Suswa context at each of its levels: the rights and agency of communities, the human rights responsibilities of the investor, and the institutional infrastructure required to ensure that concerns can be raised, heard, and resolved in a legitimate, accessible, and sustainable manner.

Chapter Four

Summary Discussion and Roadmap

The case studies demonstrate that a deliberate, multi-stakeholder engagement strategy rooted in the UN Guiding Principles on Business and Human Rights and the NAP- BHR can disrupt the entrenched patterns of adversarial relationships, legal contestation, and community marginalization that have historically characterized large-scale energy investments on Indigenous Peoples' lands in Kenya.

These cases offer evidence that when investors, State agencies, and communities are brought into a structured, transparent, and sustained dialogue platform, the conditions for principled investment become achievable. A defining feature of this engagement strategy was its deliberate grounding in historical context by acknowledging contextual dynamics that are different in each case.

Notwithstanding these advances, the strategy confronts challenges, pre-existing socio- ecological struggles and emerging investment dynamics. Community land registration under the Community Land Act, 2016 remains incomplete in multiple target project areas. Secondly, inter-community tensions overlapping land interests, administrative boundaries that require ongoing, locally led conflict resolution mechanisms. Finally, the question of benefit-sharing beyond corporate social responsibility remains substantively unresolved.

The future of development on Indigenous lands will depend not only on what is built, but on how communities, investors, and the State choose to build it together.

Because progress is strongest when built together.

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