

**Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to development; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of indigenous peoples**

REFERENCE:  
AL OTH 210/2021

17 August 2021

Dear Mr. Lévy,

We have the honour to address you in our capacities as Special Rapporteur on extreme poverty and human rights; Special Rapporteur on the right to development; Special Rapporteur on the situation of human rights defenders; and Special Rapporteur on the rights of indigenous peoples, pursuant to Human Rights Council resolutions 44/13, 42/23, 43/16, 42/20.

We are independent human rights experts appointed and mandated by the United Nations Human Rights Council. Special Procedures mechanisms can intervene directly with Governments and other actors, including multilateral banks or companies, on allegations of abuses of human rights that come within their mandates. They do this by sending communications to the concerned actors identifying facts of the allegation, applicable international human rights norms and standards, the concerns and questions of the mandate-holder(s), and a request for follow-up action.

We are sending this letter under the communications procedure of the Special Procedures of the United Nations Human Rights Council to seek clarification on the **information we have received concerning the human rights impact of the large-scale wind energy farms and their human rights impacts on the Zapoteca indigenous peoples of Unión Hidalgo, in Oaxaca, Mexico**. As has been the case with other large-scale renewable energy projects in the region of the Isthmus of Tehuantepec, several already constructed wind farms, and other wind farm projects that are still being developed in the territory of the community of Unión Hidalgo, may affect the rights of the Zapoteca indigenous peoples and human rights defenders, and they may have been implemented without taking into account the impacts on women in particular.

According to the information received:

*Background*

Due to its geographic position, orography and wind speed, the Isthmus of Tehuantepec in the state of Oaxaca is considered one of the regions with the most significant wind energy potential in the world.<sup>1</sup> It has been estimated that this region has the potential to generate between 5000 to 7000 MV annually, which would be enough to provide energy to 18 million people.<sup>2</sup>

<sup>1</sup> National Institute of Statistics and Geography (INEGI), “[División Municipal del Estado de Oaxaca](#)”, (2015).

<sup>2</sup> Secretaría de Gobernación, Comisión para el Diálogo con los Pueblos Indígenas de México, “[La energía eólica en México. Una perspectiva social sobre el valor de la tierra](#)” (2015), p. 6.

These favourable conditions for wind energy development have led to the construction of the so-called ‘Wind Farm Corridor of the Isthmus of Tehuantepec’, currently home to 31 large-scale wind farms,<sup>3</sup> attracting foreign investment with the support of international financial institutions, such as the World Bank, the Inter-American Development Bank and the EU-supported Latin American Investment Facility.<sup>4</sup>

This important flow of resources and investment, however, appears not to have benefited the local population of Unión Hidalgo, a small community of 15,347 people, nor the rest of the communities of the Isthmus of Tehuantepec, which are mostly inhabited by Zapoteca indigenous peoples. Despite wind energy enterprises and State authorities having promised to be a source of employment and livelihood improvement, 57.6 percent of the population of Unión Hidalgo is still living in poverty, 35.1 percent lack access to essential services in their households<sup>5</sup>, 37.1 per cent live in conditions of food insecurity, and 21.4 percent do not have access to health services.<sup>6</sup>

#### *The EDF large-scale wind park in the community of Unión Hidalgo*

Since 2015, *Electricité de France* (EDF), one of the largest energy producers worldwide and largely owned by the French State,<sup>7</sup> is planning to build a large-scale wind park in the indigenous community of Unión Hidalgo through its Mexican subsidiary, *Eólica de Oaxaca S.A.P.I. de C.V.*

This large-scale wind park called “Gunaa Sicarú” would be located in two municipalities of the Isthmus of Tehuantepec region: Unión Hidalgo and Juchitán, Mexico. The project is expected to have a total capacity of 300 MW and it involves the construction of 115 wind turbines, a power generator of 300 MW and an electrical transmission line of 30 kV. The total surface of the project would be 47’079,019.9922 m<sup>2</sup>, with a perimeter of 37,723.8745m<sup>2</sup>.<sup>8</sup> In addition, the construction of the wind farm would require the establishment of rights of passage over the land and the signing of several leasing or usufruct contracts with individuals from both municipalities at different stages of the development of the project.<sup>9</sup>

In 2015, *Eólica de Oaxaca* started negotiations to sign leasing contracts with some selected landowners of the community of Unión Hidalgo. These contracts, however, would be in violation of the *Mexican Agrarian Act*, which recognizes that the lands in the municipality of Juchitán de Zaragoza, where

<sup>3</sup> The Wind Power, “[Bases de datos Parques Eólicos México](#)”, (2020).

<sup>4</sup> World Bank, International Finance Corporation, Multilateral Investment Guarantee Agency, “[Country Partnership Strategy for the United Mexican States](#)”, (2013), para. 49; AIDA, “[The challenges of deploying wind energy in Mexico](#)”, (2012); Latin American Investment Facility, “[Operational Annual Report](#)”, (2012), p. 14.

<sup>5</sup> According to the Mexican Council for the Evaluation of Social Development policy (CONEVAL), the local population of Unión Hidalgo lacks at least one of the following essential services in their households: water; sanitation or/ and electricity. See Consejo Nacional de Evaluación de la Política de Desarrollo Social, “[Metodología para la Medición Multidimensional de la Pobreza en México](#)”, (2019).

<sup>6</sup> Secretaría de Bienestar de México, “[Informe Anual sobre la Situación de Pobreza y rezago social 2020. Oaxaca. Unión Hidalgo](#)” (2020).

<sup>7</sup> The French State holds 83.6% total of the shares of the company. See EDF, “[EDF Group’s share capital at 31 December 2020](#)”.

<sup>8</sup> EDF Energies Nouvelles, “[Manifiestación de Impacto Ambiental Modalidad Regional](#)”. Proyecto Central Eólica “Gunaa Sicarú” (2017).

<sup>9</sup> Ibid.

the community of Unión Hidalgo is located, are communally owned.<sup>10</sup> This means that all decisions on the use of the land should be taken in communal assemblies and cannot be subjected to a single landowner's decision to sell or lease the property.

A few years later, in 2017, EDF's subsidiary *Eólica de Oaxaca* presented, as required by national law, social and environmental impacts assessments to the Mexican authorities, which identified the potential negative impacts of the Gunaa Sicarú project.<sup>11</sup> Despite these irregularities and the concrete evidence of the potential impacts of the wind farm in the indigenous community of Unión Hidalgo, *Eólica de Oaxaca* signed energy supply contracts with the Mexican authorities and the company was granted the necessary permissions and concessions to generate electricity. The company also benefited from exemptions from local taxes.

According to the information received, all these negotiations and administrative processes were conducted without good-faith consultations with the Zapoteca indigenous peoples as required by article 19 and 32 of the United Nations Declaration on the Rights of Indigenous Peoples and article 6 of the Indigenous and Tribal Peoples Convention (No. 169) of the International Labour Organisation (ILO), ratified by Mexico in 1990. It was only after the community of indigenous peoples mobilized and presented several *amparo* writs before local judicial authorities that, in 2017, the community members were able to obtain information on the plan to develop the wind farm in their territory. The project was, however, pushed forward by the company before the court could resolve the *amparos*. Considering previous experiences with similar wind farm cases in the region and the writ of *amparo* filed by the Unión Hidalgo community of indigenous peoples, the Mexican authorities decided to initiate a consultation with them more than nine months after the project had already received the electricity generation license.

A historically devastating 8.2 magnitude earthquake hit the State of Oaxaca and several other regions of the country on 7 September 2017. This affected the poor infrastructure of the community of Unión Hidalgo and many resources and efforts had to be directed to the relief of the local population and the reconstruction of the community.<sup>12</sup> Despite these conditions of emergency, Mexican authorities sought to go forward swiftly with the indigenous consultation on the Gunaa Sicarú project, although the proper conditions did not appear to exist for the full and effective participation of the indigenous community. The Zapoteca indigenous peoples filed another successful writ of *amparo* arguing that the conditions were inadequate due to the earthquake damage and the rising political tensions of the upcoming local election process, which did not allow the indigenous peoples to hold the consultation under adequate and safe conditions. By judicial order, the consultation was therefore suspended.

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<sup>10</sup> Presidential Decree published on 13 July 1964, available at: [https://www.dof.gob.mx/nota\\_to\\_imagen\\_fs.php?codnota=4794606&fecha=13/07/1964&cod\\_diario=206395](https://www.dof.gob.mx/nota_to_imagen_fs.php?codnota=4794606&fecha=13/07/1964&cod_diario=206395).

<sup>11</sup> EDF Energies Nouvelles, Eólica de Oaxaca, S.A.P.I. DE C.V., '[Manifestación de Impacto Ambiental Modalidad Regional. Proyecto Central Eólica "Gunaa Sicarú"](#)' (2017). See the photographs of Unión Hidalgo after the earthquake published in 2017 by national news media Milenio available [here](#).

In October 2018, a Federal Court recognised that the Mexican authorities had failed to respect the indigenous community's right to free, prior, and informed consent and ordered the Ministry of Energy and other relevant authorities to reinstate the consultation process in accordance with the standards of the Indigenous and Tribal Peoples Convention (No. 169) of the ILO.<sup>13</sup>

Authorities have so far failed to fully comply with these judicial decisions, however. While the indigenous consultation was resumed in November 2018, the Oaxaca's Human Rights Ombudsman Office (in Spanish *Defensoría de los Derechos Humanos del Pueblo de Oaxaca*), ProDESC and other civil society organizations documented several incidents that raise serious doubts about the neutrality, legitimacy and adequacy of that process. The information provided by the authorities was considered to be culturally inadequate, and the community members considered that they were not able to freely express their views during the consultation assemblies.<sup>14</sup>

The announcement of the Gunaa Sicarú wind power project also sparked violent outbreaks against community members who opposed the construction of the wind farm due to violations and abuses committed. On 13 June 2018, the Oaxaca's Human Rights Ombudsman Office issued an early warning addressed to the Governor of the state of Oaxaca and other state authorities, urging them to adopt measures to guarantee the safety of community members in Unión Hidalgo.<sup>15</sup> A year later, the World Organisation Against Torture and the International Federation for Human Rights also issued an urgent appeal directed to federal and local Mexican authorities, alerting them of the increasing situation of risk and security incidents involving human rights defenders in the community of Unión Hidalgo.<sup>16</sup>

Attacks, intimidation and harassment to human rights defenders occurred throughout the consultation assemblies. Community members opposing the project were confronted with insults, physical aggressions and death threats. Stigmatizing speech was disseminated in social media and on the radio.<sup>17</sup> Women human rights defenders within the community explained that these attacks have sparked fear for them and their children and families. According to them, generating fear is one of the aims of the actors in favour of the project as a means to deter the advocacy work of human rights defenders in the indigenous community. Human rights defenders and the Zapoteca indigenous peoples of Unión Hidalgo community itself are recipients of precautionary measures granted by the *Defensoría de los Derechos Humanos del Pueblo de Oaxaca* since 2011, due their situation of risk and social conflict arising from

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<sup>13</sup> Judicial decisions regarding the writs of amparo No. 376/2018, 377/2018 and 554/2018 issued by the First District Federal Court in State of Oaxaca, Mexico (2018).

<sup>14</sup> ProDESC, "Declaración de cierre de la observación de las sesiones informativas del Procedimiento de Consulta sobre la Construcción y Operación del Proyecto Central Eólica Gunaa Sicarú, promovido por la empresa Eólica de Oaxaca, S.A.P.I. de C.V., en Unión Hidalgo, Oaxaca", (2020).

<sup>15</sup> Defensoría de los Derechos Humanos del Pueblo de Oaxaca, "[Alerta Temprana: Caso Unión Hidalgo](#)", (2018).

<sup>16</sup> The Observatory for the Protection of Human Rights Defenders of the World Organisation Against Torture and the International Federation for Human Rights, "[México: Amenazas, señalamientos y estigmatización en contra de miembros de la comunidad indígena de Unión Hidalgo \(Oaxaca\). Llamado Urgente](#)", (2019).

<sup>17</sup> European Center for Constitutional and Human Rights (ECCHR), "[Civil society space in renewable energy projects: a case study of the Unión Hidalgo community in Mexico: policy paper](#)", (2019), p. 3.

the development of the windfarms in the community.<sup>18</sup>

As previously stated, both EDF's subsidiary in Mexico and its project operator advanced with the negotiation of several agreements and were granted important administrative measures from Mexican authorities before any consultation took place.

In some instances, it is alleged that company representatives offered food or money or other promises to community members to persuade them to vote in favour of the wind park.<sup>19</sup> This situation has resulted in the creation of groups within the indigenous community linked to *Eólica de Oaxaca* through the signing of such agreements. Self-identified as "*propietarios*" (landowners), the members of these groups have become active promoters of the project, privileged interlocutors with the company and have allegedly committed wrongful actions during the indigenous consultation. This, according to the information received, has contributed to the failure of obtaining the free, prior and informed consent of the Zapoteca indigenous peoples, as well as the escalating tension and attacks perpetrated by these groups against human rights defenders, comuneros, and other members of the community.

As a result, it is alleged by the community that EDF has breached its duties of due diligence as envisaged in the French Due Diligence Law of 27 March 2017 (*Loi n° 2017-399 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*). Thus, in October 2020, members of the community of Unión Hidalgo, ProDESC, and the European Centre for Constitutional and Human Rights (ECCHR) filed a civil lawsuit before French courts alleging that EDF's failed to identify the risks of violations of human rights and establish appropriate mitigation and prevention measures in the course of the development of the Gunaa Sicarú project. The claimants requested EDF be ordered to suspend the implementation of the project until effective measures are taken to prevent further violations of human rights. The case is currently being assessed by judicial authorities in France.

Due to the current COVID-19 outbreak, since March 2020, in Mexico, public authorities suspended the consultation process after the end of the informative phase.

#### *Impacts of the wind farms on the human rights of the Zapoteca indigenous peoples in Unión Hidalgo*

According to the information received, the arrival of the wind farms has not only failed to deliver on their promises to raise the living standards of the local

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<sup>18</sup> Since 2007, the community of Unión Hidalgo have mobilized against the installation and operation of two other wind parks developed by the enterprise DEMEX, a subsidiary of the Spanish transitional renewable energy enterprise Renovalia Energies, which built and operates the windparks 'Piedra Larga I' and Piedra Larga II without adequately consulting the indigenous community and have caused negative affectations to their fundamental rights to health, adequate standard of living, and access to land and natural resources. Episodes of intimidation, harassment, and arbitrary detentions to human rights defenders opposing the wind parks promoted by DEMEX were also documented by ProDESC and other human rights organizations. The leasing contracts used to develop the wind parks in the territory of the community are also currently being questioned in a judicial process before local tribunals. See Proyecto de Derechos Económicos, Sociales y Culturales, *ProDESC: diez años de construir justicia social. Memoria Institucional*, (2017).

<sup>19</sup> ProDESC, European Centre for Constitutional and Human Rights, Terre Solidaire, "[Wind farm in Mexico: French Energy Firm EDF disregards indigenous rights, case report](#)", (2020).



population, but has resulted in human rights abuses, which have especially affected indigenous women and girls. As the development of large-scale wind farms require important areas of land to be built upon, they have resulted in violations of the to self-determination and the right to free, prior, and informed consent of the indigenous population, the loss of indigenous territory and the lack of access to key natural resources, which they rely on for the preservation of their livelihoods, income-earning activities, and cultural identity. Increased levels of violence and insecurity in the indigenous community due to the divisions around the projects have particularly affected indigenous women of Unión Hidalgo.

#### Free, prior and informed consent and consultations

In her report, following her visit to Mexico in 2017, the UN Special Rapporteur on the rights of Indigenous Peoples expressed “serious concerns about the lack of prior consultation of indigenous peoples who could be affected by a second phase of expansion in wind power projects in the Isthmus of Tehuantepec.”<sup>20</sup> One year before, in 2016 the UN Working Group on Business and Human Rights also visited Mexico and urged Mexican authorities to “continue efforts to ensure adequate prior consultation for the new wind farms being developed in the region of the Isthmus of Tehuantepec due to concerns over the negative impacts that these projects have on indigenous lands.”<sup>21</sup> As of today, despite some efforts undertaken by the Mexican authorities, the right to free, prior and informed consent of the indigenous people has not been guaranteed.

It has become unsafe for human rights defenders opposed to wind farms developed in such a manner, to raise their demands and to participate safely in community decision-making. This, coupled with the significant environmental and health impacts resulting from the wind farm’s construction and operation phases, results in a situation in which the development of wind farms may negatively impact the living standards of the local community.

According to the information received, if EDF continues with the development of this large-scale wind farm project without due consideration of its human rights and socio-environmental impacts, it will further exacerbate the cumulative effects of the mass construction of wind farms, which have had a particularly damaging effect on the rights of the local women and girls.

Participation in the consultative process was allegedly weak and unsatisfactory, and certain groups were left out. The consultation with the community was conducted retrospectively, more than nine months after the relevant resolutions and licenses to generate electric energy were granted to EDF’s subsidiary, *Eólica de Oaxaca*. This violation of the right to free, prior, and informed consent of the indigenous community of Unión Hidalgo was recognized by several judicial sentences that ordered the State authorities to reinstate the consultation with the indigenous community in accordance with

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<sup>20</sup> [“Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico”](#), A/HRC/39/17/Add.2, para. 42.

<sup>21</sup> UN Working Group on Business and Human Rights, [“Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico”](#), A/HRC/35/32/Add.2, paras. 24-28.

the standards envisaged in the Indigenous and Tribal Peoples Convention (No. 169) of the ILO. However, the enforcement of these judicial orders are still pending.

According to consultations made by the sources, women human rights defenders of Unión Hidalgo highlighted that authorities and representatives of EDF failed to make sufficient efforts to protect them from hostile speech and dangerous behaviour from the few community members that would be benefited from the wind farm project. These conditions of hostility and insecurity against human rights defenders, and in particular women, have fragmented the community and disincentivised many women to actively participate and engage in the indigenous consultation, and also even if they do take part, they refrain from expressing their opinions in public to avoid being attacked.

Once the consultation process was finally initiated in 2018, social tensions and violent attacks towards human rights defenders critical to the development of the wind farm escalated. In public and social media, they were stigmatized as “enemies of development” and “anti-wind energy activists.” Personal information of the human rights defenders was publicised and incited community members to discourage them from voicing their opposition. Direct threats against the physical integrity of these project critics and their families followed. These harassments and intimidations escalated to physical acts of intimidation to such an extent that the Observatory for the Protection of Human Rights Defenders issued an international urgent appeal in June 2019 calling for the protection of members of the community’s Resistance Committee and the Communal Assembly.<sup>22</sup>

It has also been alleged that some of the community members who expressed their agreement to the development of the EDF project had received payments, benefits, or other promises from representatives of the renewable energy enterprise, which if true would seriously affect the legitimacy and impartiality of the consultation. It was also stated that authorities and representatives of EDF failed to provide objective and culturally adequate information on the potential impacts of the project for the indigenous community to make an informed decision about the wind farm project. Information sessions were carried out on working days and during working hours and calls to attend such sessions were poorly disseminated within the community, resulting in low attendance. Conversely, “*propietarios*” and other groups allegedly linked to the company were overrepresented. Police presence was erratic throughout the information sessions and the authorities remained passive when intimidation, verbal altercations and threats occurred, and did not encourage attendance of the community, particularly women, in the consultation process. The information provided during the sessions moreover was often highly technical and difficult to engage with, and did not cover many of the most important concerns regarding the potential contamination of water sources and the impacts that the project could have on agriculture or livestock, the main economic activities of the community, and more broadly on the environment or health.

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<sup>22</sup> Organización Mundial Contra la Tortura (OMCT), “México: Amenazas, señalamientos y estigmatización en contra de miembros de la comunidad indígena de Unión Hidalgo”, (2019).

It is also alleged that in addition to these irregularities, State authorities did not undertake measures to ensure the full and effective participation of indigenous women in the consultation. Of the approximately 500 people participating in some of the most crowded sessions, only about 5% were women, and only rarely did they seek to speak or engage actively and meaningfully in the assemblies. Furthermore, the State did not make any effort to organize the consultation with the community at times and locations accessible for women, nor did they provide information in appropriate spaces to incentivise women's participation, such as in schools and other community centres. For instance, women human rights defenders mentioned that meetings were held at times in which women needed to take care of their children, prepare meals, and perform other tasks, which made it impossible for many of them to attend the consultation's assemblies.

Finally, State authorities proposed that the right to attend and participate at consultation assemblies should be limited only to people of legal age, thus excluding participation of girls and young women, even though the project would directly impact them.

### Energy poverty

A separate concern is that the wind-farm project will not provide a satisfactory answer to the question of energy poverty. Despite the large-scale renewable energy projects installed in the community of Unión Hidalgo with the capacity to produce electricity for millions of people, the local populations have not benefited from more affordable energy prices and access to reliable and sustainable sources of electricity. Even though most households in Unión Hidalgo are connected to the national energy grid, prices of electricity have remained high, and often, unaffordable to many community members. As more than 50% of the population in Unión Hidalgo lives in poverty and 11% in conditions of extreme poverty, households and small businesses often use electricity intermittently and have limited access to technology and other electric appliances.<sup>23</sup> Wind energy generated in the Isthmus region is directed to the use of large private companies<sup>24</sup>, nor to provide access to energy to the local population.

### Livelihoods and the right to work

Moreover, the wind energy projects may threaten livelihoods in the community. The economic activity of firewood collection has historically been an important source of income for the community of Unión Hidalgo, especially for the most impoverished families. However, since the arrival of the large-scale wind energy projects, large extensions of land have been enclosed and access to the local forests and resources is now severely restricted. The firewood needed to produce these traditional foods is, therefore, now hard to find making it a scarce and expensive product for all community members. This has simultaneously affected a main source of income for many families in Unión Hidalgo and the indigenous peoples' cultural practices.

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<sup>23</sup> Data México, "[Indicadores de pobreza y carencias sociales 2010-2015](#)".

<sup>24</sup> In the case of DEMEX's Piedra Larga I and II operating in Unión Hidalgo for example, electricity produced goes directly to supply energy to Walmart and Bimbo (the largest bakery corporation in Mexico).



While the renewable energy developers insisted on the benefits that the investment in wind farms would bring to the local population as they create new sources of employment, the jobs created during the phase of construction of the project<sup>25</sup> tend to be temporary, sometimes of only a week of duration, and low-paid. Workers therefore rarely can register in the national social security system and obtain other labour benefits to which they are entitled by national law. Once the wind farms are in operation, most job vacancies are reserved for foreigners hired by the transnational renewable energy enterprises.

Despite the precarious employment opportunities offered to the locals, members of the community of Unión Hidalgo highlighted that both, women and men, are interested in applying for job vacancies at the wind farms. However, wind energy companies rarely hire local women and if they do, it is mostly in precarious jobs related to cleaning and general security. EDF's policies on diversity and inclusivity seem to only apply to high technical and professional employment opportunities.

#### Access to land

Access to land is a major challenge raised by the wind energy projects. Under the communal land-tenure regime in force, *ejidatarios* and *comuneros* should take all decisions on land use and ownership in communally held assemblies. Nevertheless, EDF concluded usufruct and leasing contracts with individual landowners in disregard of communal decision-making processes. This has contributed to the degradation of the social fabric and created tensions in the community between the few who will individually benefit from these contracts, and the majority of the community members who are adversely affected by the construction of the wind parks.<sup>26</sup>

Furthermore, it is alleged that most contracts signed with wind power companies do not clearly stipulate the impacts that the project will have on the land and fail to envisage, once the contract expires, that the renewable energy developer has the responsibility to return the land in the same conditions. Some leasing contracts were also signed by community members, who did not speak Spanish and did not have access to an interpreter to fully understand the contract's legal implications. Cases of unfair compensation have also been documented, and although the local law requires that contracts must not exceed 30 years, some renewable energy developers have negotiated exclusive rights to renovate the lease for additional periods once the initial term of the contract expires.<sup>27</sup> These highly unfair conditions in which leasing, and usufruct contracts were negotiated inexorably led to the development of

<sup>25</sup> This is the case of EDF's project: at its peak (during the site preparation and construction phase), the company will hire 475 persons for an average period of 12 months, the majority of whom will work on manual labour. By contrast, only 42 (mostly security and technician positions) job vacancies will be available during the operation phase. EDF Energies Nouvelles, '[Manifiestación de Impacto Ambiental Modalidad Regional. Proyecto Central Eólica "Gunaá Sicarú"](#)' (2017), p. 74. Nonetheless, "propietarios" leaders have actively promoted the project as a secure and lasting source of employment for young students in Unión Hidalgo.

<sup>26</sup> Even though the legality of these usufruct contracts has not been challenged in agrarian courts, DEMEX usufruct contracts have been. After almost 8 years of litigation and several flaws in the process, a final decision on the merits of the case has not been reached yet. A first instance (but then annulled) decision from Agrarian courts has nonetheless recognized the legal standing of comuneros from Unión Hidalgo and the communal tenure of the land in Unión Hidalgo.

<sup>27</sup> PODER and ProDESC, '[The Dirty Side of the Wind Industry: Development and Human Rights in the Isthmus of Tehuantepec](#)', (2020), p. 14.

asymmetrical relationships and abusive agreements.

Moreover, due to traditional gender roles that see men as “bread-winners” and women as “care givers”, only a handful of indigenous women in the community of Unión Hidalgo hold land tenure rights and actively participate in communal land governance bodies. As a result, women’s livelihoods are disproportionately impacted when the land is leased or sold to renewable energy developers as they often do not receive any direct benefits from these transactions. Thus, they rely on their male partners and family members to make the most out of these negotiations and trust they would provide enough resources to ensure their family’s well-being—conditions that are not always met and which lead women into poverty and destitution.

Women’s lack of land tenure rights also results in indigenous women in Unión Hidalgo being severely under-represented in comuneros’ governance bodies<sup>28</sup>. Only a few women in the indigenous community hold principal and deputy positions in the assemblies, but the great majority of the women in Unión Hidalgo do not fully and meaningfully participate in the communal decision-making processes on the use and ownership of the land despite playing a key role in agriculture and livestock, the main economic activities of the community.

Finally, when land is enclosed to develop wind farms projects, the community is precluded from freely accessing key natural resources that are essential for women’s sustainable livelihoods, such as medicinal plants, firewood, and sources of water. As ever more wind farms are being developed in the community of Unión Hidalgo and its surroundings, these impacts have considerably exacerbated in the last few years seriously limiting women’s main means of subsistence.

Without prejudging the accuracy of the above allegations, we wish to reiterate that it is incumbent on EDF to carry out human rights due diligence and gender impact assessment in order to identify, prevent or mitigate any adverse human rights impacts of projects that they finance. By financing a project that violates international human rights law and standards, EDF may be complicit in human rights violations associated with the acts of its client.

We wish to take this opportunity to underline that it is critical that the Gunaa Sicarú project provides a clear illustration of the importance of fully and transparently disclosing all information relating to environmental and social risks at an early stage of the project planning, conducting thorough due diligence on such risks, and engaging in meaningful consultations with affected indigenous peoples, prior to

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<sup>28</sup> According to Mexican Agrarian Statute, “ejidos and comunidades agrarias” have functioning bodies called “Comisariados”, comprising three elected members from communities and their corresponding deputies. “Comisariados” execute assemblies’ decisions, manage communal assets and legally represent the ejido or comunidad. An elected Board of Vigilance is in charge of monitoring the functioning of the “Comisariados”. Comisariados can appoint commissioners and secretaries as needed or as established in the internal bylaw. [Mexican Agrarian Statute](#), articles 21 to 40.

project approval.

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and any comments that you may have on the above-mentioned allegations.
2. Please provide information on any steps taken by EDF to adopt and implement a comprehensive human rights impact assessment, according to the highest standards of human rights due diligence and the French Due Diligence Law, necessary to carry out the wind farm project.
3. Please indicate what steps EDF has already taken or will take to undertake a comprehensive gender impact assessment on the wind farm project, which includes consideration of the rights of women in the community of Unión Hidalgo, relating to work, livelihoods, health, culture, and security.
4. Please provide information on the measures taken by EDF and its Mexican subsidiary, *Eólica de Oaxaca*, to engage in genuine, meaningful and inclusive consultations with the local communities to obtain their free, prior and informed consent, in compliance with article 6 of the Indigenous and Tribal Peoples Convention (No. 169) of the ILO, and to ensure the meaningful participation of indigenous women and girls taking into account their views.
5. Please provide information on the measures EDF has taken to identify the risks of violations of human rights and establish appropriate mitigation and prevention measures in the course of the development of the Gunaa Sicarú project.
6. Please provide information on the steps EDF will take to ensure women's access to the use and control of land and employment opportunities, especially in communities where large-scale projects are intended to be developed.

We would appreciate receiving a response within 60 days. Passed this delay, this communication and any response received from EDF Group as well as relevant Governments of Mexico and France will be made public via the communications reporting [website](#). They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please be informed that a letter on this subject matter has been sent to the Government of France and the Government of Mexico.

Sincerely,

Olivier De Schutter  
Special Rapporteur on extreme poverty and human rights

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## **Annex**

### **Reference to international human rights law**

In connection with above alleged facts and concerns, we would like to draw your attention to relevant international human rights law and standards, as well as authoritative guidance on their interpretation. They include:

- Universal Declaration of Human Rights;
- International Covenant on Civil and Political Rights (ICCPR);
- International Covenant on Economic, Social and Cultural Rights (ICESCR);
- UN Declaration on the right to development;
- UN Declaration on the Rights of Indigenous Peoples;
- UN Declaration on Human Rights Defenders;
- UN Guiding Principles on Extreme Poverty and Human Rights; and
- UN Guiding Principles on Business and Human Rights.

Having regard to the fact that the Gunaa Sicarú project concerned the indigenous peoples of the community of Unión Hidalgo, we would also like to highlight the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), adopted by the General Assembly in 2007, which sets out international human rights standards relating to indigenous peoples' rights. Article 26 of UNDRIP asserts the right of indigenous peoples to "the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired". Article 32 affirms that indigenous peoples have the right to determine and develop priorities and strategies for the development or use of their lands or territories and resources and that "States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources". UNDRIP furthermore underlines that States shall provide effective mechanisms for just and fair redress for any such activities, and appropriate measures shall be taken to mitigate adverse environmental, economic, social, cultural or spiritual impact. Importantly, article 10 specifically prohibits forcible removal of indigenous peoples from their lands or territories without their free, prior and informed consent, and provides that relocation could take place only after agreement on just and fair compensation and, where possible, with the option of return.

In 1990, Mexico ratified ILO Convention No. 169 which affirms the rights of indigenous peoples 'to decide their own priorities for the process of development' and to 'participate in the formulation, implementation and evaluation of plans and programmes for national and regional development which may affect them directly'

(Art.7(1)). Article 14 (1) mandates recognition of indigenous peoples ‘rights of ownership and possession’ over the lands they ‘traditionally occupy.’ This includes ‘lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities.’ Further, Article 6 of ILO Convention 169 affirms that governments shall consult the peoples concerned, through good-faith appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them; establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programmes which concern them; establish means for the full development of these peoples’ own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

We further recall that the UN Declaration on the right to development (A/RES/41/128) defines the right to development an inalienable human right by virtue of which every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural and political development (article 1.1). The Declaration further states that the human person is the central subject of development and should be the active participant and beneficiary of the right to development (article 2.1) and requires that States should encourage popular participation in all spheres as an important factor in development and in the full realization of all human rights (article 8.2). We are concerned at the information that, contrary to these commitments, the affected indigenous peoples and communities were not informed or consulted in a meaningful manner about the Gunaa Sicarú project’s plans and measures to mitigate its adverse impact. We refer to the Guidelines and recommendations on the practical implementation of the right to development, which urge states to design and implement development projects after holding meaningful consultations to identify the development priorities of the communities in a project area and benefits-sharing arrangements that would be suitable for those affected. Specifically:

- (a) Consultation processes should be institutionalized rather than ad hoc, and any potential conflicts of interest among those convening the consultations should be addressed in order to ensure that the consultations truly reflect the viewpoints of affected stakeholders (this is particularly important when consultations are convened by a State or by private actors that would benefit directly from the proposed project);
- (b) Those convening a consultation should transparently inform the consulted communities about the potential impacts of the decisions to be made, and the priorities of those affected must be taken into account. (A/HRC/42/38, para 18). Further, the Guidelines recommend that States should institute public planning processes that are participatory and include monitoring mechanisms. Whenever possible, States should decentralize participatory planning processes, thus enabling local communities to pursue development initiatives that reflect their interests and to draw more domestic resources (para 19).

We would like to draw your attention to articles 21 and 22 of the International Covenant on Civil and Political Rights (ICCPR), which guarantee the rights to freedom of opinion and expression, peaceful assembly and association. The Human



Rights Council resolution 31/32 calls upon all States to take all measures necessary to ensure the rights and safety of human rights defenders, including those working towards realization of economic, social and cultural rights and who, in so doing, exercise other human rights, such as the rights to freedom of opinion, expression, peaceful assembly and association, to participate in public affairs, and to seek an effective remedy. It further underlines in paragraph 10 the legitimate role of human rights defenders in mediation efforts, where relevant, and in supporting victims in accessing effective remedies for violations and abuses of their economic, cultural rights, including for members of impoverished communities, groups and communities vulnerable to discrimination, and those belonging to minorities and indigenous peoples.

In addition, we would like to refer to the United Nations Declaration on Human Rights Defenders, which states that everyone has the right to promote and to strive for the protection and realization of human rights and indicates State's prime responsibility and duty to protect, promote and implement all human rights and fundamental freedoms (articles 1 and 2) and details the State's obligation to ensure that no one is subject to violence, threats, or retaliation as a consequence of their legitimate exercise of their rights as human rights defenders (article 12). We would also like to recall article 5 (a), which provides for the right to meet or assemble peacefully and article 6 points b) and c), which provides for the right to freely publish, impart or disseminate information and knowledge on all human rights and fundamental freedoms, and to study, discuss and hold opinions on the observance of these rights.

Finally, we would like to draw your attention to the United Nations Guiding Principles on Business and Human Rights (A/HRC/17/31), which were unanimously endorsed by the Human Rights Council in June 2011, and which are relevant to the impact of business activities on human rights. These Guiding Principles are grounded in recognition of:

- a. "States' existing obligations to respect, protect and fulfil human rights and fundamental freedoms;
- b. The role of business enterprises as specialized organs or society performing specialized functions, required to comply with all applicable laws and to respect human rights;
- c. The need for rights and obligations to be matched to appropriate and effective remedies when breached."

The Guiding Principles further provide that all business enterprises have a responsibility to respect human rights, which requires them to avoid infringing on the human rights of others to address adverse human rights impacts with which they are involved. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States' abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

Principle 13 has identified two main components to the business responsibility to respect human rights, which require that "business enterprises: (a) Avoid causing or

contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts”.

Principles 17-21 lays down the four-step human rights due diligence process that all business enterprises should take to identify, prevent, mitigate and account for how they address their adverse human rights impacts. Principle 22 further provides that when “business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes”.