



Columbia Center
on Sustainable Investment
A JOINT CENTER OF COLUMBIA LAW SCHOOL
AND THE EARTH INSTITUTE, COLUMBIA UNIVERSITY



Respecting the human rights of communities in commercial wind and solar project deployment

A business guide and legal risk primer

CCSI's Just Transition Resources

- **Business Guide:** Respecting the human rights of communities in wind and solar project deployment
- **Legal Primer:** An overview of the associated legal risks



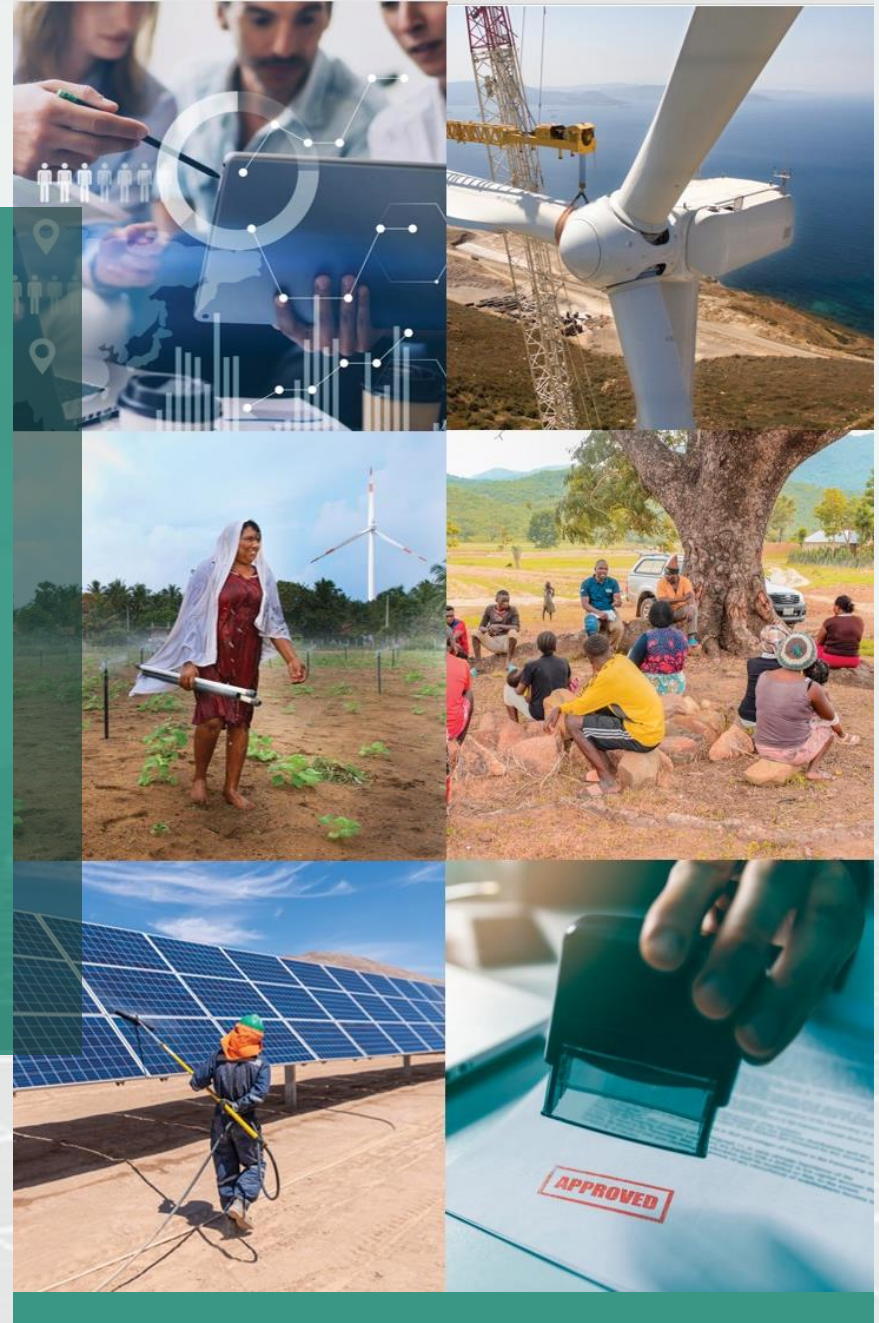
AGENDA



- 1.** Scope and definitions
- 2.** The issues in context
- 3.** Human rights impacts to project-affected communities
- 4.** The business case
- 5.** The way forward



SCOPE & DEFINITIONS



Which project-affected communities?

Indigenous Peoples as well as other local communities, especially vulnerable or marginalized communities, whose internationally recognized human rights are, or risk being, affected by a project.



Types of wind and solar companies addressed



DEVELOPER

Identifies promising sites for renewable energy development, acquiring all permits, contracts and rights necessary



ENGINEERING, PROCUREMENT & CONSTRUCTION (EPC) COMPANY

Finalizes project design, organizes purchase and delivery of equipment, and builds the project



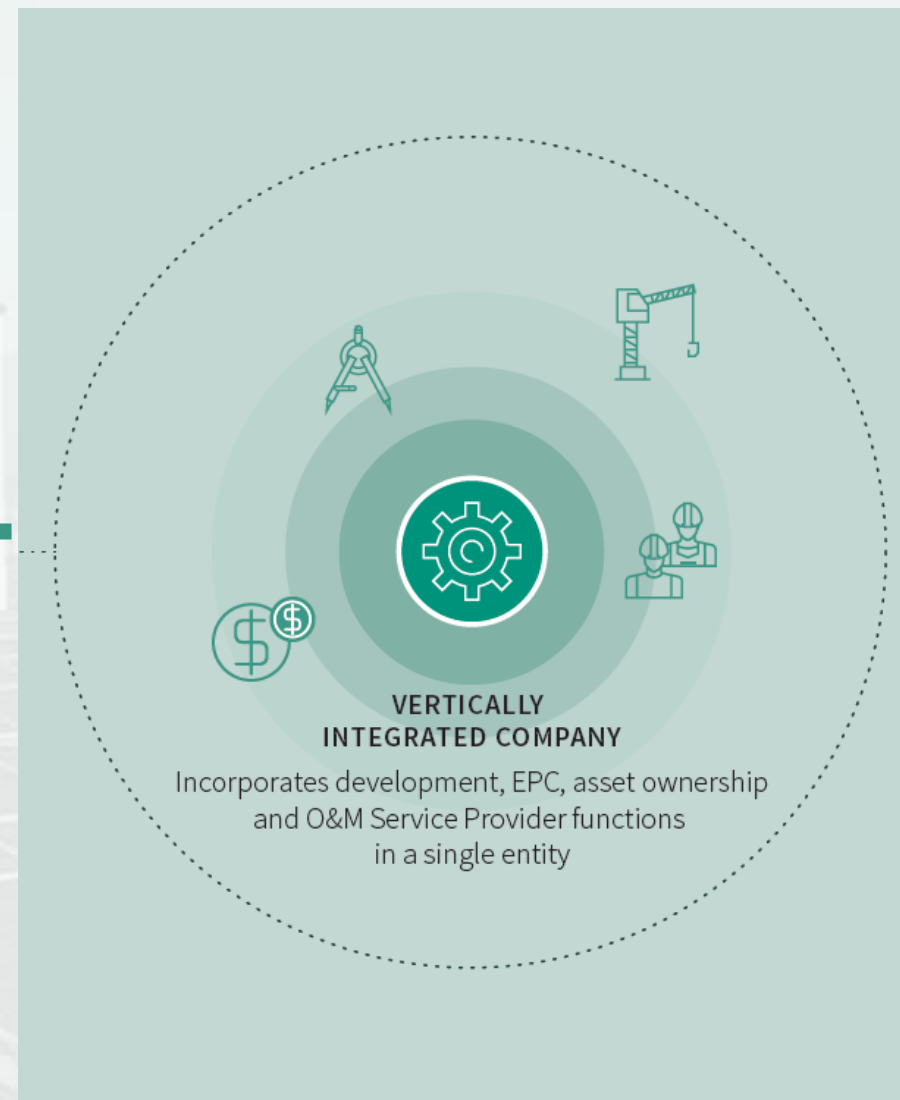
OPERATION & MAINTENANCE (O&M) SERVICE PROVIDER

Manages technical operations and maintenance of installed projects



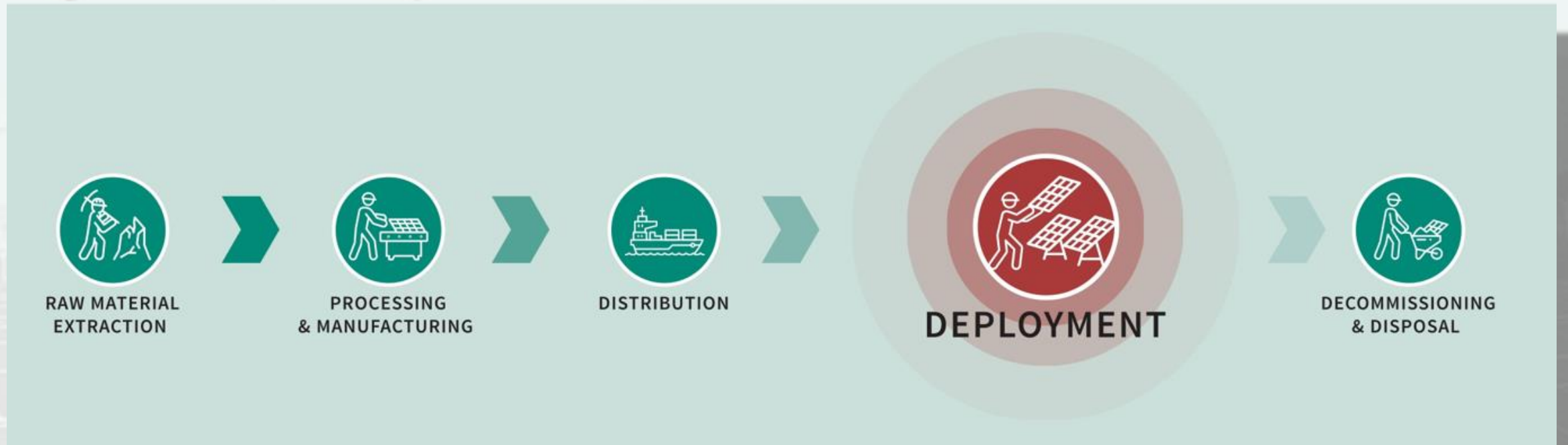
ASSET OWNER

Owns and collects revenue from production, manages sales, output and regulatory reporting



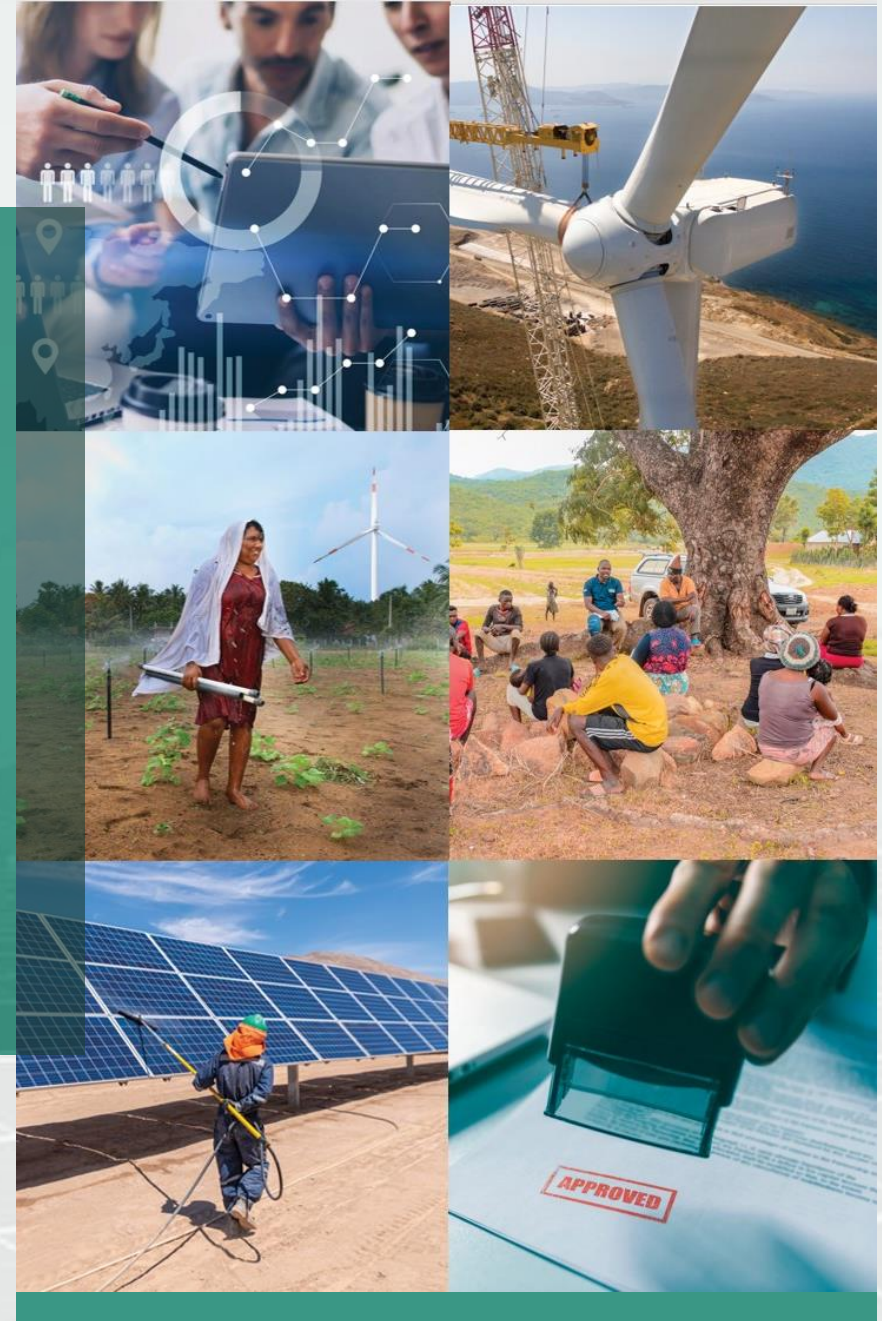
The project deployment phase

All activities from project development through to construction and ongoing operation.





THE ISSUES IN CONTEXT



Why is this issue important?

- The Business and Human Rights Resource Center recorded over 200 allegations of adverse human rights impacts in the renewable energy industry between 2010 and 2020.
 - 44% were linked to the wind and solar sectors
 - 61% occurred in Latin America
- Of combined wind and solar allegations in Latin America alone, the majority concerned:
 - Indigenous Peoples' rights
 - Free, Prior and Informed Consent
 - Land rights
 - Human rights defenders



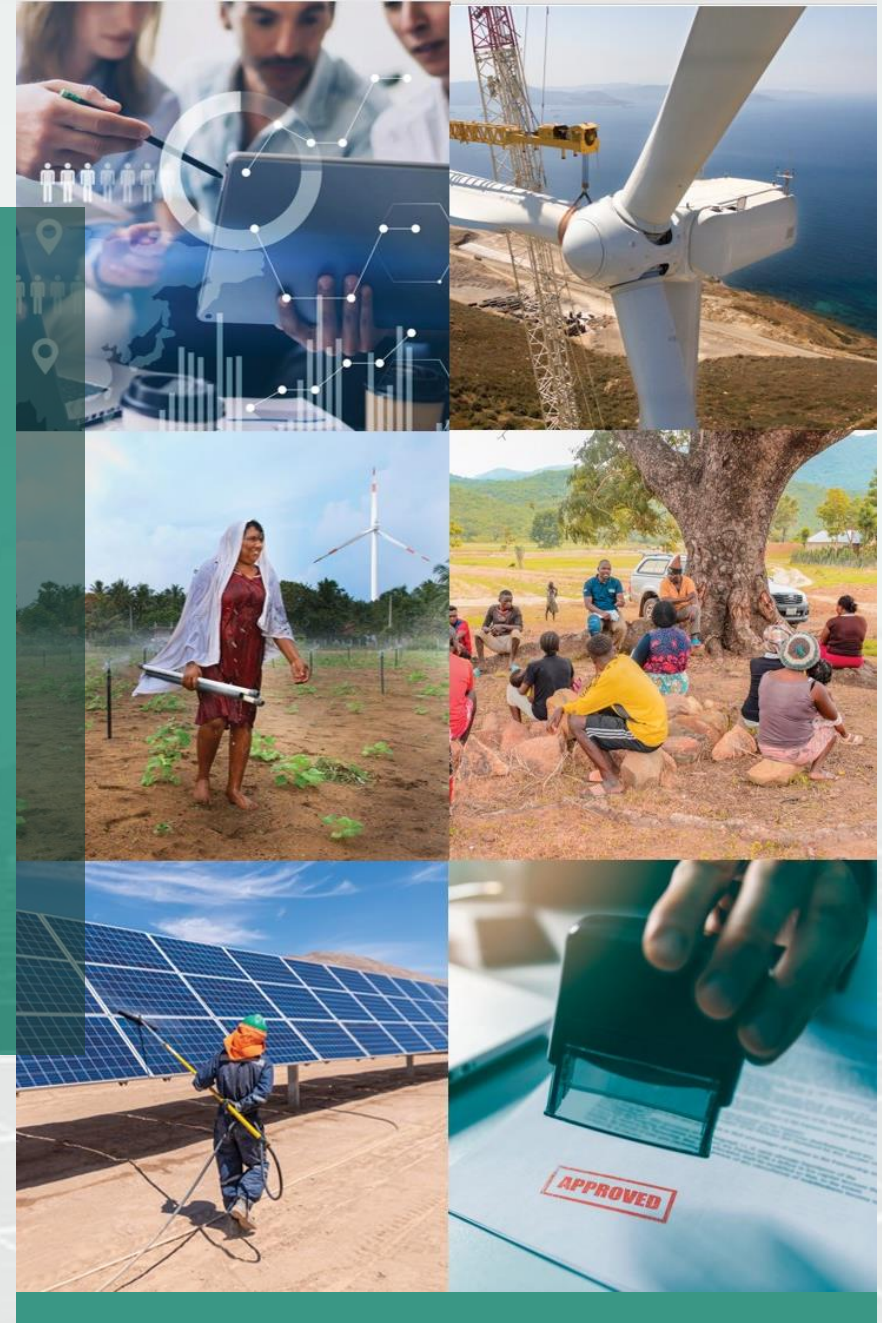
What are the broader implications?

- Without proper management of human rights impacts by wind and solar companies, this trend has the potential to:
 - Cause widespread harm to Indigenous Peoples or local communities, such as loss of land, livelihoods, and cultural integrity
 - Increase legal, financial, operational, and reputational risks for companies and their investors
 - Threaten the sector's continued public support, legitimacy, and market growth opportunities
 - Undermine the sector's critical contributions to combating climate change and advancing sustainable development.





HUMAN RIGHTS IMPACTS TO PROJECT-AFFECTED COMMUNITIES



Potential community impacts in deployment

Some of the more common and salient community-related human rights impacts during deployment include, but are not limited to:

- **Land acquisition without Free, Prior and Informed Consent** (as a right for Indigenous Peoples and best practice and/or domestic legal requirement for other local communities) and **meaningful consultation** with Indigenous Peoples and other local communities.
- **Physical and/or economic displacement** of Indigenous Peoples and other local communities without fair and adequate compensation.
- **Loss of culture and traditions** as well as impacts to community cohesion and identity of Indigenous Peoples or minorities via the interference with or destruction of sacred sites, burial grounds, and areas of cultural significance.
- **Threats, intimidation, and violence against human rights defenders.**
- **Labor rights impacts and threats to community health and safety**



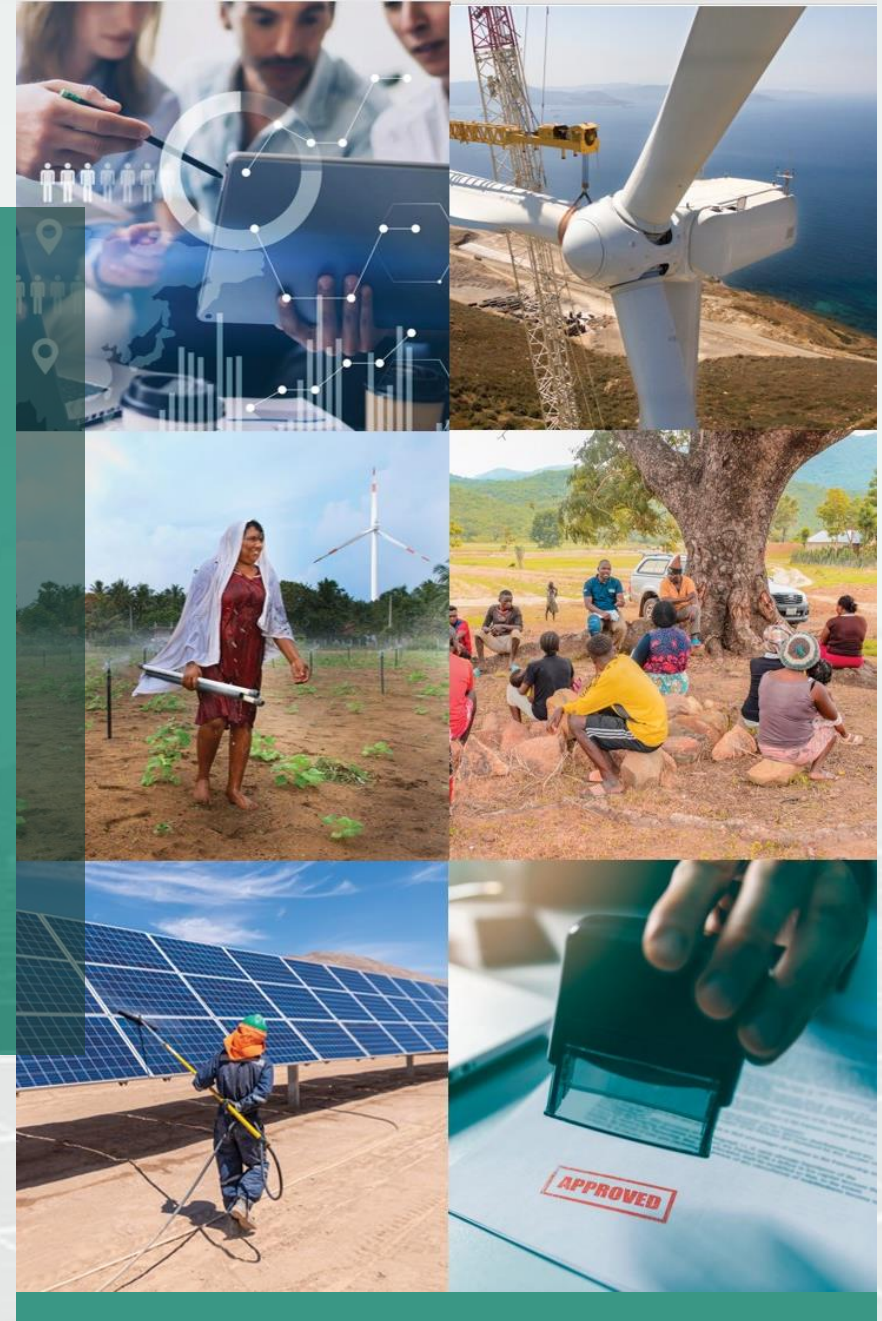
Other factors during deployment

- Companies may also contribute to other factors that can cause or exacerbate to human rights impacts, including:
 - **Bribery and corruption** during project development, which can undermine respect for community rights, as well as the ability of communities to seek redress via legitimate processes
 - **Local tax avoidance**, which can adversely impact human rights and sustainable development outcomes for local communities





THE BUSINESS CASE



Financial, operational & reputational risks

- **Operational delays and lost productivity** due to community conflict, protests, roadblocks, and legal proceedings in response to impacts and a lack of community consultation
- **Revocation of, or an inability to secure, project finance** due to a failure to meet lender social impact criteria
- **Project write-offs** including abandoned assets and projects due to a lack of due diligence surrounding land rights and tenure risk
- **Reputational damage** from adverse media coverage and civil society campaigns
- **Financial costs** and subsequent impacts on project/business viability
- **Diminished return on investment**, investor pressure, and decreased investor appetite.



Legal risks

- Home and host government laws
- Community litigators
- Financiers
- Power purchase agreements



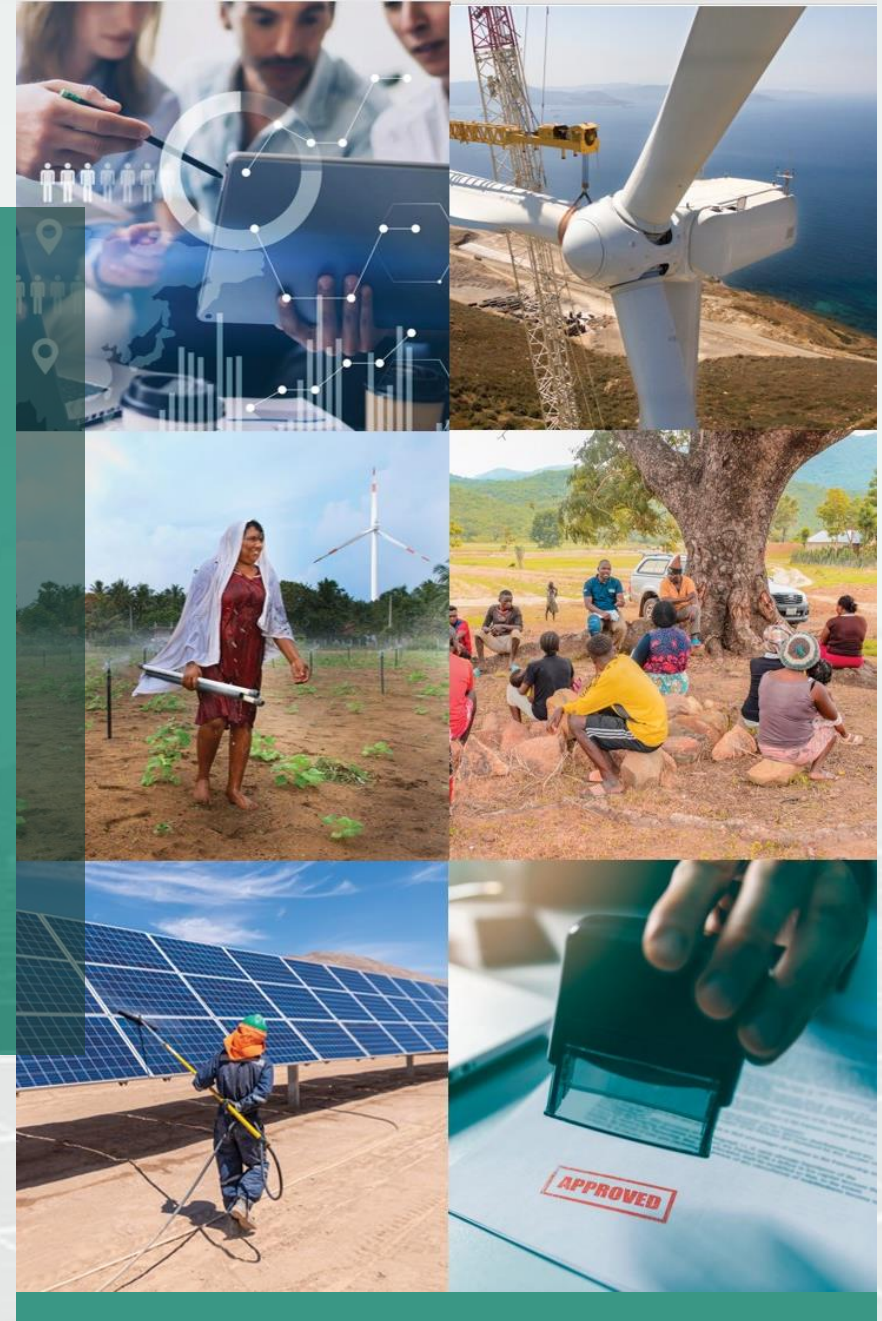
Human Rights Due Diligence Laws

The emerging landscape of mandatory corporate human rights due diligence (HRDD) laws:

- ❖ France
- ❖ Netherlands
- ❖ Germany
- ❖ Norway
- ❖ Switzerland
- ❖ European Union (proposal)



THE WAY FORWARD



Looking forward: Drivers & recommendations

Key drivers

- Human rights benchmarks of wind and solar companies reveal:
 - Poor implementation of the UNGPs
 - Lack of policies in salient impact areas - land tenure rights, Indigenous Peoples' rights, community engagement, and protection of human rights defenders

Recommendations

- A robust human rights program that addresses impacts to project-affected communities via:
 - Governance
 - Policy Commitments
 - Due diligence, Integration & Remedy
 - Partnerships



Recommendations



1. Establish a human rights governance framework

Governance



2. Adopt and implement a human rights policy
3. Adopt and implement a community engagement policy that commits to FPIC and requires ongoing meaningful community consultation across the full project life cycle
4. Adopt and implement a human rights defender policy

**Policy
Commitments**



5. Embed human rights due diligence
6. Conduct human rights impact assessments
7. Cease, prevent, mitigate, and remediate adverse human rights impacts
8. Establish and implement effective human rights grievance mechanisms
9. Track, evaluate, and report human rights performance
10. Deliver human rights training

**Due Diligence,
Integration &
Remedy**



11. Assess, build, and use leverage with business partners
12. Explore project equity models with communities
13. Explore industry coalitions and multi-stakeholder approaches

Partnerships

FPIC-related community engagement



- **Scoping:** Identify all potentially affected communities, tenure rights, representatives (including legitimacy and scope of authority)
- **Planning, research and evaluation:** Map community rights against potential project impacts
- **Method:** Conduct preliminary consultations with all affected communities to agree on the appropriate method and timing of engagement, as well as processes to document engagement steps
- **Consultation:** Provide detailed, accurate, complete, and accessible information about the project (scope, timeline, impacts, benefits, grievance mechanisms, remedies) and respect community decisions
- **Negotiation:** Facilitate access to independent legal and technical assistance for communities, negotiate terms and conditions and, if the community is amenable, develop a written agreement.
- **Agreement:** Obtain community consent to enter into any agreements and plan for iterative dialogue and negotiations to reflect that the requirement to obtain FPIC is ongoing for the length of the project.
- **Implementation:** Implement the agreement(s), establish participatory processes for ongoing dialogue, monitoring and conflict resolution, and effective grievance mechanisms.

Community consultation (non-FPIC)

- **Open to all members** of the affected community
- **Transparent** as to its intention and progress
- **Accessible** (format and terminology)
- **Non-discriminatory** in terms of race, gender, age, income, language, literacy, or disability
- **Culturally-appropriate, gender-sensitive, and context-sensitive**
- **In language(s) understood** by the community
- **Validated** by the community
- **Respectful of inter-community confidentiality**
- **Protective of confidential community attendance lists**
- Conducted in ways that **provide sufficient time** for meaningful community preparation and deliberation
- **Openly accommodating of all opinions, decisions, and a community's right to say "no"**
- **Free from retaliation** in cases of disagreement or dissent





QUESTIONS



THANK YOU