



# ENABLING A JUST TRANSITION: PROTECTING HUMAN RIGHTS IN RENEWABLE ENERGY PROJECTS

**A BRIEFING FOR POLICYMAKERS**

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# 1. INTRODUCTION

The rapidly accelerating climate crisis and its already observable impacts on people and ecosystems, warrants a rapid and thorough transformation of global energy systems.<sup>1</sup> Renewable energy plays a pivotal role in this transition, and in the critical worldwide effort to reach net-zero emissions.<sup>2</sup> Global installed capacity of renewable energy has more than doubled in the last ten years, with renewable energy generation now outpacing fossil fuel sources in many countries.<sup>3</sup> Further expansion of the sector is still needed, and likely to accelerate with increasing investment and related policy measures such as the European Green New Deal and the United States’ Inflation Reduction Act.<sup>4</sup>

Amidst this expansion and its many climate-related benefits, evidence shows that policymakers would benefit from examining the social impacts of renewable energy projects in order to advance a sustainable and just energy system. Much of the world’s non-commercially exploited land and natural resources, including key sources of renewable energy, are found in or around the territories of Indigenous Peoples.<sup>5</sup>

Further, Indigenous Peoples, customary land holders, forest guardians and local farmers collectively manage a significant share of global forests and agricultural lands. These peoples and communities (defined in Box 1) therefore play a central role in land-based climate mitigation efforts,<sup>6</sup> which risks being jeopardized if they are excluded from large-scale development decision-making.

Further, conflicts over large-scale renewable energy deployment can erode critical popular support for renewable energy technologies, threatening governments’ plans to build more sustainable energy systems in the long-term. Failure to consult affected peoples and communities, and oppression of local protest, undermines the argument that such projects serve the public interest, including the vulnerable communities that most require access to affordable energy.<sup>7</sup> Continuing the necessary expansion of the renewable energy sector to meet global climate objectives therefore requires advancing a just energy transition that adequately addresses its human rights impacts.



## BOX 1: WHICH PEOPLES AND COMMUNITIES?

This brief focuses on the human rights and tenure rights impacts of renewable energy deployment (see Box 2). These rights are held by different collectivities. **Indigenous Peoples** are one such collectivity whose rights may be at risk. Indigenous Peoples' unique rights are recognized under the UN Declaration on the Rights of Indigenous Peoples, among other instruments and judgments.<sup>8</sup> This briefing also concerns the rights of local communities, especially vulnerable or marginalized communities, whose internationally recognized human rights and tenure rights are, or risk being, affected by such projects.

## BOX 2: PROJECT DEPLOYMENT

The scope of this primer is limited to rights impacts during project deployment, which includes all activities from feasibility scoping through to construction and ongoing operation. Upstream activities, such as material acquisition and transport, as well as end-of-project decommissioning and disposal, are not covered here but also require careful consideration. Policymakers should therefore address all human rights impacts across the entire value chain of projects, including supply chain labor rights impacts, and the mining of critical minerals.



Source: CCSI, 2022<sup>9</sup>

This briefing provides guidance to **policy- and decision-makers** (hereafter, “policymakers”) on the benefits of and strategies for taking a human rights-based approach to renewable energy policy. It highlights the various impacts of utility-scale renewable energy projects on peoples and communities, associated risks for policymakers, and explains how national, regional, and global policies can help mitigate those impacts and risks. The briefing addresses different agents of policy- and decision-making: **Host states**, where renewable energy projects are proposed or located; **Home states** where corporations pursuing renewable

energy investments, especially investments abroad, are based; **Development Finance Institutions (DFIs)** financing renewable energy investments, especially those required to comply with environmental and social safeguards; and **Intergovernmental bodies** concerned with socio-economic cooperation, which can set standards regarding the conduct of renewable energy investments. This briefing is part of a series of publications by the Columbia Center on Sustainable Investment that provide guidance on adopting a rights-based approach to renewable energy deployment.



## 2. RENEWABLE ENERGY'S IMPACT ON HUMAN RIGHTS

In addition to their crucial contribution as a climate solution, renewable energy projects can be a vehicle to empower Indigenous Peoples and relevant local communities. Renewables can enable access to affordable and reliable energy, including in remote locations, create local jobs, and promote self-sufficiency where projects are collectively owned and managed.<sup>10</sup> Countless local communities and Indigenous Peoples have stepped forward with innovative renewable energy projects to contribute to global climate action and the protection of their environments (see Box 11, below).<sup>11</sup>

Despite these many benefits, utility scale renewable energy projects also pose significant risks. Peoples and communities across the world have been deeply affected by the effects of land-based investments such as mining, energy generation, logging, industrialized agriculture, and

associated infrastructure development.<sup>12</sup> Such projects have led to land-grabbing and forced displacement, the destruction and contamination of local lands, the depletion and contamination of water resources, and the destruction of sacred sites, among other human rights impacts. A growing body of literature documents how large-scale renewable energy projects can have similar impacts for peoples and communities, owing to the sector's demand for large amounts of land.<sup>13</sup> One recent study recorded over 200 allegations of adverse human rights impacts linked to renewable energy projects between 2010 and 2020.<sup>14</sup> These alleged human rights infringements point to failures of the sector to meet its internationally recognized responsibility to protect human rights, thereby threatening the continued growth and viability of the energy transition.<sup>15</sup>





### BOX 3: TYPES OF RENEWABLE ENERGY PROJECTS AND THEIR IMPACTS ON PEOPLES AND COMMUNITIES<sup>16</sup>

**Solar energy** requires large amounts of land, for the actual power plant as well as access infrastructure such as roads, which can interfere with existing community land uses. Land on which panels and mirrors stand typically has to be cleared and levelled, which can lead to erosion. Both photovoltaic (PV) and concentrated solar power (CSP) also have substantial water requirements for manufacturing and cleaning of panels and, in the case of CSP, cooling.

**Wind power** has a smaller land footprint than solar energy, can be compatible with grazing, and can make smaller demands on available water sources. Nevertheless, large onshore wind farm projects can interfere with local land use as land is needed for the wind farm itself as well as for access infrastructure. Wind projects can therefore involve land acquisitions that violate the rights of Indigenous Peoples and local communities.

**Biofuel production**, similar to other large-scale agriculture projects, can lead to deforestation and displacement of Indigenous Peoples and small-scale farmers through land acquisition and conversion, and can contribute to additional water stress and scarcity, in addition to food shortages and price shocks. Land conversion through deforestation can also lead to a net increase in carbon emissions. Additionally, herbaceous or woody bioenergy crops and non-native production forests can damage local ecosystems, thereby affecting nearby peoples and communities.

**Large-scale hydropower** projects have among the most severe impacts within the renewable energy sector on the environment and on peoples and communities. Environmental impacts include: changes to water quality and temperature, affecting all parts of rivers' ecosystems; pollution through waste and hazardous materials from the construction phase; noise, dust, reduced air quality, erosion and sediments; and, in many cases, damage to the natural architecture of riverbeds and the surrounding environment. Peoples and communities can be deeply affected by these impacts, including through loss of livelihoods due to declining fish populations and loss of access to safe drinking and irrigation water and, in many cases, through loss of land, forced removals, displacement of people and livelihoods, combined with the abrogation of their rights to their land, livestock, and territories.

**Green hydrogen** is a relatively new energy source, with high political interest and prospects for substantial growth in the coming decades. The production of hydrogen itself requires relatively little land but significant amounts of water, which may compete with water sources used by communities and peoples. Further, production is based on electricity generated by renewable energy, which can be generated far from the hydrogen production site, as electricity can be transported via power lines, usually from wind, solar or hydropower plants. The social and environmental footprint of green hydrogen thus relate back to the siting of wind, solar, and hydropower projects that serve these production plants, which as discussed above, can carry significant implications for peoples and communities.

Many adverse impacts on peoples and communities caused by renewable energy project deployment derive from conflict over land. Large, utility-scale wind and solar generation requires at least ten times the amount of land as coal and natural gas generation per unit of power produced,<sup>17</sup> while bioenergy production and the construction of large dams can involve land requirements many multiples of this. While often linked to land-based concerns or conflicts, multiple human rights can be affected by renewable energy projects, as is often the case with infrastructure projects. These include:<sup>18</sup>

- **Land acquisition without Indigenous Peoples' free, prior and informed consent (FPIC) or meaningful engagements** with, and participation in decision-making by, local communities (see Box 4). A lack of FPIC can breach Indigenous Peoples' rights to property and resources,<sup>19</sup> development,<sup>20</sup> and self-determination,<sup>21</sup> among others. For local communities, especially vulnerable or marginalized communities, the absence of meaningful engagements can breach their legitimate tenure rights (see Box 5), rights to public participation and



information,<sup>22</sup> and the right of minorities to take part in cultural life.<sup>23</sup>

- **Physical and/or economic displacement** of peoples and communities without fair and adequate compensation. Such displacement can infringe on human rights to property, adequate housing, food, water, health,<sup>24</sup> development, and a clean, healthy, and sustainable environment,<sup>25</sup> among others, as well as specific rights of Indigenous Peoples, including the right to self-determination, redress, and collective rights to land, territories, and resources.<sup>26</sup>
- **Loss of culture and traditions as well as impacts to community cohesion and identity of Indigenous Peoples** via the interference with or destruction of sacred sites, burial grounds, and areas of cultural significance; and via other project impacts on land, water, and animal migratory patterns on which their traditional livelihoods are based. Such impacts may infringe on the rights to communal property and cultural survival, among others.<sup>27</sup> Community engagements that use undue influence to obtain consent, and are not conducted in a culturally appropriate, rights-based manner, can also interfere with community cohesion and violate Indigenous Peoples' right not to be subject to forced assimilation and destruction of their culture.<sup>28</sup>
- **Threats, intimidation, and violence** against human rights defenders via actions of security personnel, Strategic Lawsuits Against Public Participation (SLAPPs),<sup>29</sup> and other tactics,<sup>30</sup> infringing on human rights to freedom of expression, association, peaceful assembly, and life, among others.<sup>31</sup>
- **Threats to community health and safety** from violence, gender-based violence, and sexual assault by security personnel and temporary workers; the spread of communicable diseases via workers from other places; and environmental threats from poor waste management practices. Such impacts can violate the prohibition on torture and cruel, inhumane, or degrading treatment, and infringe on the rights to life, health, and water, among others.<sup>32</sup> These impacts also risk violating the human right to a clean, healthy and sustainable environment, which has been widely recognized in national legal frameworks and by intergovernmental bodies.<sup>33</sup>
- **Labor rights impacts** where community members form part of the project's workforce. This may include poor working conditions, health and safety hazards, the lack of a living wage, restrictions on collective bargaining and workplace organizing, the risk of child labor, and in some cases, forced or bonded labor.<sup>34</sup> Such impacts can infringe freedom of association and the human rights to work, to just and favorable conditions of work, to an adequate standard of living, and to form and join trade unions. Forced labor can violate the right to life, liberty and security of person; to freedom from slavery; and to not be subject to torture or cruel, inhumane, and degrading treatment.<sup>35</sup>

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

**Indigenous Peoples' right to 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 includes a requirement to enable participation in decisions by project-affected peoples and communities 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 under international law, including the right to self-determination.<sup>36</sup>

**Evolving community engagement standards.** All individuals and communities have human rights to information and meaningful public participation in decision-making processes.<sup>37</sup> In order to operationalize those rights, companies and governments are increasingly being required to move beyond consultations and disclosures and obtain the FPIC of all affected local communities whose tenure or human rights may be at risk. Domestic laws, such as *Liberia's Land Rights Act* of 2018 and Sierra Leone's *Customary Land Rights* and the *National Lands Commission Acts of 2022*, contain FPIC requirements for all peoples and communities.<sup>38</sup> Similarly, various industry and multi-stakeholder initiative standards, including the EO100 Standard for Responsible Energy, promote FPIC as a good practice for all affected peoples and communities. These broader FPIC requirements have a different basis than Indigenous Peoples' right to FPIC.



## BOX 5: WHAT ARE 'LEGITIMATE TENURE RIGHTS'?

Tenure rights refer to the relationship among individuals or groups, whether formal or customary, with respect to land.<sup>39</sup> This includes 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 *transfer* (e.g. sell or lease) a parcel of land.

Tenure rights that lack legal recognition or formal documentation may still be legitimate where they are broadly socially accepted by local actors, and should therefore be respected. The UN Voluntary Guidelines for the Responsible Governance of Tenure, endorsed by most countries through the Committee for World Food Security, call on states to respect all legitimate tenure rights.<sup>40</sup> Examples of tenure rights that may be socially legitimate even without legal recognition include those based on Indigenous customary tenure systems, shared forests accessed and used by multiple communities, and traditional fishing grounds.<sup>41</sup> In 2021, a High Court in Kenya found land title deeds for a wind power project to have been unlawfully obtained because the project interfered with, and did not address, nomadic pastoralists' ancestral and customary rights to use the land for grazing.<sup>42</sup>

Tenure rights are also indivisible from, and instrumental to the realization of many, human rights more broadly.<sup>43</sup> Where tenure rights are not recognized, rights-holders risk being excluded from crucial processes during project deployment, including community engagements, benefit-sharing negotiations, and access to justice and grievance mechanisms. Lack of recognition can also lead to the involuntary resettlement of project-affected peoples and communities with legitimate tenure rights, which will often lead to violations of their internationally recognized human rights and must be avoided.<sup>44</sup>





# 3. WHY ADVERSE HUMAN RIGHTS IMPACTS MATTER TO POLICYMAKERS

Adverse human and tenure rights impacts caused by renewable energy projects are not only an ethical problem; they can bring about negative consequences for governments and financiers. This section outlines how adverse human rights impacts can cause legal, financial, and reputational harms for policymakers.

**Host states** face serious risks, including:

- *Delayed or foregone realization of benefits from investments.* Conflict with and mobilization by aggrieved project-affected communities or peoples can disrupt operations and lead to project delays or cancellations.<sup>45</sup> These outcomes can reduce production and profits, which could reduce or delay governments' collectable royalties, taxes, and downstream benefits such as increased energy production and additional economic activity.
- *Legal risk.* Failure to uphold laws concerning human rights can and has led directly to legal action against host governments (See Box 6, below).<sup>46</sup>
- *Reputational harm.* Failures to respect and protect human rights can damage governments' credibility and ability to meet energy security and net zero targets. In serious cases, conflict and adverse judgments can affect governments' legitimacy among local and national constituents, and feed into existing local-level conflict, as well as conflict between communities and the state.<sup>47</sup> Such failures can also damage investor confidence in the jurisdiction. Poor human rights performance may also compromise a state's geopolitical legitimacy in multilateral institutions and settings.<sup>48</sup>
- *Risk of policy failure.* A failure to account for human rights impacts can also threaten the viability and success of emerging policy initiatives such as the European Union's Green Deal Industrial Plan, and the United States' Inflation Reduction Act that seek to incentivize investment in and accelerate the uptake of renewable energy technologies.

**Home states** face risks, including:

- *Reputational harm.* The failure to prevent such violations can damage home states' reputation and the credibility of their energy security, net zero commitments, and broader sustainable development objectives. Various UN treaty bodies and special procedures, as well as civil society organizations, have also admonished home states for failing to take appropriate measures to address human rights impacts of overseas investments by companies based in their jurisdiction.<sup>49</sup>
- *Financial and legal risk.* State-owned utility companies operating overseas that cause or fail to address adverse human rights impacts of an investment may face project delays or cancellations, and associated diminishment of financial returns, due to community opposition. In some cases, the state company may also be subject to litigation relating to adverse harms on peoples and communities (See Box 7, below).<sup>50</sup> Such delays and cancellations may also cause energy shortages for off-taker governments purchasing energy from overseas projects that violate human rights.

**Development Finance Institutions** financing renewable energy projects face risks, including:

- *Financial risk.* Failure to address a project's human rights impacts can lead to failed loan repayments as well as project failure (see for example, Box 6, below) and increased demand on finance-linked grievance mechanisms, leading to financial losses and additional costs for the lender. A 2021 study showed that DFI-financed projects in emerging markets risk losing \$25-40 million due to delays in inception or operation if they fail to proactively mitigate social risks, representing 24-37% of their net present value at inception.<sup>51</sup>
- *Damage to credibility and legitimacy.* DFIs' sustainability mandates necessitate that clients



conduct adequate environmental and social due diligence and otherwise implement projects in a manner that takes into account potential impacts on project-affected peoples and communities.<sup>52</sup> Rights violations contravene DFIs' norms, standards, or internal policies. Such impacts can also compromise a DFI's perceived legitimacy and credibility as an agent for advancing sustainable development.



### BOX 6: COSTS OF POOR RIGHTS PERFORMANCE FOR HOST STATES AND DFIS

In 2014, members of the Indigenous Turkana, Samburu, Rendille, and El Molo pastoralist peoples filed a lawsuit against the Government of Kenya, the National Lands Commission of Kenya, and the Lake Turkana Wind Power, Ltd. in the Meru High Court.<sup>53</sup> The Court subsequently issued an injunction to halt project construction, later nullifying the company's land title deeds on the grounds that the land was acquired without proper engagement with, or compensation of, project-affected peoples and communities.<sup>54</sup> As a result of the local conflict and lawsuit, the host government and financiers involved faced significant delays, and various operational and reputational challenges. Prior to the lawsuit, in 2012, the World Bank withdrew financing for the project over concerns about its human rights impacts and the associated long-term economic feasibility.<sup>55</sup> The US Development Finance Corporation later extended financing to the project, along with subsequent financing from several others including the Finnfund, Norfund, and the Danish Investment Fund for Developing Countries.<sup>56</sup>

### BOX 7: COSTS OF POOR RIGHTS PERFORMANCE FOR HOME STATES

In October 2020, multiple human rights groups filed a lawsuit against Électricité de France (EDF), a utility based in France and majority-owned by the French government.<sup>57</sup> The complaint alleged that EDF failed to conduct adequate human rights due diligence 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.<sup>58</sup> In June 2022, as a result of the legal action, Mexico's Federal Electricity Commission cancelled the contracts which were set to allow the wind farm to supply electricity to the national grid, rendering the project unviable.<sup>59</sup> The controversy represents a significant financial loss for France, as nearly €310 million were invested in the now cancelled project.<sup>60</sup>





# 4. RECOMMENDATIONS FOR POLICYMAKERS

Policymakers are legally obliged under international law, expected, and able to proactively implement policies that advance a rights-based energy transition. In addition to enabling policymakers to mitigate the financial, legal, and reputational risks outlined in the previous section, a rights-based transition can also help realize the long-term economic, social, and environmental benefits that this sector can bring. This section highlights key policy priorities and the diverse strategies policymakers should pursue to protect human rights when deploying large-scale renewable energy projects. These recommendations comprise overarching best practices which policymakers in different settings can support and/or implement (**in bold**) and examples of how each type of policymaker could pursue them (**organized by actor**).

## i. Recognize and respect human rights, including all legitimate tenure rights

**Host states** should:

- Enact laws to formally recognize and respect all legitimate tenure rights (see Box 5) not currently protected by law, especially customary tenure, and rights beyond ownership.<sup>61</sup> To implement new and existing tenure rights laws, host states should expedite fair and inclusive land titling and other relevant recognition processes in regions where renewable energy projects are ongoing, planned or anticipated.<sup>62</sup>
- Mandate participatory culture- and gender-sensitive human rights and land-use mapping that engages project-affected communities and peoples in the design and implementation of Strategic Environmental Assessments (SEAs) and Environmental, Social and/or Human Rights Impact Assessments (ESHIA) to ensure impacts on matters of local and cultural significance are considered at both the policy and project levels.<sup>63</sup> ESHIA are conducted at the project-level to assess and address the environmental and social impacts of a proposed project, whereas SEAs are strategic tools that go beyond project specifics to assess and address the policies, plans, and programs that frame them. SEAs can help host

governments reconcile the environmental and social impacts of proposed policies, and facilitate the search for the best alternative, including by determining zones restricted for the siting of renewable energy projects.<sup>64</sup>

- Co-design climate and energy policy with peoples and communities, position human and land rights at the center of state climate plans, and include specific provisions in Nationally Determined Contributions (NDCs) to signal that human rights must be protected and fulfilled in all climate change mitigation efforts, including any relevant policies and legislation.<sup>65</sup>
- Give equal weight to both environmental and social impacts in investment assessment processes to avoid climate change mitigation outcomes outweighing or obscuring negative impacts on human rights. Investment assessment processes refer to those carried out by government entities that promote, screen, approve, and monitor investments (hereafter, “investment assessment processes”).
- Carefully assess the implications of any investment incentives in the renewable energy sector for land availability and public revenues. Avoid implementing regressive legal reforms and tax incentives, and streamlining or foreshortening investment assessment processes that could cause tenure and human rights to be overlooked during project deployment, attract undesirable projects that put tenure and human rights at risk, and reduce public revenues available to the government for fulfilling land and human rights.

**Home states** should:

- Require companies to undertake mandatory human rights and environmental due diligence (mHREDD) to assess, address, and communicate on an ongoing basis, all human and land rights impacts that companies may cause or contribute to, and those which may be directly linked to companies’ operations, products or services through their business relationships (see, for example, Box 8).<sup>66</sup> This should include, among other requirements, a due



diligence obligation to ensure that companies do not violate human rights in the process of acquiring or leasing land.<sup>67</sup>

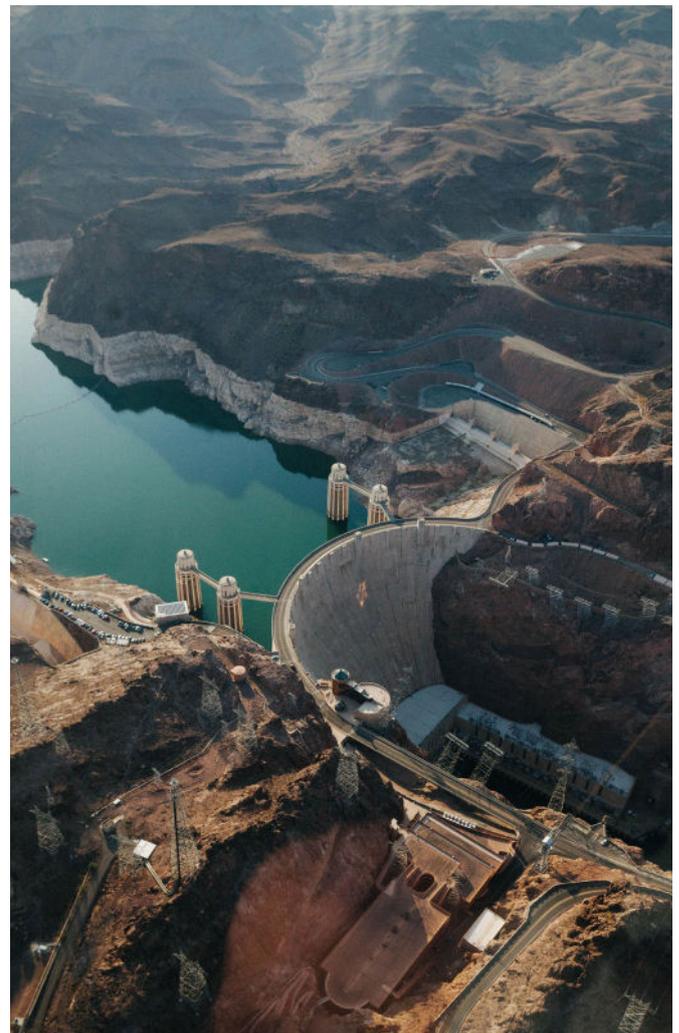
- Require companies, for example under sustainability reporting laws, to disclose their exposure to, policies on, and performance related to human and land rights risks.<sup>68</sup>
- Redesign investment treaties to protect the ability of host states to advance human rights through new and existing laws and policies. Explore options to terminate existing treaties that contain investor protections that hamper efforts to respect human rights.<sup>69</sup> If they choose to negotiate new treaties, they should explore approaches that advance rather than undermine human rights, including the exclusion of investor-state dispute settlement provisions.<sup>70</sup>
- Give equal weight to both environmental and social impacts when introducing or assessing domestic and foreign policies that facilitate climate action, including policies that determine the domestic renewable energy mix and that require or incentivize the import of renewable fuels or related products.<sup>71</sup>

#### BOX 8: FRANCE'S 'CORPORATE DUTY OF VIGILANCE' LAW<sup>72</sup>

In 2017, the French National Assembly adopted the *Corporate Duty of Vigilance Law* after five years of negotiation and debate among human rights advocacy groups, corporate lobbyists, and the Parliament. The legislation requires large French corporations to establish, disclose, and implement a “vigilance plan” which details “reasonable vigilance measures to identify risks and prevent serious violations of human rights and fundamental freedoms, health and safety and the environment” resulting from activities of the company, their subsidiaries, sub-contractors, and suppliers. Companies are encouraged to craft these vigilance plans in collaboration with other stakeholders, such as NGOs and trade unions, in the “duty of vigilance.”<sup>73</sup> Similar laws were adopted in the Netherlands (related to child labor only) and Germany in 2019 and 2021, respectively.<sup>74</sup>

#### Development Finance Institutions should:

- Require clients and borrowers, including both government and companies, (hereafter, “clients”) to comply with international human and land rights standards.
- Use relevant performance standards and binding contractual provisions to compel clients to consider the full range of human and tenure rights implicated in the project when conducting environmental and social due diligence, and to engage with all rights-holders affected by the direct, indirect, and cumulative impacts of the company’s activities (see, for example, Box 9).<sup>75</sup>
- Give equal weight to both environmental and social impacts of a project during project selection, screening, and due diligence processes to avoid climate change mitigation outcomes outweighing or obscuring negative impacts on human rights.<sup>76</sup>





### BOX 9: INTER-AMERICAN INVESTMENT CORPORATION (IDB INVEST) ENVIRONMENTAL AND SOCIAL SUSTAINABILITY POLICY<sup>77</sup>

In December 2020, IDB Invest (the investing arm of the Inter-American Development Bank) adopted an updated Environmental and Social Sustainability Policy. The policy identifies nine key risk areas for which project-level due diligence is required, including “human rights,” “Indigenous Peoples and other vulnerable groups,” and land acquisition. The policy applies to “all activities undertaken, and operations financed by IDB Invest, including, among others, direct and indirect financing and technical assistance services,” and states that the Bank “will only finance operations that are expected to meet the Sustainability Policy’s environmental and social requirements within a reasonable time frame.”<sup>78</sup>

The 2020 policy clarified the roles of both companies and the Bank itself in conducting human rights due diligence. Companies are responsible for implementing plans to identify, manage, and mitigate human rights risks at the project-level,<sup>79</sup> and the Bank is to provide relevant guidance, assistance, technical support, and monitoring throughout the project life cycle.<sup>80</sup> The Policy has been praised by the Office of the United Nations High Commissioner for Human Rights as a guiding example<sup>81</sup> and by a human rights advocacy group for institutionalizing the protection of human rights defenders.<sup>82</sup>

#### Intergovernmental bodies should:

- Positively influence the conduct of governments and companies by shaping the global narrative to acknowledge the inviolability of human rights, including in efforts to advance sustainable development, climate action, and a just transition, such as under the umbrella of the United Nations Framework Convention on Climate Change (UNFCCC) and the Agenda 2030.
- Incentivize and advocate for the full implementation of the UN Declaration on the Rights of Indigenous Peoples, including provisions on Indigenous Peoples’ rights to lands, territories, and resources.
- Build capacity of member states to conduct SEAs, and review ESIA, effectively, through direct country- and regional-level technical and financial support.
- Advocate more broadly for the use of comprehensive environmental and social due diligence and a rights-based approach to large-scale infrastructure planning and deployment, such as that outlined under the United Nations Guiding Principles on Business and Human Rights.<sup>83</sup>
- Encourage reporting on how actions to address climate change are taking human rights impacts into consideration in countries’ Nationally Determined Contributions (NDCs) submitted to the UNFCCC in line with the Paris Agreement.



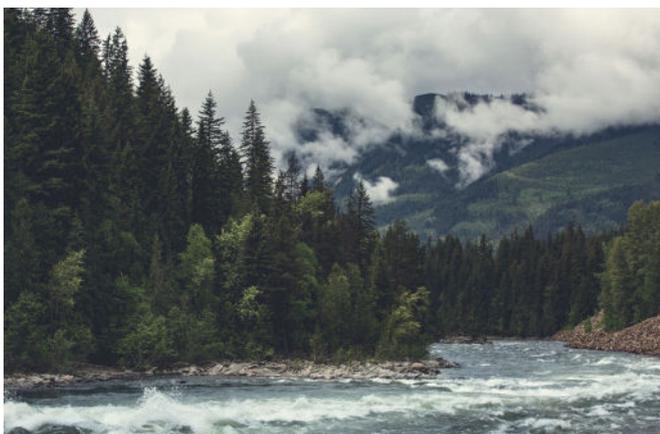


## ii. Facilitate meaningful engagement with affected peoples and communities

### BOX 10: CONDUCTING RIGHTS-RESPECTING ENGAGEMENTS WITH PROJECT-AFFECTED PEOPLES AND COMMUNITIES

To comply with FPIC and community participation requirements (see Box 4), all engagements with peoples and communities should be open to all members, transparent, accessible, non-discriminatory, culturally appropriate, gender-sensitive, context-sensitive, and in languages understood by the community or people. Those implementing engagements should be trained in anti-racism and culturally sensitive communication that acknowledges the important role of, and knowledge possessed by, peoples and communities.

Communities should have sufficient time and financial resources, and access to independent technical support to allow for preparation, deliberation, and informed negotiation and decision-making. Engagements should be conducted on an ongoing basis and be responsive to the community's input throughout the life cycle of the project, including in project design, risk assessment, project monitoring, and in the design and implementation of arrangements for co-equity and benefit sharing, and grievance mechanisms.<sup>84</sup>



#### Host states should:

- Integrate, through legislation, mandatory FPIC and community participation processes (see Box 10) into investment assessment processes and investor-state contract negotiations to allow for human and land rights issues to be addressed early on in project approval cycles.<sup>85</sup>
- Require companies, through regulation and contractual provisions, to implement FPIC and community participation processes, and guide companies to design and implement stakeholder engagements that align with international human rights standards and enable effective and meaningful participation by all affected peoples and communities (see Box 10).
- Facilitate capacity building and provide funding for independent technical and legal support to empower affected peoples and communities to freely and effectively engage in complex investment processes, including the negotiation and implementation of co-equity arrangements, and remedy and grievance mechanisms. Governments can marshal funding for this support from companies in the form of taxes, fees, and penalties and make funding available through independent basket funds or other mechanisms for community support.<sup>86</sup>

#### Home states should:

- Require companies to implement FPIC and community participation processes (see Box 10), including through mHREDD laws, and guide companies to design and implement stakeholder engagements that align with international human rights standards and enable effective and meaningful participation by project-affected peoples and communities.
- Build community agency in host jurisdictions by directing overseas development aid and other financing towards independent legal and technical support initiatives that empower project-affected peoples and communities to freely and effectively engage in complex investment processes, including the negotiation and implementation of co-equity arrangements, and remedy and grievance mechanisms.

#### Development Finance Institutions should:

- Require and support clients to implement FPIC and community participation processes that align with international human rights standards and enable



effective and meaningful participation by project-affected peoples and communities (see Box 10).

- Improve clients' compliance with FPIC and community participation requirements by enabling peoples and communities to access independent technical or legal support that facilitates their free and effective engagement with complex investment processes, including the negotiation and implementation of co-equity arrangements, and remedy and grievance mechanisms. DFIs can advance such support by contributing to, and requiring companies to contribute to, independent basket funds or other mechanisms for community support.<sup>87</sup>

**Intergovernmental bodies** should:

- Facilitate regional implementation and improvement of existing conventions, and support separate regional conventions that improve the protection of the rights of Indigenous Peoples and local communities, including rights to FPIC and meaningful participation in decision-making.<sup>88</sup>
- Dispel false narratives, such as those claiming that Indigenous Peoples are obstacles to development and necessary climate action, by compiling and disseminating information on Indigenous Peoples' large contributions to their national societies and to global climate action, while highlighting their inviolable rights.<sup>89</sup>

- Build community agency in host jurisdictions by partnering with or otherwise supporting civil society organizations on advancing independent legal and technical support initiatives for project-affected peoples and communities.

### iii. Advance local-level development, including through co-equity models and benefit sharing

**Host states** should:

- Prioritize and facilitate small-scale projects that are led by peoples and communities to enable improved energy access in remote locations, and integrate the protection of land rights and traditional natural resource management practices.
- Encourage companies to enter into, and pursue projects that involve, co-equity arrangements with peoples and communities, in line with best practice (see Box 11).

**Home states** should:

- Require companies operating abroad to advance community benefit sharing and development arrangements, and to explore the design and implementation of co-equity models together with affected peoples and communities (see Box 11), as part of their mHREDD-related compliance processes.





- Require companies, under mHREDD and sustainability disclosure laws, to communicate in public company filings and directly to affected peoples and communities, measures taken to advance community development, the process undertaken to define a people or community's self-determined development and benefit sharing goals, as well as any progress on the implementation of these arrangements.<sup>95</sup>
- Guide companies planning to invest in the sector by outlining potential co-equity models and guidance for co-developing projects with peoples and communities in a manner that is rights-respecting and advances their self-determined development goals (see Box 11).

#### Development Finance Institutions should:

- As part of their selection and screening of renewable energy projects, explicitly prioritize projects that include community co-development of benefit sharing agreements, and those that explore co-equity models with affected peoples and communities in line with best practice (see Box 11).

#### Intergovernmental bodies should:

- Mainstream local development and the fostering of meaningful partnerships with peoples and communities as best practice across all international bodies and initiatives, including the UNFCCC and the UN Agenda 2030, as an essential component of sustainable development and climate action.

### BOX 11: CO-EQUITY MODELS<sup>90</sup>

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>91</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 co-equity models are being driven by the *Right Energy Partnership* as well as the *First Nations Clean Energy Network* in Australia.<sup>92</sup>

Policymakers have a critical role in mainstreaming co-equity models, including cooperative models, joint ventures, equity allocation, transfer of ownership over time, or those that otherwise share benefits with affected peoples and communities. However, co-equity arrangements should be carefully developed to avoid unfairly shifting project risks to communities and peoples, and be realized through processes that enable co-development and meaningful participation by *all* members of the affected collectivity.<sup>93</sup> Further, the community's representatives should be supported to access capital, 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.<sup>94</sup>





#### iv. Institute systems to address human and land rights harms

##### BOX 12: RIGHTS-COMPATIBLE REMEDY ECOSYSTEM

Harms caused by renewable energy projects should be prevented, mitigated and addressed in a timely, appropriate, and responsive manner, in recognition of the human right to an effective remedy. A remedy ecosystem integrated across policies, institutions, and projects is therefore pivotal for addressing human rights impacts. Such an ecosystem can facilitate the early detection of issues, preventing harm, conflict escalation, litigation, and project delays, while strengthening engagement with project-affected peoples and communities.

Grievance mechanisms are central to remedy ecosystems. Grievance mechanisms, whether judicial or non-judicial, state-based or non-state based, are effective when they are legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning, and based on participatory dialogue and engagement.<sup>96</sup> Remedies available under these mechanisms should be appropriate, just, fair and adequate, agreed upon in advance with affected rights-holders, and may include apologies, restitution, rehabilitation, financial and non-financial compensation, punitive sanctions, injunctions, or guarantees of non-repetition.<sup>97</sup>

FPIC and community participation processes (see Box 4), and the empowerment of project-affected peoples and communities to engage with and throughout the project, are also critical for a well-functioning remedy ecosystem. These processes enable rights holders to raise concerns early on and as they arise throughout project deployment, allowing for early prevention, mitigation, and resolution.

##### Host states should:

- Institute state-based judicial and non-judicial grievance mechanisms.<sup>98</sup> Non-judicial mechanisms, including through the establishment of operational national human rights institutions, may be mediation-based, adjudicative, or follow other gender sensitive, culturally appropriate and rights-compatible processes.<sup>99</sup>
- Ensure that grievance mechanisms are accessible by addressing legal, practical, informational, and other barriers that could deny peoples and communities access to remedy.<sup>100</sup>
- Require companies, through regulation and contractual provisions, to implement project-level grievance mechanisms that are co-developed with communities, and which do not preclude access to other grievance mechanisms.<sup>101</sup>

##### Home states should:

- Require outward investing companies to institute and report on the operation of project-level grievance mechanisms as part of their strategy to comply with mHREDD laws.<sup>102</sup>
- Enact provisions under mHREDD, anti-corruption, transnational torts, and other relevant legal regimes which (i) create legal liability for companies that cause or contribute to human rights harms overseas, and (ii) enable overseas victims of human rights violations to have standing to bring legal action and seek remedy against companies domiciled in the home state's jurisdiction.<sup>103</sup>
- Where the home state is an OECD member, strengthen the role and effectiveness of OECD National Contact Points (NCPs). Home states can do so by establishing NCPs that are independent from rather than housed within any specific government department, encouraging coordination across government departments and with governments of other countries in the investigation and resolution of complaints, and deploying leverage, such as by withholding government subsidies, to encourage companies to comply with penalties and compensation awards.<sup>104</sup>

##### Development Finance Institutions should:<sup>105</sup>

- Require companies to co-develop with peoples and communities—and institute—effective and rights-compliant project-level grievance mechanisms.



- Require companies to earmark contingency funds for the operation of project-level grievance mechanisms and provision of remedies, including through insurance instruments, ring-fenced funds, trust funds or other relevant financing mechanisms.
- Expand the scope of compliance review functions of independent accountability mechanisms, such as the World Bank's Inspection Panel, beyond the mere review of internal policy and procedures, to provide a wide range of binding remedies to project-affected peoples and communities. DFIs should explicitly consider this issue as part of continuous external review processes that assess the effectiveness of their accountability mechanisms.
- Create institutional level remedy funds to ensure resources for the provision of remedy.
- Enhance transparency, predictability, effectiveness, and accessibility of project-level grievance mechanisms and independent accountability mechanisms, including by requiring clients and all stakeholders within their value chains to inform peoples and communities about the availability of these mechanisms, and by supporting independent legal and technical support initiatives that empower peoples and communities to meaningfully seek remedy.

#### Intergovernmental bodies should:

- Include reparations for peoples and communities affected by climate change mitigation and adaptation efforts in any loss and damage mechanisms and funds. Such reparations should extend to those affected by the energy transition and utility-scale renewable energy project deployment.<sup>106</sup>

## v. Protect the safety of environmental, land, and human rights defenders

#### Host states should:

- Commit to the principle of non-retaliation against human rights defenders within and across all government agencies, including by training government officials and implementing a zero-tolerance policy for retaliation.
- Establish productive relationships with human rights defenders, including key community leaders, who can be critical sources of knowledge in policy planning for renewable energy projects.

- Screen companies seeking to invest in renewable energy for any history of retaliation or SLAPPs against human rights defenders.<sup>107</sup>
- Institute, through investor-state contracts and anti-SLAPP legislation, a zero-tolerance policy for retaliation by companies against human rights defenders.<sup>108</sup>

#### Home states should:

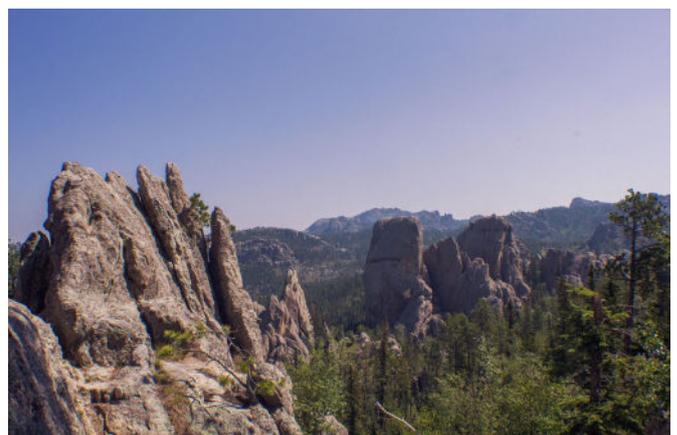
- Encourage companies to establish productive relationships with human rights defenders as part of their strategy to comply with mHREDD laws, as they can be critical sources of knowledge in conducting human rights due diligence.

#### Development Finance Institutions should:

- Commit to the principle of non-retaliation against human rights defenders at the institutional- and project- level, including by training DFI staff and company officers, and by implementing a zero-tolerance policy for retaliation by companies against human rights defenders.
- Encourage companies to establish productive relationships with human rights defenders as part of their strategy to comply with relevant performance standards.
- Screen companies seeking financing for any history of retaliation or SLAPPs against human rights defenders, and avoid financing those with a poor human rights record.<sup>109</sup>

#### Intergovernmental bodies should:

- Promote international norms and standards to protect human rights defenders, with special focus on Indigenous Peoples, and include them in all future agreements in the areas of sustainable development and climate action.





# 5. CONCLUSION

Renewable energy systems are pivotal for combatting the climate crisis. Yet, as highlighted in this briefing, the often-overlooked human rights impacts of this sector can expose companies and policymakers to operational, financial, legal and reputational risks, undermining the growth and viability of the sector. On a policy level, these impacts can erode critical popular support for renewable technologies as a whole and jeopardize the achievement of important climate and sustainable development objectives. A rights-based approach to renewable energy governance is therefore urgently

needed to address adverse human rights impacts and their associated risks.

This briefing has set out five key policy priorities and corresponding strategies that policymakers can mobilize to advance a rights-respecting energy transition. While specific standards around responsible investment in the renewable energy sector continue to evolve, home governments, host governments, development finance institutions, and intergovernmental bodies each play a distinct and important role in advancing these priorities to shape and govern responsible investment.





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### **Columbia Center on Sustainable Investment**

Jerome Greene Hall  
435 West 116th Street  
New York, NY 10027  
Phone: +1 (212) 854-1830