

# Contested visions of sustainable development in conflicts over renewable energy, land, and human rights: A case study of Unión Hidalgo, Mexico

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## Abstract

The so-called ‘green shift’ poses dilemmas in developing sustainable sources of energy while ensuring the respect and protection of the rights of affected communities. The article seeks to advance understanding of how prevailing conceptualisations of Sustainable Development – as formulated in the 2030 Agenda for Sustainable Development – are constructed and adopted at different scales and are implicated in and shape struggles over land and environmental conflicts. The exceptional geographical conditions for wind energy production in the region of the Isthmus of Tehuantepec in the southern Mexican state of Oaxaca have led to significant investments in wind energy projects. In Unión Hidalgo, two projects are already in operation, the focus here. A content analysis was carried out of 36 documents published by three key actors involved (local defenders, companies, and the government at the state and federal levels). The results are then triangulated with insights from semi-structured interviews with local environmental defenders. The article shows how rights-based dimensions are perceived in a highly variable way and power relations unfold in discursive practices. That the project was eventually stopped, does, however, suggest the polyvalence of human rights, but that they are highly contingent – in this case, critically, part of social mobilisation, domestic litigation, and extra-territorial obligations of a company headquartered in France, all of which appear to rebalance power asymmetries uncovered in the analysis here.

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## Keywords

Sustainable development, sustainability, environmental human rights defenders, business, human rights, rights based approaches, wind energy, renewable energy, free and prior informed consent, land rights, indigenous rights, Mexico, content analysis

## I. INTRODUCTION

The need for renewable energy (RE) sources has never appeared more urgent as the dangers of climate change escalate, and, yet, at the same time, it has never appeared more paradoxical. There are high-profile calls for the trebling of investment in RE (even if a 1.5 Celsius temperature increase is to be stabilised),<sup>1</sup> which appears to make the imperative of clean energy ever more irresistible for Sustainable Development (SD). As in other areas of development, however, this rapid expansion has led to processes that require the use of land and the alteration of the local landscape. Therefore this expansion causes conflicts with the surrounding population, the number of which is rising year on year.<sup>2</sup> SD is regarded as a concept and approach pivotal in reconciling environmental protection and the economic and social components of ‘development’. But given its catch-all status, as envisioned in the Sustainable Development Goals (SDGs), ‘the primary objective of sustainability is very much contested’ and underlying values, worldviews and knowledge-systems influence these contested perspectives.<sup>3</sup> This paper brings to the fore the need for a critical understanding of divergent conceptions of SD and how these interact with human rights discourses. It seeks to advance how prevailing representations of SD – notably as formulated in the 2030 Agenda for SD (henceforth 2030 Agenda) – are constructed and adopted at different scales and implicated in struggles over land and environmental conflicts.

The article provides a case study of wind energy investments in the Isthmus of Tehuantepec region in the southern Mexican state of Oaxaca. The area is particularly interesting, gaining significant political attention, because of its extraordinary geographical conditions for wind energy production since 1994.<sup>4</sup> According to the Environmental Justice Atlas, 29 wind parks and a total of 1564 wind turbines were in operation in 2021.<sup>5</sup> The conflict around the Gunaa Sicarú wind park in Unión Hidalgo was chosen not least because of the attention it has received in the international human rights arena, which provided access to a wealth of relevant material for discourse analysis. The case is used to look at the discursive practices of key actors and their perceptions of SD, human rights and RE in the context of Mexico. The overall research question is: How do the key actors involved in conflicts around RE perceive and represent SD? In addition, closely related, is another research question: What, therefore, do such discourses reveal about the scope for a

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1. International Energy Agency (IEA), ‘Global Energy Review 2021’ (2021) 86, 23 <<https://www.iea.org/reports/global-energy-review-2021>> accessed 21 May 2022.

2. Business and Human Rights Resource Centre (BHRRC), ‘Renewable Energy & Human Rights Benchmark. Key Findings from the Wind & Solar Sectors’ (2020) <[https://media.business-humanrights.org/media/documents/files/Renewable\\_Energy\\_Benchmark\\_Key\\_Findings\\_Report.pdf](https://media.business-humanrights.org/media/documents/files/Renewable_Energy_Benchmark_Key_Findings_Report.pdf)> accessed 5 April 2021, 5–6, 13.

3. Patrina Whyte and Geoffrey Lamberton, ‘Conceptualising Sustainability Using a Cognitive Mapping Method’ (2020) 12 *Sustainability* 1977, 16–17.

4. Cymene Howe, ‘Anthropocenic Ecoauthority: The Winds of Oaxaca’ (2014) 87 *Anthropological Quarterly* 386.

5. Sofia Avila-Calero and Yannick Deniau, ‘Corredor Eólico En El Istmo de Tehuantepec, Oaxaca, México’ (*Environmental Justice Atlas*, 2020) <<https://ejatlas.org/conflict/corredor-eolico-en-el-istmo-de-tehuantepec-oaxaca>> accessed 4 February 2021.

more rights-based approach to SD? Identifying interpretations and adaptations of SD and other concepts that are relevant in the case and the potential clashes that arise from it will allow for a deeper understanding of the power that discourses can have in uncertain and conflictual contexts.

The paper is primarily based on a content analysis of key documents and texts associated with three main actors in four different categories: Environmental Human Rights Defenders (EHRDs), state administrations (that is, both federal and state level), and companies. The findings demonstrate that decision-making actors including governmental institutions and companies create powerful inter-related discourses, which give legitimacy to expanding RE to meet sustainability agendas. But this imperative is at the cost of local populations and includes how human rights defenders' understandings of SD significantly diverge from dominant discourses.

## 2. METHODS

The primary method used in this article is content analysis, which Bowen described as 'a systematic procedure for reviewing and evaluating documents-both printed and electronic (computer-based and Internet-transmitted) material'.<sup>6</sup> Some of the advantages of content analysis are that it is efficient, enables analysis of a larger amount of relevant material than say interviewing and is arguably less obtrusive (that is unaffected by research purpose), providing more exact details and broad coverage. Conversely, its disadvantages are that the documentation may be incomplete, insufficient, and reflect biased selectivity.<sup>7</sup> Additional methods try to offset some of these disadvantages through triangulation, with some interviews with EHRDs and by contextualising these documents in the broader case study. However, the overall purpose is not to seek to be definitive but rather to use content analysis to identify themes and tensions and arguably some of the key actor discourses, in a systematic way.

The analysis of discourse does not only include the examination of how concepts are represented but also in which context and system of power they are embedded. In this sense, discursive power means the ability of actors to present their conceptions of the world as the legitimate version of reality or 'knowledge' to their audience.<sup>8</sup> According to Howe, an important factor for the legitimisation of knowledge is the cooperation between decision-making actors, for example, state authorities and corporations. These partnerships can create the perception that certain concepts are official and neutral while disregarding alternative ones.<sup>9</sup> Furthermore, systems enabling the circulation of knowledge are also permeated by power structures and consequently influence to which degree the competing discourses are heard in the public sphere.<sup>10</sup>

As already indicated, a single case study comprising qualitative empirical data was chosen, featuring the Gunaa Sicarú wind park. While the project was cancelled during the finalising of this paper, the case remains highly relevant because its analysis can advance the understanding of patterns in similar contested contexts. To understand the context holistically,<sup>11</sup> the viewpoints of different actors involved on different scales are analysed: EHRDs (Category A); the multinational

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6. Glenn Bowen, 'Document Analysis as a Qualitative Research Method' (2009) 9 *Qualitative Research Journal*, 27.

7. *ibid* 29, 31–32.

8. Kevin C Dunn and Iver B Neumann, *Undertaking Discourse Analysis for Social Research* (University of Michigan Press 2016) 54.

9. Howe (n 4) 381, 383.

10. Dunn and Neumann (n 8) 58.

11. Robert K Yin, *Case Study Research and Applications: Design and Methods* (Sixth edition, SAGE 2018) 52.

companies that operate wind parks in Unión Hidalgo and their subsidiary companies, including EDF Renewables, Renovalia Energy, DEMEX, and Eólica de Oaxaca (Category B); the Mexican government executive at state level: the government of the state Oaxaca, its Secretary for Infrastructure and Sustainable Land Management, and its Secretary for the Environment, Energy and Sustainable Development (Category C); and the Mexican government executive at federal level, including the Secretariat of Governance and the Ministry of Energy (Category D). It should be mentioned that a variety of other actors were involved in the case, such as national and international Non-Governmental Organisations (NGOs); national organisations representing investors and developers; international and national judicial bodies; and UN regulating bodies.<sup>12</sup> Nonetheless, the authors decided to delimit the scope of the study through focus on the four actors with the most pronounced power imbalance (in this case, the local EHRDs appear to be in a vulnerable position in relation to the other three actors). Another selection criterion was the availability of documents from these actors that were suitable for analysis of those discourses directly relevant to society. In addition, because these actors are the main focus, the study was not extended to legal actors, although the legal context is nonetheless presented due to its ultimate bearing upon the case and in upholding rights-based standards. Samples of 7 to 14 documents were chosen for each actor-category based on the following characteristics: delimited to 2011; and either addressing wind energy projects or more general views on development and sustainability, related activities of these institutions or groups, and/or human rights or ethical concerns.

The resulting sample consists of 36 documents and includes a wide variety of text forms, from press releases, project reports, and policy papers, to websites and blog articles.<sup>13</sup> Category A consists mainly of video transcripts of interviews with EHRDs provided by the local human rights NGOs *Comité de Defensa Integral de Derechos Humanos, Gobixha A. C.* [Committee for the Integral Defence of Human Rights, Gobixha] (Código DH) and *Proyecto de Derechos Económicos, Sociales y Culturales, A.C.* [Economic, Social, and Cultural Rights Project] (ProDESC). Meanwhile, the documents from Category B are the companies' websites, a policy document and press release and the relevant environmental and social impact assessments. In contrast, the documents from Categories C and D comprise mainly policy documents and websites issued by the above-mentioned ministries. It could be argued that this diversity of text forms makes a systematic discourse analysis impractical. Although the approach taken for each text form had to be somewhat different, the aim remained to decode the main narratives of the actors, for which all text forms were considered equally meaningful. The documents were analysed by conducting inductive coding separately for each actor-category and then comparing the content, linguistic instruments and representations within and between the categories.<sup>14</sup> As mentioned, to provide some triangulation and to improve the understanding of the case-example from the perspective of the EHRDs, three semi-structured interviews with EHRDs from Unión Hidalgo were conducted digitally.<sup>15</sup> This significantly improved the quality of the research, as a direct perspective on the issues considered important for those directly affected by human rights violations was gained. However, it must be emphasised that interviewing only one of the four categories creates a one-sided

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12. See Chapter 4.

13. Consult Annexe 1 for the list of documents.

14. Consult Annexe 2 for the codebook of each actor-category.

15. Bowen (n 6) 28; Yin (n 11) 115; Aimee Grant, *Doing Excellent Social Research with Documents: Practical Examples and Guidance for Qualitative Researchers* (Routledge 2018) 127–128.

perspective, which is potentially limiting. Nevertheless, with the aim of narrowing down the research and in the spirit of the considerations mentioned above, the authors made a conscious decision to ‘take sides’.<sup>16</sup> In a more extensive study, the inclusion of interviews with representatives of the companies or government agencies would have been an insightful addition. The sample of interviewees is not meant to be representative of the population in Unión Hidalgo and the findings have to be viewed in that light.<sup>17</sup> Rather, their voices are significant, because they are some of the few who speak out against powerful actors. The interviews were analysed with the same coding strategy as the other actor-categories and these findings are presented under Category E. Lastly, both the documents and interviews are contextualised in the broader processes taking place, such as the regional context, the timeline of events, and the overview of energy policies in Mexico (see Chapter 4).

### 3. UNDERSTANDING SUSTAINABLE DEVELOPMENT AND RIGHTS-BASED APPROACHES

By the 1970s there was a growing awareness of the toll that an overly economic growth focus was taking on the environment and eco-systems, as for example expressed in the 1972 Declaration of the UN Conference on the Human Environment (Stockholm Declaration). But the first prominent mention of the term SD was only in the Brundtland-Report (1987). In an often-used quotation, it was defined as ‘a development that meets the needs of the present without compromising the ability of future generations to meet their own needs’.<sup>18</sup> After several efforts by the UN to set development guidelines, the most prominent instrument was the 2030 Agenda adopted by all UN member states in 2015. It formulated the 17 SDGs to be achieved jointly by 2030. Even though the 2030 Agenda does not include a definition of SD, it emphasises the need for a balance of three dimensions: economic, social and environmental.<sup>19</sup> How, then, do we understand these three elements that have to be reconciled: namely, the activity of ‘sustaining’ or conserving the environment, while at the same time allowing for economic growth and human development?

Whyte and Lamberton provide one overall perspective, by arguing that definitions of ‘sustainability’ will always be variable, depending as they do on ‘differences in scale, change processes, temporal, and spatial contexts’.<sup>20</sup> Accordingly, the scale of influence of the actors (individual, local, national, regional or global) shapes the importance they ascribe to different elements of sustainability. Other aspects, such as an intra- vs. intergenerational focus (temporal dimension) and whether actors draw on ecocentric or anthropocentric arguments are other elements for classifying their discursive representation of sustainability. While ecocentrism highlights the conservation of the environment as a standalone target, an anthropocentric discourse argues for the protection of

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16. Alan Bryman, *Social Research Methods* (Fifth Edition, Oxford University Press 2016) 141.

17. *ibid* 408.

18. World Commission on Environment and Development, ‘Report of the World Commission on Environment and Development: Our Common Future’ (1987) UN Document A/42/427 Chapter 2, para 1 <<http://www.un-documents.net/wced-ocf.htm>> accessed 10 February 2021.

19. United Nations General Assembly (UNGA), ‘Transforming Our World. The 2030 Agenda for Sustainable Development’ (2015) UN Document A/RES/70/1 Preamble <<https://sustainabledevelopment.un.org/content/documents/21252030%20Agenda%20for%20Sustainable%20Development%20web.pdf>> accessed 8 January 2021.

20. Whyte and Lamberton (n 3) 2.

the environment to allow further human development in the future. Consequently, the term SD is laden with stark contrasts and meanings.<sup>21</sup>

Another related theory is developed by Connelly who criticises approaches that do not see SD as a contested and an 'inherently political concept'.<sup>22</sup> His model not only acknowledges but foregrounds the role of contestation: besides the inclusion of an anthropocentric/ecocentric axis as explained above, he proposes the possibility of any of the three extreme positions aimed at achieving (a) economic growth, (b) environmental protection or (c) social justice, without taking into account any costs resulting for the remaining other two dimensions. He argues that different perspectives can be situated along the axes between these three extreme positions, thereby showing potentially highly varied responses.<sup>23</sup> Therefore, the varying combinations of the three pillars provide an important backdrop to considering the potential scope for rights-based approaches to SD.

With their normative, moral and legal standards and guarantees for protection relevant to social justice, human rights are increasingly used to engage with SD and environmental policy debates. The acknowledgement of human rights principles as common ground for all parties in the 2030 Agenda was a milestone towards understanding the threats of climate change from a social perspective that considers the effects upon the most vulnerable groups.<sup>24</sup> There are procedural and normative mechanisms that seek to develop a rights-based approach (RBA) to counter-act these harms and to actually operationalise human rights. Far from there being one definitive blue print, there is a variety of approaches to a RBA.<sup>25</sup> One framework that can usefully be applied here to make some sense of the RBA in the context of sustainability is the one used by the Swedish International Development Cooperation Agency (SIDA).<sup>26</sup> There are key dimensions which SIDA usefully categorise as and apply to RBA using the 'PLANET' acronym: P, participation; L, standing for *linkages* to human rights law and legal mechanisms; A, accountability; N, non-discrimination; E – empowerment; and T – transparency, involving access to information. These dimensions represent a means to operationalise RBA, along with other closely related principles and approaches. For example, the Free and Prior Informed Consent (FPIC) principle, which contains RBA like participation, accountability, and empowerment, emerged from human rights norms in the International Labour Organization (ILO) Convention 169, and then more explicitly in the Declaration on the Rights of Indigenous Peoples (UNDRIP).<sup>27</sup> These RBA are supposedly to counter-act negative effects, such as lack of participation,

21. Anna Tsing, 'A Threat to Holocene Resurgence Is a Threat to Livability' in Marc Brightman and Jerome Lewis (eds), *The Anthropology of Sustainability: Beyond Development and Progress* (Palgrave Macmillan 2017) 61, 62; Whyte and Lamberton (n 3) 2–4.

22. Steve Connelly, 'Mapping Sustainable Development as a Contested Concept' (2007) 12 *Local environment* 259, 259, 260, 262.

23. *ibid* 271.

24. Malcolm Langford, 'Critiques of Human Rights' (2018) 14 *Annu. Rev. Law Soc. Sci.*, 69–89; Andreas Spahn, "'The First Generation to End Poverty and the Last to Save the Planet?'—Western Individualism, Human Rights and the Value of Nature in the Ethics of Global Sustainable Development' (2018) 10 *Sustainability* 1853, 2.

25. For an overview of rights-based approaches see Peris Jones, *Human Rights and Development* (First Edition, Routledge 2023).

26. Swedish International Development Cooperation Agency (SIDA), 'Human Rights Based Approach' (updated 23 December 2022) <<https://www.sida.se/en/for-partners/methods-materials/human-rights-based-approach>> accessed 6 July 2023.

27. International Labour Organization (ILO) 'Indigenous and Tribal Peoples Convention' (adopted 27 June 1989), C169; UNGA 'The United Nations Declaration on the Rights of Indigenous Peoples' (2 October 2007), A/RES/61/295.

and, ideally, do not only hold duty bearers to account but in doing so, provide preventative measures. But even when it is not taking place in contexts fraught with conflict, enabling a meaningful process of FPIC is extremely difficult at best, given existing power imbalances.<sup>28</sup>

Additionally, the 2030 Agenda includes key sustainability principles through an emphasis on intergenerational equity: the notion that the world's environment is passed on from one generation to the other and that this entails the responsibility of taking into account future generation.<sup>29</sup> This touches upon an area in International Human Rights Law (IHRL) that is currently being discussed but which is not yet established, with a traditional human rights understanding that has so far focused on present generations.<sup>30</sup>

Therefore, the question arises of how the incorporation of human rights can shape the concept of SD within the international agenda. One possible effect is that through 'rights talk' a discursive turn towards the social dimension of SD allows for a more pluralistic view, freeing it from subordination to economic aspects in earlier prominent understandings of development. But the outcomes depend on how human rights themselves are interpreted and used, as this concept too can be variously ascribed with diverging meanings, such as, legal standards, moral norms or code of conduct.<sup>31</sup> Human rights' primary function might also be considered to serve as critical norms, that is, to provide a critique of policies and processes rather than offering policy solutions *per se*.<sup>32</sup> The normative obligations for state and non-state actors established under the human rights framework can additionally lead to more substantive commitments to the protection of human rights through SD policies and action.<sup>33</sup> Current efforts in IHRL are directed towards providing more tools for this purpose.

For instance, a legally binding document on human rights and the activities of transnational corporations and other business enterprises is currently being developed, building on the already existing voluntary UN Guiding Principles for Business and Human Rights (UNGPs), which aim to strengthen the accountability principle in particular.<sup>34</sup> One additional recent and important instrument reflecting this legal trend at the regional level is the level Escazú-Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (hereafter Escazú Agreement), which entered into force in April 2021.<sup>35</sup> It promotes the key RBA principles therefore

28. Rodríguez-Garavito, 'Ethnicity.Gov: Global Governance, Indigenous Peoples, and the Right to Prior Consultation in Social Minefields' (2011) 18 *Indiana Journal of Global Legal Studies* 263.

29. 2030 Agenda for Sustainable Development para 53.

30. Otto Spijkers, 'Intergenerational Equity and the Sustainable Development Goals' (2018) 10 *Sustainability* 3836, 9.

31. Vanessa Trapani, 'The Discursive Dimension of Human Rights. A Discourse Analysis of Contemporary Polish Debates' in Gavan Titley and Alana Lentin (eds.) *The politics of diversity in Europe* (Council of Europe Publishing, 2008) 45.

32. Langford (n 24) 76–77.

33. Jona Razzaque, 'Right to a Healthy Environment in Human Rights Law' (*Law Explorer*, 5 October 2015) <<https://lawexplores.com/right-to-a-healthy-environment-in-human-rights-law/>> accessed 22 March 2021.

34. Human Rights Council (HRC), 'Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights' <<https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-ontc>> accessed 15 October 2023.

35. Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (adopted 4 March 2018 Negotiating Committee of the regional agreement on access to information, participation and justice in environmental matters in Latin America and the Caribbean, entry into force 21 April 2021).

combining the mentioned elements of PLANET, but, in addition, is the first binding agreement upon states that includes provisions on EHRDs.<sup>36</sup>

More generally, Keenan argues that such legal trends towards recognising the need for participation and self-determination of indigenous peoples with regards to development projects goes hand in hand with the increasing tendency to include the voices of local people in the management of such projects.<sup>37</sup> On the other hand, and as the approach taken in the article suggests, it is important to ask how these procedural and substantive dimensions of RBA and legal standards more generally, are subject to actual perception, representation and use by actors. Advocates criticised, for example, how human rights were not a central aspect of the 2030 Agenda and stated that the unspecific formulations have little potential for its practical implementation.<sup>38</sup> Although there are references to principles associated with human rights approaches in the 2030 Agenda, they are vague and not associated with specific aspects of IHRL. In addition, human rights language might lead to legitimising harmful practices.<sup>39</sup> Regarding the right to FPIC, for example, as we saw earlier, not only is it challenging in practice to genuinely include local opinions<sup>40</sup> but in relation, FPIC processes can become technical and depoliticised legal procedures, which serves to legitimise ongoing extraction of resources.<sup>41</sup>

### 3.1. SUBJECT TO EXTRACTIVISM

The wider backdrop here to SD and RBA concerns understanding processes involved in the transition to RE. In particular, there is an economic drive for resources and a market logic pushing companies further into almost all regions of the world. This logic is termed by some as an extractive imperative and is linked also to furthering political and development agendas of states.<sup>42</sup> Understanding extractivism as an ideology shows that its enduring power reflects both privatisation, or, alternatively, state-led re-nationalisation agendas. Its ideological foundation stems from the common ground of a state's drive to enable the export of primary goods and to increase its

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36. For more information: Fermín Koop, 'Historic Escazú Agreement enters into force' (*Diálogo Chino*, 22 April 2021) <<https://dialogochino.net/en/climate-energy/42377-historic-escazu-agreement-enters-into-force/>> accessed 6 May 2021. The former UN Special Rapporteur on the situation of Human Rights Defenders defined the term EHRDs as follows: 'individuals and groups who, in their personal or professional capacity and in a peaceful manner, strive to protect and promote human rights relating to the environment, including water, air, land, flora and fauna' Michel Forst UN Special Rapporteur on the situation of Human Rights Defenders, 'They Spoke Truth to Power and Were Murdered in Cold Blood. Analysis on the Situation of Environmental Human Rights Defenders and Concrete Recommendations to Better Protect Them' (2016) 8 <<https://leap.unep.org/sites/default/files/2020-09/environmentaldefenders.pdf>> accessed 15 October 2023.
37. Patrick Keenan, 'Business, Human Rights, and Communities: The Problem of Community Contest in Development' [2013] SSRN Electronic Journal 5–6 <<http://www.ssrn.com/abstract=2353493>> accessed 25 March 2021.
38. Inga T Winkler and Carmel Williams, 'The Sustainable Development Goals and Human Rights: A Critical Early Review' (2017) 21 *The International Journal of Human Rights* 1023, 1023–1024.
39. Langford (n 24); Hans-Otto Sano and Tomas Max Martin, 'Inside the Organization. Methods of Researching Human Rights and Organizational Dynamics', *Research Methods in Human Rights. A Handbook* (Edward Elgar Publishing 2017).
40. Marcela Torres Wong, 'El Peligroso Nexo Entre La Industria Extractiva, Los Territorios Indígenas y El Medio Ambiente: ¿A Quién Corresponde La Defensa de La Naturaleza?' (2019) 69 *Revista de la Facultad de Derecho de México* 949, 964; Alexander Dunlap and Martín Correa Arce, "'Murderous Energy" in Oaxaca, Mexico: Wind Factories, Territorial Struggle and Social Warfare' (2022) 49 *The Journal of Peasant Studies* 455, 460.
41. Rodríguez-Garavito (n 28).
42. Murat Arsel, Barbara Hogenboom and Lorenzo Pellegrini, 'The Extractive Imperative in Latin America' (2016) 3 *The Extractive Industries and Society* 880.

revenue. These imperatives provide legitimisation of project development, state sovereignty, and, with controlled inclusion of alternative perspectives, outright exclusion of others.

Some manifestations of this imperative include how it overrides local concerns and this therefore needs to be managed. One way to ‘fix’ the imperative is spatial: it may involve ‘enclavisation’, with physical demarcation and through relocating local populations out of these extractive enclaves and/or giving the enclave a special economic status.<sup>43</sup> A related dynamic involves a blurring of public and private responsibility and hybrid models of de facto control and governance of territory and populations. There is often also a much more coercive imperative based upon state and private sector collusion, in which local populations defending their lands are subject to brutal counter-insurgency tactics and militarisation often in the name of anti-terrorism and ‘development’.<sup>44</sup> But another ‘fix’ is posited in Wiegink’s study of the extractive sector in Mozambique, where she identifies a temporal dimension ‘particularly apt to uncover how (future) projects are experienced and envisioned’.<sup>45</sup> The promise of future benefits of development is therefore also an important temporal accompaniment to the discourse of development. Similarly, however, there is another competing temporal element, one which is not only related to future benefits, but also carries the notion that environmental burdens should not be unequally passed on to future generations.

Regarding the right to FPIC, therefore, scholars argue that in the face of these pressures, the ability to genuinely include local opinions is often limited in practice. According to Dunlap, governments instrumentalise FPIC ‘as a counter insurrectionary device to pacify opposition and legitimize controversial development projects’.<sup>46</sup> Similarly, Keenan identifies the use of FPIC as ‘political risk insurance’ by companies and investors, thereby reducing the risk of emerging costs in case of political resistance against a development project.<sup>47</sup>

While a human rights language could help increase attention to the social dimension of SD, it is therefore not certain that vulnerable communities will benefit, let alone that true intra- and intergenerational equity as promoted by the 2030 Agenda will be achieved. In this article, the main focus is an open-ended view on how social realities are authored through a discursive reading of these elements of SD and some of the features of RBA mentioned. Our approach is that for meaningful RBA, a fundamental starting point is whether these dimensions are, first, acknowledged and, then, whether they are actually used in practice by the key actors involved in SD.

## 4. CONTEXT: GUNAA SICARÚ WIND PARK IN UNIÓN HIDALGO

### 4.1. REGIONAL CHARACTERISTICS

Unión Hidalgo is a town of about 14,500 inhabitants located in the Isthmus of Tehuantepec (hereafter the Isthmus) in the state of Oaxaca in southern Mexico.<sup>48</sup> Oaxaca is the second poorest state in

43. Nikkie Wiegink, ‘Imagining Booms and Busts: Conflicting Temporalities and the Extraction-“Development” Nexus in Mozambique’ (2018) 5 *The Extractive Industries and Society* 245.

44. Alexander Dunlap, ‘Wind, Coal, and Copper: The Politics of Land Grabbing, Counterinsurgency, and the Social Engineering of Extraction’ (2020) 17 *Globalizations* 661.

45. Wiegink (n 43) 245.

46. Alexander Dunlap, ‘Renewing Destruction: Wind Energy Development in Oaxaca, Mexico’ (PhD dissertation, Vrije Universiteit Amsterdam 2017) 187 <<https://research.vu.nl/ws/portalfiles/portal/42583967/complete+dissertation.pdf>> accessed 23 March 2021.

47. Keenan (n 37) 15–16.

48. According to a 2020 census. Gobierno de México, ‘Unión Hidalgo’ (*Data México*) <<https://datamexico.org/en/profile/geo/union-hidalgo>> accessed 15 October 2023.

Mexico and human rights organisations have reported that it is among the Mexican states with the most attacks against EHRDs.<sup>49</sup> Yet, these attacks are not isolated incidents, as shown in the latest Global Witness report, in which Mexico ranks third in the global statistics of EHRDs killed.<sup>50</sup>

More than half of the population (57,6%) in Unión Hidalgo was considered poor in 2020.<sup>51</sup> Moreover, a large part is indigenous: 47.6% of the inhabitants speak at least one indigenous language, most of them Zapotec.<sup>52</sup> Hence, the community self-identifies as a Zapotec indigenous community.<sup>53</sup> This is important because nationwide struggles to maintain and strengthen indigenous identities after Mexican independence are still relevant today. They have been accompanied by territorial conflicts and profound land inequalities stemming from colonial history to which past governments responded with processes of land redistribution in the early 1900s. These were linked to the notion of a historical restoration of justice and were intended to benefit indigenous communities.<sup>54</sup> In Unión Hidalgo, too, parts of the land are now being administered communally, meaning that the decisions concerning its use must go through a community assembly.<sup>55</sup> Nonetheless, land conflicts have continued to emerge and confusion about who owns certain territories persists.<sup>56</sup> RE developments have not been without opposition: all over the Isthmus, residents have expressed their concerns about inadequate consultation procedures and unfair contracts and many of them experienced physical attacks, threats and criminalisation in response (Figure 1).<sup>57</sup>

## 4.2. TIMELINE OF EVENTS

The French company Electricité de France (EDF) already operates three windfarms in Oaxaca and together with its subsidiary company Eólica de Oaxaca S.A.P.I de C.V., it had worked on

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49. ECCHR, ProDESC and CCFD-Terre Solidaire, 'Vigilance Switched off. Human Rights Violations in Mexico: What Are the Responsibilities of EDF and the APE?' (2021) 9 <[https://www.ecchr.eu/fileadmin/Publikationen/2021-06-08\\_-\\_Vigilance\\_switched\\_off\\_-\\_Report\\_-\\_EN.pdf](https://www.ecchr.eu/fileadmin/Publikationen/2021-06-08_-_Vigilance_switched_off_-_Report_-_EN.pdf)> accessed 8 February 2022. ;HRC, 'Report of the Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Mexico' (A/HRC/37/51/Add.2, 2018) paras. 61, 64 <<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G18/037/94/PDF/G1803794.pdf?OpenElement>> accessed 8 January 2021.
50. Global Witness, 'Standing firm. The Land and Environmental Defenders on the frontlines of the climate crisis.' (*global witness*, updated 15 September 2023) <<https://www.globalwitness.org/en/campaigns/environmental-activists/standing-firm/>> accessed 14 October 2023.
51. Secretaría de Bienestar de México, 'Informe Anual Sobre La Situación de Pobreza y Rezago Social 2020. Oaxaca, Unión Hidalgo' (2020) <[https://extranet.bienestar.gob.mx/pnt/Informe\\_2020/inf\\_municipal\\_20557.pdf](https://extranet.bienestar.gob.mx/pnt/Informe_2020/inf_municipal_20557.pdf)> accessed 16 February 2022.
52. Gobierno de México (n 48).
53. ECCHR, ProDESC and CCFD-Terre Solidaire, 'Vigilance Switched off.' (n 49) 9.
54. Noé Hernández Cortez, 'Energía Eólica, Identidades Políticas y Discurso: Los Casos de Unión Hidalgo y Juchitán de Zaragoza En Oaxaca, México' (2016) 3 FRONTERAS 9, 22.
55. ECCHR, 'Civil Society Space in Renewable Energy Projects – A Case Study of the Unión Hidalgo Community in Mexico. Policy Paper' (2019) 2 <[https://www.ecchr.eu/fileadmin/Publikationen/ECCHR\\_PP\\_WINDPARK.pdf](https://www.ecchr.eu/fileadmin/Publikationen/ECCHR_PP_WINDPARK.pdf)> accessed 27 January 2021.
56. Rosa Lehmann, 'The Conflict Surrounding Wind Power Projects in the Mexican Isthmus of Tehuantepec. Renewable Energy and Politics of Scale' (Working Paper No. 3, Bioeconomy & Inequalities, 2018) 12 <[https://www.bioinequalities.uni-jena.de/sozbiemedia/Neu/2018\\_11\\_19+Working+Paper+3.pdf](https://www.bioinequalities.uni-jena.de/sozbiemedia/Neu/2018_11_19+Working+Paper+3.pdf)> accessed 22 January 2021.
57. Coalition for Human Rights in Development, 'Uncalculated Risks. Threats and Attacks against Human Rights Defenders and the Role of Development Financiers' (2019) 42–43 <<https://rightsinddevelopment.org/wp-content/uploads/2019/06/Uncalculated-Risks-Full-report-cmpr-h.pdf>> accessed 27 November 2020; Lehmann (n 56) 32; HRC, 'Report of the Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Mexico' (n 49) para 83.

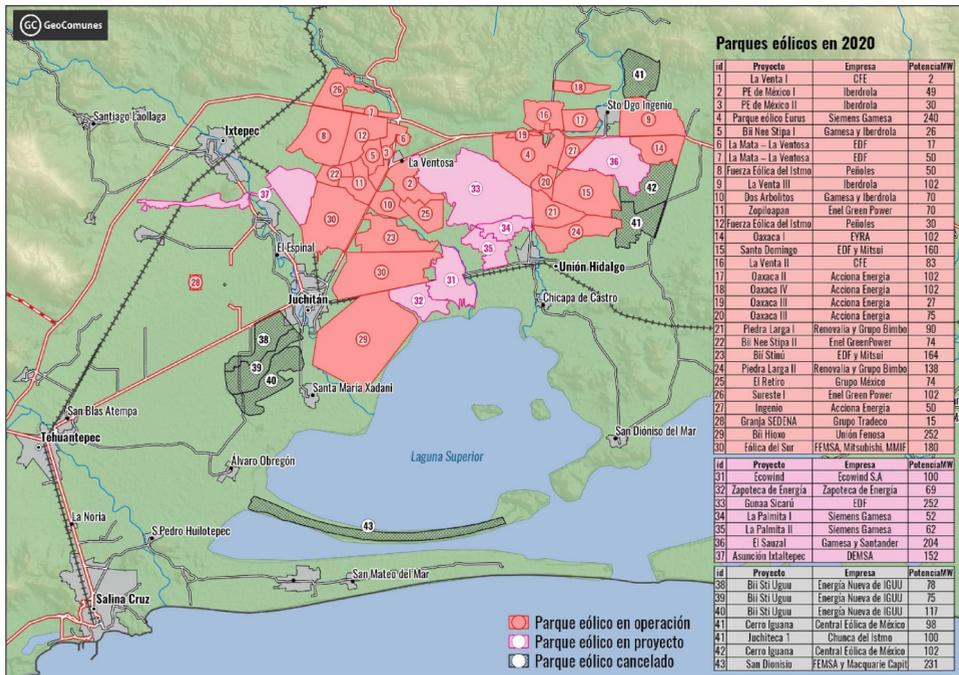


Figure 1. Map of wind parks in the Isthmus.<sup>149</sup>

the implementation of the next wind project called Gunaa Sicarú before it was cancelled in 2022.<sup>58</sup> It was supposed to be located in the municipalities of Unión Hidalgo and Juchitán de Zaragoza and was envisaged to be one of the biggest wind parks in Latin America, with a capacity of 300 MW and covering 4,700 hectares of land. Consultation with the Zapotec indigenous community was required before its construction, for which the Federal Ministry of Energy was responsible.<sup>59</sup>

As shown in the timeline (Figure 2), conflicts and legal proceedings regarding the implementation of the right to FPIC have permeated the Gunaa Sicarú project. The European Center for Constitutional and Human Rights (ECCHR), an international NGO supporting the civil lawsuit against EDF, explains that the community assembly had not received sufficient information before contracts were signed between EDF and the state government of Oaxaca in 2017. It concludes that the communities' right to FPIC as established in IHRL had not been respected and that 'the role of the state, in this case, is problematic because it is, at best, ambivalent and, at worst, knowingly negligent'.<sup>60</sup> Moreover, local activists experienced public stigmatisation, based

58. Avila-Calero and Deniau (n 5); ProDESC, 'Set Back to EDF in Mexico! The Zapotec Community of Unión Hidalgo and ProDESC Achieve the Definitive Cancellation of the Wind Park Megaproject "Gunaa Sicarú"' (Press Release, 2 June 2022) <<https://drive.google.com/file/d/1pxMunEU1dU3omnrfaoanXRjddWMVebcQy/view>> accessed 2 August 2022.

59. EDF Renewables Mexico, 'Gunaa Sicarú Wind Project' (*gunaa-sicaru*) <<https://www.gunaa-sicaru.com/>> accessed 7 February 2022.

60. ECCHR, 'Case Study of the Unión Hidalgo Community' (n 55) 4-5.

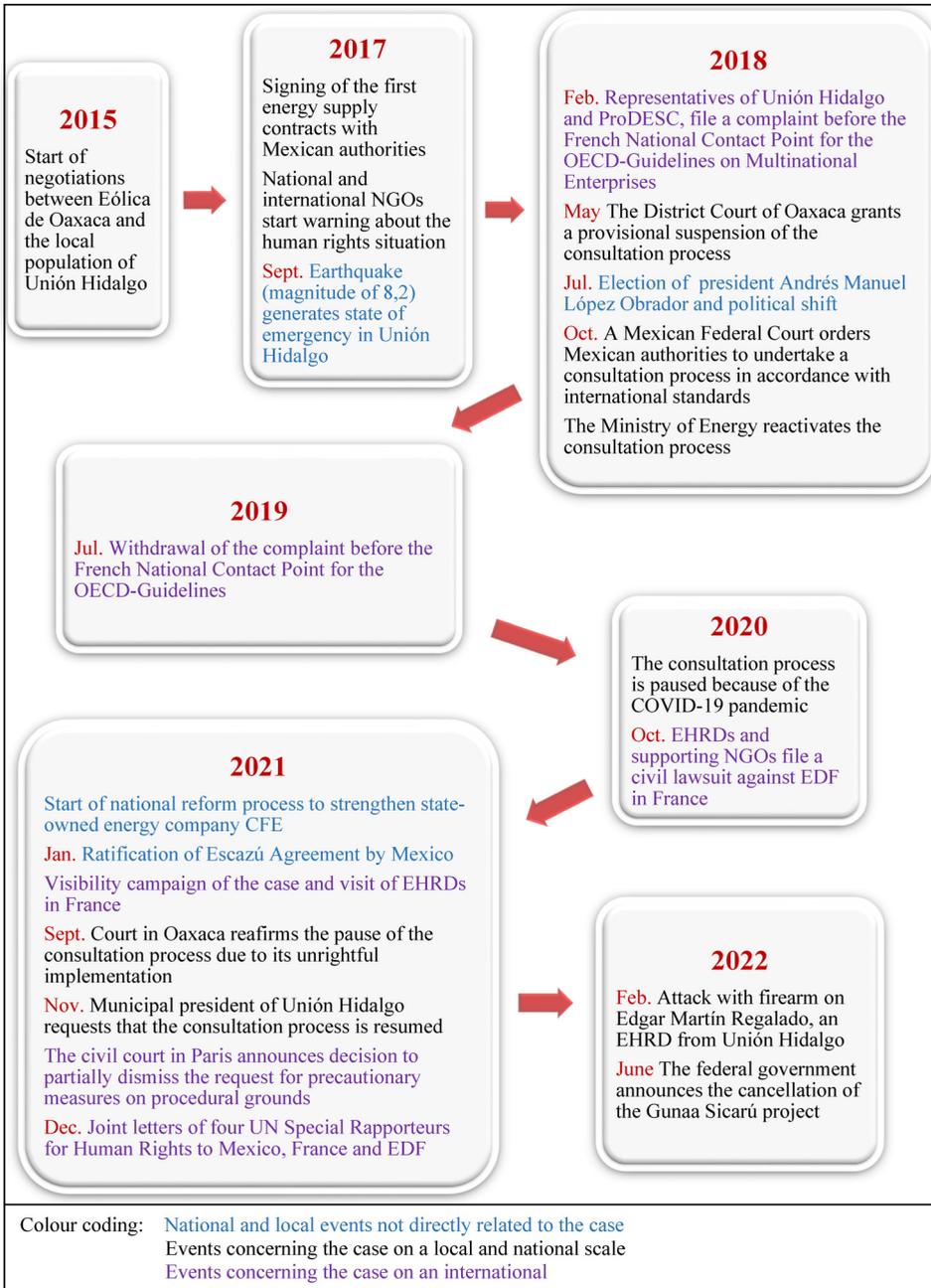


Figure 2. Timeline of key events around the consultation process.<sup>150</sup>

on accusations of being against development, as well as direct threats and attacks,<sup>61</sup> and the accompanying NGOs reported a general state of violence.<sup>62</sup> The community itself seemed to be divided since some community members stated their wish for the process of the implementation of Gunaa Sicarú to be continued without interruptions and their disagreement with the EHRDs' concerns.<sup>63</sup> In addition, gender inequalities due to limited opportunities for participation, targeted attacks and violence against women defenders as well as a disproportionate burden on women from leasing or selling land were identified.<sup>64</sup>

These issues ultimately led to the halting of the consultation process in 2018 and the final cancellation of the project by the federal government through its state-owned *Comisión Federal de Electricidad* [Federal Electricity Commission] (CFE) in June 2022.<sup>65</sup> The CFE confirmed that a court ruling led to this cancellation, which was announced by the First District Court of Oaxaca, where ProDESC has for years held a lawsuit regarding the construction of this wind park.<sup>66</sup> In September 2022, the Agrarian Tribunal of Tuxtepec nullified the leases of 11 community members of Unión Hidalgo, recognising the land in question as community property and thus bound by the decisions of the respective community assembly. Human rights NGOs saw this as an important precedent for similar cases in Mexico.<sup>67</sup>

Hence, in terms of RBA, the affected indigenous communities mainly argued that their right to FPIC was not carried out according to established norms and standards. The following examples of such established norms and standards are relevant in this light. Under Mexican law, the territory of

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61. Peter Millard, Amy Stillman and Saijel Kishan, 'Wind Project Splinters a Mexico Region Prized for Powerful Gusts' *Bloomberg* (9 July 2021) <<https://www.bloomberg.com/news/features/2021-07-09/mexico-wind-farms-divide-communities>> accessed 8 February 2022; Federación Internacional por los Derechos Humanos, 'México: Ataques a Miembros de La Comunidad Indígena de Unión Hidalgo (Oaxaca) Por Megaproyectos Eólicos' (*fidh*, 18 June 2019) <<https://www.fidh.org/es/temas/defensores-de-derechos-humanos/mexico-ataques-contra-miembros-de-la-comunidad-indigena-de-union>> accessed 27 January 2021; BHRRC, 'Mexico: Defender of Unión Hidalgo, Opponent of EDF Wind Farm in Oaxaca, Suffers Armed Attack' (22 February 2022) <<https://www.business-humanrights.org/en/latest-news/m%C3%A9xico-defensor-de-uni%C3%B3n-hidalgo-opositor-de-parque-e%C3%B3lico-de-edf-en-oaxaca-sufre-ataque-armado/>> accessed 2 August 2022.
  62. ECCHR, ProDESC, and CCFD-Terre Solidaire, 'Case Report: Wind Farm in Mexico: French Energy Firm EDF Disregards Indigenous Rights' (2020) <[https://prodesc.org.mx/wp-content/uploads/2020/10/20201002\\_Case-report-EDF-V2\\_LOGOS\\_EMBARGO\\_including-Guillermo-edits\\_Logos-1.pdf](https://prodesc.org.mx/wp-content/uploads/2020/10/20201002_Case-report-EDF-V2_LOGOS_EMBARGO_including-Guillermo-edits_Logos-1.pdf)> accessed 13 January 2021.
  63. This is for instance shown in the documentary by ARTE 'Mexico: Winds of Anger' (26 November 2021) <<https://www.arte.tv/en/videos/105004-000-A/arte-reportage/>> accessed 15 February 2022.
  64. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) 'UN Experts Call on All Electricité de France (EDF) Key Stakeholders to Uphold Their Human Rights Obligations in the Development of a Wind-Farm in Unión Hidalgo, Mexico' (11 December 2021) <<https://gi-escr.squarespace.com/latest-news/un-experts-call-on-all-edfs-key-stakeholders-to-uphold-their-human-rights-obligations-in-the-development-of-a-wind-farm-in-unin-hidalgo-mexico>> accessed 8 February 2022.
  65. María José Goytia, 'CFE Cancels Gunaa Sicarú Wind Farm Contract in Oaxaca' *Mexico Business News* (8 June 2022) <<https://mexicobusiness.news/energy/news/cfe-cancels-gunaa-sicaru-wind-farm-contract-oaxaca>> accessed 2 August 2022.
  66. Tom Azzopardi, 'Mexico cancels contract with controversial EDF wind farm' *Wind Power Monthly* (7 June 2022) <<https://www.windpowermonthly.com/article/1788903/mexico-cancels-contract-controversial-edf-wind-farm>> accessed 27 August 2023; Héctor Usila, 'Unión Hidalgo, comunidad indígena de Oaxaca, logra cancelación de megaproyecto eólico francés' *El Financiero* (8 June 2022) <<https://www.elfinanciero.com.mx/economia/2022/06/08/union-hidalgo-comunidad-indigena-de-oaxaca-logra-cancelacion-de-megaproyecto-eolico-frances/>> accessed 27 August 2023.
  67. BHRRC, 'Mexico: Agrarian Tribunal declares nullity of lease contracts of 11 community members of Unión Hidalgo regarding wind farm owned by Renovalia Energy' (n 61).

Unión Hidalgo is recognised as *comunidad agraria* [agrarian community], which means that the respective community assembly has the right to decide over the land.<sup>68</sup> The Mexican government is obligated to ensure these rights because of binding international conventions it has ratified, such as the ILO Convention 169 and the Escazú Agreement.<sup>69</sup> The Mexican Supreme Court of Justice has also produced jurisprudence on the specific requirements for FPIC.<sup>70</sup> The UNDRIP, even though it is a non-binding instrument, is also a significant international declaration establishing the rights of indigenous peoples to decide over their territory, including the right to FPIC. Mexico is also part of the Inter-American system, which has developed important standards on the right of indigenous peoples to communal property over their lands.<sup>71</sup> In addition, the Inter-American Court for Human Rights stated in the decision on the case of *Saramaka v. Suriname*, that the implementation of FPIC must be in accordance with the traditional decision-making practices of indigenous peoples.<sup>72</sup> It is one of the most influential cases for the implementation of FPIC in the Americas.<sup>73</sup> Finally, the 27/2016 Recommendation issued by the Mexican National Commission for Human Rights includes important guidelines for the Mexican federal executive regarding FPIC.<sup>74</sup>

Another important event in these emerging legal processes is the civil lawsuit in France against EDF. The EHRDs and supporting NGOs invoked the French Corporate Duty of Vigilance Law from 2017, which obliges French companies to issue an annual vigilance plan including an assessment of human rights and environmental impacts of their activities.<sup>75</sup> The complaint demanded the rightful implementation of the community's right to FPIC as well as the physical protection of the EHRDs, arguing that the vigilance plan for the project did not guarantee this.<sup>76</sup> The French Duty of Vigilance law is one of the first laws to impose a binding obligation on large companies to identify the human rights and environmental impacts of their activities and their supply chains and to prevent rights violations.<sup>77</sup> Other international instruments relevant for EDF in this case, although voluntary, are the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises on Responsible Business Conduct and the UNGPs, which give concrete recommendations to multinational companies for carrying out human rights due diligence in their operations.<sup>78</sup>

68. ECCHR, ProDESC, and CCFD-Terre Solidaire, 'From rights to reality. Ensuring a rights-holder-centred application of the French Duty of Vigilance law' (2023) 10 <[https://www.ecchr.eu/fileadmin/user\\_upload/ECCHR\\_EDF\\_WEB.pdf](https://www.ecchr.eu/fileadmin/user_upload/ECCHR_EDF_WEB.pdf)> accessed 27 August 2023.

69. See Chapter 3.

70. José Israel Herrera, 'Free, Prior and Informed Consent (FPIC) in Mexico: Elements for its Construction and Challenges' (2019) 12 *The Age of Human Rights Journal*, 69–70.

71. Organization of American States 'Indigenous and tribal peoples' rights over their ancestral lands and natural resources. Norms and Jurisprudence of the Inter-American Human Rights System' (2009) OEA/Ser.L/V/II. Doc. 56/09 <<http://cidh.org/countryrep/indigenous-lands09/Ancestral-Lands.ENG.pdf>> accessed 2 September 2023

72. *Case of the Saramaka People v. Suriname*, Judgment Inter-American Commission on Human Rights, Series C No. 172 (2007) paras 133, 134.

73. ECCHR, ProDESC, and CCFD-Terre Solidaire, 'From rights to reality' (n 68) 14–17; Israel Herrera (n 72) 69.

74. Comisión Nacional de Derechos Humanos 'Recomendación General 27/2016 sobre el derecho a la consulta previa de los pueblos y comunidades indígenas de la República Mexicana' (2016) <[https://www.cndh.org.mx/sites/all/doc/Recomendaciones/generales/RecGral\\_027.pdf](https://www.cndh.org.mx/sites/all/doc/Recomendaciones/generales/RecGral_027.pdf)> accessed 2 September 2023. For a more detailed mapping of the right to FPIC in the Mexican context see: Israel Herrera (n 70).

75. ECCHR, 'Case Study of the Unión Hidalgo Community' (n 55) 7–8.

76. ECCHR, ProDESC and CCFD-Terre Solidaire, 'Vigilance Switched off.' (n 49) 16–17.

77. ECCHR, ProDESC, and CCFD-Terre Solidaire 'From rights to reality' (n 68).

78. Organisation for Economic Cooperation and Development (OECD) 'OECD Guidelines for Multinational Enterprises on Responsible Business Conduct' (Paris, OECD Publishing 2023) <<https://www.oecd-ilibrary.org/docserver/81f92357-en.pdf?expires=1693232652&id=id&acname=guest&checksum=5A6EE5A007BE581A216F4390041ABD2C>>

Supporting the defenders' claims, four UN Special Rapporteurs sent joint letters to the governments of Mexico and France, as well as to EDF, demonstrating the international attention the case received since the lawsuit was filed.<sup>79</sup> They called for a genuine consultation process that would guarantee the right to FPIC and would take the effects on women and girls of the community into special consideration.<sup>80</sup>

The events described occurred within a period of political changes that also affected Mexico's electricity production and supply system and thus the RE-projects in the Isthmus. Past Mexican governments had been welcoming of foreign direct investment in the energy sector,<sup>81</sup> and in 2013, Mexico's government implemented a reform to open up the national energy market to private investments.<sup>82</sup> Most of the wind energy produced in the region was part of a self-supply scheme and therefore privatised.<sup>83</sup> transnational companies built the wind parks and the produced electricity supplied big industrial, commercial or service consumers in other parts of Mexico.<sup>84</sup> Yet, it was only in 2014 that the requirement for public consultation was included in Mexican legislation under the Electricity Industry Law, and many voice the critique that even after the legal implementation of this requirement, consultations are not carried out properly.<sup>85</sup> However, the government shift in 2018 started deprioritising investments in RE. Many of the new decisions by president Andrés Manuel López Obrador (AMLO) are to some extent hostile to foreign private investment. Critics argue that the reason behind this position is an agenda of greater state control over the energy supply through CFE and the destabilisation of private investors.<sup>86</sup> These measures are taking place within the broader context of a political turn to the left after AMLO assumed the presidency and under his slogan of the so-called '*Cuarta Transformación*' ['Fourth Transformation']. According to the discourse used, this is a political project aimed at bringing about profound change. The

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accessed 28 August 2023; Office of the High Commissioner for Human Rights (OHCHR), 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' (2011) HR/PUB/11/04 <[https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr\\_en.pdf](https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf)> accessed 28 August 2023.

79. The UN Special Rapporteur on extreme poverty, Olivier de Schutter; the UN Special Rapporteur on the right to development, Saad Alfarargi; the UN Special Rapporteur on human right defenders, Mary Lawlor and the UN Special Rapporteur on indigenous peoples, José Francisco Cali Tzay.
80. GI-ESCR (n 64). Letters from the UN Special Rapporteur on extreme poverty, Olivier de Schutter; the UN Special Rapporteur on the right to development, Saad Alfarargi; the UN Special Rapporteur on human right defenders, Mary Lawlor and the UN Special Rapporteur on indigenous peoples, José Francisco Cali Tzay to the Mexican Government (13 August 2021), the French Government (13 August 2021) and EDF (17 August 2021) <<https://drive.google.com/drive/folders/1gUf1h8liME1cRvmOE4ZAYxQrW9bYCKX>> accessed 8 February, 2022.
81. Jacobo Ramirez, 'Governance in Energy Democracy for Sustainable Development Goals: Challenges and Opportunities for Partnerships at the Isthmus of Tehuantepec' [2020] *Journal of International Business Policy* 2 <<http://link.springer.com/10.1057/s42214-020-00077-3>> accessed 14 January 2021; Howe (n 4) 385.
82. Adriana Barrera, 'Mexico Launches Reform to Put State in Charge of Power Market' *Reuters* (Mexico City, 2 October 2021) <<https://www.reuters.com/world/americas/mexico-president-says-electricity-reform-has-been-sent-congress-2021-10-01/>> accessed 15 February 2022.
83. Dunlap (n 46) 80.
84. Ezequiel Zárate-Toledo, Rodrigo Patiño and Julia Fraga, 'Justice, Social Exclusion and Indigenous Opposition: A Case Study of Wind Energy Development on the Isthmus of Tehuantepec, Mexico' (2019) 54 *Energy Research & Social Science* 1, 4; Avila-Calero and Deniau (n 5).
85. Ramirez (n 81) 8–9.
86. *ibid* 2; Justin Villamil, '¿Por Qué El Gobierno de AMLO Está "peleado" Con Las Energías Limpias?' *El Financiero* (16 July 2020) <<https://www.elfinanciero.com.mx/economia/y-a-todo-esto-por-que-el-encontrazo-del-gobierno-de-mexico-con-las-energias-renovables>> accessed 19 February 2021.

name alludes to a continuation of three major historical transformations the country has experienced (the independence and liberal reforms in the nineteenth century and the revolution at the beginning of the twentieth century).<sup>87</sup> Through this narrative, the president draws attention to issues such as social inequalities, poverty and corruption and uses them as rationale for various policies.<sup>88</sup> At the same time, the tendencies of developing reform proposals that give more regulating power to governmental authorities show a development that could fit into the above-described 'extractive imperative' that has been observed in the context of a left turn in several Latin American countries, like Bolivia, Ecuador and Venezuela.<sup>89</sup> Under this imperative, the discursive argument is that 'advancing extraction is in the interest of the nation at large' and it can be powerful when used against expressions of dissent from the affected individuals and communities.<sup>90</sup>

How exactly these developments have influenced the decision to cancel the Gunaa Sicarú project by CFE is unclear. The NGOs supporting EHRDs in Unión Hidalgo celebrated the cancellation of Gunaa Sicarú as a win after their 5-year fight.<sup>91</sup> It is perhaps an example of how international and domestic pressure on responsible actors to guarantee human rights can impact decision-making processes around development issues. Nonetheless, and as will become clear in the next section, powerful national and international aspirations for increasing energy production and related discourses on SD persist. Therefore, it is essential to investigate how these interests play out in local contexts and to understand their consequences for affected communities and individuals.

## 5. FINDINGS

This article has examined the multi-faceted ways of seeing SD, including RBA approaches to SD and explained then the specific policy and political context surrounding the case study, which reveals the importance of REs for SD in this context. This section will focus on how the discursive reading of these terms reveals particular social realities authored by three key sets of actors. The analysis of the findings focused on three main themes, namely the visions of the actors on the concepts of (a) Sustainable Development; (b) Human Rights; and (c) Renewable Energies and the wind parks in Unión Hidalgo. The latter theme was included to capture statements, views and narratives more explicitly connected to the case of Gunaa Sicarú. For the documents not referring to the case, a more general view on RE was added as an analytical element. The following sections present the results of this analysis according to these three themes.

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87. Armando Chaguaceda, 'México : contexto y antecedentes de la cuarta transformación' *Diálogo Político* (21 June 2019) <<https://dialogopolitico.org/debates/mexico-contexto-y-antecedentes-de-la-cuarta-transformacion/>> accessed 28 August 2023.

88. Rafael Romo, 'Mexico's President Is Just Beginning His "Fourth Transformation" of the Country' *CNN* (16 August 2019) <<https://edition.cnn.com/2019/08/16/americas/mexican-president-lopez-obrador-profile-intl/index.html>> accessed 12 March 2021.

89. Reuters, 'Legisladores Mexicanos Rechazan Propuesta de Reforma Eléctrica Del Presidente López Obrador' *CNN* (18 April 2022) <<https://cnnespanol.cnn.com/2022/04/18/mexico-reforma-electrica-amlo-reuters-reux/>> accessed 2 August 2022; Emily Pickrell, 'Mexico's Proposed Electricity Law Would Leave Foreign Investment out in the Cold' *Forbes* (9 February 2022) <<https://www.forbes.com/sites/uhenergy/2022/02/09/mexicos-proposed-electricity-law-would-leave-foreign-investment-out-in-the-cold/?sh=4975f369954b>> accessed 15 February 2022; Barrera (n 82); Gabriel Ruiz and others, 'Energy Reform in Mexico. When, How and What Does It All Mean for Mexico and Industry Participants?' (*Holland & Knight*, 8 October 2021) <<https://www.hklaw.com/en/insights/publications/2021/10/la-reforma-energetica-en-mexico>> accessed 15 February 2022; Text to n 42.

90. Arsel, Hogenboom and Pellegrini (n 42) 885–886.

91. ProDESC, 'Set Back to EDF in Mexico!' (n 58).

## 5.1. SUSTAINABLE DEVELOPMENT

While the EHRDs - both Categories A and E – do not mention SD, their goal for development appears to be tied to intergenerational equity and the formation and conservation of a collective identity as an indigenous group. Even though they bring forward arguments of social justice and environmental protection,<sup>92</sup> references to their indigenous identity and territorial connection are much more prominent.<sup>93</sup> The analytical models of SD described above, including the definition of the three pillars of SD, are therefore not a precise fit for their narratives. The EHRDs additionally have an intergenerational vision by emphasising that the territory is supposed to be passed on to future generations.<sup>94</sup> But the interviews reveal strong disapproval of the term ‘development’ provoked by past experiences of injustice that were discursively linked to it:

‘this view from outside has made some of us feel that we are above nature and therefore we damage it, we do not respect it and we want to extract everything from it. That is the vision of development. And sustainability is perhaps to say: well, a little less [damage], so that we can stay alive longer.’<sup>95</sup>

Another interviewee explains that the term ‘development’ limits his legitimacy to openly criticise megaprojects.<sup>96</sup>

Within the discourse of the state and federal governments, the term SD, the SDGs, and other international frameworks for environmental protection were more dominant. Nonetheless, only the federal government mentioned the Brundtland-Report and the interrelation of SD with human rights.<sup>97</sup> The companies preferred the terms ‘sustainability goals’ or a ‘sustainable future’ instead of SD,<sup>98</sup> thereby perhaps avoiding a declaration of commitment regarding the international SD standards.

The language around the use and conservation of natural resources reveals a great deal about the actors’ perception of SD, too. For the EHRDs interviewed (Category E), the availability of natural resources is tied to the possibility of being independent of the government and therefore carries great importance for a collective identity. While one EHRD argues that natural resources are worth more than money because they ensure the continuation of human life in their territory,<sup>99</sup> the companies describe the resource wind mainly in connection with its potential for more effective energy production,<sup>100</sup> for example as ‘limitless, non-polluting resource that consumes virtually no water, and the power it generates is even more affordable than ever, with a 60%+ reduction in cost over the last five years’.<sup>101</sup>

When taking internationally defined views of SD as a starting point, the conceptualisation of SD by the Oaxacan government is perhaps the most holistic one. Environmental protection is

92. A01; A04; A05; A06.

93. A02; A04; A03; A06.

94. A02; A04.

95. Interview with Laura (Digital interview, 15 April 2021). Pseudonyms are used for the interviewees due to security reasons. All quotations in this Chapter were translated from Spanish to English by the authors.

96. Interview with Marco (Digital interview, 18 April 2021).

97. D01; D02.

98. B07; B11; B13.

99. A05.

100. B05; B13; B11.

101. B05. No translation was needed for the quotations from documents B01-B07 as the original language was English.

described as the ‘foundation’ for SD.<sup>102</sup> Moreover, the fact that the right to a healthy environment and intergenerational equity are mentioned,<sup>103</sup> even though not extensively, shows an open-mindedness towards non-traditional views on development. Nonetheless, aspects of efficiency and economic growth are also dominant,<sup>104</sup> creating contradictory goals: on one hand the need for economic growth and more effectiveness, and on the other hand, the importance to conserve the environment and include indigenous views on economic development and the environment. However, this contradiction is not addressed.

On the national scale, a special emphasis is put on the social dimension of development. D01 uses the narrative of a turning point in the history of Mexico (the so-called Fourth Transformation), which distances itself from a neoliberal agenda. D01 and D02 mention the participation of civil society as necessary for Mexico’s compliance with the 2030 Agenda and identify the country’s inequalities as a developmental challenge, mentioning consultation processes as tools to achieve participation. But while the government claims a turn towards social justice, it nonetheless sees the encouragement for private investments as a necessary economic measure.<sup>105</sup> The possible contradiction of these priorities is not addressed either.

## 5.2. HUMAN RIGHTS

The EHRDs adopt human rights mainly to underline the claims against the construction of the wind parks, even though they rarely use explicit references to IHRL and do not name the 2030 Agenda at all. Yet the right to FPIC is explicitly mentioned by most EHRDs,<sup>106</sup> who embed this right within a wider narrative of the perpetual struggles over territory and identity as indigenous peoples since colonial times. A statement in Category A illustrates this importance: ‘the right to consultation for indigenous communities is a right that has been won with blood and hard work by many indigenous communities and peoples around the world (...)’.<sup>107</sup> Moreover, the interviewees bring up the right to FPIC to highlight their experiences of manipulatory and corrupted processes of consultation when wind energy projects were installed in Unión Hidalgo.<sup>108</sup> Laura concludes that ‘the consultation has become an element only to validate the dispossession’.<sup>109</sup> This points to a perceived gap between formally established standards of FPIC and real-life experiences.

The companies include statements claiming a strong commitment toward including the views of the local population.<sup>110</sup> A general language describing positive effects for local communities is preferred over concrete references to human rights frameworks and commitments to their protection. Moreover, the discourse creates the image that benefits for local development are generated almost automatically through increased capital flow and the creation of employment.<sup>111</sup> In general, the narrative assumes that local views are in agreement with the projects because potentially opposing

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102. C01; C06.

103. C01; C05; C06.

104. C01.

105. D01.

106. A01; A03; A04; A06.

107. A01.

108. Laura (n 95); Marco (n 96); Interview with Ne riguiidxi (Digital interview, 15 April 2021).

109. Laura (n 95).

110. B06; B07.

111. B02.

views are not mentioned. For instance, in the response of EDF to the accusations that the consultation process for the Gunaa Sicarú project is illegitimate, EDF does not acknowledge the existence of political resistance by the local population. On the contrary, the company states that '[t]he Gunaa Sicarú project is quite well accepted by the local communities'.<sup>112</sup> Only EDF's Social Impact Assessment (SIA) for Gunaa Sicarú includes a detailed explanation of the rights of the indigenous communities. The SIA concluded with the statement that the level of the project's negative impacts can be considered 'moderate to high' and it emphasised the cumulative effect of different factors including power structures and conflicts of interest. It is stated that this might cause a violation of their human rights as well as social fragmentation.<sup>113</sup> However, the concerning results of this assessment are not mentioned in any of the other documents published by EDF analysed here.

The discourse on the national level is the one most permeated by a human rights language and IHRL. The rights to land and FPIC are more dominant than at the state level and include the acknowledgement that the right to FPIC is not a mere procedure but 'a genuine participatory and conciliation mechanism aimed at reaching an agreement between the parties'.<sup>114</sup> References to international standard-setting instruments, such as the UNGP, are also only made at the national level.

Furthermore, none of the decision-making actors refer to the concept of EHRDs. The risks of being an EHRD and the importance of defending the territory are taken up by the EHRDs themselves in Category A and by all interviewees (Category E) but not in any other category.<sup>115</sup> Some aspects include stigmatisation (being labelled as 'anti-progress' or 'anti-wind energy'), persecution, threats, legal issues, physical attacks and murders. Laura summarises her situation as follows: 'They are threatening your life because here, it is not just a matter of them taking your job, but of them killing you'.<sup>116</sup>

### 5.3. RENEWABLE ENERGIES AND THE WIND PARKS IN UNIÓN HIDALGO

Some of the EHRDs describe the construction of wind parks in their region as an 'invasion',<sup>117</sup> a term that can be understood as referring to the occupation of Mexican territory during colonial times, thereby first and foremost understanding the changes brought about by the wind parks through a perspective of collective territory and indigenous experiences of injustice. The identified problems of the wind parks are mainly political, such as a lack of transparency, the emergence of internal conflicts and violence, and the false promises made by the companies.<sup>118</sup> The discursive contrast between the EHRDs and the companies becomes most evident when looking at the identified arguments that the companies bring forward to support wind energy production: emissions reduction, meeting sustainability goals, energy security, improvement of the environment, job creation, and contribution to local development.<sup>119</sup> Only the SIA mentions the fact that some of the territories belong to the indigenous community and that the region has been shaken by constant

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112. B12.

113. B14.

114. D01; D03; D06; D07; D07.

115. A01; A04.

116. Laura (n 95).

117. A01; A02; A05; A07.

118. A01; A03; A04; A06.

119. See codebook for Category B in Annexe 2.

land conflicts,<sup>120</sup> while other documents describe the territory simply as ‘private land’.<sup>121</sup> Furthermore, both Environmental Impact Assessments analysed show how companies make the local ecosystem seem less important by stating that it has already been used for agricultural activities,<sup>122</sup> thereby justifying the alteration of the natural environment caused by the wind parks. Environmental conservation seems to be desired only to a limited extent, ‘while making it compatible with economic development’.<sup>123</sup>

The companies’ arguments clearly speak to government authorities by stating that wind energy brings Mexico closer to achieving internationally and nationally set sustainability goals as well as energy independence,<sup>124</sup> which are development priorities in the narratives of the state and federal government. For instance, the National Development Plan 2019–2024 for Mexico presents statistics where Mexico is identified as the fourth most attractive country in the world for clean energy investments. It targets an annual increase of 11% in wind energy production and plans to allocate 67% of the inversions in energy production between 2018–2032 to renewables.<sup>125</sup> The fact that the Isthmus was declared a so-called Special Economic Zone additionally demonstrates the government’s attention to this region as a source for boosting investment and economic growth, which in turn legitimises the claims of the companies of their status as key drivers for development.<sup>126</sup>

Furthermore, the environmental and social strategic assessment of the wind energy development in the Isthmus by the Federal Ministry for Energy recognises the concerns declared by the EHRDs but concludes with the approval of the wind parks and ‘extremely positive’ outcomes.<sup>127</sup> Consequently, even though the federal government critically reviewed the project, addressed the claims of the EHRDs and included human rights aspects, this did not lead to serious requirements for an improvement in the management of the wind parks to the benefit of the local population. In this regard, all interviewees describe the role of Mexican state authorities at different government levels as ‘complicit’, ‘in favour of the companies’ and even acting as ‘employees for the companies’.<sup>128</sup> How the new government administration of AMLO affects this situation is evaluated differently by the interviewees: Laura describes the situation as equally bad or even worse than before because it is more difficult to openly criticise the current government, while Marco observes some improvements since the companies are not as confident in their activities anymore.

#### 5.4. SUMMARY OF THE FINDINGS

The following table summarises the main findings for each of the actors regarding all three themes (Table 1).

### 6. DISCUSSION

The actors reveal diverging conceptualisations of development and adopt the concept of SD to varying degrees. The Oaxacan government seems to use the broadest understanding of SD, though the federal

120. B14.

121. B13.

122. B11; B13.

123. B13.

124. B05; B11; B13.

125. D01.

126. C01.

127. D06.

128. Laura (n 95); Marco (n 96); Ne riguiidxi (n 108).

**Table 1.** Overview of findings for each actor-category and theme.

	<b>Sustainable Development</b>	<b>Human Rights</b>	<b>Renewable Energies and the wind parks in Unión Hidalgo</b>
<b>EHRDs (Category A)</b>	Social development and environmental protection; Territory and identity as an indigenous community; Intergenerational equity	Right to FPIC as a tool for territorial defence; Symbolic character of FPIC; Risks for EHRDs	Social and environmental detriments; 'Invasion' of communal territory; Wrongful consultation process
<b>Companies (Category B)</b>	Economic development; Use of other terms linked to sustainability	Benefits for local communities; Moderate to high risk for violation of human rights	Benefit for local development and meeting sustainability goals
<b>The Mexican government at the State level (Category C)</b>	Holistic perspective including all three dimensions; Territory	Cultural rights, right to FPIC and right to a healthy environment	Importance of RE for achieving SD; Efficiency
<b>The Mexican government at the Federal level (Category D)</b>	Social and economic development; Connection to human rights; Achieving SDGs	Indigenous rights and right to FPIC; References to IHRL	Importance of RE for achieving SD; Efficiency
<b>Interviewed EHRDs (Category E)</b>	Disapproval of the term 'development'; Territory and identity as an indigenous community; Intergenerational equity	Right to FPIC as a tool for territorial defence; Gap between FPIC standards and practice; Risks for EHRDs	Social and environmental detriments; Wrongful consultation process

government uses a stronger interrelation of economic development with social justice and human rights. The companies appear to use SD for more strategic purposes and prefer using other terms linked to sustainability. But the varied discourses of the decision-making actors do not explain how the different pillars of SD appear compromised, similar to Connelly's observations in other contexts.<sup>129</sup>

The perspectives of the EHRDs are the most divergent from international conceptualisations of SD - most importantly, regarding the conservation of their territories. Furthermore, the critique towards the term 'development' expressed by EHRDs shows that the SD discourse has little relevance to speak to them, let alone make them adopt the term to support their arguments. The EHRDs report a hostile attitude towards them, that is specifically directed to their disagreement with Mexico's aspirations for development, as the critique directed at them uses terms, such as 'anti-progress'. These experiences are confirmed by NGO reports and news media about the stigmatisation of EHRDs in Unión Hidalgo as mentioned above.<sup>130</sup>

The EHRDs appropriate specific concepts based on human rights language, such as FPIC and EHRDs, but they do not use more general references to international frameworks for human rights or environmental protection. The right to FPIC is seen as the main tool for defending their

129. Connelly (n 22).

130. See Chapter 4.

territory and indigenous identity. Yet, the decision-making actors operating in the local context (the state government and the companies), do not incorporate a human rights language or specific legal obligations connected to the right to FPIC. Only at a national scale, do the governments' documents refer to international instruments, describing the obligations of the state and companies to fulfil and protect the right to FPIC. Moreover, none of the decision-making actors mention the term EHRDs or any of the risks related to their activities, even though the Mexican state is obliged to provide for the EHRDs' protection according to IHRL.<sup>131</sup> Considering the mentioned stigmatising language in public, the conflicts and tensions within the community, as well as reports about a general state of violence in Unión Hidalgo including physical threats and attacks directed towards the EHRDs,<sup>132</sup> this fact is very alarming and demonstrates the precariousness of their situation.

The EHRDs' concerns regarding the wind parks are only taken up in two documents of the decision-making actors: the SIA and the strategic assessment of the wind energy development in the Isthmus by the Federal Ministry for Energy.<sup>133</sup> However, the conclusions from these documents are not mentioned elsewhere. The repeated public statements, in which EDF denies accusations made against the company by stating that a local court ruling will not affect Gunaa Sicarú because it 'is planned exclusively on private lands'<sup>134</sup> or that it 'is quite well accepted by the local communities',<sup>135</sup> show the disregard for any issues that could jeopardise the project. In their study on Unión Hidalgo, Dunlap and Arce interviewed the regional director of EDF and concluded too, that the presence of violence was downplayed, and that the existence of communal land was denied.<sup>136</sup> This indicates that EDF may not be complying with human rights due diligence and the right to FPIC. It is also clear that the EHRDs have the impression that their concerns are not taken seriously – on the contrary, they perceive the state as being complicit. The narrative of Mexico's 'Fourth Transformation' used in Category D shows that the discourse is in fact in line with a so-called extractive imperative with the goal of economic development of REs, including the argument that it also leads to more social equality and poverty alleviation. As has been observed in other contexts, this can widen the gap between rhetoric and practice and leave less space for critical voices.<sup>137</sup> The categorisation of the Isthmus as a Special Economic Zone and the formulation of national goals for increased RE production exemplify this emphasis on 'sustainable' economic development.<sup>138</sup> This corresponds to the above-mentioned strategies of 'enclavisation' and the use of counterinsurgency tactics by the state.<sup>139</sup>

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131. HRC, 'Report of the Special Rapporteur on the Situation of Human Rights Defenders on His Mission to Mexico' (n 49); Alejandra Leyva Hernandez, Rita Chantal Reyes Medina, Cristina Garcia Bravo and Jose Carlos Juarez Perez (Centro Mexicano de Derecho Ambiental, CEMDA), 'Report on the Situation of Environmental Human Rights Defenders' (2019) <[https://www.cemda.org.mx/wp-content/uploads/2020/04/Informe\\_defensores\\_ambientales\\_eng.pdf](https://www.cemda.org.mx/wp-content/uploads/2020/04/Informe_defensores_ambientales_eng.pdf)> accessed 6 January 2021; UN Special Rapporteur on the situation of Human Rights Defenders (n 36) 5.

132. See Chapter 4.

133. B14; D06.

134. Tom Azzopardi, 'EDF Denies Mexican Court Ruling over Indigenous Land Challenge Will Affect Wind Farm' *Windpower Monthly* (27 September 2021) <<https://www.windpowermonthly.com/article/1728377/edf-denies-mexican-court-ruling-indigenous-land-challenge-will-affect-wind-farm>> accessed 8 February 2022.

135. B12.

136. Dunlap and Arce (n 40) 468.

137. Arsel, Hogenboom and Pellegrini (n 42) 884-886; Romo (n 88).

138. C01; D01.

139. Text to n 43; Dunlap (n 44).

The final developments of this case as explained above show that the use of legal instruments at the national level (and also possibly influenced by the international court case against EDF regarding its obligations under the French Duty of Vigilance Law) was ultimately effective and led to the cancellation of the project and the recognition of the EHRDs' rights to their communal land and the right to FPIC. The case therefore sets an interesting precedent for similar cases and demonstrates how national and international advocacy and the existing legal framework can have a significant impact on the effective protection of human rights. Nonetheless, the varying understandings of the meaning and degrees of engagement with the right to FPIC identified here are somewhat contrary to the course of events and could easily lead to the opposite outcome and conclusion that the law sets standards that are too high and unrealistic for specific actors on the ground.<sup>140</sup> The finding that RBA and specifically FPIC are downplayed in the discourse of major actors and decision-makers confirms the assumptions that these discourses are not connected to serious commitments and is even used instrumentally to pacify opposing views, as experienced by the interviewed EHRDs. The potential for the empowerment of local communities through these legal instruments is therefore bound not only to the goodwill of the decision-makers, who are driven by ideas of cost-effectivity and international standing, but is underscored by the vital role of national and international mobilisation. The fact that none of the other categories mentions the term EHRDs shows an attitude of denial of the existence of resistance against development projects, and therefore considerably hinders the defenders' possibilities to speak out against the injustices they experience. In addition, as explained above, a civil lawsuit has been filed against EDF under the French Duty of Vigilance Law, which has so far remained unresolved. ECCHR, ProDESC, and CCFD-Terre Solidaire identify that the obstacles for EHRDs in this case are closely connected to the power imbalance that unavoidably exists between a local indigenous community of the Global South and a multinational company in terms of financial resources, access to legal experts and access to relevant information.<sup>141</sup>

Furthermore, Unión Hidalgo is not an isolated case and other communities affected by other projects may experience the ineffectiveness of legal instruments to a greater extent. The ECCHR states that none of the other wind parks operating in the region have been accompanied by an appropriate consultation process and that the companies' disregard of communal land rights is a systematic practice in the region.<sup>142</sup> On an international level, the Business and Human Rights Resource Centre reported 197 allegations of human rights abuses related to RE-projects since 2010. The report concludes that none of the companies analysed fully comply with the human rights standards established in the UNGP,<sup>143</sup> nor do they score any points in the areas of respecting land rights and the rights of EHRDs.<sup>144</sup> This confirms the findings of the present analysis, which identified that while these two areas are crucial aspects for the EHRDs, they are not sufficiently acknowledged and complied with by decision-making actors.

Genuine productive criticism of REs is rare, even though it has become clear that it is necessary.<sup>145</sup> Therefore, the question arises as to how the prevailing discourse on SD, still mainly associated with the goal of reducing greenhouse-gas emissions, can be negotiated. A more holistic

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140. Keenan (n 37) 2.

141. ECCHR, ProDESC, and CCFD-Terre Solidaire, 'From rights to reality.' (n 68) 31–34.

142. *ibid* 18–19.

143. BHRRC, 'Key Findings from the Wind & Solar Sectors' (n 2) 5.

144. *ibid* 15–16.

145. Dunlap (n 46) 265.

definition of SD has the potential to incentivise a critical perspective on RE-projects. But going further, this can also mean thinking outside the box when defining SD theoretically by looking at the existence of dimensions outside of the commonly known three pillars. Perhaps the term SD itself needs to be challenged to mark a disruption with historical processes of dispossession of indigenous peoples in the name of any form of development - be it sustainable or not. This research has also demonstrated that effective RBA needs to be more attentive to the local perspectives of those affected. One such approach could be to move beyond a rights language that merely demands the consent of local communities and to start implementing a discourse about the negotiation of land with them as equal partners, as suggested by Gilbert,<sup>146</sup> which is reflected in some of the legal protection around the case. This could potentially ensure greater community involvement in decision-making processes and self-determination.

## 7. CONCLUSION

The findings reveal a powerful alliance of decision-makers who emphasise the need for economic growth, reducing greenhouse-gas emissions, and investing in RE, thereby presenting the construction of wind parks in Unión Hidalgo as a priority. Dunn and Neumann, describe 'the practice of knowledge as a socially constructed system, within which various actors articulate and circulate their representations of "truth"'.<sup>147</sup> The use of scientific arguments in combination with the authoritative power for circulating knowledge, makes the claims of these decision-makers appear to be the ultimate and only possible version of the truth. The human rights commitments of these actors - whether stressed to a greater or lesser extent - appear to be a weak counterweight to this discursive power, as they are seemingly up for negotiation when they stand in the way of RE-projects. Especially the lack of protection of indigenous land rights and the right to FPIC by the government in combination with an already uncertain and conflicted atmosphere concerning land ownership can facilitate the abuse of this situation by the companies for their benefit.

Up against such odds, it therefore appears surprising, and yet, hopeful, that the Gunaa Sicarú project was ultimately cancelled. In that sense, human rights could, for all their uncertainty, also have a politically instrumental role. It is an example of how local, national and international pressure on responsible actors to guarantee human rights can impact decision processes around development issues. Though the Court in France fell short of setting a precedent with regards to the due diligence of transnational companies like EDF, it is likely that domestic legal mobilisation and community resistance, and national and international NGOs were ultimately so significant that it led to the project's cancellation. It is easy to imagine a different outcome in a similar context, perhaps in the absence of such mobilisation and an extra-territorial dimension. The conditions in Unión Hidalgo are therefore still representative for similar conflicts in the Isthmus and probably also in other parts of Latin America. Surely, the Mexican government will envision more wind parks in the near future, given the political agendas of increasing wind energy production in the name of SD.

The analysis has shown that the global discourses on SD and REs if applied in contexts that hinder the effective implementation of human rights and FPIC, can have a direct and massive

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146. Jérémie Gilbert, *Indigenous Peoples' Land Rights under International Law: From Victims to Actors* (Second revised edition, Brill Nijhoff 2016) 213, 299.

147. Dunn and Neumann (n 8) 54.

impact on the affected communities and individuals that express diverging views. However, the eventual outcome of the case also suggests, though needing further research, that these dominant discourses are not always omnipotent and that counter-veiling political-legal pressure remains essential in attempts to re-balance power asymmetries.

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## Annexe I: List of Documents for Document Analysis

### Documents for Category A.

Document nr.	Publishing institution	Type of document	Title	Link <sup>148</sup>
A01	Código DH (2019)	Video transcript	Gabriel Sánchez: En defensa de los sueños por Unión Hidalgo [Gabriel Sánchez: In defence of dreams for Unión Hidalgo]	<a href="https://www.youtube.com/watch?v=ek8g59TJBc0">www.youtube.com/watch?v=ek8g59TJBc0</a>
A02	Código DH (2018)	Video transcript	Laureano Toledo 'Palmerito', Unión Hidalgo [Laureano Toledo 'Palm-worker', Unión Hidalgo]	<a href="https://www.youtube.com/watch?v=8jHIDXSd7Qo&amp;feature=youtu.be&amp;fbclid=IwAR1_LYrM4JL6S0FTcdZqqKU3CbS6FcVbDOa07GfOcPuPhCSXbOahorL8kZk">www.youtube.com/watch?v=8jHIDXSd7Qo&amp;feature=youtu.be&amp;fbclid=IwAR1_LYrM4JL6S0FTcdZqqKU3CbS6FcVbDOa07GfOcPuPhCSXbOahorL8kZk</a>
A03	Código DH (2019)	Video transcript	Para que no muera el sol [So that the sun does not die]	<a href="https://www.youtube.com/watch?v=9KSVvWE3PX4">www.youtube.com/watch?v=9KSVvWE3PX4</a>
A04	Código DH (2020)	Video transcript	Mujeres gubiñas en la defensa del territorio [Gubiñas women in defence of the territory]	<a href="https://www.youtube.com/watch?v=uweo94cV-vs">www.youtube.com/watch?v=uweo94cV-vs</a>
A05	Código DH (2020)	Video transcript	Mujer Guiéstiá [Woman Guiéstiá]	<a href="https://www.youtube.com/watch?v=9-x57oH6d2c">www.youtube.com/watch?v=9-x57oH6d2c</a>
A06	ProDESC	Video transcript	Unión Hidalgo, Oaxaca	<a href="https://www.youtube.com/watch?v=Y7EAE-9Qmm8&amp;feature=youtu.be">www.youtube.com/watch?v=Y7EAE-9Qmm8&amp;feature=youtu.be</a>
A07	APIDIT (Assembly of the indigenous communities in the Isthmus in Oaxaca in the defence of their land and territory) (2020)	Blogpost	No lo queremos decir, pero lo vamos a decir; 'Se los dijimos' [We did not want to say it, but we will say it; 'We told you']	<a href="https://territorioterritorio.wordpress.com/2020/05/25/no-lo-queriamos-decir-pero-lo-vamos-a-decir-se-los-dijimos/">https://territorioterritorio.wordpress.com/2020/05/25/no-lo-queriamos-decir-pero-lo-vamos-a-decir-se-los-dijimos/</a>

**Documents for Category B.**

Document nr.	Publishing institution	Type of document	Title	Link
B01	EDF Renewables, France (n.d.)	Website article	Gunaa Sicarú Wind	<a href="http://www.edf-re.com/project/gunaa-sicar-u-wind/">www.edf-re.com/project/gunaa-sicar-u-wind/</a>
B02	EDF Renewables, France (n.d.)	Website article	What we do, Onshore Wind	<a href="http://www.edf-re.com/what-we-do/onshore-wind/">www.edf-re.com/what-we-do/onshore-wind/</a>
B03	EDF Renewables, France (n.d.)	Website article	About us, Core Values	<a href="http://www.edf-re.com/about-us/core-values/">www.edf-re.com/about-us/core-values/</a>
B04	EDF Renewables, France (n.d.)	Website article	About us, Corporate Social Responsibility	<a href="http://www.edf-re.com/about-us/csr/">www.edf-re.com/about-us/csr/</a>
B05	EDF Renewables, France (2020)	Brochure	Energy innovation for the next generation – Creativity. Ambition. Imagination.	<a href="http://www.edf-re.com/wp-content/uploads/EDFR-Capab-broch-2020-NA-FINAL-low-res.pdf">www.edf-re.com/wp-content/uploads/EDFR-Capab-broch-2020-NA-FINAL-low-res.pdf</a>
B06	Renovalia Energy, Spain (n.d.)	Website article	About us	<a href="http://www.renovaliaenergygroup.com/about-us/">www.renovaliaenergygroup.com/about-us/</a>
B07	Renovalia Energy, Spain (2019)	Policy document	Renovalia Corporate Social Responsibility Policy	<a href="http://www.renovaliaenergygroup.com/wp-content/uploads/2019/09/WEB-Corporate-Social-Responsibility-Policy.pdf">www.renovaliaenergygroup.com/wp-content/uploads/2019/09/WEB-Corporate-Social-Responsibility-Policy.pdf</a>
B08	DEMEX, Mexico (n.d.)	Website article	Quienes somos [About us]	<a href="http://demexrenovables.mx/quienes-somos/">http://demexrenovables.mx/quienes-somos/</a>
B09	DEMEX, Mexico (n.d.)	Website article	Areas de actividad [Activity areas]	<a href="http://demexrenovables.mx/areas-de-actividad/">http://demexrenovables.mx/areas-de-actividad/</a>
B10	DEMEX, Mexico (n.d.)	Website article	Parque eólico Piedra Larga [Piedra Larga windfarm]	<a href="http://demexrenovables.mx/sedes/">http://demexrenovables.mx/sedes/</a>

(continued)

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Document nr.	Publishing institution	Type of document	Title	Link
B11	Eólica de Oaxaca, Mexico (2017)	Executive summary of Environmental Impact Assessment for Gunaa Sicarú	Resumen Ejecutivo - Manifestación de Impacto Ambiental Modalidad Regional [Executive Summary - Manifestation of Environmental Impact Regional Modality]	<a href="https://avispa.org/wp-content/uploads/2017/11/UH_MIA_200A2017E0031.pdf">https://avispa.org/wp-content/uploads/2017/11/UH_MIA_200A2017E0031.pdf</a>
B12	EDF, France (2019)	Press release, Response to accusations	Respuesta de EDF sobre 'México: Defensores comunitarios declaran ilegítima y parcial la consulta para construir otro parque eólico en el Istmo' [EDFs response about 'Community defenders declare the consultation to build another windfarm in the Isthmus illegitimate and biased']	<a href="https://www.business-humanrights.org/en/latest-news/edf-respon-di%C3%B3/">https://www.business-humanrights.org/en/latest-news/edf-respon-di%C3%B3/</a>
B13	DEMEX, Mexico (2011)	Environmental Impact Assessment for Piedra Larga II	Modificación del Proyecto Central Eoloelectrica Piedra Larga, Etapa II – Manifestación de Impacto Ambiental Modalidad Particular [Modification of the Piedra Larga Wind Power Plant Project, Stage II - Manifestation of Environmental Impact Particular Modality]	<a href="http://sinat.semarnat.gob.mx/dgiraDocs/documentos/oax/estudios/2011/200A2011E0012.pdf">http://sinat.semarnat.gob.mx/dgiraDocs/documentos/oax/estudios/2011/200A2011E0012.pdf</a>
B14	Eólica de Oaxaca, Mexico (n.d.)	Social Impact Assessment for Gunaa Sicarú	Evaluación de impactos sociales en el marco de la construcción y operación del proyecto 'Central Eólica Gunaa Sicarú' [Evaluation of social impacts in the context of the construction and operation of the Project 'Wind Power Plant Gunaa Sicarú']	<a href="https://datos.gob.mx/busca/dataset/consulta-previa-libre-e-informada-a-comunidades-indigenas/resource/afdbb254-8c36-4602-b20b-19842446e834">https://datos.gob.mx/busca/dataset/consulta-previa-libre-e-informada-a-comunidades-indigenas/resource/afdbb254-8c36-4602-b20b-19842446e834</a>

**Documents for Category C**

Document nr.	Publishing institution	Type of document	Title	Link
C01	State Government Oaxaca (n.d.)	Policy Document	Plan Estatal de Desarrollo [State Development Plan 2016–2022]	<a href="http://www.finanzasoaxaca.gob.mx/pdf/planes/Plan_Estatal_de_Development_2016-2022.pdf">www.finanzasoaxaca.gob.mx/pdf/planes/Plan_Estatal_de_Development_2016-2022.pdf</a>
C02	SINFRA, Secretary for Infrastructure and Sustainable Land Management (n.d.)	Website article	Misión, Visión y Objetivos [Mission, Vision and Goals]	<a href="http://www.oaxaca.gob.mx/sinfra/mision-y-vision/">www.oaxaca.gob.mx/sinfra/mision-y-vision/</a>
C03	SEMAEDES, Secretary for the Environment, Energy and Sustainable Development (n.d.)	Website article	Energía Eólica [Wind energy]	<a href="http://www.oaxaca.gob.mx/semaedes/energia-eolica/">www.oaxaca.gob.mx/semaedes/energia-eolica/</a>
C04	SEMAEDES (n.d.)	Policy document	Justificación del apartado de Energías Alternativas y Renovables de la Secretaría del Medio Ambiente, Energías y Desarrollo Sustentable de Oaxaca [Justification of the Alternative and Renewable Energies section of the Ministry of Environment, Energy and Sustainable Development of Oaxaca]	<a href="http://www.oaxaca.gob.mx/semaedes/antecedentes-energias/">www.oaxaca.gob.mx/semaedes/antecedentes-energias/</a>
C05	SEMAEDES (n.d.)	Website article	Misión, Visión y Objetivos [Mission, Vision and Goals]	<a href="http://www.oaxaca.gob.mx/semaedes/mision-y-vision/">www.oaxaca.gob.mx/semaedes/mision-y-vision/</a>
C06	SEMAEDES (n.d.)	Policy document	Plan Estratégico Institucional 2020–2022 [Institutional Strategic Plan 2020–2022]	<a href="http://www.oaxaca.gob.mx/semaedes/plan-estrategico-institucional-pei/">www.oaxaca.gob.mx/semaedes/plan-estrategico-institucional-pei/</a>

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Document nr.	Publishing institution	Type of document	Title	Link
C07	SEMAEDES (2018)	Website article	Compañía Francesa tiene confianza en Oaxaca y prepara inversión [French company has confidence in Oaxaca and prepares to invest]	<a href="http://www.oaxaca.gob.mx/semaedeso/compania-francesa-tiene-confianza-en-oaxaca-y-prepara-inversion/">www.oaxaca.gob.mx/semaedeso/compania-francesa-tiene-confianza-en-oaxaca-y-prepara-inversion/</a>

**Documents for Category D.**

Document nr.	Publishing institution	Type of document	Title	Link
D01	SEGOB, Secretariat of Governance (2019) Federal Government (2018)	Policy document	Plan Nacional de Desarrollo 2019–2024 [National Development Plan 2019–2024]	<a href="http://www.dof.gob.mx/nota_detalle.php?codigo=5565599&amp;fecha=12/07/2019">www.dof.gob.mx/nota_detalle.php?codigo=5565599&amp;fecha=12/07/2019</a>
D02	Federal Government (2018)	National Report	Informe Nacional Voluntario para el Foro Político de Alto Nivel sobre Desarrollo Sostenible [Voluntary National Report to the High-Level Political Forum on Sustainable Development]	<a href="http://www.agenda2030.mx/docs/doctos/InfNalVol_FPAN_DS_2018_es.pdf">www.agenda2030.mx/docs/doctos/InfNalVol_FPAN_DS_2018_es.pdf</a>
D03	SENER, Ministry of Energy (2015)	Website article	Desarrollo Sostenible [Sustainable Development]	<a href="http://www.gob.mx/sener/articulos/desarrollo-sostenible">www.gob.mx/sener/articulos/desarrollo-sostenible</a>
D04	SENER (2020)	Website article	Avanza en 2 años la transición energética con el Gobierno de México en forma ordenada [The Mexican government's energy transition is progressing in an orderly fashion in 2 years]	<a href="http://www.gob.mx/sener/es/articulos/avanza-en-2-anos-la-transicion-energetica-con-el-gobierno-de-mexico-en-forma-ordenada?idiom=es">www.gob.mx/sener/es/articulos/avanza-en-2-anos-la-transicion-energetica-con-el-gobierno-de-mexico-en-forma-ordenada?idiom=es</a>
D05	SENER (2020)	Website article	El Gobierno de México fortalece el Sistema Eléctrico Nacional [The Mexican government strengthens the National Electricity System]	<a href="http://www.gob.mx/sener/es/articulos/el-gobierno-de-mexico-fortalece-el-sistema-electrico-nacional?idiom=es">www.gob.mx/sener/es/articulos/el-gobierno-de-mexico-fortalece-el-sistema-electrico-nacional?idiom=es</a>
D06	SENER (n.d.)	Executive summary of the Strategic Evaluation for the Wind Energy Development in the Isthmus	Evaluación Ambiental y Social Estratégica para el Desarrollo Eólico en el Sur del Istmo de Tehuantepec, Resumen Ejecutivo [Environmental and Social Strategic Evaluation for the Wind Energy Development in the South of the Isthmus of Tehuantepec, Executive summary]	<a href="http://www.gob.mx/cms/uploads/attachment/file/136647/18439_EASE_E_lico_Tehuantepec_Resumen_ejecutivo_espa_ol.pdf">www.gob.mx/cms/uploads/attachment/file/136647/18439_EASE_E_lico_Tehuantepec_Resumen_ejecutivo_espa_ol.pdf</a>
D07	Federal	Protocol for a Free, Prior and	Protocolo para la Implementación del	<a href="http://www.gob.mx/cms/uploads/">www.gob.mx/cms/uploads/</a>

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Document nr.	Publishing institution	Type of document	Title	Link
	Government (n.d.)	Informed Consent according to ILO Convention 169 in the Municipality of Juchitán	Proceso de Consulta Previa, Libre e Informada sobre el Desarrollo de un Proyecto de Generación de Energía Eólica, de Conformidad con Estándares del Convenio 169 de la Organización Internacional del Trabajo sobre Pueblos Indígenas y Tribales en Países Independientes [Protocol for the Implementation of the Process of Free, Prior and Informed Consultation on the Development of a Wind Energy Project, in Accordance with the Standards of Convention 169 of the International Labour Organisation on Indigenous and Tribal Peoples in Independent Countries]	<a href="attachment/file/25581/Protocolo_Consulta_-_Versi_n_16_Octubre.pdf">attachment/file/25581/Protocolo_Consulta_-_Versi_n_16_Octubre.pdf</a>
D08	SENER (n.d.)	Policy document	PRODESEN Programa de Desarrollo del Sistema Eléctrico Nacional 2018-2032 [PRODESEN Development Programme for the National Electricity System 2018-2032]	<a href="http://www.gob.mx/cms/uploads/attachment/file/331770/PRODESEN-2018-2032-definitiva.pdf">www.gob.mx/cms/uploads/attachment/file/331770/PRODESEN-2018-2032-definitiva.pdf</a>

## Annexe 2: Codebooks of Analysed Categories

Table A1 Codebook Category A

Codename	Number of files (out of 7 files)	Number of references
Sustainable Development		
Economic development	1	6
Environmental protection	3	8
Social development		
Territory	7	18
Human Rights	1	1
Activism	6	21
Risks for EHRDs	2	2
FPIC	4	8
Indigenous identity	2	5
IHRL	2	2
Renewable Energies and wind parks in Unión Hidalgo	6	10
Invasion	4	5
Negative consequences of wind parks	7	11
Intergenerational equity	2	3

Table A2 Codebook Category B

Codename	Number of files (out of 13 files)	Number of references
Sustainable Development	5	11
Economic development	3	4
Efficiency	3	9
Potential	5	12
Environmental protection	5	7
Perception of wind	4	7
Social development	3	5
Human Rights		
Inclusion of local communities	8	15
FPIC	2	2
Renewable Energies and wind parks in Unión Hidalgo		
Environmental risk mitigation	2	20
Fauna and flora	2	18
Landscape	3	24
National sustainability goals	2	6
Positive outcomes of energy projects	2	2
Emissions reduction	6	11
Meeting sustainability goals	3	4
Energy security	3	7
Improvement of the environment	1	2
Job creation	4	12
Contribution to local development	1	10

Table A3 Codebook Category C

Codename	Number of files (out of 7 files)	Number of references
Sustainable Development	5	14
Economic development	2	19
Efficiency	3	9
Special Economic Zone	1	11
Use of natural resources	2	15
Environmental protection	3	28
Indigenous peoples cosmovision	1	4
Social development	2	24
Intergenerational equity	2	3
Territory	3	10
Human Rights	1	21
Indigenous rights	2	7
Culture-related indigenous rights	1	7
FPIC	3	7
Right to environment	2	5
Renewable Energies and wind parks in Unión Hidalgo		
International sustainability goals	3	11
RE	4	22

Table A4 Codebook Category D

Codename	Number of files (out of 8 files)	Number of references
Sustainable Development	3	17
Economic development	2	18
Environmental protection	2	23
Social development	2	9
Equality and inclusion	2	10
Intergenerational equity	1	2
Social participation	3	7
Human Rights	3	24
IHL	2	10
Indigenous rights	2	12
FPIC	3	13
Renewable Energies and wind parks in Unión Hidalgo	7	45
International sustainability goals	4	16
Compliance with SDGs	1	23
Wind parks	2	5
Employment	1	5
Indigenous communities	2	25
Local development	2	11
Territory	2	7

Table A5 Codebook Category E

Codename	Number of files (out of 3 files)	Number of references
Sustainable Development	3	19
Economic development	1	4
Environmental protection	2	6
Social development		
Community	3	9
Intergenerational equity	2	4
Territory	3	19
Human Rights	2	2
FPIC	3	8
Indigenous identity	1	6
Renewable Energies and wind parks in Unión Hidalgo	3	21
Activism	3	37
Risks for EHRDs	3	7
Negative consequences of wind parks	3	39
The role of the Mexican government	3	14