



## CORPORATE ACCOUNTABILITY, RESILIENCE AND PARTICIPATION FOR AN EQUITABLE TRANSITION (CARPET) PROJECT BRIEF No. 002

### ACCESS TO REMEDY IN KENYA'S JUST TRANSITION

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#### OVERVIEW

This policy brief finds that Kenya has a comparatively strong constitutional, statutory, and policy foundation for access to remedy in the context of a just transition in agriculture, energy, and textiles, anchored in the Constitution of Kenya (2010), sectoral laws, and the National Action Plan on Business and Human Rights (2021–2025). However, the effectiveness of this framework is uneven in practice: remedies are often slow, costly, poorly enforced, and inaccessible to the very communities and workers most affected by low-carbon transitions, particularly women, informal workers, Indigenous and project affected communities and persons with disabilities.

The core challenges to access to remedy stem from structural and institutional barriers rather than the absence of legal norms. Tenure insecurity, weak recognition of Indigenous Peoples, and slow implementation of the Community Land Act continue to undermine consultation, benefit-sharing, and consent in carbon, energy, and natural resource projects. High litigation costs, technical complexity, and geographic concentration of courts exclude rural and low-income rights-holders, while weak enforcement of court orders and regulatory decisions erodes confidence in formal justice systems. Power asymmetries between corporations and communities, reinforced by opaque supply chains, limited legal literacy, and information gaps, further constrain accountability. Although administrative and alternative dispute resolution mechanisms are more accessible, they suffer from capacity constraints, fragmented mandates, and limited oversight, while corporate grievance mechanisms remain inconsistent, often lacking independence, transparency, and meaningful remedial outcomes.

To address these gaps, the brief prioritises policy and institutional reforms that shift Kenya's just transition from formal compliance to effective, rights-based accountability. Key recommendations include: reforming land and natural resource governance to recognise Indigenous Peoples, secure community land tenure, mandate FPIC, and enforce benefit-sharing; strengthening judicial and administrative remedies by expanding legal aid, simplifying procedures, improving accessibility, and ensuring enforcement of decisions; and closing coordination gaps.

#### BOX 1: KEY MESSAGES

- Recognise Indigenous and community land rights and enforceable benefit-sharing in transition projects.
- Lower barriers to justice by expanding legal aid, simplifying procedures, improving accessibility, and enforcing remedies.
- End institutional fragmentation by coordinating remedy institutions, localising access at county level, and tracking outcomes.
- Enforce corporate accountability through mandatory, transparent, and independently verified grievance mechanisms.
- Strengthen prevention and oversight by resourcing regulators, supporting civil society, and protecting civic space.
- Prevent harm early through risk-grading and just transition checks at licensing and financing stages.
- Embed inclusion by ensuring gender, disability, and worker representation in remedy systems.

## **BOX 2: ABOUT CARPET AND METHODOLOGY**

This policy brief was developed under the Corporate Accountability, Resilience and Participation for an Equitable Transition (CARPET) Project, co-funded by the European Union and implemented by NANHRI and the Business and Human Rights Centre. CARPET aims to address the urgent need for a just and inclusive transition to green economies in four key countries in Africa and Asia (South Africa, Kenya, Indonesia, and the Philippines). Drawing on primary data from a stakeholder consultative workshop in November 2025 and peer review processes, the policy brief examines how Kenya can strengthen access to effective, rights-based remedies for communities and workers affected by the just transition, highlighting the reforms needed to close implementation, coordination, and accountability gaps in land, labour, environmental, and corporate governance systems.

## **INTRODUCTION**

The concept of a just transition emphasizes that the shift to a green and climate-resilient economy must not impose disproportionate social and economic costs on vulnerable communities, but instead align climate action with broader sustainable development and human rights objectives (International Labour Organization [ILO], 2015). In Kenya, this principle is constitutionally grounded, as sustainable development is a national value under Article 10 of the Constitution, obligating the State to balance economic, social, and environmental considerations in climate and development policies (Republic of Kenya, 2010). As the country pursues low-carbon and climate-resilient development despite its historically low greenhouse gas emissions, transition risks are already emerging across key sectors such as agriculture, renewable energy, and textiles. Agriculture employs over half of Kenya's workforce and is dominated by informal and women smallholder farmers, making inclusive transition frameworks essential to avoid deepening poverty and inequality (Government of Kenya, 2022). Renewable energy expansion increasingly relies on community and customary land, where weak tenure security, limited recognition of Indigenous Peoples, and gaps in consultation and benefit-sharing undermine rights and livelihoods (Republic of Kenya, 2016). Similarly, while decarbonisation of the textile sector—one of Kenya's largest employers contributing about 7% to the national export earnings, critical to reducing industrial pollution, it risks exacerbating labour precarity in a sector already marked by weak protections, particularly for women workers (NEMA, 2014; Thomas, 2025). According to Awino (2025), the sector is responsible for approximately 56% of total industrial pollution hence the need to emphasize just transition. Renewable energy projects in Kenya, particularly geothermal and large-scale solar, often involve foreign investors and bilateral investment treaties hence the need for investor-State dispute settlement mechanisms as an important facet of remedy in the energy transition.

The EU Corporate Sustainability Due Diligence Directive (CSDDD) is expected to have significant supply chain implications for Kenyan agricultural and textile exporters, as it requires EU companies to identify, prevent, and address human rights and environmental risks across their entire value chains, including upstream suppliers in third countries (European Union, 2024). Although Kenyan firms are not directly regulated, they will face indirect compliance pressures through contractual obligations imposed by EU buyers, particularly in relation to labour rights, environmental sustainability, traceability, and reporting requirements (Norton Rose Fulbright, 2024). This is likely to increase compliance costs, documentation demands, and certification requirements, while also raising the risk of market exclusion for non-compliant exporters, especially smallholder-linked agricultural producers and SME textile firms (ECDPM, 2023). At the same time, the directive may create opportunities for upgrading, value addition, and access to premium sustainable markets for firms that can meet enhanced ESG standards (Intereconomics, 2024).

## **BOX 3: WHAT IS JUST TRANSITION?**

Just transition refers to a framework for ensuring a fair and inclusive shift toward a low-carbon, climate-resilient economy that protects workers, communities, and vulnerable groups while advancing decent work, social dialogue, and social protection (ILO, 2015). It is further anchored in global climate governance under Article 2(1)(c) of the Paris Agreement, which calls for making financial flows consistent with low greenhouse gas emissions and climate-resilient development. In Kenya, this approach is reflected in national climate planning through the Nationally Determined Contributions which emphasize sustainable development, green growth, and safeguarding livelihoods.

## LEGAL AND INSTITUTIONAL FRAMEWORKS FOR ACCESS TO REMEDY IN KENYA

Kenya's framework for access to remedy and justice in the context of a just transition in agriculture, energy, and textiles is firmly anchored in the Constitution of Kenya (2010), sectoral legislation, and international human rights and climate commitments. These instruments establish binding obligations on the State and responsibilities for businesses, while providing judicial, administrative, and non-judicial avenues for redress where transition processes result in environmental harm, labour violations, land dispossession, or socio-economic exclusion.

### Constitutional Foundation for Access to Remedy

The Constitution of Kenya (2010) provides the primary normative basis for access to justice and remedy. Article 20 makes the Bill of Rights binding on all persons, including companies and other business entities as defined under Article 260. Kenyan courts have interpreted this provision to impose horizontal human rights obligations on private actors, expanding remedies available to victims of business-related harms. This was witnessed in *Amy Kagendo Mate v Prime Bank Limited Credit Reference Bureau & Another*, where the High Court held that the Constitution binds all persons, including private entities, under Articles 2(1) and 20(1), (High Court of Kenya, 2012). Key constitutional rights relevant to just transition include the right to equality and freedom from discrimination (Art. 27), human dignity (Art. 28), access to information (Art. 35), fair labour practices (Art. 41), socio-economic rights (Art. 43), protection of minorities and marginalized groups (Art. 56), and the right to a clean and healthy environment (Art. 42). Article 70 provides a robust enforcement mechanism, allowing any person to seek redress where environmental rights are violated or threatened, without the need to demonstrate personal loss (Government of Kenya, 2010).

### Statutory Frameworks

The Environmental Management and Coordination Act (EMCA) establishes the institutional and legal framework for environmental governance, including environmental impact assessments, compliance monitoring, and access to the National Environment Tribunal. EMCA operationalizes Article 42 and provides an accessible administrative pathway for addressing environmental harm linked to agribusiness, energy infrastructure, and industrial production. The Climate Change Act (2016) further strengthens access to remedy by creating duties for both public and private actors to support Kenya's transition to a low-carbon, climate-resilient economy. It explicitly enables enforcement of climate-related obligations through the Environment and Land Court under Article 70 of the Constitution, including actions that undermine mitigation or adaptation efforts. This is critical for ensuring accountability of businesses whose investment, procurement, employment, or exit decisions disproportionately affect workers and communities during transition processes (Republic of Kenya, 2016). Labour rights protections under the Employment Act, Labour Relations Act, and the mandate of the Employment and Labour Relations Court provide avenues for remedy in cases of unfair dismissal, unsafe working conditions, wage violations, and casualization of labour, risks that are acute in the energy, agriculture, and textile sectors during economic restructuring.

### Business and Human Rights Policy Architecture

- Kenya's National Action Plan on Business and Human Rights (2021–2025) provides a key policy entry point for integrating just transition considerations into access to remedy.
- Aligned with Vision 2030, the SDGs, and the UN Guiding Principles on Business and Human Rights, the NAP prioritizes land and natural resources, environmental protection, labour rights, and access to remedy as core risk areas. Pillar III of the NAP articulates Kenya's remedy ecosystem, comprising judicial mechanisms (the High Court's Human Rights Division, Environment and Land Court, and Employment and Labour Relations Court with the right to appeal to higher courts), administrative and quasi-judicial bodies (including the National Environment Tribunal), and industry and company-level grievance mechanisms.
- Implementation of NAP-BHR shows uneven but incremental progress, with persistent structural gaps that limit its effectiveness in delivering access to remedy. While efforts have been made to

strengthen Alternative Justice Systems in line with Article 159 of the Constitution, expand business and human rights capacity-building, and conduct outreach on judicial and non-judicial mechanisms, access to justice remains constrained by high litigation costs, weak enforcement of court outcomes, and coordination gaps among non-judicial bodies.

- Progress on land and natural resource governance has been particularly limited: the absence of legal recognition of Indigenous Peoples and slow implementation of the Community Land Act (2016) continue to undermine consultation, benefit-sharing, and tenure security, exacerbating conflicts linked to carbon and natural resource projects. Out of Kenya's total land area of 56.91 million Ha, an estimated 39.3 million Ha (69.1 percent) is community land. Most of the projects are currently being undertaken on unregistered community land owned by indigenous communities (Rights and Resources Initiative, 2021).
- Although labour inspection capacity and company-level grievance mechanisms have improved, enforcement, effectiveness, and outcome-based accountability remain weak, especially in addressing transition-related labour risks.

## **Effectiveness of Existing Remedy Mechanisms**

### **Courts and Tribunals**

- Constitutional guarantees enable courts to enforce environmental and labour rights (Republic of Kenya, 2010).
- Litigation is slow, costly, and procedurally complex, excluding low-income and informal rights-holders as evident in Owino Uhuru case which took long time to settle and the non-judicial mechanism through NEMA, parliamentary committees among others did not offer an effective remedy.
- Enforcement of court decisions, including compensation and restoration orders, remains inconsistent (KNCHR, 2021).

### **Regulators, Labour Offices, and NEMA**

- Sector regulators, labour offices, county governments, and NEMA serve as first-line remedy mechanisms.
- Administrative processes are generally more accessible and less costly than courts (Mutua & Kibet, 2020).
- Environmental regulators oversee licensing, EIAs, and compliance in energy, mining, and waste sectors.
- Effectiveness is limited by capacity gaps, fragmented mandates, political interference, and weak enforcement.
- Penalties are often insufficient to deter violations, and compliance monitoring is weak (ACHPR, 2017).

### **National Human Rights Institution (KNCHR)**

- As a State based non-judicial grievance mechanism KNCHR directly receives and processes complaints of business-related human rights infractions including complaints around a just transition (KNCHR, 2026)
- Can leverage on its mandate to interact with other remedy enablers holders and collaborate with other remedy mechanisms to assist affected rights-holders to access remedy.
- The KNCHR faces resource and legal limitations to effectively execute its remedy functions.

### **Corporate Grievance Mechanisms**

- Corporate grievance mechanisms under the UN Guiding Principles on Business and Human Rights (UNGPs) are expected to be accessible, predictable, transparent, and rights-compatible.
- Large multinationals often have formal grievance systems, but these mechanisms are frequently poorly understood, lack independence, and offer remedies inadequate or disproportionate to the harm caused.

- Significant access barriers persist, including fear of retaliation, limited awareness, language obstacles, and power imbalances between workers and employers.
- Smaller and domestic enterprises commonly lack any grievance mechanism, leaving workers without structured avenues to raise concerns (KNCHR, 2021).
- Community grievance redress mechanisms; such as project-level committees, local administration channels, or investor-driven platforms, exist in some areas but often suffer from weak transparency, limited participation, elite capture, and poor follow-up.
- Both workplace and community grievance systems frequently fail to meet key UNGP effectiveness criteria: legitimacy, accessibility, predictability, equitability, transparency, rights-compatibility, and meaningful stakeholder engagement.

### **Mediation and Alternative Dispute Resolution (ADR)**

- ADR is increasingly used for land, labour, and community disputes in transition-related projects.
- Mediation can be faster, less adversarial, and culturally appropriate.
- Power imbalances can result in coercive settlements and inadequate compensation.
- Without safeguards and oversight, ADR may prioritize project continuity over justice (OHCHR, 2022).

### **Transparency, Accountability, and Enforcement Challenges**

- Information on grievance processes and remedial outcomes is often inaccessible to affected communities.
- Workers and communities frequently lack clarity on where and how to file complaints.
- Regulatory and corporate decisions lack effective monitoring and public accountability.
- Enforcement failures are most pronounced in cases involving powerful corporate or politically sensitive projects.
- Delayed or unenforced remedies undermine trust in accountability systems (European Commission, 2022).

#### **BOX 4: Case Study**

#### **Owino Uhuru case (EPZ Authority & 11 Others v NEMA & 6 Others, Supreme Court Petition Nos. E019 & E021 of 2023)**

The Owino Uhuru case involved residents of Owino Uhuru Village in Mombasa who suffered severe environmental and health harm from lead contamination caused by Metal Refinery (EPZ) Limited, a battery recycling company operating from 2006 to 2014. Toxic lead exposure led to over 20 deaths and numerous illnesses, particularly affecting children and pregnant women, violating residents' rights to health, life, a clean environment, and human dignity. Residents argued that State agencies, including NEMA and EPZA, failed in their regulatory duties by permitting continued operations despite known risks. The Supreme Court upheld residents' claims, awarding KES 1.3 billion in compensation, mandating environmental remediation, and directing stronger regulatory frameworks for lead-related industries. Liability was apportioned among corporate and State actors, emphasizing shared accountability, with Metal Refinery (EPZ) Limited bearing 40%, NEMA 30%, EPZA 10%, Penguin Paper 10%, and Cabinet Secretaries 5% each. The court also mandated environmental remediation, including soil and water clean-ups, and directed the development of regulations for lead and lead alloy manufacturing plants. The judgment emphasized that polluters must be held accountable for both compensation and environmental restoration

Adopted from Ndinda (2025)

#### **BOX 5: Northern Kenya Rangelands Carbon Project**

The Northlands Carbon Project, formally the Northern Kenya Rangelands Carbon Project (NKRCP), is the world's largest soil carbon removal initiative, covering 1.9 million hectares and aiming to remove 50 million tons of CO<sub>2</sub> over 30 years while generating significant revenue for 14 community conservancies and improving pastoralist grazing. Despite these environmental and economic goals, the project, managed by the Northern Rangelands Trust and associated entities, has been marred by serious human rights concerns. In *Osman & 164 Others v Northern Rangelands Trust & 8 Others* (Petition E006 of 2021) [2025] residents of Merti sub-county, Chari, and Cherab wards in Isiolo County

challenged the establishment of community wildlife conservancies on unregistered community land without their consent, asserting violations of their indigenous, pastoralist, and property rights. The Petition highlighted the illegal deployment of armed rangers, instances of violence, forced disappearances, and threats to cultural sites and grazing lands. The court found that the Respondents breached constitutional and statutory mandates by establishing conservancies on unregistered land without public participation, violating Articles 10, 69(1) (d-f), 3(1), 22(1), and 258 of the Constitution, and ordered that activities outside legal frameworks, including the use of armed rangers, are unconstitutional, affirming the community's rights to property, culture, and self-determination.

Adopted from Ndinda (2025)

## **POLICY RECOMMENDATIONS**

### **1. Reform Land, Environment, and Natural Resource Governance for Remedy**

- Legally recognize Indigenous Peoples within Kenya's land and natural resource governance framework, aligned with UNDRIP and ILO standards, to clarify rights to consultation, representation, benefit-sharing, and consent.
- Fast-track implementation of the Community Land Act (2016) through nationwide registration of community land, with ring-fenced budgets, technical support to counties, and accessible dispute resolution mechanisms.
- Mandate Free, Prior and Informed Consent for carbon markets, renewable energy, mining, and large-scale infrastructure projects affecting community or customary land.
- Standardize and enforce benefit-sharing frameworks for carbon and renewable energy projects through legally binding community agreements subject to independent oversight.

### **2. Strengthen Judicial and Administrative Remedies for Just Transition Harms**

- Expand legal aid eligibility and prioritization to explicitly cover business-related and just transition harms under the Legal Aid Act (2016).
- Introduce simplified and fast-track procedures for environmental, labour, displacement, and livelihood-related disputes.
- Strengthen enforcement of court orders and regulatory remedies through statutory timelines, sanctions for non-compliance, and public reporting on enforcement status.

### **3. Close Coordination Gaps Across Remedy Institutions**

- Establish a National Access to Remedy Coordination Framework defining mandates, referral pathways, escalation procedures, and information-sharing across judicial, regulatory, and non-judicial mechanisms.
- Strengthen the convening and oversight role of the National Council on the Administration of Justice to track remedy outcomes and reduce duplication.
- Create a single public-facing remedy portal mapping all judicial and non-judicial mechanisms, procedures, and access points.
- Mandate inter-agency data sharing and joint investigations for systemic or cross-sector transition-related harms.
- Require periodic coordination audits to identify gaps, overlaps, and effectiveness of remedy pathways.
- Support counties to localize access-to-remedy frameworks, positioning them as frontline custodians of remedy for transition-related harms.

### **4. Regulate and Enforce Corporate Accountability and Grievance Mechanisms**

- Mandate rights-compatible grievance mechanisms for companies operating in high-risk transition sectors (energy, mining, agribusiness, waste, manufacturing).
- Legally require compliance with UNGP effectiveness criteria, including independence, transparency, protection from retaliation, and accessibility.

- Require public reporting on grievance outcomes, focusing on remedies delivered rather than complaints received.
- Introduce independent verification or accreditation of corporate grievance mechanisms.
- Prohibit grievance mechanisms from limiting access to courts, regulators, or constitutional bodies.
- Assess corporate grievance systems based on actual remedial impact, not formal existence.

#### **5. Enhance Regulatory Capacity and Enforcement for Transition Risks**

- Increase dedicated budget allocations for labour and environmental inspection units addressing just transition risks.
- Develop specialized inspection guidelines covering job losses, reskilling obligations, occupational safety, environmental rehabilitation, and subcontracting abuses.
- Require mandatory human rights and just transition training for inspectors, regulators, and licensing authorities.
- Integrate early warning indicators into inspection and licensing systems.
- Strengthen enforcement powers, including stop-work orders, license suspension or withdrawal, remediation bonds, and public blacklisting for repeat offenders.

#### **6. Introduce Innovative and Preventive Remedy Mechanisms**

- Establish a National Just Transition Remedy Framework and Fund to finance legal aid, expert evidence, mediation, remediation, and community monitoring for transition-related harms.
- Introduce early warning and project risk-grading systems for energy, mining, carbon, and infrastructure projects, linked to licensing, financing, and insurance decisions.

#### **7. Strengthen Human Rights Institutions, Civil Society, and Civic Space**

- Adequately resource Kenya National Commission on Human Rights to perform its mandate
- Integrate Just Transition as a core thematic priority in the second phase of the National NAP, recognizing its importance as an emerging business and human rights (BHR) issue.
- Establish a Just Transition Civil Society Support Fund to provide sustained financial and technical support for monitoring, documentation, legal aid, and strategic litigation.
- Formalize the role of CSOs, trade unions, and CBOs in impact monitoring, early warning systems, and social dialogue.
- Protect civic space through safeguards against harassment, reprisals, or criminalization of rights defenders.
- Institutionalize structured State–CSO–Trade Union dialogue platforms focused on remedy outcomes and systemic transition risks.

#### **8. Strengthen Corporate Grievance Mechanisms for Effective Access to Remedy**

- Mandate minimum UNGP-aligned grievance standards for all companies covering accessibility, independence, transparency, non-retaliation, and rights-compatible remedies.
- Require companies to publicly disclose grievance procedures and outcomes, including disaggregated data on complaints received, resolved, and pending.
- Strengthen worker and community access by requiring multilingual reporting channels, anonymous submissions, and awareness-raising campaigns targeting workers, women, youth, and persons with disabilities.
- Integrate community-level grievance mechanisms into regulatory approvals for large projects, ensuring inclusive representation, regular monitoring, and government oversight to prevent elite capture.

## FURTHER READING

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