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The background is a complex, abstract illustration. It features several hands of different colors (green, brown, orange, grey) reaching towards the center, symbolizing unity and collaboration. Overlaid on this are various geometric and organic shapes: a large green circle with internal lines, a red vertical bar, a wind turbine, a solar panel, and various leaves and abstract patterns in shades of green, blue, and brown. The overall style is modern and graphic.

# RESPECTING THE HUMAN RIGHTS OF COMMUNITIES

A **BUSINESS GUIDE** FOR COMMERCIAL WIND  
AND SOLAR PROJECT DEPLOYMENT

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# RESPECTING THE HUMAN RIGHTS OF COMMUNITIES

## A BUSINESS GUIDE FOR COMMERCIAL WIND AND SOLAR PROJECT DEPLOYMENT

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# 1. WHY IS THIS ISSUE IMPORTANT FOR WIND AND SOLAR COMPANIES?

Wind and solar energy are essential for the world to reach net zero global emissions in accordance with the *Intergovernmental Panel on Climate Change* targets. The potential for wind and solar energy to advance the *Sustainable Development Goals* (SDGs) around the world is also without question. Rights-respecting wind and solar projects can also contribute to equitable rural development and bolster community livelihoods. The global installed capacity of renewable energy has more than doubled in the last ten years,<sup>1</sup> with wind and solar energy leading this growth.<sup>2</sup> Yet amidst this rapid expansion there have been increasing allegations and lawsuits against wind and solar companies for their involvement in adverse human rights impacts (see Box 1), particularly with respect to the rights of Indigenous Peoples

and local communities and human rights defenders.<sup>4</sup> A key driver has been a lack of robust human rights programs that address community-related human rights impacts.

### BOX 1: WHAT IS AN ADVERSE HUMAN RIGHTS IMPACT?

An adverse human rights impact occurs when an action removes or reduces the ability of an individual or community to enjoy their human rights.<sup>3</sup>

## OVERVIEW

Wind and solar companies are poised to play a critical role in combating climate change and advancing sustainable development. However, they are also facing increased exposure to legal, financial, operational, and reputational risks arising from adverse human rights impacts to project-affected communities, caused by:

- **Land acquisition without FPIC** (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.**

Companies may also contribute to other factors that can cause or exacerbate human rights impacts, including:

- **Bribery and corruption** during project development, which can undermine respect for community rights.
- **Local tax avoidance**, which can adversely impact human rights and sustainable development outcomes for local communities.

Implementing a comprehensive **human rights program** that is integrated throughout business operations can help companies get ahead of these issues and establish an innovative business model that can grow sustainably with respect for human rights. This guide outlines recommendations that draw on the *UN Guiding Principles on Business and Human Rights* to offer tailored guidance on the key elements of such a program with examples. It should be read together with the legal companion to this guide: [Respecting the human rights of communities: A legal risk primer for commercial wind and solar project deployment](#).

Without proper management of human rights impacts by wind and solar companies, this trend has the potential to:

1. Cause widespread harm to Indigenous Peoples or local communities, such as loss of land, livelihoods, and cultural integrity;
2. Increase legal, financial, operational, and reputational risks for companies and their investors;
3. Threaten the sector's continued public support, legitimacy, and market growth opportunities; and
4. Undermine the sector's critical contributions to combating climate change and advancing sustainable development.

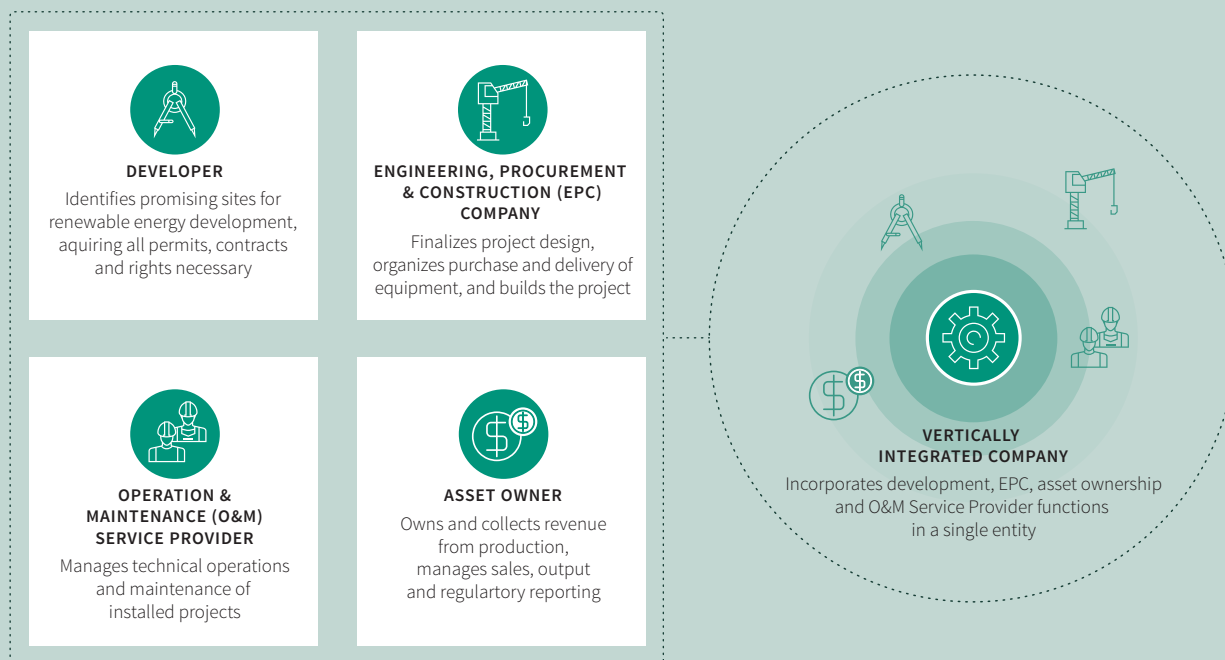




Companies involved in commercial wind and solar projects (see Box 2) are facing increased exposure to the above risks and heightened scrutiny of their human rights performance. This guide provides these companies with information and strategies to identify, prevent, mitigate, and account for adverse human rights impacts that they cause, contribute to, or are directly linked to through their operations, products, or services, by virtue of their business relationships. It may also be useful for investors, business partners, government actors, civil society organizations, communities, and other stakeholders.

The scope of the guide is limited to **community-related** human rights impacts during **project deployment**, namely, all activities from project development (feasibility, scoping) through to construction and ongoing operation. The types of communities contemplated by the guide are 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 ('project-affected communities').

## BOX 2: TYPES OF WIND AND SOLAR COMPANIES THIS GUIDE IS DESIGNED FOR





## 2. WHICH HUMAN RIGHTS IMPACTS?

The Business and Human Rights Resource Center (the Resource Center) recorded over 200 allegations of adverse human rights impacts in the renewable energy industry between 2010 and 2020, 44% of which were linked to the wind and solar sectors.<sup>5</sup> Human rights impacts can arise

at each phase of the wind and solar value chains, and range from forced labor during the extraction of transition minerals and manufacture of components to community health impacts stemming from their disposal (see Box 3).

### BOX 3: A BRIEF SNAPSHOT OF SOME OF THE ACTUAL AND POTENTIAL ADVERSE HUMAN RIGHTS IMPACTS ACROSS THE WIND AND SOLAR VALUE CHAINS



This guide focuses on human rights impacts arising during the project **deployment** phase, including those that can flow from environmental impacts such as loss of biodiversity during project land clearing.<sup>6</sup> However, several salient human rights impacts arise in other phases – comprising both the *upstream* and *downstream* supply chains of the wind and solar companies in Box 2 – and are important to highlight briefly here despite being beyond the scope of this guide.

- **Raw Material Extraction:** Growing demand for the transition minerals<sup>7</sup> that wind and solar projects use exacerbates existing human rights impacts associated with mineral extraction such as child labor, assault by security personnel, attacks against human rights defenders, and interference with Indigenous Peoples' rights to self-determination, Free, Prior and Informed Consent, land, resources, and cultural integrity.<sup>8</sup> Further, the bulk of transition mineral reserves exist in countries classified as both 'fragile' and 'corrupt,' heightening the risk of human rights impacts as the wind and solar sectors expand.<sup>9</sup>
- **Processing & Manufacturing:** Labor rights impacts in this phase are a widespread issue. For example, allegations concerning the use of state-directed forced labor in Xinjiang, China for the manufacture of polysilicon used in solar panels have attracted global attention,<sup>10</sup> led to import bans on Xinjiang-produced polysilicon and goods that contain it,<sup>11</sup> and caused some audit firms to cease labor audits in the region amidst concerns about restricted access.<sup>12</sup> Crucially, 95% of solar modules require solar-grade polysilicon, and 45% of that polysilicon is produced in Xinjiang, thereby pervading the value chains of solar companies globally.<sup>13</sup>
- **Distribution:** Relying on third-party recruitment agencies to find and manage large, low-skilled workforces to transport minerals, components, and equipment, can lead to situations of forced and bonded labor, particularly for informal and migrant workers. Further, logistics and human trafficking routes often coincide such that value chain distribution networks are used for human trafficking.<sup>14</sup>
- **Decommissioning & Disposal:** A failure to adequately rehabilitate a project site and properly restore tenure rights to Indigenous Peoples and local communities can result in several adverse human impacts during decommissioning. Also, given current recycling challenges, the disposal of decommissioned wind and solar technology waste, particularly when it is discarded in landfills or shipped to burn facilities, releases toxins that result in air, soil, and water contamination and affect the health of adjacent communities.<sup>15</sup>

The *UN Guiding Principles on Business and Human Rights* state that companies should carry out due diligence across their value chains and account for human rights impacts that they cause, contribute to, or are directly linked to through their operations, products, or services by virtue of their business relationships.<sup>16</sup>





Due to the land-intensive nature of commercial wind and solar projects,<sup>17</sup> some of the most severe and *common* adverse human rights impacts arise during the project **deployment phase** during which wind and solar farms are scouted, scoped, installed, and operated. Many of these impacts concern the rights of project-affected communities, including:

- **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 and participation in decision-making** by Indigenous Peoples and other local communities (see Box 4);
- **Physical and/or economic displacement** of Indigenous Peoples and other local communities without fair and adequate compensation, affecting their rights to property, housing, food, water,<sup>20</sup> health, development, and a clean, healthy, and sustainable environment,<sup>21</sup> among many others,<sup>22</sup> as well as specific rights of Indigenous Peoples, including the right to self-determination and collective rights to land, territories, and resources;
- **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** via security personnel, Strategic Lawsuits Against Public Participation (SLAPPs),<sup>23</sup> and other tactics (see Box 5 ).
- **Threats to community health and safety** during project construction including physical threats from security personnel and temporary workers, the spread of communicable diseases via imported laborers, and environmental threats from poor waste management practices; and
- **Labor rights impacts** where community members are recruited to form part of the project's workforce.

Companies may also contribute to other factors that can cause or exacerbate human rights impacts, including:

- **Bribery and corruption** during project deployment, which can undermine respect for community rights, as well as the ability of communities to seek redress via legitimate processes; and
- **Local tax avoidance**, which can adversely impact human rights and sustainable development outcomes for local communities.<sup>27</sup>

The likelihood and severity of impacts during project deployment vary based on a project's location as well as the presence or absence of Indigenous Peoples, local conflict, human rights protections, and rule of law. Of all allegations associated with renewable energy projects recorded by the Resource Center from 2010 to 2020, 61% occurred in Latin America.<sup>28</sup> Of the combined allegations in Latin America linked to the wind and solar sectors, 20% concerned Indigenous Peoples' rights, 19% concerned FPIC, 18% concerned land rights, and 17% concerned attacks against human rights defenders.<sup>29</sup> Further, five of the seven countries forecast to attract the most wind energy projects – China, India, Brazil, Turkey, and Mexico – score 'high' or 'extreme' on risk indices related to Indigenous Peoples' rights, land rights, and violations by security personnel.<sup>30</sup>



Security forces near Pau Brasil.

#### BOX 4: WHAT IS FREE, PRIOR AND INFORMED CONSENT (FPIC)?

FPIC concerns the right of Indigenous and tribal peoples to collectively decide on matters that stand to affect their lands, territories, resources, and cultural integrity. FPIC entails a requirement to enable participation in decisions by project-affected communities and peoples and to respect their right to give or withhold consent—without coercion—to any project that may affect them or their lands or resources. FPIC derives from Indigenous and tribal peoples' collective rights, including the right to self-determination, under international law.<sup>18</sup>

In addition, companies and governments are increasingly being required to obtain FPIC from all communities whose human rights may be put at risk. Some domestic laws, such as Liberia's *Land Rights Act* of 2018, contain FPIC requirements for all communities. Similarly, various industry and multi-stakeholder initiative standards, including the EO100 Standard for Responsible Energy, promote FPIC as a good practice for all affected communities.<sup>19</sup> All communities also have human rights to information and public participation that must be respected. This guide therefore takes the position that wind and solar companies should obtain the FPIC of all project-affected communities.

#### BOX 5: HUMAN RIGHTS DEFENDERS (HRDS)

HRDs are defined as “...*people who, individually or with others, act to promote or protect human rights in a peaceful manner.*”<sup>24</sup> This may include human rights activists, lawyers, journalists, whistleblowers, and community leaders and members. According to the Resource Center, the renewable energy sector was the third highest contributor to HRD attacks from 2015 – 2020.<sup>25</sup> In 2020 alone, the Resource Center recorded 604 attacks against HRDs, with ~33% stemming from lack of consultation with, or a failure to obtain the FPIC of, affected communities and ~50% relating to peaceful protests. Also in 2020, Global Witness recorded 227 fatal attacks against land and environmental defenders, with over one third comprising Indigenous people.<sup>26</sup>





## 3. WHAT DOES THIS MEAN FOR BUSINESS?

### 3.1 LEGAL RISKS

Wind and solar companies that cause, contribute to, or are directly linked to adverse human rights impacts could be exposed to legal risks. In particular, an emerging landscape of mandatory corporate human rights due diligence (HRDD) laws strengthen existing due diligence requirements in line with expectations set out in the *UN Guiding Principles on Business and Human Rights*<sup>31</sup> and *OECD Guidelines for Multinational Enterprises*.<sup>32</sup> These laws differ in scope (and some also encompass environmental due diligence, which is beyond the scope of this guide) but typically require companies that meet certain employee, revenue, or other thresholds and criteria to conduct ongoing HRDD (see Box 6) throughout their operations and in some cases, their full value chains. The consequences of non-compliance include administrative supervision (e.g. fines, orders, and exclusion from government procurement contracts) and civil liability. Existing and proposed examples of these laws include:

- **France:** The *Corporate Duty of Vigilance Law* (2017)<sup>34</sup>
- **Netherlands:** The *Child Labour Due Diligence Act* (2019)<sup>35</sup>
- **Germany:** The *Corporate Due Diligence in Supply Chains Act* (2021)<sup>36</sup>
- **Norway:** The *Transparency Act* (2021)<sup>37</sup>
- **Switzerland:** The *Ordinance on Due Diligence and Transparency in the Areas of Minerals and Metals from Conflict-Affected Areas and Child Labour* (2021)<sup>38</sup>
- **European Union:** The European Commission has adopted a proposal for a *Directive on Corporate Sustainability Due Diligence* (2022).<sup>39</sup>

Further examples are currently under consideration in several other jurisdictions.<sup>40</sup> Although these laws are jurisdiction-specific, their effect can be extraterritorial and apply to:

- Foreign companies merely operating and not necessarily headquartered in that country; and
- Human rights impacts occurring abroad, including the deployment-related impacts detailed in Section 2, above.

For example, a lawsuit was filed against France's largest utility, Électricité de France (EDF), under the *Corporate Duty of Vigilance Law* for a failure to conduct adequate HRDD in relation to its wind farm development in Mexico resulting in a violation of the Indigenous Zapotec community of Unión Hidalgo's right to FPIC in the use of their land.<sup>41</sup> Companies are also being held accountable for human rights impacts via non-judicial pathways, and EDF was pursued in a parallel action under the OECD Guidelines complaint mechanism.<sup>42</sup>

Other potential legal risks arise from home and host government laws, community litigators, financiers, and power purchase agreements. See the legal companion to this guide: [Respecting the human rights of communities: A legal risk primer for commercial wind and solar project deployment](#) (CCSI, 2022).





**BOX 6: WHAT IS HUMAN RIGHTS DUE DILIGENCE (HRDD)?**

HRDD refers to the ongoing, iterative process of *continuously* assessing actual and potential human rights impacts (e.g. via human rights impact assessments, auditing, and management systems), integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed via internal and external reporting. HRDD should not be confused with merely undertaking social auditing.<sup>33</sup> Further, HRDD differs from due diligence in the finance context which typically only involves an *initial* appraisal of human rights issues and is concerned with risks to *business* whereas HRDD is concerned with risks to *people*.



Lake Turkana wind power installations in Kenya.



## 3.2 FINANCIAL, OPERATIONAL, AND REPUTATIONAL RISKS

Wind and solar companies that cause, contribute to, or are directly linked to community-related adverse human rights impacts during project deployment could also face costly financial, operational, and reputational risks. These include:

- **Operational delays and lost productivity** due to community conflict, protests, roadblocks, injunctions, and other legal proceedings in response to adverse impacts and a lack of community consultation (see Box 7);
- **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<sup>45</sup> (see Box 8);

- **Reputational damage** from adverse media coverage and civil society campaigns;
- **Financial costs** and subsequent impacts on project or business viability; and
- **Diminished return on investment**, investor pressure, and decreased investor appetite.

Companies that rate poorly on Indigenous Peoples' rights management alone can experience up to 66 times more material credit events (such as halts to operations, regulator inquiries, enforcement actions, and lawsuits) than companies with good human rights management in this area.<sup>49</sup> The cost of these kinds of events for a company can amount to 24-37% of the net present value (NPV) of project investments.<sup>50</sup> By contrast, the cost of implementing measures to *mitigate* adverse human rights impacts are estimated at only 2% of project costs (~10% of the NPV).<sup>51</sup>

### BOX 7: THE COST OF COMMUNITY CONFLICT

A study of company-community conflict in the extractives sector by the *Harvard Corporate Social Responsibility Initiative* found that the company cost of preventable conflicts could amount to \$379 million in asset write-offs and \$1.33 billion in projected reserves for a single project.<sup>43</sup> In Oaxaca, Mexico, communities affected by the 132-turbine Mareña Renovables wind project challenged the project for a failure to obtain FPIC, a lack of fair compensation for their land, interference with traditional fishing practices and cultural rituals, and corruption in the issue of project permits.<sup>44</sup> A combined approach of community roadblocks, non-judicial complaints, and litigation impeded construction and forced Mareña to abandon and relocate the \$1.2 billion project.

### BOX 8: LAND TENURE RISK

This is the risk that land offered for project development is subject to pre-existing individual, collective, communal, or overlapping *ownership* or use claims.<sup>46</sup> Such risks are common in countries where land governance is weak, land rights are undocumented or otherwise insecure, ownership of land by women is not recognized, and customary uses (e.g. pastoral grazing, harvesting of forest products) are not well understood or protected.<sup>47</sup> For example, the High Court in Meru, Kenya, recently nullified the land title deeds for the Lake Turkana Wind Power project because the land was acquired without proper consultation with, or compensation of, Indigenous community members.<sup>48</sup> Land tenure risk can also result in significant financial and/or operational issues for companies because of local opposition.



The *UN Guiding Principles on Business and Human Rights* (UNGPs) are an established global standard of conduct outlining the corporate responsibility to respect human rights. This includes *identifying, preventing, mitigating, and accounting for* adverse human rights impacts that a company causes, contributes to, or that are directly linked to the company's operations, products, or services by virtue of its business relationships. In recent benchmarks of wind and solar companies, many scored poorly in their implementation of the UNGPs,<sup>52</sup> signaling increased exposure to the risks outlined above. These benchmarks also found a significant lack of policies concerning the most salient human rights risks – land tenure rights, Indigenous Peoples' rights, community rights, and protection of human rights defenders.<sup>53</sup>

Building a comprehensive **human rights program** that is integrated throughout business operations can help companies involved in wind and solar projects to get ahead of these issues and establish an innovative business model<sup>54</sup> that can grow sustainably with respect for human rights. The following recommendations draw on the UNGPs to offer tailored guidance on the core elements of such a program grouped into four broad areas: **(1) governance; (2) policy commitments; (3) due diligence, integration, and remedy; and (4) partnerships.** Examples are provided for each recommendation and are intended to be illustrative rather than endorsements of a company's broader human rights performance. Further guidance documents are also referenced in the endnotes.

## GOVERNANCE

### 4.1 Establish a human rights governance framework.

Companies should establish an internal human rights governance framework with executive-level oversight to ensure that their human rights program has structure, oversight, and accountability. This framework should take the form of an Executive Steering Committee, Board of Directors Committee, C-Suite Officer, Cross-functional Working Group, or similar, with appropriate human rights training or expertise, charged with integrating human rights throughout all business functions, processes, and decisions (including decisions regarding whether or not to pursue a project based on the likelihood and severity of associated human rights impacts). This governance framework should also include adequate budget, resourcing, and broad cross-functional engagement with all business departments to avoid a siloed approach.<sup>55</sup>

## EXAMPLES

>> GE Renewable Energy's human rights governance framework includes the GE Group Global Human Rights Counsel, business-level human rights champions, and a cross-functional Steering Committee, with oversight by the Governance & Public Affairs Committee of the Board of Directors.<sup>56</sup>



## POLICY COMMITMENTS

**4.2 Adopt and implement a human rights policy.** This policy or statement should ensure that actual and potential human rights impacts receive company-wide attention and provide a platform for their integration into business processes and decision-making. The policy should encompass all business operations and personnel (including business partners and contractors<sup>57</sup>), outline areas of biggest human rights risk and opportunity in the company's operations and value chain, and include explicit commitments to:

- Implement the **UNGPs, respect all human rights** under the International Bill of Human Rights (consisting of the *Universal Declaration of Human Rights*, *International Covenant on Civil and Political Rights*, and the *International Covenant on Economic, Social and Cultural Rights*)<sup>58</sup> and other human rights treaties, and avoid complicity in human rights impacts;
- Respect **Indigenous Peoples' rights** including those under the *UN Declaration on the Rights of Indigenous Peoples* and the *ILO Convention 169 on Indigenous and Tribal Peoples*;<sup>59</sup>

- Recognize the **legitimate tenure rights** of local communities, including those that are not formally documented, as outlined in the *UN Voluntary Guidelines on the Responsible Governance of Tenure*<sup>60</sup> (see Box 9, and Recommendation 4.3, below);
- Respect **labor rights** as set out in the core ILO conventions and *Declaration on Fundamental Principles and Rights at Work*;<sup>63</sup>
- Prevent **bribery and corruption**, given their potential to cause or exacerbate adverse human rights impacts during projects<sup>64</sup> (see Box 10); and
- Treat contribution to **local taxes** as a human rights and sustainable development responsibility and comply with both the letter and *spirit* of the tax laws in all countries of operation.

The policy should also be *designed in consultation with other stakeholders*, including representatives from Indigenous Peoples and other local communities, approved by senior leadership, *integrated* into other existing policies, made *publicly available*, and *communicated* both internally and externally.

## EXAMPLES

- >> Enel's *Human Rights Policy*, approved by the company's Board of Directors, begins with a commitment to the UNGPs, relevant regional and international laws, and voluntary business standards related to human rights, Indigenous rights, labor rights, and anti-corruption.<sup>66</sup> The policy also requires this of Enel's contractors, suppliers, and other business partners, with a specific requirement that security personnel adhere to the *Voluntary Principles on Security and Human Rights*.<sup>67</sup>
- >> Engie's *Human Right's Referential* describes the policy's integration into the company's broader policy framework.<sup>68</sup>
- >> Iberdrola's *Anti-Corruption Policy* recognizes the link between corruption and adverse social impacts and the company provides some transparency around payments made to governments.<sup>69</sup>
- >> Acciona's *Human Rights Policy* commits to respect and protect communities' land rights.<sup>70</sup>

Examples of stand-alone policies on tenure rights in other sectors:

- >> Nestlé's *Commitment on Land & Land Rights*<sup>71</sup> and PepsiCo's *Land Policy*<sup>72</sup> outline detailed commitments to respect legitimate land tenure rights, including those of customary communities and Indigenous Peoples.



### BOX 9: TENURE RIGHTS

Tenure rights refer to the relationship among individuals or groups, whether formal or customary, with respect to land.<sup>61</sup> This encompasses different types of rights including the right to *access* (e.g. to get to local water sources), *use* (e.g. for grazing or growing crops), *control* (e.g. decide how it is used or derive income from its use), or *transfer* (e.g. sell or lease) a parcel of land. Tenure rights that lack formal documentation may still be *legitimate* and should therefore be respected. In 2021 Norway's Supreme Court revoked the operating licenses of two wind farms on the grounds the projects interfered with Indigenous Sami reindeer herders' traditional grazing rights.<sup>62</sup>



### BOX 10: BUSINESS FACTORS THAT INCREASE RISK OF CORRUPTION FOR WIND AND SOLAR PROJECTS

Factors that contribute to heightened risk in this area include:<sup>65</sup>

- Complex financing arrangements with multi-layered governance structures;
- The prevalence of project siting in locations with political instability, organized crime, institutional corruption, or weak rule of law;
- Reliance on government permits and approvals;
- Frequent interaction with government officials; and
- Use of third-party agents and brokers to navigate local business contexts.





**4.3 Adopt and implement a community engagement policy that commits to FPIC (as a right for Indigenous Peoples and best practice and/or domestic legal requirement for other project-affected communities) and requires ongoing meaningful community consultation across the full project life cycle.** Local communities play a significant role in determining the trajectory of a project. Early engagement and frequent dialogue are essential to understand community concerns, identify and respect legitimate tenure rights, and ascertain the cultural significance of a project site for Indigenous Peoples and customary communities. A community engagement policy or statement may be stand-alone from a broader human rights policy or be embedded within it, and should follow the standards outlined in *IFC Performance Standards 5, 7 and 8*<sup>73</sup> as well as *Equitable Origin EO100*<sup>74</sup> *Standard for Responsible Energy Development*.<sup>74</sup>

The policy should encompass how communities will be engaged and able to participate in decisions throughout the project life cycle, whether *informally* or *formally*, including for the purposes of:

- Gathering information and relationship building
- Conducting, or collaborating on, a Human Rights Impact Assessment
- Obtaining FPIC
- Engaging in participatory project monitoring
- Co-designing and implementing grievance mechanisms and providing remedy

The policy should also outline clear guidelines for all *initial* and *ongoing* community engagement for both *new* and *existing* projects, as well as a step-by-step process for FPIC, such as those outlined below.



## GUIDELINES FOR ALL COMMUNITY ENGAGEMENT

All types and levels of community engagement and associated documentation should be:

- **Open to all members of the affected community**, including women (and not only formal representatives)
- **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** when sharing information and documentation
- **Protective of confidential community attendance** lists to ensure members are not placed at risk
- **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

## STEPS FOR FPIC COMMUNITY ENGAGEMENT

All FPIC-related community engagement should include the following steps:<sup>75</sup>

1. **Scoping:** Identify all potentially affected communities, their tenure rights associated with the project site, as well as formal representatives, including their legitimacy and scope of authority.
2. **Planning, research and evaluation:** Map community rights (see Section 2) against potential project impacts (positive and negative); assess the community's capacity to participate in consultations and provide FPIC; evaluate who can faithfully represent all community voices (including women and minorities); and undertake a preliminary estimate of fair compensation or other appropriate remedies.

3. **Method:** Conduct preliminary consultations with all affected communities to agree on the appropriate method and timing of engagement, as well as processes to document every step and activity of engagement (using participation lists, photos, video, audio recordings, and other tools with the explicit consent of the community) and provide copies to the community.

4. **Consultation:** Avoid applying any pressure on the community; provide detailed, accurate, complete, and accessible information about the project to all community members (scope, timeline, impacts, benefits, grievance mechanisms, remedies); ensure access to independent sources of information, technical support, and advice; allow for iterative discussions; revise proposals based on community feedback; and respect community decisions, including when communities say "no."

5. **Negotiation:** Facilitate access to independent legal and technical assistance for communities; negotiate terms and conditions for the project to proceed with the community (including appropriate remedies and clear plans to adequately rehabilitate the project site and properly restore tenure rights to Indigenous Peoples and other local communities at completion); and, if the community is amenable, develop a written agreement.

6. **Agreement:** Obtain community consent to enter into any agreements with appropriate representative(s); secure the requisite government approvals; and plan for iterative community dialogue and negotiations to reflect that the requirement to obtain FPIC is ongoing for the length of the project. *Note: Simply conducting consultation should not be confused with obtaining FPIC.*

7. **Implementation:** Implement the agreement(s) (including any agreed remedies), and establish participatory processes for ongoing dialogue, monitoring and conflict resolution, and effective grievance mechanisms.

The policy should also include an explicit commitment not to proceed with a project if FPIC is withdrawn at any stage, as well as to ensure non-retaliation where a community's consent is not given or withdrawn.





## EXAMPLES

- >> Ørsted's stand-alone *Local Community Engagement Policy* sets out the guidelines for local community engagement that apply to all projects.<sup>76</sup>
- >> Enel's *Human Rights Policy* includes a commitment to respect the UN Declaration on the Rights of Indigenous Peoples and to consultation and continuous listening activities with all local communities.<sup>77</sup>
- >> Acciona's *Human Rights Policy* commits to respect the rights of Indigenous and tribal peoples, whether or not they are included in the host's state's domestic laws.<sup>78</sup>

Examples from other sectors:

- >> PepsiCo's *Land Policy* defines the components of FPIC and commits to ensure FPIC of *all* communities (Indigenous or otherwise) in all land acquisitions.<sup>79</sup>
- >> Natural Habitats' *Land Use Policy* includes a commitment to promote community access to independent legal representation to ensure FPIC.<sup>80</sup>



Community meeting in the rural village of Djiifanghor, in the Casamance region, Senegal, West Africa.



#### 4.4 Adopt and implement a human rights defender policy.

A significant portion of human rights allegations against wind and solar companies concern threats, intimidation and violence against human rights defenders, including community leaders and members. A human rights defender policy should ensure this specific issue is both *understood* and *addressed* in company processes and decision-making. This policy or statement may be stand-

alone from a broader human rights policy (or be embedded within it) and should outline a clear position on respect for and non-retaliation against human rights defenders and their activities, as well as how it will be operationalized.<sup>81</sup> The policy should also be designed in consultation with other stakeholders, including human rights defenders who are members of, or represent, Indigenous Peoples, other local communities, and civil society organizations.

### EXAMPLES

- >> First Solar's *Human Rights Policy* includes a statement that the company "does not tolerate retaliation of any kind against anyone who reports an issue... [nor] unlawful threats, intimidation, physical, or legal attacks against human rights defenders" in relation to its operations.<sup>82</sup>

Examples of comprehensive, stand-alone human rights defender policies and approaches from other sectors:

- >> Wilmar's *Human Rights Defenders Policy* was developed in collaboration with an external expert and was designed following stakeholder consultations and a gap analysis against international best practices.<sup>83</sup> It specifically includes land, Indigenous and other community defenders, acknowledging the particular vulnerability of defenders who are women or Indigenous persons. It also recognizes the role that defenders can play in due diligence and monitoring to identify actual and potential adverse human rights impacts.
- >> Adidas's *Human Rights Defenders Policy* defines who constitutes a defender, outlines the threats they may face, clarifies their rights, commits to non-interference with these rights, and requires the same of business partners.<sup>84</sup> Adidas also commits to take action where a business partner has breached this obligation, to petition a government where the rights of a defender linked to the company have been infringed by the State, and provides examples of such action taken.
- >> Meta has created a Human Rights Defender Fund and Journalist Safety Initiative for the Asia Pacific region to provide new devices and security technologies, temporary relocation, and other support to individuals who are targets of harassment, persecution and/or prosecution because of their activities in support of human rights.<sup>85</sup>

Protest against the Eólicas del Sur wind farm, at the height of the COVID-19 pandemic, November 2020.





## DUE DILIGENCE, INTEGRATION & REMEDY

**4.5 Embed human rights due diligence.** Embedding HRDD throughout all processes and decision-making ensures that actual and potential adverse impacts are not only identified, but also prevented, mitigated, and addressed. HRDD is an ongoing, proactive *and* reactive process of vigilance, assessment, and action, that evolves with a company's ever-increasing understanding of its human rights impacts (see Box 6). It involves several interdependent elements – **assessing** impacts, **integrating** and **acting** upon findings, **tracking** responses, and **communicating** progress – each of which are expanded on in subsequent stand-alone recommendations below. Broadly, HRDD can be embedded within a company's enterprise risk management systems and decision-making, and should encompass adverse human rights impacts that it may

**cause or contribute** to through its own operations and those which may be **directly linked** to its operations, products or services through its business relationships. Further, HRDD should take into account **operating context** and involve additional rigor for high-risk, high-volume projects or geographies, as well as engagement with the legal department to ensure compliance with any applicable mandatory HRDD laws (see Section 3.1). HRDD should be carried out by those with appropriate training, initiated early during project development, and continue through project construction and operation. Companies should note that conducting HRDD, either to comply with HRDD laws or simply as a good practice measure, may reduce the risk of both legal and non-legal complicity.<sup>86</sup>

### EXAMPLES

- >> Schneider commits to conduct HRDD and has adopted a group-wide *Vigilance Plan* in accordance with HRDD requirements under the French *Corporate Duty of Vigilance Law* to prevent human rights impacts by its operations in France or abroad.<sup>87</sup> The plan includes a human rights risk assessment methodology, results matrix, and mitigation measures.
- >> Engie incorporates additional vigilance in its HRDD processes in high-risk areas (conflict zones or countries with weak governance) which are identified based on a country risk rating tool.<sup>88</sup>
- >> Vestas demonstrated support for regulatory efforts by endorsing the introduction of forthcoming mandatory HRDD legislation.<sup>89</sup>



#### 4.6 Conduct human rights impact assessments (HRIA).

A key element of HRDD is *identification* of the specific rights and rightsholders that are or might be adversely affected by company operations or business relationships. The assessment of human rights impacts should be systematically incorporated into all business and project-related processes and decision-making (including key decision points such as commencing a new project or entering a new geography), and carefully consider communities that may be at heightened risk of vulnerability or marginalization. Stand-alone HRIAs – encompassing all or part of a company’s operations or specific high-risk geographies or projects – can also be

used as an effective tool to ascertain hotspots and allocate appropriate budget and qualified resources to areas that will optimize outcomes for communities. It is important that HRIA processes draw on independent external human rights expertise and involve the meaningful participation of actual or potential affected communities (with their consent), including those who are especially vulnerable such as Indigenous Peoples, women, youth, and people with disabilities.<sup>90</sup> HRIAs should also be published in line with a commitment to transparency.

#### EXAMPLES

- >> Vestas engaged external experts to undertake a company-level HRIA to ascertain human rights impacts across its operations and value chain.<sup>91</sup> The HRIA consisted of research, internal management process analysis, and interviews with employees and subject matter experts. The human rights impacts were mapped and prioritized according to *salience of the risk* (scale, scope, remediability, likelihood) and *relevance for business action* (attribution, leverage, risk history, current management).
- >> Arcadis engaged external experts to undertake a project-level HRIA to ascertain human rights impacts for an offshore wind project.<sup>92</sup>
- >> EDP Renewables, as part of the EDP Group, commits to engage independent third parties to conduct HRIAs when commencing or closing substantial projects or entering new businesses or geographies, and publishes the results.<sup>93</sup>
- >> GPSC Group conducted an HRIA encompassing its operations, supply chain, subsidiaries, and joint ventures, including community rights (related to consultation, health and safety, cultural heritage, Indigenous Peoples, and resettlement) as a category of investigation.<sup>94</sup>







#### 4.7 Cease, prevent, mitigate, and remediate adverse human rights impacts.

HRDD also encompasses integrating the findings from HRIAs into business processes and taking action to cease, prevent, mitigate, remediate, and account for the human rights impacts identified. What constitutes appropriate action for an identified human rights impact will depend on the **type** and **severity** of harm, whether it is a **potential** harm or has **already occurred**, the nature of the company's **involvement**, and the extent of its **leverage** in addressing the impact. Specifically:

- **Cause or contribute:** Where a company risks causing or contributing to a *potential* adverse human rights impact, the company should develop, or cooperate with other contributors to develop, processes and plans to cease or change its activity to prevent the impact from materializing or mitigate (reduce) it to the greatest extent possible. If such an impact has *already occurred*, the company should provide, or cooperate with other contributors to provide, remediation. Company remedies for individuals and communities that suffer harm may include: restitution, compensation, rehabilitation, public apology or acknowledgment, truth-finding, and/or changes to policy, processes, or contractual terms to ensure non-repetition.<sup>95</sup>
- **Directly linked:** Where a company's operations, products, or services are directly linked through a business relationship to a *potential* adverse human rights impact, the company should use its leverage in those relationships to prevent or mitigate the impact. If such an impact has *already occurred*, a company is not required itself to provide a remedy, but may take a role in doing so and use its leverage with responsible parties to enable remedy (see Recommendations 4.11 & 4.13).

It may not always be possible to address all actual or potential impacts simultaneously, and **prioritization** may be required. In these circumstances, the most severe impacts should be prioritized based on factors such as scale, scope, and whether a delayed response would make them irremediable. However, while prioritization and sequencing may be required, *all* impacts must still be addressed. All of these activities – determining how a company is connected to an impact, deciding what action to take, and prioritizing actions – can be complex and challenging, and companies should engage external experts for assistance as needed.<sup>96</sup>

#### EXAMPLES

- >> Schneider commits to provide, or help provide, remedy to those harmed in situations where it has caused or contributed to an adverse human rights impact.<sup>97</sup>
- >> Acciona commits to remediate its adverse human rights impacts, and also to use its influence to encourage commercial partners to do the same.<sup>98</sup>

#### 4.8 Establish and implement effective operational-level human rights grievance mechanisms.

As part of a broader remedy ecosystem approach, operational-level grievance mechanisms provide a crucial avenue for project-affected individuals and communities, and their representatives, to voice concerns and complaints, and serve as a vital feedback loop in HRDD. In doing so, these mechanisms can facilitate the early detection and resolution of issues, avoid compounding harms, prevent the escalation of disputes, avoid litigation, strengthen engagement with project-affected communities, and demonstrate the company's commitment to understand and respond to community concerns.





A company grievance mechanism should align with the UNGPs effectiveness criteria and be:<sup>99</sup>

- **Legitimate**, validated, and trusted by those using it
- **Accessible** to all for whom it is intended irrespective of race, gender, age, income, language, literacy, disability or access to technology
- **Predictable** in terms of its procedure, response times, monitoring, and appeals processes
- **Equitable** and ensure that aggrieved parties have access to information, expert advice, and support
- **Transparent** as to its function and progress
- **Rights-compatible** with internationally recognized human rights
- **Confidential** to ensure the anonymity of complainants
- **A source of continuous learning**
- **Designed and monitored in consultation** with all for whom it is intended, adopting a bottom-up rather than top-down approach
- **Culturally appropriate, gender-sensitive, and context-sensitive**, and context-sensitive, and, where relevant, incorporate the traditional justice systems of the Indigenous Peoples concerned

## EXAMPLES

- >> Acciona commits to provide all stakeholders with grievance channels to report and make claims with respect to human rights impacts that are transparent, reliable, confidential, culturally-appropriate, and accessible (both physically and linguistically).<sup>100</sup>
- >> Vestas has implemented a grievance mechanism tailored to communities that registers and handles community concerns or complaints caused by Vestas or its contractors in the *Vestas Incident Management System* and publicly reports on total grievances received.<sup>101</sup>

Examples of grievance mechanisms designed around existing community practices from other sectors:

- >> TVI Resource Development used existing traditional community structures and localized customary procedures as the basis for its grievance mechanism.<sup>102</sup>

**4.9 Track, evaluate, and report human rights performance.** Tracking, evaluating, and reporting on human rights performance both internally and externally as part of HRDD is crucial to monitor policy implementation, drive continuous improvement, and ensure transparency. Reporting should use **qualitative** and **quantitative** indicators and be informed by a human rights materiality assessment to identify and prioritize salient human rights risks to track and report.<sup>103</sup>

## EXAMPLES

- >> Vestas reports on three human rights performance indicators related to its projects: (1) the number of community grievances received via the company's grievance mechanism; (2) the number of direct beneficiaries from community engagement activities; and (3) the share of projects that have undergone a HRDD process.<sup>104</sup>
- >> Engie produces an integrated annual report that encompasses both its financial results and human rights performance.<sup>105</sup>

Examples of comprehensive, stand-alone human rights reports from other sectors:

- >> PepsiCo and Unilever both produce an annual, stand-alone Human Rights Report, that discloses updates to the company's human rights approach, progress on salient human rights issues such as land rights, and tracking against key metrics.<sup>106</sup>





**4.10 Deliver human rights training.** Training is a critical part of integrating human rights throughout a company. It ensures that all employees and business partners both *understand* and are *aware* of the potential human rights impacts of company operations, and can effectively implement human rights policies and due diligence. A human rights training program should be mandatory for all employees and business partners (including joint venture partners, suppliers, contractors, subcontractors, and security personnel),<sup>107</sup> and tailored to emphasize the specific human rights risks relevant to specific roles, functions, locations, and a company's operations or projects.<sup>108</sup>

### EXAMPLES

- >> Engie has developed tools for internal human rights awareness raising and training.<sup>109</sup>
- >> GE Renewables conducts similar training with a focus on tailoring its training for different audiences – employees, contractors, and business partners – which are regularly updated.<sup>110</sup>



## PARTNERSHIPS

**4.11 Assess, build, and use leverage with business partners.** Wind and solar projects often involve joint ventures (JVs) with State and non-State entities, a network of subsidiaries with varying levels of control and responsibility, and an array of contractors and suppliers. In such cases, there may be a risk that even wind and solar companies with a robust human rights program may be **directly linked** to an adverse human rights impact through one of these business partners. Further, questions of complicity may arise where a company is, or is seen to be, contributing to adverse human rights impacts caused by these other parties. It is therefore crucial that wind and solar companies **assess, build, and use** their leverage to lift respect for human rights (and contributions to the

SDGs) across all State and non-State parties involved in a project. Leverage can be exercised either **individually** or **collectively** (see Recommendation 4.13) via a range of measures such as adopting business partner codes of conduct, requiring contractual human rights compliance, implementing contractor screening practices, and determining conditions under which it might be appropriate to terminate a relationship. Companies should also be cognizant of the ways in which their leverage to prevent and mitigate human rights impacts may be *diluted* via actions such as allocating control for project activities that carry a high human rights risk to a JV partner with weak human rights management.<sup>111</sup>

## EXAMPLES

- >> Ørsted has adopted a *Code of Conduct for Business Partners* as a ‘foundation for continuous engagement’ and dialogue with business partners (including suppliers and JV partners) on human rights issues.<sup>112</sup> The Code outlines an expectation that business partners respect human rights and embed international human rights principles into their own operations, and notes that the Code forms part of all contracts. Ørsted also commits to terminate a relationship where a business partner fails to live up to the Code in an explicit and severe manner, refuses to engage in due diligence activities, or lacks commitment to make progress on issues identified during an assessment.
- >> BKW Energie has added an opt-out clause to its contracts with business partners that allows BKW to withdraw if human rights violations are identified and not addressed.<sup>113</sup>

### 4.12 Explore project equity models with communities.

As part of a commitment to respect the rights of communities, including the rights of Indigenous Peoples, and to advancing sustainable and inclusive development, companies should also explore equity models with local communities such as joint ventures, equity allocation, transfer of ownership over time, and other benefit-sharing. These approaches can be mutually beneficial for both the company and community. For communities, they can help to preserve connection to customary lands, strengthen their voice and participation, and facilitate benefits such as a share of profit streams, opportunities for employment, technical knowledge transfer, skill building, and training. Similarly, companies benefit from communities sharing their local knowledge and practices, and the opportunity to reduce risk exposure by preventing and mitigating adverse human rights impacts. While promising in principle, equity models do not *guarantee* these outcomes. To increase the chances of their success, the community’s representatives should be supported to develop the technical skills to participate in governance decisions, given veto rights in the case of a minority stake, and protected against the dilution of their shares or representation. The community and its representatives may also benefit from independent technical and legal assistance to help advocate for their rights and interests. Particular attention should be given to mitigating power imbalances between the company and the community during consultation, negotiation, and operation of any such scheme.

## EXAMPLES

- >> In Canada, several renewable energy companies have partnered with First Nations, Inuit and Métis communities using models that allow the communities to both participate in projects and retain a share of the ownership and/or profits.<sup>114</sup> For example, in British Columbia the Saik’uz First Nation formed a 50-50 joint venture with Innergex to develop a wind farm, and the T’Sou-ke Nation entered into a \$750 million wind farm partnership with Timberwest and EDP Renewables.
- >> Similar collaborative ownership models are being driven by the *Right Energy Partnership* as well as the *First Nations Clean Energy Network* in Australia.<sup>115</sup>



Saik’uz First Nation and Innergex with their wind energy project.



**4.13 Explore industry coalitions and multi-stakeholder approaches.** Human rights benchmarks of wind and solar companies reveal that many are still in the early stages of implementing the above recommendations. Companies should explore opportunities to drive improvement via

new or existing collaborative forums to level the playing field, share knowledge and best practices, maximize collective leverage to drive change, fill governance gaps, and capitalize on economies of scale in implementing the above recommendations.

## EXAMPLES

- >> The US Solar Energy Industry Association has developed a *Solar Industry Commitment to Environmental & Social Responsibility* and a *Solar Supply Chain Traceability Protocol* to advance human rights and environmental performance in the industry.<sup>116</sup>
- >> The Dutch Socio-Economic Council has initiated exploration of a multi-stakeholder *Responsible Business Conduct Agreement* for the renewable energy sector to implement the OECD Guidelines and UNGPs.<sup>117</sup>
- >> Joint financing of independent legal and technical support for communities to support FPIC is another possible initiative that collaborative forums might address.<sup>118</sup> For example, members of the *Roundtable on Sustainable Palm Oil* global multi-stakeholder initiative – companies, processors and traders, manufacturers, and retailers – collectively finance support for dispute settlement via annual membership fees.<sup>119</sup>
- >> Collaborative HRIAs are another possible initiative that an industry or multi-stakeholder forum might facilitate.<sup>120</sup>





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