

Inequality Watch

The Struggle for Land and Justice in the Green Transition



Norwegian People's Aid



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EDITORIAL STAFF

Main author **Peder Ressem Østring**, NPA advisor. He holds a master's degree in Human Geography from the University of Oslo and has previously worked with international climate policy for the Rosa Luxemburg Foundation in Berlin.

Beate Thoresen, Section leader Latin America and organisational development and policy, NPA's Head Office in Oslo. She has an MA in political science from the University of Oslo. She has long experience in practical solidarity and academic work on development, democracy, conflict and peace processes, civil society and political participation, particularly from Latin America.

Kari Eliassen, political advisor, NPA. She holds an MA in Peace and Conflict studies from the University of Oslo. She has experience from humanitarian and development work from various international organisations particularly from sub-saharan Africa.

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LAYOUT

Magnolia design as

FRONT PAGE

Mapuche activists protesting the devastation of their holy river Pilmaiken.

Photo: Pablo E. Piovano

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The Los Lagos hydropower project on the river Pilmaiken. *Photo: Pablo E. Piovano*

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Sammendrag

Itakt med det grønne skiftet ser vi en økning i såkalte grønne investeringer. Det kan dreie seg om biomasseproduksjon for karbonbinding, arealinngrep for å produsere fornybar energi eller utvinning av strategiske mineraler. Samtidig ser vi et økende omfang av konflikter mellom utbyggere og lokalbefolkning i kjølvannet av slike prosesser. Rapporten peker på en tydelig tendens hvor grønne investeringer foretas uten forankring hos berørte lokalsamfunn, mens godene tilfaller kommersielle selskaper. Dersom dagens modell for grønne investeringer oppskaleres uten å stille spørsmål om hvem som tjener og taper på disse, risikerer vi en *urettferdig omstilling* som går på tvers av grunnleggende rettigheter og forsterker dagens strukturelle ulikhet i verden.

Omstillingen i seg selv er tvingende nødvendig, og det haster. Samtidig risikerer vi at en slik prosess mister tilslutning og forsinkes av polarisering, konflikt og rettslige prosesser hvis ikke vi får på plass et effektivt rammeverk for ansvarlige grønne investeringer som er forankret i prinsippet *rettferdig omstilling*.

Norsk Folkehjelps inngang til dette arbeidet er gjennom vårt samarbeid med organisasjoner og bevegelser i det globale sør. Disse kommer fra regioner med svært lavt karbonfotavtrykk, og de gir uttrykk for bekymring for at den nye bølgen av grønne investeringer vil bidra til å frata dem tilgang til jord, forringe natur og påvirke deres livsvilkår negativt. Vi har sett investeringer som gjøres uten tilstrekkelige maktanalyser og hvor det er liten forståelse av hvilke aktører man bidrar til styrke eller svekke. Mange av våre partnere har selv stått i dette og krever ikke bare å bli hørt eller kompensert – men retten til å si nei når livsgrunnlaget deres trues.

Norske bistandsmidler går i stadig større grad til grønne investeringer. Mye oppmerksomhet har blitt rettet mot å skaffe tilstrekkelig kapital til investeringer, mens det har vært mindre fokus på kvaliteten og fordelingseffekten av den grønne kapitalen. Investeringene kan ikke foretas kun ut fra økonomiske avveininger. Vi trenger å få på plass reguleringer for å sikre en sosial og rettferdig omstilling.

Gjennom klimainvesteringsfondet har Norfund fått en sentral rolle i å forvalte norske investeringer i fornybar energi utenfor Norge og Norfund har allerede støttet flere prosjekter innen fornybar energi og skogdrift. I rapporten pekes det på flere områder hvor norske næringslivsaktører med støtte fra Norfund har gått på tvers av viktige prinsipper for rettferdig omstilling.

I **Mosambik** har Norfund vært avgjørende for at selskapet Green Resources har kunnet etablere seg som Øst-Afrikas største selskap innen industriell skogdrift.

- Prosjektet har fortrent småbønder i en prosess som av flere aktører er beskrevet som et landran.
- Green Resources har gjort store inngrep i lokalmiljøet, samtidig som klimaeffekten av deres virksomhet er høyst omdiskutert.
- Prosjektet har vært preget av lite åpenhet, manglende aktsomhet og falske premisser forut for igangsettelse.

I **Honduras** har Norfund støttet utbyggingen av to solparker hvor de også er medeiere sammen med de norske aktørene KLP og Scatec.

- En sentral forretningspartner i prosjektet var den honduranske forretningsmannen David Castillo Mejia som er dømt for å ha medvirket til drapet på miljø- og urfolksaktivisten Berta Cáceres. Gjennom sin virksomhet har Norfund bidratt til å styrke makten til aktører i den honduranske eliten.
- Scatec, Norfund og KLP har saksøkt den honduranske staten gjennom en investor-stat tvisteløsningsmekanisme på bakgrunn av manglende betalinger og strid rundt reforhandling av en kraftkjøpsavtale.
- Personer som har motsatt seg utbyggingen har blitt kriminalisert og drevet på flukt.

I **Chile** har offentlig eide Statkraft kjøpt seg inn i en aktiv konflikt rundt et vannkraftverk ved Pilmaiken-elven.

- Lokal motstand fra mapuche-urfolk har blitt besvart med skarpe skudd.
- Statkraft har kjøpt konsesjoner som ble privatisert under Pinochet-regimet, og oppkjøpet har beriket flere aktører som var sentrale under militærdiktaturet.
- Implementeringen av fritt og forhåndsinformert samtykke, et krav i saker som berører urfolk, har vært mangelfull.

Det finnes rammeverk for god næringslivspraksis for å hindre brudd på menneskerettighetene. Vi forutsetter at det stilles krav om at disse følges. Denne rapporten kommer med **syv** hovedanbefalinger til regjeringen for å sikre at grønne investeringer bidrar til en rettferdig omstilling. Disse utdypes i siste kapittel.

- Norges strategi for grønne investeringer må prioritere å støtte tiltak som møter marginaliserte gruppers behov og styrker deres posisjon.
- Norsk støtte til investeringer i grønn energi må ta utgangspunkt i kontekst- og maktanalyser, bygd på et mangfold av kilder, for å unngå å opprettholde skjeve maktstrukturer og ulikhet.
- Anerkjennelse og støtte sivilsamfunnsaktører i deres rett til å vise motstand, sentrale rolle som vaktbikkjer overfor private utbyggerinteresser og forsvarere av natur, miljø og leveste.
- Norfunds mandat bør endres for å understøtte arbeidet for en rettferdig omstilling.
- Norge må støtte og fremme lovgiving som har som mål å styrke demokratisk kontroll, hjemfall og allmenn tilgang på energi.
- Norsk støtte til grønne investeringer bør vurdere flere former for eierskap hvor verdiskapningen tilfaller lokalsamfunn, for eksempel gjennom kooperativer.
- Norge må stille krav til ivaretagelse av urfolksrettigheter, medvirkning og reelt fritt forhåndsinformert samtykke for alle berørte grupper i nye fornybarprosjekter.

Executive summary

In line with the green transition, we see an increase in so-called green investments. This may involve biomass production for carbon sequestration, land encroachment to produce renewable energy or extraction of strategic minerals. At the same time, we are seeing an increasing number of conflicts between developers and local populations in the wake of such processes. This report points to a clear trend where green investments lack the support of, and anchoring within, affected local communities – instead solely benefiting commercial actors. If the current model for green investments is scaled up without questions being raised as to who benefits and who loses, we risk an *unjust transition* that violates fundamental rights and reinforces global structural inequality.

It is both imperative and urgent to transition away from fossil fuels. At the same time, unless a rigorous framework for responsible green investments is put in place, we risk losing support for this transition, and further delaying it as a consequence of polarisation, conflict and legal processes.

The Norwegian People's Aid's point of departure on this issue is borne of our close collaboration with organisations and movements in the Global South, active in regions with very low carbon footprints. They express concern that escalating green investments will contribute to depriving their access to land, further degrading nature and negatively impacting their livelihoods. We have witnessed investments made without an adequate power analysis and with little understanding of which actors are strengthened or weakened as a result of these investments. Many of our partners have been in this situation themselves and demand not only to be heard or compensated – but *the right to say no* to these investments when their livelihoods are threatened.

Norwegian aid funds are increasingly being used to leverage more green capital, but there needs to be a greater focus on the qualitative and distributional impact of these investments. Beyond the metrics of private economic growth, we need to put regulations in place to secure a *just transition*.

Through the Norwegian Climate Investment Fund, Norfund has been given a central role in managing Norwegian investments in renewable energy outside Norway, and Norfund has already supported several renewable energy and forestry projects. The report points to several areas where Norwegian business actors, with support from Norfund or through the fully state-owned enterprise Statkraft, have undermined key principles of a just transition.

In **Mozambique**, Norfund has been crucial in enabling the company Green Resources to become East Africa's largest industrial forestry company.

- The project has displaced small-scale farmers in a process that has been described by several stakeholders as a land grab.
- Green Resources has made major interventions in the local environment, while the climate impact of its operations is highly disputed.
- The project has been characterised by false premises and a lack of transparency and due diligence prior to implementation.

In **Honduras**, Norfund jointly owns two solar parks with Scatec and KLP.

- A key business partner in the project was the Honduran businessman David Castillo Mejia, who has been found guilty of complicity in the murder of environmental and indigenous activist Berta Cáceres. Through its activities, Norfund has contributed to strengthening the power of the Honduran elite.
- Scatec, Norfund and KLP have sued the Honduran state through an investor-state dispute resolution mechanism due to non-payment and disputes over the renegotiation of a power purchase agreement.
- People who have opposed the project development have been criminalised and have had to flee.

In **Chile**, Statkraft is involved in a conflict over a hydropower plant along the Pilmaquien River.

- Local resistance from the Mapuche indigenous people has been met with gunfire.
- Statkraft has bought concessions that were privatised under the Pinochet regime, and this acquisition has enriched several key players from the military dictatorship.
- The implementation of free and prior informed consent, a requirement in cases affecting indigenous peoples, has been inadequate.

Det finnes rammeverk for god næringslivspraksis for å hindre brudd på There are frameworks seeking to prevent the violation of human rights, and we assume that compliance with these are followed. This report makes **seven** main recommendations to the government to ensure that green investments contribute to a just transition.

- Norway's green investment strategy must prioritise supporting measures that meet the needs of marginalised groups and strengthen their position.
- Norwegian support for renewable energy must be founded on a thorough analysis of both context and relations of power, built on a diversity of sources, to avoid reproducing inequality.
- Recognise and support civil society actors in their right to resist, their key role as watchdogs against private developer interests and defenders of nature, environment and their way of life.
- Norfund's mandate should be changed to support the work towards a just transition.
- Norway must support and promote legislation that aims to strengthen democratic control, rights of reversion and universal access to energy.
- Norwegian support for green investments should strengthen the diversification of forms of ownership in order for more value benefiting local communities, for example through co-operative forms of ownership.
- Norway must set requirements for safeguarding indigenous rights, participation and genuine free prior informed consent for all affected groups in new renewable energy projects.

Foreword

Climate crisis is upon us. If we are indeed all in the same boat facing this accelerating calamity, this is a vessel starkly divided along class lines in which the most marginalised have slim chances of reaching a lifeboat.

Decarbonising the economy is a vital process from which no one can opt out and the current state of the climate compels swift action at a massive scale. Yet, the so-called *green transition* tends to be discussed in a rather technocratic and depoliticised way. This report, however, aims to inform discussions on fundamental political questions: Whose voices are heard and whose knowledge is valued when planning the transition? Who benefits and who loses out in our quest for a sustainable future? These are foundational questions that have to be asked in the time ahead for the green economy not to exacerbate already existing patterns of injustice and inequality based on extraction and exploitation.

To a much greater extent, the people and communities that already face the increasing impact of climate change need to be involved in how the transition away from fossil fuels is carried out. This is very much in line with an old saying: If you do not have a seat at the table – you’re probably on the menu.

This report investigates green investments through the lens of global inequality and human rights, showcasing several illustrative cases where green and social issues fail to be considered together. Norwegian People’s Aid (NPA) collaborates with partners that work towards a more egalitarian distribution of power and resources, and this report is informed by their ongoing struggles for land and justice.

Introduction

In the process of phasing out the vast energy system relying on fossil fuels, a whole new infrastructure and new value chains of renewable energy have to come into place. This is essential to lift millions from energy poverty and for the *dual* commitment to social and environmental sustainability presented in the United Nations' sustainable development goals (SDGs).

There are a wide range of positive effects, long and short-term, of switching from fossil to renewable energy (Union of Concerned Scientists, 2017). The faster we fully take on this challenge, the better our chances will be of staying inside the targets determined by the Paris Agreement of limiting global warming to 1.5 degrees. Still, green investments have their own environmental and social impacts which require the involvement and critical assessment from both communities and civil society to avoid or minimise potential harms (ICNL, 2022). While this report showcases projects which in one or more aspects have contributed to an increased risk of human rights violations or increased inequality, it is important to underline that this does not amount to an overarching critique of investments into renewable energy and mitigation in general. Rather, the current state of the world's climate leaves no viable alternative to upscaling these technologies in a rapid fashion, unless aiming for a future where large areas of the globe would be uninhabitable.

It is important, but not enough merely to strengthen frameworks for consultations and due diligence of new green developments. The question of *ownership* of green investments and the *distribution* of the values they generate is also foundational in two major ways – both in the struggle against global inequality and for the transition to get the popular legitimacy needed to pick up pace and momentum. Local resistance cannot be removed from the question of who benefits and who has a say in the project. Today, affected people risk losing access both to land and resources, while commercial interests are the principal beneficiary.

Common themes from this report's cases are the lack of information, in which highly exaggerated prospects of local employment and development are widely professed before project initiation. Lacking participation and consultation of affected parties prior to new projects is also predominant. Another recurring theme is the deep-seated connection between the state apparatus, elites and foreign capital, showcasing how an entry into certain markets can be prone to corruption, land grabs and increased inequality.

In the Central American republic of Honduras, the tension between an exclusionary and a just transition is highlighted. In the wake of the 2009 military coup, a corrupt regime oversaw a wide-ranging liberalisation of the energy sector, and renewable companies established several projects under an extraordinarily favourable framework. When a new progressive government in 2022 passed a law that sought a larger public share of the values generated by renewables, the state was subsequently sued through an investor state dispute settlement mechanism by several Norwegian investors, among them the state-owned Norwegian fund for developing countries, Norfund. While Honduras took a leap in pursuing a just transition, the Norwegian investors answered with exertions of pressure through

the controversial arbitration tribunal ICSID. This is just one example where Norwegian actors have failed to address inequality when dealing with green investments.

Until now, the dual commitment of ensuring social and environmental sustainability has been severely lacking, with the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association (2021: 4) holding that:

“[...] many initiatives aimed at shifting to renewable energy have not been designed and managed so as to build resilience within affected communities, including workers and indigenous peoples, and to reduce inequality.”

This inquiry has taken a critical look at enterprises with an environmental claim which have failed to integrate key aspects of social justice and human rights. We have sought to draw important lessons from these cases, proposing concrete policy measures for how to bridge the existing divide as well as a set of principles which should inform future discussions on how to ensure a just transition for all. Implementing these is no easy task, but one thing is increasingly clear: Green investments cannot primarily be a means of private enrichment realised by excluding affected parties. This will risk stalling the transition with increased conflict, legal disputes and polarisation. In the crucial years ahead, we simply do not have time for exclusionary and unjust processes.

An unjust transition risks exacerbating conflicts over land

Faced with the colossal challenge of climate change and the repercussions on land use from green investments, it is more important than ever to establish a concrete framework for social dialogue and local inclusion, as well as an overall policy geared towards tackling inequality.

Access to land will be a major overarching factor structuring how global inequality will develop in the years to come. Most scenarios on how to achieve the targets of the Paris Agreement involve ramping up renewables to a level that requires large swaths of land. Land-intensive green investments include land-based carbon sinks, the location of renewable installations such as solar panels or windmills as well as corresponding infrastructure. In turn, these technologies need new material inputs that also rely on extensive mining and rare earth minerals, which are predominantly pursued in the Global South (Hamouchene, 2022a). The impact of green energy on land use is relevant throughout the value chain and life cycle of renewables, from mining, deployment to decommissioning.¹ A major reason for the spatially extensive nature of renewables is due to their lower power densities in relation to fossil fuels (Scheidel & Sorman, 2012). This is particularly true for solar and wind, which according to Gross (2020) requires at least ten times as much land per unit of power

¹ ICNL (2022a) briefly addresses the environmental and social implications of waste generated by renewables, which tends to end up in the Global South.



Farmer Alifa Aide now has to travel 40 km from his home to reach the field where he grows his crops.

(Photo: NRK/Truls Alnes Antonsen)

as coal or gas-fired power plants, while generally being located in areas where resource availability is best. This raises concerns over who might be displaced and how decisions about localisation will be made in the green transformation (McCarthy & Thatcher, 2019).

Areas rich in natural resources are increasingly looked upon as potential grounds for green investments. These investments risk exacerbating inequality and violations of human rights, if their deployment is left to an unchecked logic of maximising profit.

Risks of human rights violations

The upscaling of renewable energy will be immense in the coming years, with forecasts of providing one-third of the world's electricity by 2025 (IEA, 2023). Ultimately, the ensuing sharpened competition for land might put human rights on the line, with increasing reports of threats against human rights defenders opposing renewable energy projects. Defending the environment and standing up for fundamental rights is associated with an immense risk for civil society, with activists involved in work relating to land, indigenous and environmental issues comprising the majority of human rights defenders that were killed in 2018 (ICNL, 2022).

Overall, the renewables industry has shown a poor track record in questions of human rights (BHRRC, 2020a) and some have gone as far to describe human rights as “the blind spot of the green economy” (Bergius, Benjaminsen & Widgren, 2017: 1). On the same note, a meta-study of over 332 cases (Sovacool, 2021) has identified different negative processes associated with the transition to low-carbon energy, namely: Enclosure of land or resources, exclusion in the planning process, encroachment, (i.e. destruction of the environment), or entrenchment of increased inequality and vulnerability.

A growing trend of authoritarianism and a shrinking space for civil society is itself diminishing the space for social forces that can push for a just transition, showcasing the intrinsic link between the struggle for democracy, human rights and the environment. This tendency is not just emerging from countries in the Global South, but a tightening in on the right to protest and other coercive actions against the climate movement has also been observed in Global North countries, limiting the extent to which civil society can influence the public and decision makers (ICNL, 2022: 5).

The Business and Humans Rights Research Council (2020a) has noted allegations of human rights abuse in every region of the globe and across all types of renewable energy. They have also warned that the patterns of violence that have been characterising the fossil industry are now being replicated across the world in renewable energy development (BHRRC, 2021: 4).²

Inequality

Reducing global inequality is an area of focus for the Norwegian government. This report aims to inform the debate on how this can be achieved in the context of the increasing number of green investments.

There is a range of literature covering inequality and its detrimental effects on society in general, (Wilkinson & Pickett, 2010), development (NPA, 2012, Agenda, 2023) as well as climate mitigation and the unequal effects of climate change (Chancel, Bothe & Voituriez, 2023). While this report hones in on the particular social effects of green investments, inequality plays into the fight against climate change in different ways. First, social and economic inequality leads to increased vulnerability to climate change. Second, without addressing the *social sustainability* of green investments, projects that are foundational for the transition away from fossil fuels risk getting bogged down by local resistance, polarisation and legal disputes. Correspondingly, a top-down energy transition that sidelines affected populations and civil society is likely to face greater opposition (ICNL 2022). The Intergovernmental Panel on Climate Change (IPCC), the most authoritative

² It is important to underline here that the social structures surrounding the fossil industry are in no way exempt from the concerns raised over green investments. An additional factor is the geographical concentration of fossil reserves in authoritarian states. In this case, decoupling from the fossil economy holds a potential of democratisation.

W The struggle for equality, inclusion and human rights is not just desirable on normative grounds. For the world's leading experts on climate change, it is a *precondition* for enabling the change we need.

voice on climate science, has increasingly pointed to the intrinsic link between inclusion, justice and successfully addressing climate change. In its 2023 synthesis report (IPCC: 33) the panel holds that:

“Adaptation and mitigation actions, that prioritise equity, social justice, climate justice, rights-based approaches, and inclusivity, lead to more sustainable outcomes, reduce trade-offs, support transformative change and advance climate resilient development”

The IPCC further holds that redistributive policies across regions, shielding the poor and vulnerable, can help reduce tradeoffs with sustainable development goals, while

“Attention to equity and broad and meaningful participation of all relevant actors in decision making at all scales can build social trust which builds on equitable sharing of benefits and burdens of mitigation that deepen and widen support for transformative changes.”
(IPCC, 2023 pp. 33).

Thus, the struggle for equality, inclusion and human rights is not just desirable on normative grounds. For the world's leading experts on climate change, it is a *precondition* for enabling the change we need.

Increasingly, we face the challenge of accelerating the transition while also ensuring a just and inclusive process. As cases showcased in this report reveal, failure to respect human rights and principles for a just transition can result in project delays, legal action, and an overall blow to the legitimacy of the transition itself. As stressed by the Business & Human Rights Resource Centre (2018: 1), we cannot afford to slow the critical transition to renewables with these kinds of impediments.

The fight against inequality has to be carried out along many fronts. We need a large portion of political will and better systems of governance. However, none of this will be possible without popular organisation and mobilising. This is why a *just transition* requires that social movements and civil society organisations are both supported and protected.

Principles for a just transition

Justice has to be a central ingredient in the transition to a post-carbon society. Two of the principles underpinning such a transition according to Atteridge & Strambo (2020) are the tackling of existing social inequalities, while ensuring a transparent and inclusive planning process. According to the authors, it is imperative to create a wide local engagement with transition planning, drawing on many different stakeholders that can identify and address challenges and risks. This emphasis does not come to the detriment of the transitional process itself, however. Another of the main principles holds that the transition has to ensue swiftly and at scale, all the while avoiding putting the livelihoods of future generations at risk. We have to act, and we have to act now – but with a maximum effort to ensure a just and inclusive process.

The Business and Humans Rights Resource Centre (2021) has provided a framework for energy justice, promoting participation in the development of energy projects. Noting that this framework is designed with large-scale energy projects in mind, we here apply a revised framework which encompasses any type of green investment, informed by the aforementioned principles and the findings from the IPCC.

The first element entails **distributional justice**: Asking who wins and loses from a green investment while considering a wide range of both positive and negative impacts that might come from a project. When assessing distributional justice, it is important to apply a multi-scalar perspective, since certain benefits such as increased grid capacity in a country might be favourable to certain actors, this might not leave any benefits to the surrounding community of a project, who has faced the main impacts in the first place.³

The second element is about **procedural justice** which is concerned with decision-making and participation. Participation goes beyond mere consultation (the opportunity to say yes or no) but should allow for a range of perspectives and opportunities to engage in the project in question. This should also as a minimum include free, prior and informed consent (FPIC)⁴ as well as due diligence which is specified in the UN Guiding Principles on Business and Human Rights (UNGPR).

Recognitional justice is the third element, expressing the need to recognise already existing structures of injustice. Different groups and actors might have widely different starting points and means to access processes. This includes populations previously excluded such as people subjected to colonialism and historical processes of domination and other particularly marginalised groups, acknowledging that different groups might value resources such as land differently.

Finally, **the right to resist** is a key to ensure the protection and safety of people protesting green investments, or who are resisting the privatisation of already existing projects. There is a growing trend of criminalisation, persecution and killings of activists in opposition to land resources, showcasing the need to protect fundamental human rights.

In brief, the framework advocates ensuring procedural justice, tackling existing

3 While distribution is one of the main ways to address inequality and can go a long way towards mitigating and compensating for negative outcomes of a project, it does not address the root causes of the project in itself. Here, a more fundamental critique has to address the wider economic system which compels profit-driven growth.

4 While free, prior and informed consent is usually addressed in relation to indigenous peoples rights, it is also referenced as a principle that should have a more universal applicability. A concept arising from the Global South, the Right to Say No has been presented as an extension of FPIC, involving a stronger emphasis on grassroots agency as well as expanding the scope beyond indigenous peoples only.

inequalities, the recognition of a range of stakeholders all the while ensuring the essential right to voice opposition. We believe that this framework does not slow the transition, but rather that rigorous standards, participation and the struggle against inequality are prerequisites to maintain the legitimacy and momentum needed for the time ahead.

Methodology

Through desk-based case studies, supplemented with stakeholder and expert interviews, this report has sought to provide illustrative examples of the workings of Norwegian green investments and their impact on inequality and human rights. Observation has also been applied as a method, both in order to represent and participate in, and represent social reality (Kearns, 2016). The first week of May 2023, the NPA supported a delegation of representatives from the Mapuche-Williche people that came to Oslo to put forward their grievances to Statkraft and their hydropower project *Los Lagos*, currently under construction in southern Chile. Throughout the week, we were able to follow several meetings and events and get a deeper understanding of the conflict by meeting with several actors such as representatives from the Norwegian State, members of parliament, journalists, the labour union, civil society, the academic community and Statkraft. Through this *participative* observation, the complexity and multi-faceted nature of the conflict was easier to appreciate.

Rather than diving further into the quantitative aspects of green investments which have been elaborated better elsewhere,⁵ this report aims to address qualitative aspects of the green transition and take a deeper look into illustrative cases in which inequality is reproduced in the name of the transition itself.

Through a qualitative approach, this report has sought to make analytical rather than statistical generalisations (Ragin & Amoroso, 2011). This means that the aim has not been to find corroborated numbers covering *all* cases in which green investments have driven inequality and undermined human rights, but rather to show – in specific cases, and through a range of different sources – that this takes place. Through a qualitative approach, the positions and subjective experience of certain actors otherwise not given a voice, can be brought forth. There is also a comparative element to the study, in which the different cases have made it possible to uncover common themes and tendencies that appear across the samples.

We have conducted semi-structured and in-depth interviews, supplemented with more informal interviews with key informants and NPA staff with regional expertise, as well as regional partner-organisations.⁶ NPA's approach to international engagement is based on the strengths of our long-term work: understanding the local context and collaboration with local partners who have local access and trust.

5 See for example ICNL, 2022, EJ Atlas, BHRRC, 2018 & 2021

6 See list of respondents

Green colonialism

As a tool for development, private investments are attaining an increasingly central position in many Western countries. In parallel with rising temperatures and a cautiously increasing international commitment to tackle climate change, these investments have taken a ‘green’ turn which can be seen from the growing investments in a range of economic activities with an environmental claim, such as renewable energy, forestry plantations and carbon trading. These latter technologies operate within a market-based logic in which mitigation tends to be allocated in the Global South to offset emissions in the Global North (Lyons, Kristen & Westoby, 2014: 13). On the other hand, energy production can take the same form as the uneven trade relations of colonial times, in which energy is yet another raw material to be exported to the North, together with the flow of value generated by the projects. According to Hamouchene (2022b, n.p.) green colonialism can be defined as:

“[...] the extension of the colonial relations of plunder and dispossession (as well as the dehumanization of the other) to the green era of renewable energies, with the accompanying displacement of socio-environmental costs onto peripheral countries and communities.”

Green colonialism in Western Sahara

- While green colonialism can play out in a more structural and *neocolonial* manner as uneven extraction of value and resources, green investments can also take the form of straightforward settler-colonial relations. For instance, Morocco has been accused of greenwashing its occupation of Western Sahara, granting concessions for the construction of renewable energy on occupied territory (WSRW, 2021). The Norwegian asset manager Storebrand has withdrawn investments in the companies Siemens Gamesa and Enel, but other Norwegian companies such as DNB, the pension fund KLP as well as the Norwegian Government Pension Fund still have shares in companies contracting on occupied land.

Green grabbing

Another dynamic that plays into the wider process of green colonialism is the novel term *green grabbing* used to describe the dispossession of people from their lands, justified by claimed environmental aims. For large portions of the world’s poorest population, access to land is foundational for secure livelihoods. Private investments into natural resources such as mines and large-scale energy projects today undermine this vital connection to basic life conditions and culture for millions of people, through displacement and land grabs. Land grabbing can be defined as the sale or long-term lease of national or communal land without appropriate consultation and compensation (Cheeseman, Husaini & Bertrand 2019). It shares similar connotations with what geographer David Harvey (2003) calls accumulation by dispossession, where an unequal re-partition of property rights results in the removal of local communities while paving the way for new cycles of capital circulation.

While national policy has underlined the importance of public ownership at home, public companies undermine this approach beyond domestic borders.

Cotula (2013) lists several characteristics of a land grab including that they predominantly affect poor and marginalised groups, and that the ones adversely affected do not enjoy the benefits from a project such as jobs or affordable access to the energy that is produced. Other characteristics are that potential new employment opportunities do not compensate for the deprivation of livelihood as a result of the dispossession of land, and there is an unequal balance of power and access to information between the investor or state and the local population. A range of promises spanning from new jobs to investments in infrastructure might be given, but not fulfilled. The given promises are oftentimes not written down, or the local community does not have access to the contract. What has been a voluntary transaction, then, can still be a land grab if based on deception and false promises. The term 'green grabbing' expands on the concepts referring to the appropriation of land and resources for environmental ends (Fairhead, Leach & Scoones 2012).

The contradictions of Norwegian ownership – public at home, private abroad

For Norway as an energy nation, it has been of key political importance to secure national ownership of what has been viewed as a strategic infrastructure, namely hydropower. As a newly independent country, Norway enacted the concession laws in the early 20th century, placing strict regulations on the rights of use of national hydropower resources, with terms of escheat incorporated into law in which ownership would fall back to the public after a period of sixty years through right of reversion.

The Norwegian position of emphasising state ownership over hydropower was consolidated through revisions of the law in the late 2000s (Heiret, forthcoming). Abroad, however, Statkraft has been buying up formerly publicly owned hydropower plants, such as in Brazil (Gjerde Lied, 2023), and Norwegian capital supported by Norfund, SN Power, has also been involved in buying up major former state-owned hydropower plants in the Philippines, which had been sold to service debt (Skjold 2015: 219). This was facilitated and encouraged by a shift in Norwegian development policy. The result of this outward turn can be read from the SN Power annual report (2006: 3), stating explicitly that:

“we are now positioned to take advantage of the on-going privatization process which will lead to several hundred megawatts of state-controlled generation assets being sold off to the private sector”

It is a paradox that while national policy has underlined the importance of public ownership at home, public companies undermine this approach beyond domestic borders, effectively blocking the very same developmental path that was once followed by Norway.

Norfund

Norfund, first established in 1997, saw a significant increase in its funds in 2022 with the establishment of the Norwegian Climate Investment Fund (NCIF). The fund will increase its capital by up to two billion NOK annually in the next five years (Norfund, 2022b).



Norfund invests in private enterprises in the Global South as a minority stakeholder in partnerships. Norfund aims to go into projects that would otherwise not see sufficient investment, by entering into high-risk regions and projects, while also aiming to generate investments from additional shareholders. Norfund is today seen as an important tool for Norwegian development aid and enjoys lavish public funding. However, it has also received criticism for skewing its investments towards mid-income countries rather than poorer regions, as well as for entrenching already existing power relations in the countries of investment through bolstering the position of elites. Norfund restricts their support to actors with the ability to absorb capital, thus favouring already well-off segments of the society rather than targeting the needs of the most vulnerable (Eriksen et al., 2021: 4).

A report commissioned by Norad (2015) found that the developmental effect of Norfund has not been measured systematically. In every given case, considerations of profitability and development will constantly have to be balanced. Here, the structure and guidelines of Norfund lean towards ensuring the former, especially since it is instructed to keep investments below 35 percent of the company's equity (Norfund, 2022a). As a minority shareholder, Norfund relies on capital-strong partners which tend to invest in middle income countries. When it comes to human rights, another Norad report (2018) calls for an overall strengthening of Norfund's human rights policy, noting that the fund is more concerned with project risk over assessing the risk of violating stakeholder rights. We will now turn to a review of different cases in which green investments from Norwegian capital, in part through the support of Norfund, have led to detrimental effects in regards to inequality and human rights.

Mozambique

– A state-sponsored land grab

While rich in natural resources, Mozambique is one of the poorest countries in the world – with corresponding high levels of inequality. Far from having trickled down, economic growth has been concentrated in fewer hands, while basic democratic freedoms have been in a state of decline. Mozambique also faces severe vulnerability towards climate change, and was among the countries most affected by extreme weather events in 2019.⁷

In Mozambique, all land is formally owned by the state, something that makes local communities vulnerable in the case of state concessions to private investments. Between 2004 and 2009, three percent of total land in Mozambique was granted in concessions to investors, amounting to seven percent of arable land (Mousseau & Mittal, 2011), much of which was related to large-scale tree plantations.⁸ After the wave of land concessions in this period, a moratorium on investments covering land over a thousand hectares was in force until 2011 as a response to growing levels of conflict. On paper, Mozambique has a land law which protects local communities' rights of tenure. The 1997 Land Law gives local communities the right of land use if the occupant has been present for a period of over ten years, and a potential investor needs to have two meetings with the local community before pursuing a potential development. However, a general problem with land titles is that community land often is ruled by customary law which rarely is documented in writing, while legal practice gives priority to formal documentation over customary law. Levels of formal registration of land use rights (DUATs) range between 10 – 28% in total (Breidlid, Storbakk & Handberg, 2013).

In the 90s, Mozambique was sought out as one of the pilot countries for a shift in Norwegian development aid through a new government policy (*Strategi for støtte til næringsutvikling i Sør*) in which private capital was to replace public ownership as the motor for economic development, aided by risk capital from the development budget and the facilitation of investments from the diplomatic structure (NMFA, 1998). Much in line with the prevailing zeitgeist, this policy shift soon manifested itself in the form of a Norwegian forestry company called Green Resources, whose evolution into becoming East Africa's largest wood processing and forest development company would not have been possible without the assistance of different branches of the Norwegian state. As we shall see, the road leading up to this position was paved with objectionable handling of small-scale farmers and their communities, while critics have put the company's environmental claim under thorough scrutiny.

⁷ <https://www.germanwatch.org/en/19777>

⁸ See World Rainforest Movement & the Timberwatch Coalition, 2016: <http://wrm.org.uy/fr/files/2016/10/2016-10-Plantations-in-ES-Africa-TW-WRM-med-screen.pdf>

Norwegian capital in African forestry – Norad, Green Resources and Norfund

The Norwegian forest company Green Resources started its operations in East Africa in 1997, and managed 38,000 hectares of plantation forest in Mozambique, Tanzania and Uganda in 2021 (Benjaminsen & Svarstad, 2021: 223).

Norwegian interests in East African forestry

- Norwegian engagement in East African forestry traces back to Norad’s venture into Tanzania in the 70s. The loans of Norad were transferred to Norfund in 2001, in what later became part of Green Resources. Around 2008, Green Resources started clearing the land which it had leased from the state of Mozambique in order to plant eucalyptus and pine trees. In 2009 Norfund contributed an additional loan of seven million USD for further investment in fixed capital, as well as a high-risk loan with a six year tenure of fifteen million USD in 2012 (Bjergene, 2015, Norfund, 2023).
- Norad played a central role by providing donor funding and facilitating Mozambique’s first afforestation project and UN certified carbon credits through the Clean Development Mechanism (CDM).

Overall, public Norwegian actors have had a decisive role in establishing and scaling up forestry plantations in Mozambique. Norad approved support of plantations in Niassa in 2010 through funding a pre-study, paving the way for larger scale investment in which Norfund later took part. A merger between Green Resources and the Global Solidarity Forest Fund (GSFF) in 2014 left Green Resources with a staggering 130,000 hectares in Mozambique which would not have been possible without Norfund’s support (Bjergene, 2015).

In 2018, Norfund came in as a direct shareholder, in a process where defaulted debt was written off against Norfund receiving shares in the forestry company. Active ownership also comes with increased responsibility. In 2022, Norfund sold out of GRM, only to engage in a buy back together with Finnfund and Australian capital through the new initiative *African Forestry Impact Platform* (AFIP).⁹ The new acquisition was sold to the public as an investment in sustainability, as made clear by Norfund CEO Tellef Thorleifsson:

“As long-term investors in Green Resources, Norfund is pleased that the board and management has succeeded in developing the company into what will now be the core of the new fund focused on developing sustainable growth of the African forestry sector, thereby creating jobs, reducing deforestation, and addressing climate change” (New Forests, 2022).

⁹ <https://www.norfund.no/new-platform-will-scale-sustainable-forestry-in-africa/>

Norfund has supported the projects with over half a billion NOK, while smaller contributions have also come from Norad and Norec, supporting the project with five and four million NOK respectively (NRK, 2023b).

Although Green Resources originally had plans of selling UN certified carbon credits (CDM), the UN's criteria was not met. Today, only three percent of the company's revenue comes from carbon credits in East Africa, through the voluntary credit market (VCS) – although none of these come from Mozambique (NRK, 2023a). As a result, the commitment of using ten percent of the generated profits from carbon credits for social investments in adjacent communities has not been fulfilled.

A report commissioned by NPA partner organisation UNAC and the environmental organisation Justiça Ambiental (Calengo et al., 2016) finds that the activity of Green Resources has affected more than seventy local communities in northern Mozambique in regards to social, economic, environmental and cultural impact. Moreover, it is held that the activity of Green Resources has brought few benefits for the local population. For instance, Green Resources has cleared vast spaces of vegetation, of which significant areas have since laid idle, utilising only a fraction of total leased land, while the company only pays rent for areas with active plantations (Breidlid, Storbakk & Handberg, 2013: 7).

A state sponsored land grab

The projects of Green Resources in Mozambique are located along the Nacala corridor, with easy access to infrastructure and fertile lands. These are favourable conditions for both the forestry industry and farmers alike, which has led to competing interest and displacement of the latter group (Bistandsaktuelt, 2018). Local farmers have had to abandon the lands which had been cultivated for generations in exchange for land miles away from the established communities. The need for transport has greatly increased (Bjergene, 2015), and associated costs have led to families having to stay at their new farmland for weeks and months on end, far away from basic welfare services such as health care and educational facilities. In the Nampula-province, farmers have told of whole villages being displaced due to Green Resources' land acquisition (NRK, 2023a).

The activity of Green Resources in Mozambique has been described by several of the organisations on the ground as *land grabbing* (Justiça Ambiental & UNAC, 2011, Calengo et al. 2016, interviews with Sainda & Macaringue, 2023), the same term applied by Bjergene (2015) which also draws on the conceptual novelty of the *green grab* to describe the overall process of accumulation by dispossession in the name of the environment in Mozambican forestry.

The commitment to food security has long been a theme for Norwegian development policy, and has recently been put even higher up on the agenda with the Minister of International Development naming this as an area of priority. Therefore, it should be of particular importance to recognise how the process of land grabbing directly undermines these efforts (Åsnes, 2023). Fieldwork from 2015 found that the food

security of locals in Niassa had been exacerbated due to the hiring of wage labour in the sowing season, only to be laid off without any income a couple of months later, when the season was over (Bjergene, 2015). A holistic approach to tackling world hunger will at the very least have to make sure development funds do not undergird processes of uprooting self-subsistence farmers. This is especially important in a country like Mozambique, where eighty percent of the population cannot afford an adequate diet.¹⁰ NPA partners highlight the fact that land is the most fundamental asset for many Mozambicans who risk impoverishment and marginalisation if their access to land is deprived, particularly as the urban labour market cannot sustain the influx of rural migration.

Environmental effects

Based on research of Green Resources in Uganda, several scholars have highlighted adverse effects on local livelihoods in forest-based carbon sequestration projects (Fischer, Hajdu & Giertha, 2016, Lyons & Westoby 2014). Moreover, the ecological effects of monoculture plantations, so-called ‘green deserts’, has also been underlined. A global meta-study from 2022 (Mallen-Cooper et al.) found adverse effects on both the soil and groundwater levels tied to eucalyptus plantations. While the biomass ties up CO₂, the soil is depleted of nutrients, has less microbial activity than native plant communities and faces acidification, while water resources are drained by eucalyptus – all of which has a significant effect on the local environment. In addition, water intensive forest plantation like eucalyptus risks exacerbating droughts in already arid land. Our partners in Mozambique have confirmed the dismal record of biodiversity and accessible water resources impairing agricultural opportunities in areas with eucalyptus plantation (interview with Sainda, 13.02.2023). Calengo et al. (2016) share the concerns over biodiversity loss, and point to the possible connection between monoculture plantation and problems of drought and outbreaks of pests on crops in the vicinity of plantation areas.

While Green Resources claims to run a sustainable business, an article by NRK (2023c) showcases how Green Resources in Mozambique have serious flaws in their climate accounting, which is not reviewed by independent third parties. Nor does it consider the adverse climatic impact of clearing already existing vegetation in order to facilitate plantations, thereby also affecting the CO₂ uptake capacity of the soil.

Employment

The prospect of waged employment has been presented as a key outcome of the forestry investments by company and government representatives alike (Bjergene, 2015). Today, Green Resources is one of the largest employers in the areas which they operate. However, the number of jobs actually created has fallen well short of stated ambitions. In the province of Nampula alone, Green Resources projected generating direct employment of 12,000 people (Bistandsaktuelt, 2010). Over a decade on, the verdict is that there is no activity in Nampula – and hence no

¹⁰ See: <https://www.wfp.org/countries/mozambique>

employees. In the peak year of 2010, the company had 1029 permanent workers in Uganda, Tanzania, and Mozambique in total – a number that had sunk to 555 in 2022 (NRK, 2023a). The discrepancy between what was promised and what was realised in terms of jobs and development has been confirmed by independent fieldwork, in which the managing director for Green Resources Niassa at the time acknowledged that the assessment of jobs and social responsibility had been “oversold”, generating later conflict with communities (Bjergene, 2015: 102).

While permanent employment could give economic opportunities for locals that had formerly been relying on agriculture, the short-term and seasonal character of provided jobs has in several cases not been able to compensate what has been lost in terms of disposable time for agricultural activities as temporary workers (Breidlid, Storbakk & Handberg, 2013, Bjergene, 2015). As a result, food security has been directly negatively affected. As one of the respondents stressed, seasonal and temporary contracts are not sufficient, “because people need food on the table every day”. Furthermore, the jobs provided rely heavily on specialists with credentials usually not found amongst the local community (interview with Sainda, 2023).

While waged labour is alluring for many locals, economic turbulence and squeezed liquidity in Green Resources have led to workers not getting paid (Bjergene, 2012, 2015). Reports of delayed salary have been reported for over a decade, also after finally having started to generate profits (NRK, 2023a). This remains a stark contrast to the top level of the organisation, with the company CEO enjoying an annual salary of 401,000 US dollars (Benjaminsen & Svarstad, 2021).

Cleaning up

As we have seen, Green Resources have for many years had access to large areas of land which were not put to use and for which they did not have to pay. After Norfund entered as a majority shareholder, a process of handing over land was initiated. The process of land relinquishment is planned to be finalised in 2023. A portion of the returned land has been handed back with planted trees still in place, to the dismay of local residents that are no longer able to use the abandoned plantations for farmland (NRK, 2023b). One of our respondents laments how tracts of land with eucalyptus have been handed back, without the community having been given sufficient training to make use of these resources. For this to have been the case, communities would have to have been included as active participants from the start of the project (Interview with Sainda, 2023).

Norfund is set up to serve as an instrument for Public Private Partnerships (PPP). The rationale behind such partnerships is to generate more capital than what would otherwise be possible, and Norfund constantly re-invests its surplus into new projects. However, since Norfund receives revenue from profitable ventures, it should also take full responsibility in projects with significant economic downsides. This cannot be limited to taking financial losses, but should also entail giving reparations in cases where businesses supported and partly owned by Norfund have

Wind power in Kenya: Lake Turkana

A case in point for a project lacking recognitional, distributional and procedural justice is the Lake Turkana project in Kenya, in which FPIC was not followed nor indigenous peoples recognised as such. The joint Norwegian company KLP Norfund Investments owned 12,5 percent of Africa's biggest wind farm in Lake Turkana, finished in 2019.

The Norwegian investors sold out of all shares in the summer of 2021 to the Mauritius-registered Anergi-Group to an undisclosed sales-sum. Months before the sale, the process leading up to the construction of the wind farm was ruled unlawful (Bistandsaktuel, 2021) and a long-lasting litigation process has delayed the finalisation of the project (Bansal & Green, 2021). Publications by Danwatch and the International Work Group for Indigenous Affairs (2016) have presented detailed allegations of inadequate consultation with indigenous communities and the prevalence of alcoholism, prostitution, and violence in the wake of migrant worker influx to the area. Moreover, the Norwegian NGO FIVAS (2017) has remarked how Kenyan consumers have had to pay for increased electricity prices even after the first turbines started turning, despite the developers' stated goals of reducing the price of energy.

had detrimental social and environmental effects, such as with Green Resources in Mozambique. As an owner with substantial financial capacity and as a tool for Norwegian development policy, Norfund should make sure land handled back is in an acceptable state. Failing to do this, Norfund's activity in Mozambique would amount to the neoliberal practice of privatising profits, while socialising risks.

Early warning signs

Years ahead of Norfund becoming a shareholder in Green Resources, civil society organisations reported on the adverse effects for local communities and lack of consultation surrounding the expansion of Green Resources into Mozambique (Justiça Ambiental & UNAC, 2011, WRM, 2013). Even prior to this, a due diligence report commissioned by the Norwegian Ministry of Finance (2008) rated the risk of failing to obtain UN certified carbon credits through CDM as high, along with a medium risk for social aspects for Green Resources in Tanzania.¹¹ There have been several forks in the road where Norfund has chosen to opt further into Green Resources, despite an increasing number of red flags and reports on negative social and environmental impact coming from a range of different actors. In general, the practice of investing in large-scale biomass production comes with severe social risks, and is at best questionable in regards to the environment. This holds especially true in the context of Mozambique, a country with lacking security of tenure and a multitude of small-scale farmers that require land. Overall, Green Resources' entry into Mozambique showcases how profit-driven biomass and carbon sequestration projects can fail both in respect to environmental and social sustainability. As representatives of the Norwegian state, both Norad as initial facilitator and Norfund as current co-owner of Green Resources bear a heavy responsibility.

Recommendations

- As a minimum requirement for mitigating harms, Norfund and Green Resources should ensure that unused land is handed back to communities in a proper state. This entails removal of eucalyptus and pine where still found, so as to restore the conditions for growing food.
- When investing in land with insecure tenure rights, Norfund should ensure that these projects do not lead to social conflict.

¹¹ Despite repeated inquiries, Norfund has not been willing to disclose their due diligence reports conducted prior to expanding loans to Green Resources.

Honduras

– Strange bedfellows and international arbitration

In Latin America, renewables make up over a quarter of primary energy in the region, double the global average (IRENA, in BHRRC, 2021). Although the region is a frontrunner when it comes to on-grid renewables, it also leads on an alarming statistic. Amidst a significant increase in allegations of human rights violations related to renewable energy projects worldwide, Latin America bears a disproportionate burden, with over 61% of global reported incidents. In the decade following 2010, the continent saw a 1,050% increase in yearly violations, with over 501 cases reported across 17 different countries (BHRRC, 2021).

With a history of military dictatorships, repression of social movements, and a high level of social conflict, this grim statistic might not come as a surprise, but rather underlines the need for measures to protect basic human rights.

Countries with the highest incidence of alleged abuse (Source: BHRRC, 2021)



The general trends in Latin America are amplified in the case of Honduras. Despite its relatively small size, Honduras is the country with the highest number of incidences of alleged human rights abuse related to renewable energy projects in Latin America (BHRRC, 2021: 5).

As well as being one of the most unequal countries in the LAC region,¹² Honduras is also one of the most vulnerable countries in the face of climate change (Delgado, 2019). The Central American country also ranks amongst the highest in terms of violence outside formal war zones (Bull, 2016) and has seen waves of emigration as a result. This has been largely due to the displacement and violence in the wake of multinational companies operating in the country, particularly within hydropower (El País, 2021). In 2009, the progressive Zelaya administration was overthrown in a coup d'état, followed by a repressive neoliberal regime lasting for 12 years. Before the coup, President Zelaya was in the process of expanding peasant land ownership, as well as pursuing constitutional change, which would allow for broad redistributive measures.¹³ Investments in the aftermath of the coup cannot be seen in abstraction from the neoliberal wave of privatisation and deregulations under the banner "Honduras is open for business".¹⁴

¹² See: <https://www.worldbank.org/en/country/honduras/overview#1>

¹³ See avispa.org/business-under-the-shadow-of-the-renewable-energy-sham-in-honduras/

¹⁴ theintercept.com/2021/05/14/deconstructed-berta-caceres-desa/



**View of solar panels in Scatec's
Los Prados solar power plant**

(Photo: Ingrid Fadnes)

Norwegian green investments in Honduras: Scatec and Norfund

The Norwegian company Scatec has invested in two solar energy projects in Honduras: Los Prados and Agua Fria, located in the southern departments of Choluteca and Valle. The Norwegian investors have been criticised for their choice of business partners in one of the projects, as well as having to face severe local resistance. Recently, the investors have been in conflict with the progressive administration of Xiomara Castro over payments for the power delivered by the plants.

Scatec commenced operations at the Agua Fria solar park in 2015, while the smaller Los Prados park was in commercial operation from 2018. The plants operate under a 20-year power purchase agreement with the national utility Empresa Nacional de Energía Eléctrica (ENEE) (Scatec, 2021). Scatec has a 40% stake in Agua Fria and 70% in Los Prados, while the remaining shares are held by Norfund and Norfund KLP Investments.¹⁵ Norfund has committed 292.5 million NOK to the two solar projects, together with the Norwegian co-investors KLP and the Honduran company Potencia y Energía de Mesoamerica (PEMSA)¹⁶ as well as its Panamanian offshoot (DPLF et al., 2019). The projects were also supported by the state actors Export Credit Norway and the Norwegian Guarantee Institute for Export Credits (GIEK), what is today Export Finance Norway (Eksfin).¹⁷

Entanglements with corrupt actors

The original joint venture with PEMSAs was made in 2015, and showcases the deep entanglements between corrupt elites and private capital in Honduras. The previous year, David Castillo, a businessman with a military background, whose corrupt and violent conduct has been thoroughly documented (DPLF et al. 2019), became the sole shareholder of the energy company Producción de Energía Solar y Demás Renovables S.A. de C.V. (PRODERSSA), together with the company in which he played a leading role – PEMSAs (DPLF et al., 2019: 20). The Norwegian partnership with David Castillo came about after consulting with other similar investors in Honduras. David Castillo was at the time the managing director of the company DESA. DESA was developing a hydropower project in Agua Zarca, with financing from the Dutch and Finnish Development Fund (FMO and Finnfund), and he was recommended as a reliable partner. However, the Agua Zarca project was facing strong resistance from the local communities along the river organised in COPINH (The Civic Council of Popular and Indigenous Organisations of Honduras), led by Berta Cáceres. In 2016, Berta was brutally murdered. This led to trouble for the Scatec project, as, in 2018, Castillo was arrested and accused of co-authoring the murder, and was later convicted in 2021.

¹⁵ Correspondence with Scatec, May 11 & Norfund May 31, 2023.

¹⁶ <https://theintercept.com/2022/06/23/honduras-berta-caceres-murder-money-trail/>

¹⁷ <https://www.eksfin.no/no/prosjekter/referanser/satser-pa-sol-i-honduras/>

Norfund, Ficohsa and Berta Cáceres

- Norfund has financed the bank Ficohsa, a central actor during the coup d'état in 2009 (Gulli & Taubo, 2020). The bank has also supported the controversial Agua Zarca hydropower project, opposition to which has been led by Berta Cáceres. Cáceres was an environmental defender and Goldman environmental prize laureate, killed by gunmen, hired by the businessman David Castillo. One of the biggest Honduran customers of Ficohsa is Dinant, which has been producing palm oil for biofuels (Ahmad, 2017). Dinant has also been tied to a range of criminal activities, such as setting private security against smallholder farmers. Although Norfund's investments in Ficohsa have been earmarked to small and medium-sized enterprises (SMEs), its support of Ficohsa has nevertheless contributed to freeing up capital for larger companies with dismal human rights records (LAG, 2015).

While the case against Castillo was being unravelled in 2019, PEMSA's shares were transferred to the joint company KLP-Norfund investments, with Castillo receiving 1.3 million USD in exchange for the transfer of land titles, since areas registered in Castillo's name had been used as part of the project financing guarantee (DPLF et al. 2019).¹⁸

Briefly put, one of the main business associates that oversaw the establishment of the two solar projects that Scatec would later build in Honduras is a convicted criminal who, as we shall see, enjoyed a major personal enrichment as a result. How could the Norwegian investors end up in this situation, and why did their due diligence fail?

During his administration, President Porfirio Lobo Sosa (2010 - 2014) oversaw a wide-ranging liberalisation of the energy sector (Flores, 2018:1). In 2013, reforms were passed to encourage more renewables in the energy mix, with companies producing renewable energy becoming exempt from taxes. This had deep economic repercussions for the country; in 2019, the exemptions amounted to nearly 13% of the state budget (LAG, 2019:20). In stark contrast to the proposed 40% economic rent tax on onshore wind energy in Norway, the two Norwegian-owned solar plants are fully exempt from tax in their first decade of operation.¹⁹

In Honduras, large profits were made by companies that could make quick profits by buying properties, landing a deal with the Honduran public utility company ENEE, and then selling the land, without generating a single watt of energy. Two such companies were acquired by the Norwegian investors (Avila, in LAG, 2019: 21). The joint report by five civil society organisations, entitled *Violence, Corruption & Impunity in the Honduran Energy Industry: A Profile of Roberto David Castillo Mejía* (2019), documents how the contract of PRODERSSA Agua Fría plant (PRODERSSA) with ENEE was obtained just twelve days before former president Porfirio Lobo Sosa left office. This is of special concern, given that a central leader

¹⁸ <https://www.latin-amerikagruppene.no/landsider/land/artikkel/honduras/2020>

¹⁹ See Scatec Q1 factsheet 2023. Available at: <https://scatec.com/wp-content/uploads/sites/7/2023/05/Scatec-Q1-factsheet-2023.xlsx> [Accessed May 8, 2023].

W The profile on Castillo paints a picture of someone that has systematically and over a period of many years made use of every opportunity for personal enrichment through illicit means.

of the Cachiros criminal network, Leonel Rivera Maradiaga, later testified before a US court to making bribes to Lobo in exchange for favourable contracts for the criminal network (DPLF et al., 2019: 20). PRODERSA, which later was acquired by Scatec and KLP, was set up with an alleged front man of the Cachiros in 2013, and David Castillo became a shareholder and president of the company mere months after (Spring, 2020). The joint report concluded that the power purchase agreement with ENEE was the principal asset of PRODERSA at the time of the transfer to Castillo. Castillo contributed the land on which the solar projects would be constructed. From the time the land titles were acquired, in the second half of 2014, to the time a significant capital injection came from the Norwegian consortium, Norfund, KLP and Scatec, over a year later, the value of Castillo's properties had increased fifteenfold.²⁰ All the while, it was Castillo who acquired the necessary contracts, agreements, licences and overall paperwork on behalf of the Norwegian investors (DPLF et al., 2019: 21).

The profile on Castillo paints a picture of someone that has systematically and over a period of many years made use of every opportunity for personal enrichment through illicit means. It is against this backdrop that the Norwegian investors in solar power first entered the Honduran market.

One could hardly have chosen a partner further away from Norfund's vision of ensuring a sustainable economic and social development. While it is easy to think of Castillo as a single "bad egg", it has to be seen in relation to larger structures of corruption, violence and impunity that was let loose in Honduran society after the 2009 coup. Without such a critical analysis, private capital entering similar contexts will be prone to repeating the same mistakes.

Post-coup Honduras proved to be a tremendously difficult context in which to operate for companies, without also engaging with corrupt elites and reinforcing an extremely unequal hierarchy of resources and power. With regards to the two Scatec solar projects in Honduras, there have been reports of false information in advance of construction, co-opting of community members, and a severe lack of consultation with local communities (EJAtlas, n.d., El Pais, 2021, Conexihon, 2018). Local stakeholders have explained how the projects have spurred polarisation and a weakening of the social fabric in their communities.

Local environmental organisations also point to criminalisation as a direct result of the projects (Avila, 2019). Criminalisation can include the phenomena of strategic lawsuits against public participation (SLAPP), designed to silence protestors and human rights defenders through costly and time-consuming legal action – a strategy

²⁰ Notably, Castillo acquired his properties through a mortgage agreement with the Inter-American Corporation for Infrastructure Financing (CIF), which Norfund has also supported with a commitment of 116 million NOK as of 2023. See <https://www.norfund.no/investment/cifi/>

that is on the rise globally.²¹ When the local community surrounding Los Prados set up two protest camps in 2016, charges were pressed against eleven community leaders. The camps were forcefully evicted in 2018 after a judicial order (BHRRC, 2021: 14). For the impacted community surrounding Los Prados, the *right to resist* has been impinged through violent evictions or strategic lawsuits. Moreover, several activists, such as German Chirinos and Isis Ondina, have had to flee the country due to threats or attempted attacks (Taubo & Angeltveit, 2019, Avila, 2019), while several violent incidents surrounding the protest camps in Los Prados have been reported. In 2018, one of the formerly criminalised protestors, Reynaldo Reyes Moreno, was killed. Several sources point to a lack of investigation and unclear circumstances, but it is safe to say that the violent incident occurred in a setting of deep social polarisation and unrest, to which the solar project development contributed (Conexhion, 2018, Criterio, 2018, EJAtlas, n.d.).

Local resistance

In a statement to the Business & Human Rights Resource Centre (2020b), Scatec claims that local resistance to the Los Prados development was small, based on misconceptions, that negative impacts were limited to the construction period and that “most inhabitants were in favour of the project” (Scatec Solar, 2018: 57). However, a citizens’ vote from 2019 shows that 97% of the almost 6,000 participants from the municipality of Namasigüe voted “no” to the question of whether they were in favour of solar plants in Namasigüe, the municipality in which the Los Prados plants are located. The vote had international observers and 26 ballot boxes spread across ten different villages (El Pais 2021). Although not officially recognised, the consultation indicates that there has indeed been significant local resistance to the Los Prados solar parks.

It is important to note that local resistance to solar and other renewables projects is not necessarily directed at the physical installations themselves. Rather, the critique from local communities has often targeted what is perceived as an extractivist model that underpins these projects, with a lack of meaningful participation and with profits concentrated in private hands. This was a recurring theme in comments made by a range of local sources on Scatec projects in Honduras, as well as by Honduran NPA partner Padre Melo (interviewed March 13, 2023).

Local benefits?

Promises of abundant and cheap renewable energy, made in Honduras prior to a range of energy projects initiated in the wake of the 2013 tax break, have not materialised. NPA partners, Movimiento Amplio de Dignidad y Justicia (MADJ) and Coordinadora de Organizaciones Populares del Aguan (COPA), have underlined that the price of electricity increased three-fold in the decade following 2008. Furthermore, the rolling out of large-scale solar energy has mainly benefitted private interests, be it the multinational Scatec or their Honduran business associates.

21 <https://www.business-humanrights.org/en/latest-news/strategic-lawsuits-against-public-participation-slapps-are-on-the-rise-while-resistance-around-the-world-mounts/>

Around Los Prados, locals have claimed that there were ample promises of jobs and social development in the lead up to construction (El País 2021, EJAAtlas, n.d.). During the peak construction periods of the Los Prados and Agua Fria solar plants, Scatec employed 786 and 1,060 workers respectively, the majority of which came from Honduras (BHRRC, 2020a). Scatec's annual reports, on the other hand, reveal that full-time employees range from 12 in 2019 to 18 in 2021. As limited levels of employment during the operational phase apply for solar projects in general, promises of abundant creation of new long-term jobs have been highly inaccurate. This also has to be seen in relation to the loss of livelihoods and subsistence opportunities after the deployment of the solar parks.

The investor-state dispute settlement against Honduras

As this report was being finalised, news arrived that Scatec ASA, Norfund and KLP-Norfund Investments AS had sued the State of Honduras over disputes surrounding the power purchase agreement of the solar parks in Agua Fria and Los Prados. This was done through the International Centre for the Settlement of Investment Disputes of the World Bank (ICSID), a mechanism by which companies can sue states in private courts (COPINH, 2023).²² The new leftist government of Honduras seeks an increased financial room for manoeuvre to ramp up the expansion of renewables, partly through publicly owned projects (Energía Estratégica, 2022). The 2022 law that opened up for a renegotiation of the power purchase agreement (PPA) has the telling, though rather long name “*the Special Law to Guarantee the Electric Power Service as a Public Good of National Security and a Human Right of an Economic and Social Nature*” (authors' translation).²³ As documented, the original PPA led to the enrichment of corrupt businessmen, such as David Castillo, and concerns have been raised that the PPA may have been acquired through corruption (DPLF et al., 2019: 6). The use of ICSID, the investor-state dispute settlement mechanism, is also highly contentious. The Norwegian Minister of International Development has acknowledged that the use of such mechanisms can be both “constitutionally and politically challenging”.²⁴ Norway has either withdrawn, or is in the process of withdrawing, from agreements with other European countries that allow for the use of investor-state dispute settlement (ISDS).²⁵ Honduras is expected to follow suit, passing a law that would make them exempt from international arbitration obligations. Both Scatec and Norfund have declared that

22 See the ICSID case details – Norfund & KLP-Norfund Investments AS vs Honduras: <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/13> & Scatec ASA vs Honduras: <https://icsid.worldbank.org/cases/case-database/case-detail?CaseNo=ARB/23/12> [Accessed 05.05.2023]

23 See <https://www.tsc.gob.hn/biblioteca/index.php/leyes/1137-ley-especial-para-garantizar-el-servicio-de-la-energia-electrica-como-un-bien-publico-de-seguridad-nacional-y-un-derecho-humano-de-naturaleza-economica-y-social>

24 See www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=94183

25 <https://www.stortinget.no/no/Saker-og-publikasjoner/Sporsmal/Skriftlige-sporsmal-og-svar/Skriftlig-sporsmal/?qid=94402>

this was a major reason for invoking ISDS at a point when negotiations were still underway.²⁶

According to reports from our Honduran partners and the Honduran government, the backdrop to the arbitration in ICSID is the new law, allowing for renegotiation of earlier agreements. Here it is important to note the general level of corruption and impunity in the years following the coup (Cáceres & Korol, 2018), which the current government gives as a major justification for having introduced the new law. The looming threat of costly arbitration might, in the last instance, thwart Honduran efforts to ensure more diversified ownership and greater value retention from renewables, while also hindering endeavours to address some of the structural injustices which were exacerbated in the post-coup period.

Norfund denies that the ISDS case was prompted by their refusal to renegotiate the contract, and insists that Norfund has been first in line amongst companies in Honduras to accept revisions to the PPA. Instead, Norfund claims that the reason for filing for arbitration was due to non-receipt of payments and the risk that this would run their Honduran projects into bankruptcy. Whatever the details surrounding the dispute, the main cause of concern remains: Norwegian investors are exerting strong pressure on a developing country whose democratically elected government has expressed clear ambitions of pursuing distributional justice in their energy sector.

Overall, Norwegian green investments in Honduras have not been in line with key principles for a just transition. This goes for distributional justice, where grid energy prices have gone up for the local population, and procedural justice, due to a lack of participation and consultation from the get-go. Finally, the right to resist has also been suppressed due to criminalisation of protestors. The Honduran cases highlight the importance of country-specific assessments of political context and power structures *prior* to investments. Engaging in dialogue with civil society, when conducting due diligence assessments, could be a way of avoiding similar pitfalls in the future.

Recommendations

- Norwegian investors should withdraw the arbitration case against Honduras and refrain from using similar mechanisms against states in the future. Any dispute with the Honduran state should be resolved in a national court.
- Scatec, Norfund and KLP should acknowledge the political will to increase political control over the power sector and the need to renegotiate deals struck during the post-coup administration.

²⁶ Correspondence with Scatec, May 2, 2023 & meeting with Norfund, May 31, 2023.

Chile

– Statkraft in Mapuche territory

W We pay for the most expensive electricity in the country and we are surrounded by hydroelectric plants, which also destroy our rivers. Why don't they do this in their country? Why do they have to violate the rights of others?

Sandra Enríquez (54), Mapuche protestor against Statkraft in Los Lagos.²⁷

Land conflict in Chile, particularly in the former territories of the indigenous Mapuche people, has to be understood in the context of two historical processes that sent shockwaves through the region's social fabric. The first was the struggle against Spanish and later Chilean colonisers, and the second was the coup-d'état of Augusto Pinochet and the subsequent shock doctrine of privatisations in the region.

Today, Statkraft is involved in an ongoing conflict centred on a hydropower plant in territory of the indigenous Mapuche. The Los Lagos project is a run-of-the-river plant, currently under construction, located on the banks of the Pilmaiquen river, with a planned capacity of 52 MW (Statkraft, n.d.).

In February 2023, while the fully state-owned enterprise, Statkraft, was coming under pressure in Norway from young environmentalists and Sami activists, protesting against a wind park development in Fosen, Chilean police opened fire at a group of Mapuche protesters on the construction site of the Los Lagos power plant. The Chilean state institution for human rights (INDH) later confirmed that five protestors had been wounded by lead shots (Bergens Tidende, 2023a). Yet, this is not the first time Statkraft has been in troubled waters in Chile. In 2021, a company car was burnt out, with the perpetrators leaving a note, saying “War on Norway, Statkraft out of Pilmaiquen”²⁸. In 2018, the office of Statkraft in Osorno was occupied in a protest against another power plant along the Pilmaiquen river (E24, 2018). When SN Power (co-owned by Norfund and Statkraft) first arrived in Chile in 2004, it was already in a context of rising social tension surrounding hydropower expansion, some of which had been met with armed resistance from Mapuche groups radicalised by large-scale dam-projects in the 1990s (interview with Heiret, 2023).

The environmental impact assessments for Osorno and Los Lagos from 2007 failed to acknowledge any indigenous peoples impacted in the project areas. While this was later noted by the Chilean authorities responsible for indigenous rights, CONADI, as disregarding the spiritual dimension of the project sites for adjacent indigenous communities, the original assessment was conducted only months before Chile signed ILO Convention 169, regarding the rights of indigenous and tribal peoples. Had the convention already been in effect, a far more rigorous process would have been required. This has led some community members to believe that the process was deliberately rushed in order to avoid compliance with the requirement for free, prior and informed consent (FPIC) which followed from ILO 169. While Norway was the world's first country to ratify ILO 169, its standards do not apply retrospectively to the Los Lagos project in Pilmaiquen (interview with Heiret, 2023).

²⁸ See biobiochile.cl/noticias/nacional/region-de-los-rios/2022/06/24/fuera-statkraft-encuentran-lienzo-contra-hidroelectrica-en-ataque-incendionario-en-rio-bueno.shtml

²⁷ From interferencia.cl/articulos/por-que-nos-reprimen-si-pertenece-mos-esta-tierra-y-defendemos-un-rio (Author's translation).



Mapuche activist injured after guards at the Los Lagos project opened fire against protesters in February 2023.

(Photo: Pablo E. Pivano)

Chilean author and journalist Mönckeberg (2015) describes the privatisation of Pilmaiquen as one of the most controversial cases in Chile, predominantly because the main actors behind the process later became directors of the company and bought the rights to exploit hydropower in Pilmaiquen.

Statkraft acquired these rights, buying 98.2 percent of the shares of Pilmaiquen S.A. Notably, the former minister of finance under Pinochet, Hernán Büchi, had a prominent position in the company Statkraft bought out in the transaction. From 1985 to 1989, Büchi was in office during the most significant wave of privatisations in Chile. In this position, he oversaw the full privatisation of the largest energy companies in the country, emerging on the board of directors of one of them, Inversiones ISMA, a predecessor to the company which Statkraft bought out in 2015 (Martinsen, 2018). These circumstances have fuelled the controversies around hydropower in Pilmaiquen, which was immersed in conflict well before Statkraft entered the scene in 2015. This was partly due to a lack of recognition of the religious and cultural significance of the areas surrounding the Osorno project, in particular (LAG, 2015). In 2016, Chilean environmental authorities ruled in favour of the Mapuche in Pilmaiquen, stopping the Osorno construction plans, with reference to ILO convention 169 and a fraudulent process involving the falsification of signatures (Pérez, 2017). The decision not to pursue the Osorno project, along with handing back land to surrounding Mapuche communities, was announced in 2023 (Statkraft, 2023).

The Los Lagos project, however, remains under construction, even when faced with staunch opposition from Mapuche stakeholders. At the time of writing, Statkraft is still waiting for an assessment of a surrounding archaeological site, which the company failed to include in the original environmental impact assessment (interview with Heiret, 2023). The continued construction of a project with significant indigenous interests, even while allegations of cultural and patrimonial harm are under review, exposes the project to significant risk, as shown by the Fosen case in Norway. The fact that Statkraft has bought into a long-lasting conflict, with deep polarisation and indigenous opposition in Chile, raises a question about Statkraft's ability to learn from other projects.

In Chile, Statkraft has become entangled in what has become a violent conflict over land. Nor has Statkraft's request for an increased presence from the national police force done anything to de-escalate the situation. The Chilean police force *Carabineros* has come under repeated scrutiny for failing to prevent human rights violations by its members (Amnesty, 2020). The tale of Statkraft in Chile is a clear example of why the particular marginalisation of the Mapuche people and their rights as indigenous peoples have to be met with recognition, involvement in planning, as well as respect for the right to resist. The latter remains particularly urgent, as demonstrated by violent confrontations with the police, as well as the overall regional trend of increasing repression of environmental activists in Latin America. There is reason to question who benefits from the hydropower development in Pilmaiquen. While hydropower projects can be subject to taxation as high as 90%, as seen with recent



The Pilmaiquén river is a vital and sacred part of Mapuche culture and religion.

(Photo: Pablo E. Pivano)

increases in Norwegian taxation,²⁹ the corporate tax in Chile is set at 27%, with an additional dividend tax of 8%. The local community receives a further tax of 0.5%, with an upper limit of 500,000 USD in total (Bergens Tidende, 2023b). Statkraft is in a position to enjoy a lavish source of ground rent income, which was historically made available by the Pinochet regime's privatisation. Meanwhile, the Mapuche people bear the brunt of the impacts, while at the same time struggling to have access to the electricity itself. This further showcases how Statkraft in Pilmaiquen also falls short of addressing *distributional* justice.

Recommendations

- Statkraft should withdraw from Pilmaiquen.
- Free, prior and informed consent (FPIC) should be a minimum requirement; the Mapuche people's right to say no to developments on their land which affect their culture and way of living should be respected.
- Indigenous rights must be respected, and meaningful consultation and participation undertaken in all new renewable projects to ensure legitimacy and buy-in.

²⁹ <https://www.nettavisen.no/okonomi/okt-skatt-for-stromprodusenter-koster-kommunemilliarder/s/5-95-675501>

Saepmie– The Fosen case

Land conflicts, spurred by the increase in green investments, are not just present in the Global South. Five hundred days after the Norwegian Supreme Court ruled that concessions for a major onshore wind park in a South Sami reindeer pasture, were unlawful, young Saami activists, along with environmentalists, occupied the lobby of the Ministry for Petroleum and Energy in Oslo to send a clear message that they could no longer idly accept the continuation of an ongoing violation of human rights. The initial action spread like wildfire, and a week of action culminated with large demonstrations in front of the Norwegian parliament and the royal palace, putting the Fosen case on both the national and international agenda.

This conflict revolves around one of Europe's largest onshore wind farm developments, Roan and Storheia, in the Fosen peninsula in central Norway, set in the middle of a Southern Sami reindeer herding district. The wind farms were granted pre-accession which entailed starting development before the ongoing dispute with the Fovsen Njaarke sijte reindeer grazing district and parts of the Sami community was settled. Giving concessions for construction without the free, prior and informed consent (FPIC) of Sami stakeholders, while hoping to sort out the disputes later, has proved a costly gamble for the state.

In 2021, the Norwegian Supreme Court unanimously ruled that the expropriation of reindeer grazing areas by the energy firm and licences granted by the state in 2013 were against the law. In particular, the expropriation violated the right of the Sami people to enjoy their culture under Article 27 of the International Covenant on Civil and Political Rights (Kuokkanen, 2022: 11). The proposed mitigating measures were deemed unsatisfactory as compensation for the strategic winter pastures at Fosen – now with 151 modern day turbines and criss-crossing roads and infrastructure. Based on the demands of Fovsen Njaarke sijte, Amnesty International (2023), along with environmental and Sami organisations, have demanded a decommissioning of the wind park, along with a full restoration of the land, holding that coexistence of turbines and traditional reindeer herding is impossible.

The particular vulnerability of the South Sami culture and the centrality of reindeer herding to sustain it is a key consideration in this case.³⁰ The ruling has sent shock waves far beyond the region, and has called into question visions of a sustained rapid expansion of onshore wind in Norway, particularly in reindeer herding districts.

This Fosen case shows how finalising projects without securing free, prior and informed consent (FPIC) can backfire, resulting in local resistance, lengthy legal processes, and financial and reputational risk for companies, which in turn might put a halt to the sorely needed transition to renewable energy. Moreover, Normann (2021) has argued that the Fosen case illustrates how traditional and indigenous knowledge is systematically and willfully ignored and undermined in the workings of the state, pointing to a lack of both procedural and recognitional justice.

There is also a clear element of distributional justice at play in the case of Fosen. Tax Justice Norway (2021) has shown how aggressive tax planning and hidden ownership structures, registered in tax havens, are predominant amongst wind power companies operating in Norway. The report from Tax Justice Norway also showed how a significant part of the two wind projects in Storheia and Roan was owned by a fund with unknown investors registered in Switzerland. The overall risk of profit shifting via tax havens and the dynamic whereby the burdens are carried locally, while the profits increasingly go elsewhere, contributes to local resistance.

³⁰ Listed by UNESCO as severely endangered, South Sami is only spoken by around 500 people. Reindeer herding is an important culture-bearing practice, in which the language is used actively.

Conclusion

Support civil society & peoples' organisations

We have seen how incremental changes to the current system have left the world lagging severely behind in its pursuit of the Paris Agreement, as well as the Sustainable Development Goals. Therefore, we need to emphasise actions that promote long-term structural changes. In this regard, supporting civil society is key.

Civil society organisations play a pivotal role in getting climate and environment on the agenda and push for change. They call attention to the negative effects of climate change, how it interplays with inequality and injustice. Moreover, strengthening local communities and locally embedded popular organisations can help promote resilience in response to the climate crisis. While being an environmental defender is increasingly dangerous, these actors provide a vital function as a watchdog vis-à-vis capital and state interests. Our partners have stressed that the resilience of local communities is essential for a just transition, particularly in regards to control over and access to land, but also, more generally, in order to ensure representation of affected communities, resist and push for regulations to avoid that the transition comes with increased inequality. It is important to recognise that many local communities and civil society organisations have other priorities than green energy investments when it comes to protecting the environment and solving the climate crisis and they must be heard and respected.

The Norwegian state should through its ministries and embassies support and promote space for civil society organisations and play a role in providing information on the risks involved when Norwegian companies plan to invest, whether it is with state funding or without. This capacity needs to be strengthened as the plan is to increase green energy investment. In light of the prime responsibility of states to promote and ensure human rights, it is vital that the facilitation of business does not come at the expense of ensuring compliance with human rights and support to human rights defenders.

Ownership

There is a need for a broader discussion on how green energy is produced and how investments in the value chain are carried out, by whom, and under what conditions. This discussion also needs to include questions of ownership (BHRR, 2021).

The global initiative Trade Unions for Energy Democracy, representing over a hundred unions from 37 different countries, has argued for a break with the preceding patterns of private ownership, and that a cautious public incentivising of investment in green energy has not been sufficient for deploying renewables in the time and scale needed (Treat, 2022: 4). While public investment can play an important role in bridging the investment gap, socialising forms of ownership can also leave communities and the public with more value, thereby legitimising the green transition. Here, the Norwegian historical experience of placing hydropower and, later on, fossil resources under rigorous public control, with high degrees of public ownership, can serve as a reference. While Norwegian developmental policies have since shifted towards private investments, there is a growing range of

voices that challenge the dominant role of private capital and ownership in the green transition (Angel, 2016, ICNL, 2022a: 30, BHRRC, 2021: 28). While a better implementation of procedural justice can mitigate harm, plural forms of ownership can improve equality and distribution of its benefits. Worker- or community-owned cooperatives may be well-suited to develop and run energy projects directly. British think tank *Common Wealth* has proposed a model of *public-commons partnerships* (PCP) where new forms of ownership are facilitated and helped forth by both state and local authorities, which could serve as a point of departure for discussions on how to create more diversified forms of ownership (Milburn & Russel, 2019).

The scale of energy projects and ownership models are also linked since small-scale renewables are more easily controlled and owned by communities. Several civil society representatives have questioned the prevailing developmental policy in Norway of doubling down on supporting national grid capacity, pointing to how large populations in the Global South will not get access to these services by 2030 (Tønnesen-Krokan, Lundberg & Solhjell et al., 2018). A report commissioned by Zero, Norwegian Church Aid and the Norwegian Solar Energy Cluster (Differ, 2019) also argues that distributed and off-grid renewable energy solutions are fast, clean and cost-effective, compared with conventional electrification by grid development. While the central grid plays an important role in regard to the transfer of energy between regions with different patterns of sun and wind, central grids are also area-intensive. Therefore, smaller-scale renewables can provide an important supplement, reducing land conflict, while also securing energy access for remote communities. Such an approach is key to fulfil Sustainable Development Goal 7 – *affordable and clean energy for all*.

Free, prior & informed consent

One of the main pillars to support procedural justice in green investments is securing free, prior and informed consent (FPIC). This element should not just be addressed in relation to projects where indigenous rights are involved, but ought to be applied in all projects that entail land encroachment affecting local stakeholders. Consultation is the responsibility of the state, but we have many examples where communities, in the absence of state initiatives, organise consultation themselves.

Companies often seek to secure consent by offering local benefits. However, one problem identified, in the case of Green Resources in Mozambique, is that these have not been stated in written contracts, and have lacked the meaningful involvement of local stakeholders. This has led to communities becoming passive subjects of charity, rather than empowered partners in the process (Benjaminsen & Svarstad, 2021). Controversies that have later arisen between local communities and companies regarding what has been promised could have been mitigated through a more transparent process, which is also a key condition for *informed* consent. Informed consent entails full disclosure of which areas are being considered for development; which land and/or alternative livelihoods will be compensated; the duration of the concession; the risk of project failure; and how many long-term jobs will be created. Moreover, the investors' commitments shall be included in a contract

given to the project-affected stakeholders, with a timeframe for the compensation, as well as sanctions that the investor might be subject to if commitments are not fulfilled. When the local community is not aware of its rights, the state or investor should supply legal aid (Breidlid, Storbakk & Handberg, 2013: 8).

Prior consent includes engaging communities from the start of a process, particularly when resettlement is involved. In these cases, the process should be transparent, with signed minutes of meetings, and it should ensure that the site and resettlement conditions are better than what communities had access to before, all the while respecting their culture and ways of life. Moreover, questions of how women might be differently affected by a development has to be an overarching concern in the process, in order to promote gender equality (Justiça Ambiental & UNAC, 2011). However, it is often the case that the planning process has reached an advanced stage before local communities are involved, and thus more difficult to halt.

Today, the process of ensuring FPIC might in some cases lead to fragmentation and increased conflict in indigenous communities, if companies engage only with one representative or group, while there may be other, detracting positions. Groups are seldom homogeneous and might have ways of decision-making that differ from the company's expectations. Therefore, cultural and context-specific sensitivity has to be practised in these processes. If opposition to a project is identified, it is important to understand what an amenable approach could be, and, in case this is not possible, not go through with the project.

Tackling the shortcomings of FPIC would require both expanding what it entails, as well as improving implementation (ICNL, 2022). In order for companies to better follow up on principles of a just transition and human rights in general, these need to be operationalised in a set of guidelines, fleshing out how this could be done in practice. There are already several such frameworks, e.g., the United Nations Guiding Principles on Business and Human Rights (UNGP) and the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT).

In addition to these and many other problems with the consultation process, there are huge problems dealing with the results. What happens when the community say no? Experience shows that this leads to long processes of resistance, with high human costs, whereby development is pushed through regardless – often with state support. Even if FPIC does not prescribe a veto to indigenous or other communities, the way that such conflicts are managed must take into consideration the enormous power imbalance between the communities and the companies. The state should have a clear role in demanding respect for consultation results, protecting the human rights of the communities, and ensuring a just transition.

The Norwegian Transparency Act

The implementation of the Transparency Act in 2022 was a major leap forward for accountability and an important means of spreading information and legally affirming the duty of companies to carry out due diligence. However, several issues remain unresolved. The Act does not specifically address environmental issues,

and, while being an important driver for transparency and due diligence, the Act does not provide specific guidance on how to address potentially adverse revelations. Nor does the Act compel companies to disclose the location of production. Questions still remain about who is covered by the new law. While major Norwegian NGOs are adhering to the new regulation, a major actor like Norfund is claiming not to fall under the jurisdiction of the new law, arguing that they do not provide goods or services.³¹ While a step in the right direction, the Transparency Act does not go far enough to ensure corporate respect for basic human rights and working conditions. Expanding the scope of the Act, while imposing concrete sanctions, should be added in future evaluations and revisions of the Act.

Repurposing Norfund as a tool for a just transition

Norfund's statutes (2022a) establish an objective of both safeguarding the environment and promoting the working environment, at a minimum according to the laws of the country of operation, and with additionally adopted international conventions and principles. For this to be the case on the ground, both compliance and implementation of laws and guiding frameworks need to be strengthened. Moreover, the question of whether the IFC Guiding Principles, the basis of Norfund's environmental and social assessments, are sufficient has been raised by several actors (Breidlid, Storbakk & Handberg, 2013, Cotula, 2019). Therefore, Norfund should both work on strengthening implementation of its own environmental and social governance, while ensuring that their own guiding principles are informed by best practice amongst international frameworks.

Another general recommendation is for Norfund to expand methods and capacities to analyse context and power relations in its regions of investment, in particular, broadening the scope of consulted actors to include civil society. In this way, both internal measures and external knowledge from civil society can guide and inform decisions on whether to invest or not.

Today, Norfund relies too heavily on assumptions of trickle-down development. Instead, the fund needs a broader vision of development that promotes equality. Such a task cannot be seen in abstraction from the distribution of resources and power. Overall, Norfund's mandate should be reformed in line with the goal of contributing to a just transition through promoting green, decent and unionised jobs.

Concluding remark

Norwegian People's Aid sees people and popular movements as the engines of history. State policy can facilitate and strengthen these movements in their quest for a more just society; it can lay the international foundations for securing the right to protest, guaranteeing the safety of activists and promoting the democratic framework within which social movements operate.

31 <https://www.regjeringen.no/no/aktuelt/svar-pa-sporsmal-om-norfund-og-openheitslova/id2974521/>

Policy recommendations

To secure a just transition, the Norwegian government should:

- Ensure that investment through Norfund is conditioned on delivering positive and measurable contributions to reducing inequality.
- Ensure that investment through Norfund's climate fund is conditioned on contributing to a just transition to green energy.
- Support small businesses, including small-scale farmers. This would require a change in the mandate to be able to go beyond being a minority investor.
- Include mechanisms in Norad's new Energy for Development programme that allow for support for civil society actors that can ensure accountability.
- Prioritise bilateral cooperation with countries that demonstrate a real commitment to work actively against inequality.
- Ensure that investments in high-risk countries are conditioned on a conflict-sensitive analysis, including an analysis of social impact in affected local communities.
- Support civil society as watchdogs for social and environmental conditions vis-à-vis developers.
- Support public ownership of energy production, and democratic environmental and social governance.
- Ensure that companies investing in green energy always pay taxes to the government.
- Support legislation that aims to democratise control and access to energy.
- Implement a comprehensive framework that supports human rights, building on the United Nations Guiding Principles on Business and Human Rights (UNGPR) and the Voluntary Guidelines on the Responsible Governance of Tenure (VGGT), in questions of land tenure.
- Ensure that Norwegian state-financed projects secure free, prior, and informed consent, including the right to say no, in particular those that entail potential resettlement and affect peoples' livelihoods

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Abbreviations

- CDM** – Clean Development Mechanism
DESA – Desarrollos Energéticos Sociedad Anónima
DUAT – Direito de uso e aproveitamento dos terras (land Use and Benefit Rights)
EIA – Environmental Impact Assessment
ENEE – Empresa Nacional de Energía Eléctrica (Honduras)
FAO – The Food and Agriculture Organization of the United Nations
FPIC – Free, Prior and Informed Consent
ISDS – Investor-state dispute settlement
IFC PS – International Finance Corporation Environmental and Social Performance Standards
ILO – The International Labour Organization
MADJ – Movimiento Amplio de Dignidad y Justicia
MW – Megawatt
NCIF – Norwegian Climate Investment Fund
NMFA – The Norwegian Ministry of Foreign Affairs
Norad – Norwegian Agency for Development Cooperation
PEMSA – Potencia y Energía de Mesoamerica S.A.
PPA – Power Purchase Agreement
TUED – Trade Unions for Energy Democracy
UNAC – União Nacional de Camponeses (Small-scale Farmers National Union, Mozambique)
UNGP – The United Nations Guiding Principles on Business and Human Rights
VCS – Verified Carbon Standard

List of respondents

Ingrid Rostad, Senior Advisor ForUM – Interviewed 8.2.2023

Abel Sainda, Executive director AMDER – Interviewed 13.02.2023

Per Ranestad, former regional director of NPA – Interviewed 20.02.2023

Padre Melo, Rafto Prize laureate – Interviewed 13.03.2023

Diego Alexander Foss, Senior policy advisor, Save the Children Norway – Interviewed 15.03.2023

Isidro Macaringue, Advocacy Officer Unión Nacional de Campesinos de Mozambique (UNAC) – Interviewed 16.03.2023

Pedro Landa, Plataforma Internacional contra la Impunidad, Honduras. – Interviewed 21.03.2023

Yngve Heiret, Doctoral Research Fellow, University of Oslo – Interviewed 25.03.2023

Erick Tejada, Honduran Minister of Energy – meeting 10.05.2023.

Norfund – joint meeting with civil society actors 31.05.2023

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Norwegian People´s Aid
POB 8844 Youngstorget
0028 Oslo
Norway
Tel: + 47 – 22 03 77 00

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