Renewable energy and the right of Indigenous women to participate: a gender perspective and human rights approach to the Unión Hidalgo Case, Oaxaca, México.

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Submitted in partial fulfillment of the requirements for the degree of Master of Arts

May 2022
Abstract

In Oaxaca – with one of the greatest potentials for wind power globally – some claim that wind energy development is another form of colonialism where local communities are paying the high social costs of large-scale projects while companies keep the benefits; the social fabric of the remaining Indigenous peoples is being torn apart in the name of climate change. However, others claim that wind energy is elevating the livelihoods of communities and is suggesting new forms of structures that allow women to thrive, changing and ameliorating gender dynamics.

This research looks, from a human rights and gender perspective, at the Gunaa Sicarí wind farm, also known as the “Unión Hidalgo case,” located in Oaxaca, México. The Zapotec community, civil society, and activists have been raising allegations of human rights violations since 2017 when Electricité de France (EDF) started planning the construction of a wind farm on the Indigenous land of Unión Hidalgo.

Multiple legal proceedings nationally and internationally have taken place, including a civil lawsuit in France under the paradigmatic Duty of Vigilance Law that mandates French companies to identify and prevent risks to human rights and the environment that could result from business activities. In Mexico, the wind farm’s electricity supply contract between EDF and Comisión Federal de Electricidad (CFE) was canceled by a local tribunal last June 2022. Experts claim the Unión Hidalgo case can be “a potential milestone to show corporations what to do and what not to do.”

Where do women fit in all of this? From a feminist lens, I explore the gender dimensions of the Unión Hidalgo case aiming to portray the complexity between energy transition, Indigenous communities, and women’s rights. This case highlights the need

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1 Interview with expert from academia, November 15, 2022.
to scale up human rights concerns from a gender perspective within the wind energy conversation. Locals’ response to wind energy projects in the region is complex; some claim: “We want wind energy, but not at any price.”

Pursuant to a case-study approach and through qualitative research methodology, interviews were conducted with multiple stakeholders to provide a holistic understanding of each Union Hidalgo case stage from a human rights and gender approach. The dissertation is organized into seven chapters starting with an introduction and methodology, followed by the facts and context of the Unión Hidalgo case; then, Indigenous and Latin American Feminisms; Indigenous women’s rights; Gender, Business and Human Rights; and Insights from key informant interviews; and concluding with final remarks.

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Bibliography
Chapter I. Introduction and methodology

Unión Hidalgo, located in the geographically strategic Isthmus of Tehuantepec in Oaxaca, is one of the world's most fertile lands for wind farms. According to the World Bank's International Finance Corporation, the Isthmus has "the best wind resources on earth." However, it is also one of Mexico's poorest, most violent, and most marginalized regions.³

In 2015, Electricité de France ("EDF") – a French multinational electric utility company primarily owned by the French government – started negotiating contracts with the Zapotec community to build a large-scale wind farm in Unión Hidalgo, Oaxaca, through its subsidiary Eólica de Oaxaca (EDO).⁴

This wind farm, named Gunaa Sicarú, was planned to be among the largest in Latin America. Licenses and permissions were granted in 2017. However, in 2018, a district judge ordered local authorities to carry a consultation process, after establishing that the Zapotec community had not been consulted as mandated by national and international law, under the right to a free, prior, and informed consent. In June 2022, a district judge announced the cancellation of the electricity supply contract, thus the windfarm was indefinitely suspended.⁵

In parallel, a lawsuit was brought by the Zapotec community to France, claiming EDF failed to comply with the French Loi de vigilance, which mandates French companies to include due diligence in human rights when operating in and outside France.

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⁵ “México: Comunidad zapoteca de Unión Hidalgo y ProDESC logran cancelación del megaproyecto Gunaa Sicarú después de 5 años de lucha”, Business & Human Rights Resource Centre, June 9, 2022, https://www.business-humanrights.org/en/latest-news/m%C3%A9xico-comunidad-zapoteca-de-un%C3%B3n-hidalgo-y-prodesc-logran-cancelaci%C3%B3n-del-megaproyecto-gunaa-sicar%C3%BA-despu%C3%A9s-de-5-a%C3%B1os-de-lucha/
The resolution is still pending, and the trial in Mexico does not appear to be concluded, as there is possibility of an appeal.

Although States and companies argue that investing in wind energy is aligned with the Sustainable Development Goals, the 2015 Paris Agreement, and international human rights standards, opponents to the large-scale projects in Mexico claim otherwise. It sometimes seems as if adversaries to these projects – including human rights defenders – are in contradiction with the climate change advocacy.6

Nevertheless, companies and governments often strategically narrate the reality that suits them, showing wind energy as a trigger for development and poverty reduction, leaving aside the negative effects it often has on rural communities and Indigenous peoples. Likewise, civil society often presents these projects’ negative impacts without alluding to the contributions companies often provide to rural communities through wind farms.7 There is a universe of biases and nuances that each of the stakeholders ignores because, after all, each of them responds to a specific agenda and interests. Thus, the tensions between their narratives are almost inevitable.

The Unión Hidalgo case seems to be no exception. While part of the Oaxacan population embraced the wind farms’ construction around the Isthmus region and claimed to have better living conditions thanks to the companies operating in the area, others responded with outrage, resistance, and violent repression. “We have been through years of wind projects, but the poverty remains the same,” a local reportedly said.8 At the same time, another local expressed: “now everyone in the community wants a piece of the cake” (referring to the economic benefits provided by companies).9 Overall, experts have noted

6 Ramírez, “Inversión en energías eólicas en el Istmo de Tehuantepec-continuidad del colonialismo interno en las disputas territoriales”, 40-52.
7 Ramírez, “Inversión en energías eólicas en el Istmo de Tehuantepec-continuidad del colonialismo interno en las disputas territoriales”, 40-52.
8 Burnett, “Los parques eólicos generan prosperidad en Oaxaca, pero no para todos.”
9 Interview with private sector expert, December, 2022.
a general feeling that wind projects are “someone else’s idea, for someone else’s benefit, and for someone else’s profit.”

b. Main tensions

In Mexico, wind farms have a history of holding a tense relationship between development, extractives, human rights, and the green economy. In 2008, after the government opened the energy sector to private investment, multiple transnational companies promised "economic spillover" and "development" to rural and Indigenous communities; however, much social unrest and human rights abuses have been claimed since.

To dismantle this apparent dichotomy, it will be necessary to explore some seemingly contradictory claims.

First, renewable energy is perceived as the key solution to the global climate crisis, as its infrastructure is typically environmentally friendly. However, some evidence shows that implementing renewable energy projects can entail high human rights costs, particularly for Indigenous peoples.

Second, renewable energy promises to reduce gender inequalities by proposing new structures and job opportunities for women. However, some experts claim that the needs of women and girls have been left behind in this sector and, particularly in Indigenous contexts, women and girls can be especially vulnerable.

Third, there is a tension between individual and collective rights when wind energy projects are located in Indigenous land. The main concern is focused on the

12 Ramírez, “Inversión en energías eólicas en el Istmo de Tehuantepec-continuidad del colonialismo interno en las disputas territoriales”, 40-52.
people's right to self-determination, enforced through the right to free, prior, and informed consent. However, Indigenous peoples' collective rights, justified by their traditions, uses, and customs, often undermine Indigenous women's individual rights, such as the right to participate in public life.

Fourth, feminist theory seeks to understand the situation of women in the face of gender-based inequalities in any context. However, some Indigenous women reject the feminist movement because they consider that it does not effectively include the realities, needs, and demands of Indigenous women.

Fifth, although Mexico maintains a progressive legal framework on environmental and human rights issues, some authors consider that there are practices of internal colonization in the framework of environmental projects, including wind farm projects.13

c. Methodology

The Gunaa Sicarú wind farm seems to be a sui generis case from which we can analyze the complexity of achieving environmental justice with a gender perspective in Indigenous contexts. This research looks closely at different phases of the Unión Hidalgo case, aiming to provide a state of the art of the case from different approaches, mainly NGOs, the private sector, academia, and international mechanisms.

Pursuant to a case-study approach, this research considers multiple stakeholders to provide a holistic analysis of the multiple stages of the case. This research will address the following questions: How can women be included in wind energy projects from a gender perspective? What are the roles of governments and companies in implementing

renewable energy projects from a Business and Human Rights perspective? From a feminist theory perspective, can non-Indigenous women address Indigenous matters?

In order to answer my research questions, I used a mixed approach to research and collect data from an analysis of the Unión Hidalgo case to show the role of women’s rights in the context of wind energy projects in Mexico.

I examined primarily civil society documentation and media sources to investigate the facts of the case. Since it is a very recent case and is currently pending resolution in France, and the trial in Mexico might be a pending appeal, the accessibility to official information is limited.

Thus, the research and examination of available resources were complemented by semi-structured interviews with seven relevant stakeholders, conducted upon approval by Columbia University’s Institutional Review Board. The interviews were held mainly remotely and lasted between 45-60 minutes. The totality of the interviewees is from Mexico, with one exception, and all of them are familiar to the Unión Hidalgo case.

Resting on the logic of qualitative research, interviews were conducted with experts and key informants from the following stakeholder categories: 1) civil society: gender expert from Global Initiative ESCR; 2) academia: business and human rights scholar, and renewable energy Ph.D. Candidate; 3) private sector, renewable energy expert consulting companies in Oaxaca; 4) United Nations experts: United Nations Development Programme, Permanent Mission of a Member State to the United Nations, Office of the High Commissioner on Human Rights (analyst for the Special Rapporteur on the situation of human rights defenders).14

This first chapter aims to introduce key claims, concepts, and methodology. The second chapter will set the facts and context of the Unión Hidalgo case, touching upon

14To protect confidentiality, the interviewees’ names were withheld.
the particularities of renewable energy in Mexico and the political, legal, and socio-economic factors around the case study. Chapter three is focused on Indigenous and Latin American feminism, seeking to understand some of the tensions and challenges for Indigenous feminist theory. The fourth chapter is centered on Indigenous women’s rights, such as the right to participate in political and public life and women’s involvement in FPIC. Then, chapter five will briefly address the business and human rights framework from a gender lens. The sixth chapter focuses on the insights from key informant interviews, and finally, the seventh chapter will state some concluding remarks.
Chapter II. Unión Hidalgo Case

The Unión Hidalgo case is in many ways emblematic, as expressed by a renewable energy expert based in Oaxaca: “The Unión Hidalgo case is already impacting companies’ behavior; they are now scared of having their contracts suddenly canceled and being sued.”\(^\text{15}\) This chapter explores the socio-economic and cultural context around Gunaa Sicarú, highlighting the “momentum” of wind farm companies and the relevance of assessing such large-scale projects in a paradigmatic moment in Mexico.

a. Why renewable energy?

The pressing climate crisis has shown the urgency of decreasing fossil fuel production and increasing renewable energy. One of the main causes driving climate change is the concentration of greenhouse gasses (GHG). The Intergovernmental Panel on Climate Change estimates that 89% of the GHG comes from the fossil fuel industry. Hence, the UN Secretary-General, Antonio Guterres, called for States to decrease fossil fuel production by 6 percent yearly from now until 2030.\(^\text{16}\)

Therefore, it has become imperative to scale up renewable energy to overcome the negative human rights impacts caused by the climate crisis\(^\text{17}\), such as on the right to life, health, self-determination, and culture.\(^\text{18}\) Despite the urgency, it is essential to implement renewable energies following human rights standards, as well as a feminist analysis, to avoid replicating the bad practices of fossil fuels that tend to be gender blind.

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\(^{15}\) Interview with private sector expert, December 2022.


\(^{17}\) Guterres, “Secretary General’s address at Columbia University: The State of the Planet.”

Throughout history the fossil sector has been a mostly male-dominated industry, characterized for disregarding women’s energy needs and abilities.\textsuperscript{19}

Over the last 200 years, scholars claim that the energy sector has relegated women to a secondary role, which has manifested itself in different ways. For instance, women face unequal access to energy and participation in the renewable energy sector. Due to gender roles, women suffer disproportionately from “energy poverty,” defined as “the inability to cook with modern culinary fuels and the absence of a minimum of essential electric lighting for reading or other reproductive and household activities.”\textsuperscript{20} The state of Oaxaca, along with two others, has the highest level of energy poverty in Mexico.\textsuperscript{21}

As mentioned, women have lower participation in the renewable energy sector, both as economic subjects as in the labor market. There is a dominant masculine view and management of the energy sector due to the gender labor gap in the industry.\textsuperscript{22} As a result, in many contexts, women remain excluded from decision-making positions, consultation processes, agreements, resettlement plans, and compensation and benefit accords within their communities.\textsuperscript{23}

In Mexico, the energy sector has been predominantly considered a “men’s space”, since men are overrepresented in the labor force and male priorities dominate the energetic policy.\textsuperscript{24} Some renewable energy projects\textsuperscript{25} have been linked to human rights

\textsuperscript{23} Lozano, Energía renovable y justicia de género, 17.
\textsuperscript{24} Lozano, Energía renovable y justicia de género, 5.
\textsuperscript{25} Renewable energy refers to solar, wind, hydro, geothermal, and biomass hydro energy sources.
violations, disproportionately affecting women and girls due to the systematic inequality they already face. Indigenous women confront additionally, social, cultural, and political marginalization. As a result, they become more vulnerable to suffer human rights abuses when dealing with large-scale energy projects.  

b. Political context – a government led by an “oil president”

In 2008, a major energy reform allowed international private capital investments in the energy industry in Mexico. Since then, the Mexican Government has promoted policies to enable private investment in both the traditional and renewable energy sectors. In 2016, Mexico ratified the Paris Agreement and followed multiple structural reforms to support the country’s transition to renewable energy. As a result, renewable energy projects have had an exponential growth in recent years.

However, since then, the political scenario has changed with the current president, Andrés Manuel López Obrador, and since 2018 – when he took office – Mexico does not seem to be aligned with the climate change agenda anymore. President Obrador is known as an “oil man,” and his policies are inspired by president Lázaro Cárdenas, who nationalized the energy industry back in the 1930s. As Cárdenas, the current president advocates for energy sovereignty and claims as one of his Administration’s priorities to recover the control over energy for the State.

26 Lozano, Energía renovable y justicia de género, 5.
López Obrador claims that Mexico is not ready for the transition to renewable energy and is thus enhancing fossil fuel energy contrary to environmentalists’ and companies’ interests. As of 2021, 70 percent of the country’s energy comes from fossil fuels, while only 30 percent comes from nuclear and renewable energy. This contradicts Mexico’s commitment to the Paris Agreement of producing 35 percent of the State’s energy from renewable energy by 2024, and conversely, by the same year the government plans to invest US $6.2 billion to build 15 gas and diesel plants.\(^{31}\)

Although the energy sector remains open to private companies, in the past four years, companies have faced what experts describe as “a war against renewable energy.”\(^ {32}\) As a result, the industry in Mexico has felt a major economic impact. Direct investments in the energy sector went from $5 billion in 2018 to $600 million in 2021.\(^ {33}\)

Companies with investments in Mexico are constantly fearful of the president’s measures. The Biden administration in the United States has shown concern in this matter; Katherine Tai, U.S. Trade Representative, alleges that American companies are facing unjust treatment in Mexico. In view of the companies’ claims against the federal government, a solar energy expert pointed out that for the Mexican government, “it is not an energy issue; it is a political issue.”\(^ {34}\)

Government policies are also affected by the social conditions surrounding the country. Mexico faces major structural vulnerabilities such as corruption, impunity, and


social unrest. According to the report “Wind Energy: toward a “sustainable violence” in Oaxaca” in Unión Hidalgo, militarization, extra-judicial and institutional violence, and narco power coexist and affect economic growth.35

Having a Federal Government that resists the transition to renewable energy has practical impacts on business operations. The de facto power of drug dealing cartels and organized crime groups also influence the dynamics of renewable energy projects. The Unión Hidalgo case must be analyzed considering the highly politicized context in which the country finds itself.

c. Socio-economic conditions – The “best wind on earth”

Unión Hidalgo is a municipality located in the region of the Isthmus of Tehuantepec, in the southwest of Mexico. The Isthmus has a privileged geographic location due to its short distance between the Gulf of Mexico and the Pacific Ocean, ecological uniqueness, cultural and natural resource richness, and commercial and geopolitical advantages.36 The Isthmus has turned into a space of economic-strategic importance, and it holds the potential to supply up to 7% of the national energy needs.37

In 2020, there were 2,447 wind turbines in the country, 1,600 were operating in 32 wind farms in the Isthmus of Tehuantepec.38 The Isthmus is located in the state of Oaxaca, one of the three states with the highest Indigenous population in Mexico.39 In

36 Norma Martínez, María Sánchez, “José María Casado, The Isthmus of Tehuantepec: a geo-strategic space under the influence of local and foreign interests. Successes and failures in the application of industrial policies (1820-2002)”, Scielo, no. 46 (October 2022).
Unión Hidalgo, there is a population of 14,400 inhabitants of Zapotec origin, the largest Indigenous people in Mexico.  

Historically, the region of the Isthmus has encountered social conflict as a major and persistent challenge between Indigenous and rural communities over property regimes, land distribution, and natural resource use. High poverty levels, precarious living conditions, and limited access to basic needs and public services are also characteristic features of the region. All of this is compounded by economic inequality, a legacy of colonization, and discrimination against Indigenous peoples and non-whites.

The region's Indigenous people are considered a group that requires special attention due to their social disadvantages; for instance, according to the Marginality Index, 75% of the municipalities in Oaxaca encounter a Medium to Very High degree of marginalization. In 2020, 45.2% of the population in the Union Hidalgo municipality lived in either moderate or extreme poverty and only 23.7% of the population attended elementary school.

d. Unión Hidalgo Case – judicial mechanisms

In 2017, the Federal Government of Mexico granted all the necessary licenses to EDF’s subsidiary Eólica de Oaxaca S.A.P.I. de C.V. (EDO) to initiate the construction of the 353-million-dollar Gunaa Sicarú project. That same year, community members filed...
an *amparo*\(^{46}\) writ demanding access to information on the project. The process was resolved in favor of the Zapotec community and mandated the Ministry of Energy to initiate a consultation process retrospectively.\(^ {47}\)

In 2018, the consultation process started nine months after the license for electricity generation was granted. Nonetheless, the consultations were suspended the same year through judicial order due to a devastating earthquake that affected the social and political conditions in Union Hidalgo.\(^ {48}\)

In 2018, the same tribunal ordered the resumption of the consultation process, recognizing that local authorities failed to comply with national legislation and the Indigenous and Tribal Peoples Convention ("ILO 169"), adopted by Mexico in 1991. The resolution represents a landmark for Indigenous communities; however, its enforcement has been deficient.\(^ {49}\)

Following the judicial order, the Mexican Ministry of Energy reactivated the consultation process, which was again suspended in March 2020 due to the COVID-19 pandemic.

In October 2020, representing the Zapotec community, the NGOs *Proyecto de Derechos Económicos, Sociales y Culturales A.C.* (ProDESC) and the European Center for Constitutional and Human Rights (ECCHR) filed a civil lawsuit against EDF in Paris. The plaintiffs argued that EDF violated the vigilance obligation under France’s Law on the Corporate Duty of Vigilance for the Parent and Instructing Companies (*Loi relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre*).\(^ {50}\)

\(^{46}\) Mexican equivalent to Habeas Corpus writ.


\(^{50}\) “Vigilance Switched Off,” CCFD, ECCHR, ProDESC, accessed April 20, 2022, 7. [https://ccfd-terresolidaire.org/IMG/pdf/2021-06-08 - vigilance hors tension - rapport - en - .pdf](https://ccfd-terresolidaire.org/IMG/pdf/2021-06-08 - vigilance_hors_tension - rapport - en - .pdf)
According to this law, French companies must comply with three obligations: first, establish a vigilance plan including “reasonable vigilance measures for identifying risks and preventing serious human rights abuses….” Second, companies ought to effectively implement the vigilance plan. Third, the plan and report must be made publicly accessible. The law also encourages companies to draft the vigilance plan “in association with the company’s stakeholders.”

If a company fails to comply with the three obligations mandated by the law, a court can order the relevant company to comply and can impose a penalty. The plaintiffs in the case against EDF alleged the company failed to implement “specific action to analyze, prioritize and remedy” risks to Indigenous peoples’ rights.

In November 2021, the pre-trial judge confirmed the civil court’s jurisdiction allowing the plaintiffs’ claims to proceed. However, to the disappointment of the claimants, the court rejected the plaintiffs’ request for a provisional order for EDF to cease the wind farm. The final resolution regarding the potential violation to the right to FPIC is still pending.

On the other hand, in June 2022, the Ministry of Energy of Mexico notified the district judge who mandated the restitution of the consultation that the electricity supply contract between EDF and Comisión Federal de Electricidad (CFE) had been cancelled. Accordingly, the judge suspended the order of the consultation. The judgment is not publicly available, so in order to understand its scope, I have relied on local media, NGOs, and experts (more will be developed in Chapter V).

54 “México: Comunidad zapoteca de Unión Hidalgo y ProDESC logran cancelación del megaproyecto Gunaa Sicarú después de 5 años de lucha.”
e. International instances and extrajudicial mechanisms

In 2018, the NGOs ProDESC, PODER, and ECCHR – on behalf of human rights defenders and comuneros⁵⁵ – filed a complaint at the OECD’s National Contact Point (NCP) in France. The organizations claims that EDF (both EDF Group and EDF Renewables) violated standards on human rights due diligence in the Gunaa Sicarú wind farm.⁵⁶

However, in July 2019, the NGOs involved in this case, ProDESC, PODER, and ECCHR, Indigenous human rights defenders and comuneros⁵⁷ from Unión Hidalgo, announced their withdrawal from this procedure after participating bona fides for approximately a year and a half but alleging there were no substantial outcomes as a result.⁵⁸

In 2021, four UN Special Rapporteurs issued an Allegation Letter (AL OTH 210/2021) to EDF, Mexico, and France requesting more information on each party’s behalf about the human rights impacts on the Zapotec community in the Gunaa Sicarú wind farm. The letter raises a concern about the gender dimension in the Unión Hidalgo case, as this case and “other large-scale renewable energy projects in the region (…) may have been implemented without taking into account the impacts on women in particular.”⁵⁹

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⁵⁵ Persons who own in common with others under Mexican communal property regime.
⁵⁶ “Amenazas, señalamientos y estigmatización en contra de miembros de la comunidad indígena de Unión Hidalgo (Oaxaca)”, OMCT, SOS Torture Network, June 18, 2019, [https://www.omct.org/es/recursos/llamamientos-urgentes/amenzas-se%C3%B1alamientos-y-estigmatizaci%C3%B3n-en-contra-de-miembros-de-la-comunidad-ind%C3%ADgena-de-un%C3%B3n-hidalgo-oaxaca](https://www.omct.org/es/recursos/llamamientos-urgentes/amenzas-se%C3%B1alamientos-y-estigmatizaci%C3%B3n-en-contra-de-miembros-de-la-comunidad-ind%C3%ADgena-de-un%C3%B3n-hidalgo-oaxaca)
⁵⁷ Persons who own in common with others under Mexican communal property regime.
⁵⁹ OHCHR, “Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to development; the Special Rapporteur on the situation of human rights defenders
The letter request information regarding the measures taken or to be taken regarding gender impact assessment on the project, which should include “the rights of women in the community relating to work, livelihoods, health, culture, and security.” Including ensuring “women’s access to the use and control of land and employment opportunities.” However, neither of the letter’s recipients has replied with the requested information.


60 “Mandates of the Special Rapporteur on extreme poverty and human rights; the Special Rapporteur on the right to development; the Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the rights of Indigenous peoples,” AL OTH 210/2021, Switzerland, August 2021.
"Where a privilege exists, a right is denied, precisely because privileges are not universal, as rights are thought to be."
Francesca Gargallo

As a mestizo woman, I recognize myself as external to Indigenous peoples since I did not grow up in an Indigenous community but in a country with many Indigenous people. Nevertheless, to approach the subject matter of this thesis on Indigenous women's rights most respectfully and cautiously, this chapter seeks to apply a feminist lens to the Unión Hidalgo case. To do so, it is important first to acknowledge the diversity of feminist perspectives, particularly from Indigenous and Latin American feminist scholars.

By exploring Latin American feminist scholarship, I aim to reflect on who can be a valid interlocutor to question and unravel Indigenous women's issues, while providing a theoretical basis that will lay the groundwork for the analysis of the following chapters. To do so, I will first address the main challenges Indigenous feminisms face and, secondly, some of the claims of Indigenous feminist theories will be succinctly outlined to be considered throughout the analysis of this research thesis.

a. Tensions and challenges for Indigenous feminist theory

i. Indigenous people as the “Other”

Indigenous peoples represent 15.1% of the Mexican population, of which approximately 6.1 million are women. There is a great diversity of Indigenous Peoples, with at least 68 Indigenous groups with different Indigenous languages.61

Despite the large population of Indigenous people in Mexico, Indigenous women are often conceived as a uniform and homogenous “Other” by most of the Mexican population. There has been a coexistence between Indigenous peoples and mestizos for five centuries, and there is even a narrative of proud Indigenous culture in Mexico. However, the exclusion and denial of the Indigenous peoples’ complexities and differences only show that, despite time and mutual coexistence, there is not yet a relationship of equals and mutual respect between the Indigenous and the rest of the Mexican population.62

Being the “Other” is equivalent to being a minority, not numerically but ideologically. It is about being someone whose identity has been denied because language, history, and social interests have been deprived of someone’s identity or group.63 Under this conceptualization, the “Others” are not only the Indigenous people, but also the Afro descendants, farmers, migrants, lesbians, sex workers, women with disabilities… and all women located in places of subalternity and violence.64 Even more, labeling groups as “different” inherently creates a social hierarchy that represents the basis of oppression.65

Nevertheless, Gargallo states that the exclusion of Indigenous peoples is often related with the “whitened mestizo ideology”, which she argues is the “ideological foundation of the formation of post-colonial states.”66 This thought not only excludes and alienates Indigenous peoples but also denies the presence of racism against Indigenous

63 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 15.
66 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 38.
people in Latin America by arguing that *indigenism* is not a race. Hence, in that logic, although the “whitened mestizo” might recognize a form of discrimination against the Indigenous peoples, it would not be considered as racism. Dominican feminist anthropologist Ochy Curiel names this phenomenon “*the mestizo myth,*” which negates racism against the Indigenous, diminishes exploitation of Indigenous women, and supports the “whitening” of the populations in Latin America.  

In this regard, Curiel suggests expanding the conceptualization of “race” by clarifying that it should not be limited to biological characteristics, but rather to a “social race.” Herein, “race” is understood as a “symbolic, cultural and, above all, political construction that has been made of the biological, a strategy on which racism is based.” Likewise, Katherine McKinnon defines racism as a “social injustice based on falsely constructed, but deeply embedded, assumptions about people and their relative social value; it is often used to justify disparities in the distribution of resources.” Hence, with this broader concept of race, Indigenous peoples and women face in Mexico would be perceived as victims of racism.

### ii. Indigenous machismo

The social exclusion of Indigenous women in Mexico is not only perpetuated at a national level but also locally within their own communities. Although Indigenous women do most of the subsistence agricultural work, traditional practices continue marginalizing them within their communities. Since the conquest of the Americas,

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Indigenous women's status as workers has been hidden and, today, continues to be marginalized and silenced. The historical devaluation of their work has reinforced their condition as poor women, dependent on the men of their communities and on the market that buys their products.  

Julieta Paredes, an Indigenous Bolivian feminist, introduced the term “indigenist machismo,” which naturalizes machismo and patriarchy within Indigenous communities as it claims that it is natural for women to be assigned to domestic roles. Many communities reinforce women's subordination by normalizing such discrimination, inequality, exploitation, and oppression. Consequently, men enjoy a more privileged situation where they can spend more time in school and work, and thus, their voice is more respected.

According to Paredes, many traditional beliefs of Indigenous communities are based on the idea of men-women complementary (also known as Chacha-warmi). Although it stands for complementarity between men and women, it also has been used to justify the different social and political roles based on gender. Hence, women end up subordinated to men making this “complementarity” hierarchical and vertical. In this sense, uses and customs tend to be fixed, repetitive, and disciplined, reinforcing the gender dynamic that silences and lowers women’s voice in their communities.

Paredes states that “today, the Indigenous communities stand for men of the community, not women. Men talk, men represent, men decide, and men project the community. Women are perceived behind men or below them, subordinated to them.”

71 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 15.
73 Julieta Paredes, Hilando Fino desde el Feminismo Comunitario, 88.
74 Julieta Paredes, Hilando Fino desde el Feminismo Comunitario, 89.
Likewise, Lorena Cabnal, a “community feminist” from Guatemala, defines “original ancestral patriarchy” as an “age-old structural system of oppression against native or Indigenous women.”

The “original ancestral patriarchy differs” from the Western patriarchy as it was a condition before the process of conquest, which generated a renovation of the already existing patriarchal system. Sociologist R. W. Connell, highlights that “Colonialism certainly changed gender patterns, but it did so by building on distinctions that already existed.”

Connell brings to attention the way in which colonization, decolonization, and globalization have disintegrated and transformed local gender orders, emphasizing that Indigenous women’s situation deteriorated sharply with colonization.

b. Indigenous feminisms

The issue of mestizaje outside the oppression of the white imaginary has been addressed by Latin American feminists who seek to highlight the importance of the intersection of ethnicity, race, and gender. These scholars challenge the “self-imposed colonization of certain Latin American feminists” that follow a hegemonic feminist thought.

This Latin American feminist theory seeks to examine and account for the situation of Indigenous and non-indigenous women in the Latin American region. It
highlights the condition of subalternity of women of color vis-à-vis white women; as well as the dynamics of Indigenous women vis-à-vis "mestizo" women; and women in general vis-à-vis men in general. Their thought condemns the "colonial and postcolonial mestization" that evidences the racist rigidity of social and political structures.81 That said, feminist theory in Latin America must not deny or reduce the strength of Indigenous women, in order to avoid falling in a similar reductionism of colonial ideologies in their pursuit to master the world. 82

Moreover, some Indigenous women refrain from using the term "feminism" to avoid confusion between their decolonial feminist thought and hegemonic feminism. However, Gargallo suggests that if Indigenous women are resistant to identifying themselves as feminists, this is mainly due to a translation problem. Julieta Paredes affirms that any action organized by women to benefit a good life for all women should be translated into Spanish as feminism. But often, native languages do not necessarily address it as such. For this reason, it is important to understand feminism in a broader definition that allows for having multiple feminisms. 83

For Paredes, feminism is the struggle and the political proposal of life of any woman anywhere in the world, at any stage of history, who has rebelled against the patriarchy that oppresses her. With this definition, she suggests “communitarian feminism” as a movement in solidarity with other feminist theories. However, she remarks that it is essential to identify the differences between each feminist movement. 84

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82 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 34.
83 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 18.
84 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 18.
Likewise, Gargallo defines feminism as a "concrete search undertaken by women for the welfare of women or in dialogue with each other to unweave the symbols and social practices that place them in a secondary place, with fewer rights and a lower valuation than men, then there can be as many feminisms as there are forms of political construction of women". In this sense, feminism should not be necessarily related to a neoliberal theorization of the equality between women and men.  

Similarly, Dominican feminist anthropologist, Ochy Curiel, states that Latin American feminisms have a vital characteristic of decolonization. Since each country has different ethnic descendants, Indigenous and native communities, mestizo, black and Western population, she suggests it is crucial to recognize and highlight the distinctions and subtle differences amongst feminisms.

Indigenous feminists seek forms of social organization to overcome misery and exclusion because they face marginalization disproportionately from non-Indigenous women. Indigenous women also fight for autonomy in managing their daily lives; and against "patriarchal re-functionalization," which is the double dimension of oppression by the Western patriarchy that governs the political systems where they live on a large scale, and the native patriarchy that predominates in the way their communities operate daily. Therefore, the struggle to participate in local Indigenous organizations is dominated by Indigenous men.

Some other ideas pursued by contemporary Indigenous women are communal economy, feminine solidarity, corporal territory, collective reproductive work, and antimilitarism. They resist the privatization of land and confront hegemonic monopolic

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capitalism, based on the ideology that capitalism will be imposed everywhere, appropriating all communal lands, and imposing a single-wage labor economy. 88

In conclusion, feminist theory must affirm a “disaggregated modernity, ideologically diversified and located in diverse communities constitutive of the nations of the Americas.” 89 As claimed by Gargallo, it is urgent to get rid of the supposed “universalism of mestizo thought” and resist the patriarchal hegemony built during colonialism. 90

Also, it is necessary to recognize the contributions of Indigenous peoples in history and reality; acknowledge cultural diversity, and engage in an honest conversation based on mutual respect with Indigenous women. 91

Exploring Latin American and Indigenous feminisms in its complexities and diversity allows better comprehending the Unión Hidalgo case; it shows that a feminist lens must include certain elements that are unique to Indigenous people – such as the notion of collectivity and complementarity – that influence the needs and claims of Indigenous women in Unión Hidalgo. Particularly, in their approach to collective property, agency, their involvement in decision-making processes, and traditional social dynamics.

Also, as Gargallo – a non-Indigenous Mexican woman – I aim to “reveal the place from where I speak” to construct an honest and respectful dialogue with the subjects, avoiding an appropriation of Indigenous knowledge. 92

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88 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 25.
89 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 38.
90 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 38.
91 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 34.
92 Gargallo, Feminismos desde Abya Yala: ideas y proposiciones de las mujeres de 607 pueblos en nuestra América, 19.
Chapter IV. Indigenous Women’s Rights

Respect for individual and collective rights is crucial. Collective rights are fundamental for Indigenous peoples' existence, well-being, and livelihoods. However, the individual rights of women “should not be neglected or violated in the pursuit of collective or group interests, as the respect of both dimensions of their human rights is essential.”

In the Unión Hidalgo case, there are claims of violations of collective human rights, including loss of land and territory, limited access to natural resources, violence against human rights defenders, and absence of free, prior, and informed consent (FPIC) to the Zapotec community in Unión Hidalgo. However, there is not enough claims for individual rights of the Zapotec women, such as the right to effective participation in political and public life. Thus, this chapter explores the tensions between individual and collective rights regarding Indigenous women, highlighting the importance of assessing women’s rights.

The UN Special Rapporteur on the Rights of Indigenous Peoples highlighted the need to “strike a delicate balance between protection of Indigenous women and respect for self-determination and autonomy of Indigenous peoples.” To reduce gender inequality, States are encouraged to implement affirmative actions to ensure women’s full, equal, and meaningful participation in public life. However, initiatives may be counterproductive if they are not addressed holistically.

In this regard, in October 2022, the CEDAW Committee adopted General Recommendation No.39 on the Rights of Indigenous Women and Girls, which is the first

95 Committee on the Rights of the Child, General Comment No. 1, (2009).
96 Lozano, Energía renovable y justicia de género, 21.
instrument by the Committee specifically focused on the rights of Indigenous women and girls. Although the General Recommendation was not in place when the consultations occurred, it sets an approach that may be useful for the study of the Unión Hidalgo case.

The Recommendation established that to prevent and address discrimination against Indigenous women and girls, State action and policy must integrate a: *gender perspective* that considers discriminatory norms and practices that have affected Indigenous women and girls historically; an *intersectional approach* that includes multiple interconnected and interdependent factors that discriminate women; an *Indigenous women and girls* perspective that takes into account experiences, realities and needs of Indigenous women, men, girls, and boys considering their age, development, and condition; an *intercultural* perspective that considers the cultural diversity of Indigenous Peoples, including their cultures, languages, beliefs, and values; a *multidisciplinary* approach that involves the multifaceted identity of Indigenous women and girls, including the way in which disciplines shape their social experience and promote discrimination against them.

From this lens, the chapter aims to assess women’s involvement in the consultation process in the Unión Hidalgo case considering the CEDAW, ILO Convention No. 169, and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).

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a. Right to effective participation in political and public life

According to article 7 of CEDAW, as interpreted by the CEDAW Committee in its recent General Recommendation No. 39, Indigenous women have the right to effective participation at all levels in political, public, and community life. This includes “participation in decision-making within their communities, in consent and consultation processes over economic activities by state and private actors in Indigenous territories, their work as human rights defenders,” among others. 100

In this sense, the right to effective participation in political and public life is not restricted to formal politics. It rather includes meaningful participation in any decision-making process that impacts the community. Economic activities involving private companies and Indigenous territory are clearly of interest to the local community. Thus, women’s effective participation in such consultations and negotiations is protected under international law.

Likewise, the prohibition of discrimination against women under articles 1 and 2 applies to every right established in CEDAW and, by extension, to those in UNDRIP. It is an essential pillar and foundational principle of international human rights law. States have an obligation to guarantee Indigenous women’s right to be free from all forms of discrimination, including sex, gender, and Indigenous origins, among others. 101

The prohibition of discrimination against Indigenous women and girls extends to the right to participate in political and public life and protect Indigenous women. 102 In this sense, States have the mandate to take affirmative measures to protect the equal, full, and meaningful participation of Indigenous women, including their participation in

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consultation processes on matters that may impact Indigenous land, resources, or lifestyle.\textsuperscript{103}

Discrimination against Indigenous women should be understood in its individual and collective dimensions. In its individual dimension, Indigenous women can face discrimination by their own Indigenous communities, as well as by the State and private actors such as companies. In its collective dimension, discrimination against Indigenous women can affect their community, potentially disrupting the Indigenous people's cultural integrity and social fabric. Hence, the failure to protect Indigenous women’s right to self-determination and effective participation and consent constitutes a form of discrimination against women, as well as their communities.\textsuperscript{104}

Indigenous women face exclusion from decision-making in their communities and Indigenous systems; they face multiple and intersecting barriers to effective, meaningful, and real participation. Indigenous customary laws and practices, misogyny, tradition, and culture are some fundamental barriers.\textsuperscript{105}

b. Free, Prior, and Informed Consent

Indigenous women’s right to participate should involve their engagement in the consultation process and in the negotiation processes between a company such as EDF and the local community such as Unión Hidalgo. According to a renewable energy expert interviewed, negotiations on the rental price of the land for the construction of wind


\textsuperscript{104} CEDAW Committee, General Recommendation 28, (2010), para 9.

turbines in the Isthmus region occur between the companies and the landowners exclusively, who are mainly men.106

The right to free, prior, and informed consent (FPIC) is enshrined in articles 6 and 7 of the Convention No. 169 on Indigenous and Tribal Peoples of the ILO (ILO 169) and the UN Declaration on the Rights of Indigenous Peoples.107 States must “consult with Indigenous peoples in good faith to achieve their free, prior, and informed consent on the development of any project that will or may affect their livelihoods, life, or property.”108

FPIC is embedded in the right to self-determination of all peoples, which determines that “Indigenous people have the right to participate in decision-making matters (…) following their own procedures” (Art. 18, UNDRIP). Following the principle of non-discrimination, States must guarantee that women also participate fully, equally, andmeaningfully in their community’s decision-making, including processes to ensure FPIC.109 For example, the CEDAW Committee recommends that States ensure that economic activities, such as climate mitigation and adaptation programs, are implemented with “Indigenous women’s effective participation, including full respect for their right to free, prior, and informed consent and the undertaking of adequate consultation processes.”110

c. Participation of Indigenous Women in Oaxaca

The issue of gender equality in public and political life must not be understood in isolation. The participation of women in formal and informal politics is interconnected

106 Interview with renewable energy expert, December 9, 2022.
110 CEDAW Committee General Recommendation 34 on rural women, (2016), para. 54.
with women’s fulfillment of social, economic, and cultural rights. Discrimination against women is entrenched in all spheres of women’s lives. For instance, gender roles and stereotypes that pose the burden of domestic care on women hinder women’s personal, economic, and social development. Women are often not socially considered fit to participate in communal matters or enter politics.111

Women’s involvement in formal and informal politics reflects the gender balance of women in society. It is essential to understand the overall participation of Indigenous women in formal politics to understand the low participation of Indigenous women in informal politics, such as consultations and decision-making processes involving economic activities. As it will be further discussed, in the Unión Hidalgo case, there is an underrepresentation of women in political positions and in consultation processes of the Gunaa Sicarú wind park.112

In the state of Oaxaca in 2015, almost three-fourths of municipal authorities were communal political systems elected by custom and tradition rather than by national standard voting. However, there is a worryingly low rate of women’s formal participation at the municipal level in this state.113 Only 11.5 percent of the municipalities in Oaxaca ruled by internal normative systems have women in their municipal councils. In almost a quarter of them, women cannot vote in local elections. In 2013, only 3.2 percent of the municipal presidents were women.114

Unión Hidalgo’s local governance is ruled by “communal systems” where local affairs, including political organization, use of land, and justice, are defined according to “tradition” and “custom.” These communal systems are designed to protect the right to self-determination of the Indigenous peoples and are more often excluding women from decision-making positions.\textsuperscript{115}

In the communal system of certain municipalities in Oaxaca, the right to participate consists of deciding and voting and is earned through performing labor. Political rights then depend on the “official work” one performs in the community. Household and community work are not considered “official labor.” Consequently, women in unpaid domestic work are not allowed to participate in the community assembly.\textsuperscript{116}

In this sense, there must be a revaluation of women’s reproductive work to increase women's participation in communal systems. Because if Indigenous communities remain undermining domestic and reproductive labor, women will continue to be underrepresented in political and public spheres. “Although women are theoretically in favor of women’s participation, the gendered terms of the communal system deter their participation in the assembly and formal leadership roles.”\textsuperscript{117}

d. The consultation process in Unión Hidalgo Case

In 2017, the government of Mexico granted licenses to EDO, EDF’s subsidiary, before any consultation was implemented. Thus, the community presented legal claims to demand information about the project. In response, after several lawsuits were placed,

\textsuperscript{115} Worthen, “Indigenous Women’s Political Participation: Gendered Labor and Collective Rights Paradigms in Mexico.”

\textsuperscript{116} Worthen, “Indigenous Women’s Political Participation: Gendered Labor and Collective Rights Paradigms in Mexico.”

\textsuperscript{117} Worthen, “Indigenous Women’s Political Participation: Gendered Labor and Collective Rights Paradigms in Mexico.”
authorities mandated initiating a consultation. However, due to a climate emergency, the consultation was suspended.\textsuperscript{118}

In October 2018, a landmark federal court decision recognized that the local authorities failed to acknowledge the Zapotec community's right to FPIC and ordered the consultation process reinstated under the 169 ILO Convention.\textsuperscript{119}

In November of the same year, the consultation process was conducted. However, civil society and the Human Rights Ombudsman Office of Oaxaca claimed the process was not neutral, illegitimate, and inadequate.\textsuperscript{120}

As mentioned in Chapter II, the consultation processes have been ordered by multiple judicial resolutions but have also been suspended three times: due to the 2018 earthquake, in 2020 due to the COVID-19 pandemic, and in 2022 due to the cancellation of the electricity supply contract. According to the information gathered, the following irregularities stood out from the consultation processes:\textsuperscript{121}

- Local authorities failed to ensure women's full and effective participation in the consultation. Women were underrepresented in the consultation; only 5% of the 500 participants were women. From the women attending, it is claimed that most of them were relatives (partners, daughters,…) of the other male participants.
- Times and locations of the consultation were not accessible to women, as meetings were mainly held during caregiving hours and women are primary responsible of domestic labor due to traditional gender roles in the community.
- Several sessions were very brief and sometimes conducted by inexperienced speakers.

\textsuperscript{118} Lozano, Energía renovable y justicia de género, 21.
\textsuperscript{119} Lozano, Energía renovable y justicia de género, 21.
\textsuperscript{120} GI-ESCR, “Allegation Letter: Wind farm in Mexico: the case of the women of Unión Hidalgo”, 5.
\textsuperscript{121} GI-ESCR, “Allegation Letter: Wind farm in Mexico: the case of the women of Unión Hidalgo”, 5.
- Some of the information presented was not translated into Zapoteco, the community’s native language.\textsuperscript{122}

- The information on the project's impacts needed to be more objective and culturally adequate. Informative sessions took place on business days and business hours. Publicity about the informative session was scarce.

- The information was claimed to be “highly technical and did not cover many of the most important concerns regarding the potential contamination of water sources and the impacts that the project could have on agriculture or livestock, the main economic activities of the community, and more broadly on the environment or health.”\textsuperscript{123}

- There needed to be more information shared on the socio-environmental impacts of the wind farm and prevention and mitigation measures. Requests to access information made to EDO and authorities were unanswered and sometimes denied.

- The consultation was not impartial nor legitimate; there was an overrepresentation of people allegedly linked to the subsidiary, EDO.

- Allegedly, some community members who supported the wind farm “received payments, benefits, or other promises from representatives”\textsuperscript{124} from EDO.

- Community members that opposed the wind farm faced threats, and local authorities did not provide additional protection. Also, local Zapotec women faced hostile speech and threatening behavior from the community members who approved the project. Thus, women tended to participate less in assemblies and consultations to avoid such reactions.

Overall, from the evidence gathered, there has not been a gender perspective towards the efforts to respect and protect the Zapotec community’s human rights in the Unión Hidalgo case. The overall claims – with the exception of the Allegation Letter from the UN Special Rapporteurs – have centered on collective rights such as the FPIC, collective property, and access to information, disregarding the individual rights of the women involved. No evidence shows that either of the actors, such as the Federal Courts in Mexico or local authorities, have implemented gender-sensitive measures.

The General Recommendation 39 of the CEDAW Committee set some standards that supported the analysis of this case study to measure the human rights approach from a women’s rights perspective. A gender, intersectional, Indigenous women and girls, intercultural and multidisciplinary perspective would require State actions and measures that consider the multiple factors that exclude and discriminate Zapotec women in Unión Hidalgo. Particularly, in regard to women’s participation in decision-making and consultation processes for the construction of the Gunaa Sicarú wind farm since they are potentially impacted disproportionately.

Measures to prevent and address gender discrimination within Indigenous contexts involved in large-scale projects may include both the host country’s government and the multinational companies involved. International law has developed guidelines in this regard that allow an analysis of EDF, EDO and Mexican government’s behavior towards the Zapotec community in Unión Hidalgo.
Women are disproportionately affected by business-related human rights abuses, and Indigenous women are particularly vulnerable due to their social conditions in contexts such as Oaxaca. Thus, it is important to expand the scope of analysis to include companies’ behavior and the potential for companies to be complicit in human rights abuses. This chapter explores the gender component of the Business and Human Rights (BHR) framework in the context of the Unión Hidalgo case.

a. Business & Human Rights Framework

The UN Guiding Principles on Business and Human Rights (UNGPs) are the “global authoritative standards to prevent, mitigate and remediate business-related adverse human rights impacts.” The UN Human Rights Council endorsed the UNGPs in 2011, addressing companies and States. They establish three pillars: the State’s duty to protect, the responsibility of companies to respect human rights, and access to an effective remedy.

The UNGPs stipulates that States should provide appropriate guidance to businesses on “how to consider issues of gender, vulnerability and/or marginalization effectively;” and mandated to “pay special attention to both gender-based and sexual violence.” Despite few references, the UNGPs and the BHR discourse has not yet given enough attention to the differentiated impacts of human rights abuses on women related to businesses’ activities.

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However, in 2019 the UN Working Group\textsuperscript{128} – which is mandated to implement the UNGPs – launched a report to the Human Rights Council (A/HRC/42/43) aiming to assist States and companies in integrating a gender perspective when implementing the UNGPs. The Report develops a gender framework recommending a gender-responsive assessment, gender-transformative measures, and gender-transformative remedies.\textsuperscript{129} Although the UNGPs and the Report constitute soft law, and therefore not legally binding, they provide guidance and may serve to assess the Unión Hidalgo case.

For instance, in 2021, EDF published a human rights policy and a Modern Slavery Statement, in which it recognizes extensively a commitment to international standards such as the UNGPs, the French Due Diligence Law, and UNDRIP;\textsuperscript{130} however, there is no recollection of EDO implementing gender-responsive measures in the Unión Hidalgo case.

\textbf{b. Free, prior and informed consent (FPIC)}

In 1991, Mexico ratified the Indigenous and Tribal Peoples Convention ("ILO 169"). Article 6 mandates that States must consult the peoples concerned through appropriate procedures whenever administrative measures are contemplated that may affect them directly.\textsuperscript{131} Accordingly, the Mexican Constitution recognized the right of Indigenous peoples’ to self-determination; article 27 stipulates the right of the government to regulate the exploitation of natural resources aiming to distribute wealth equitably.\textsuperscript{132}

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\textsuperscript{128} Working Group on the issue of human rights and transnational corporations and other business enterprises (Working Group).
\textsuperscript{129} “Gender dimensions of the Guiding Principles on Business and Human Rights.”
\textsuperscript{131} ILO, Indigenous and Tribal Peoples Convention, art. 6.
\textsuperscript{132} Constitution of Mexico, article 2.
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FPIC is a legally binding obligation recognized by international and national Law in Mexico, and it requires public authorities – in this case, Ministry of Energy – to obtain consent from Indigenous communities prior to the construction of a project affecting those communities. However, France does not recognize collective rights within its legislation and has not adopted the ILO 169 Convention.\textsuperscript{133}

According to a BHR expert interviewed, it is important to distinguish the State’s obligations from the companies’ duties when dealing with human rights in the context of large-scale projects. For instance, companies can get involved in the Indigenous consultation process, but on a voluntary basis, without substituting the State’s obligation.\textsuperscript{134}

In an interview, a renewable energy consultant opined that the community in the region is overall happy with the wind farms because of the benefits they are receiving. The consultant observed, "The land is still theirs, they have their houses and cattle, and they no longer depend on farming or cattle ranching since they have a fixed monthly income that does not depend on the weather or commerce."\textsuperscript{135}

However, other interviewees claim that the Zapotec community is paying high costs for other wind farms nearby and that companies are not proportionately sharing benefits. The Zapotec community is “still poor but is now surrounded by wind turbines.”\textsuperscript{136}

On the other hand, determining if FPIC was obtained is not subjective but is rather founded on a court’s ruling. As shown in Chapter II, a civil judge from Oaxaca determined that the local authorities did not comply with national and international law regarding

\textsuperscript{133} Interview with expert from United Nations System, November 22, 2022.
\textsuperscript{134} Interview with expert from academia, November 15, 2022.
\textsuperscript{135} Interview with expert from private sector, November 29, 2022.
\textsuperscript{136} Interview with expert from civil society, October 11, 2022.
consultation processes and ordered authorities to implement consultations in 2018. However, the consultations did not conclude as they were suspended three times.

In the Unión Hidalgo case (as it also happens systematically in Mexico), the consultation processes took place after the corresponding licenses to construct were granted to EDO by the Mexican authorities. Additionally, complaints were raised about inadequate implementation of the consultations including lack of transparency in the information provided, and lack of accessibility. As mentioned in Chapter V, the consultation processes were gender-blind.

c. Benefit-sharing

The Electric Industry and Hydrocarbons Law of Mexico provides that owners of land or resources must have transparent access to positive and negative impacts prior to reaching an agreement affecting their land or resources. The Mexican Ministry of Energy and the Inter-American Development Bank released an “Action Protocol on Shared Social Benefits,” which is a non-binding instrument meant for stakeholders’ understanding of benefit-sharing duties. It defines benefit-sharing as “arrangements provided by developers to contribute to the development of local communities in the short, medium, and long term.” It highlights that it is different to measures to prevent, mitigate, or compensate negative impacts caused by projects.

The Protocol suggests that 1% of the initial investment should be given as benefits for the community during the phase of planning and construction and 1% of the annual income during the production stage. The fund should be managed by a legal entity agreed upon by the community. However, in practice, companies implement benefit-sharing in

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137 Interview with expert from civil society, October 11, 2022.
138 Interview with expert from civil society, October 11, 2022.
139 Electric Industry and Hydrocarbons Law, Article 74, II.
an *ad-hoc* manner and at their discretion, often perceived as altruistic contributions rather than as Indigenous communities’ rights.\(^{141}\)

Likewise, benefit-sharing is independent of the communities’ consent and must not be seen as a vehicle to obtain acceptance and support for wind farms.\(^ {142}\) Indigenous peoples’ right to “benefit-sharing for extractive activities and developments taking place on their lands is recognized by international law.” However, an expert shared that in the Unión Hidalgo case, “benefits are not shared equally, but the most marginalized populations unfairly pay the costs, and women are primarily affected within them.”\(^ {143}\)

In an interview, a private renewable energy consultant estimated that municipalities in Oaxaca might receive around $50,000 dollars a year from companies.\(^ {144}\) For instance, in Santo Domingo, the neighboring municipality, a company paved the streets and built a new school and a soccer field. Nevertheless, the consultant recognized that these benefits are decided unilaterally and depending on the conditions. For instance, she pointed out that recently some companies are reducing their economic support to communities because of the troubled political weather in Mexico.\(^ {145}\)

The consultant also highlighted that wind farm companies in the region are often reluctant to defy local gender roles by engaging more directly with women in the communities because of the consequences that might bring with the owners of the land (which happen to be men) who are the ones that negotiate with the companies.\(^ {146}\)

In conclusion, although EDF and the Mexican government recognize soft and hard laws regarding gender perspective and business and human rights; there is no evidence

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\(^{143}\) Interview with expert from civil society, October 11, 2022.

\(^{144}\) Interview with expert from private sector, November 29, 2022.

\(^{145}\) Interview with expert from private sector, November 29, 2022.

\(^{146}\) Interview with expert from private sector, November 29, 2022.
showing that neither integrated gender-responsive measures. The following chapter develops more key findings regarding EDO, EDF, and Mexican authorities’ compliance with international standards.
Chapter VI. Insights from Key Informant Interviews

The Unión Hidalgo case touches upon various matters addressed in previous chapters that fall into the scope of international law, such as gender issues, indigenous peoples’ rights, corporations’ responsibility to respect human rights, and wind energy large-scale projects. Key experts – some related to the Unión Hidalgo case and others with wind farms in Oaxaca – informed this research by sharing key insights from different perspectives and fields.

a. Unión Hidalgo Case scope

The Unión Hidalgo case allows an understanding of the trends of the global energy transition with respect to the gender dimension, according to a gender and human rights expert. To elucidate the situation of Zapotec women within the wind farm Gunaa Sicarú, in 2020, GI-ESCR gathered local women for only-women consultations.\(^\text{147}\)

In an interview, an expert from civil society pointed out that the gender dimension is often left behind and often remains on the margins of any environmental impact or human rights analysis in renewable energy projects. She identified that the gender justice component in the Unión Hidalgo case had not been addressed by other stakeholders. Thus, together with ProDESC, they analyzed the gender layers by asking women directly about their perceptions. From the consultation, they identified that women are experiencing differentiated impacts in many ways. Also, they recognize that female human rights defenders are increasingly raising their voices, for which the need to protect them is increasing\(^\text{148}\)

\(^{147}\) Interview with expert from civil society, October 11, 2022.
\(^{148}\) Interview with expert from civil society, October 11, 2022.
The Zapotec community has multiple cultural variations regarding their beliefs, languages, and tradition; however, they descend from the same cultural roots and share some approaches to their cosmovision and uses and customs.\textsuperscript{149} In this sense, wind farms in the region are causing changes in the Zapotec community’s traditional way of life; within their cosmovision, land and resources are an integral element of their community and resources are exclusively meant for farming or cultural purposes. The \textit{Gunaa Sicarú} wind farm changed the social fabric of Unión Hidalgo in many ways: gender dynamics, labor paradigms, social inequality and violence, and social disruptions between community members, among others.\textsuperscript{150}

The Unión Hidalgo case shows contrasting results; an interviewee affirms, “the energy projects in the region undoubtedly changed the dynamics of the town, but now the \textit{ejidatario} who didn’t even go to elementary school now has his daughters in college.” \textsuperscript{151}

There is currently much international attention on the Unión Hidalgo case – and on the Total case in Uganda – especially from French and European companies in general. Many wind farm companies in Oaxaca are fearing similar outcomes as to EDF, “how do we know that we will not meet the same fate as EDF?” \textsuperscript{152}

According to a BHR scholar interviewed, there has yet to be much attention to this case in Latin America. However, according to him, the potential legal outcomes may turn the \textit{Gunaa Sicarú} wind farm into a milestone case globally; because of the upcoming ruling in France, a potential appeal in Mexico, and hypothetical international law cases, such as at the European Court of Human Rights (ECHR) or the Inter-American Commission.\textsuperscript{153}

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\item[\textsuperscript{149}] José María Filgueiras, “La cosmovisión de los zapotecos de la Sierra Sur de Oaxaca (México) y la ética ambiental comparada”, \textit{Indiana 37.2}, (November 2019): 303-322.
\item[\textsuperscript{150}] Interview with expert from civil society, October 11, 2022.
\item[\textsuperscript{151}] Interview with expert from private sector, November 29, 2022.
\item[\textsuperscript{152}] Interview with expert from private sector, November 29, 2022.
\item[\textsuperscript{153}] Interview with expert from academia, November 15, 2022.
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The lawsuit in France is the first attempt to enforce corporate obligations to respect the right of Indigenous peoples’ FPIC, it “opens up a potentially new avenue for ensuring that multinational enterprises respect Indigenous peoples’ FPIC, both in the renewable energy sector and more broadly.” ¹⁵⁴

b. Cultural and social impact

The region of the Isthmus of Tehuantepec is surrounded historically by a context of violence with a damaged social fabric; the Zapotecs represent one of the most marginalized groups in Mexican society. ¹⁵⁵ Interviewees agreed that wind farms are modifying the community’s traditional form of life by giving the land a different use from what tradition dictates, which is cultivation. A private sector interviewee stated that wind energy projects “stripped – the Zapotec community - of their traditional ways of life.” ¹⁵⁶

According to the interviewee, “dynamics of the population are changing, even visually, as you no longer see only-green landscapes, but, in exchange, there are many benefits for the peoples.” ¹⁵⁷ She claims that such social changes are mostly beneficial, as you can perceive a new way of life and higher social conditions of those supporting wind projects. Those who decided to rent their land to wind farm companies are benefiting, and the changes can be seen over the years. For example, they have new pickup trucks and cement houses, and their children are starting to go to college. A community member claimed that thanks to other wind farm companies in the region, “my daughter is going to be an engineer.” ¹⁵⁸

¹⁵⁴ Ewell, “Reimagining the Renewable Energy Transition: The Potential for Mandatory Corporate Due Diligence to Ensure Respect for the Right to Free, Prior, and Informed Consent,” 329
¹⁵⁶ Interview with expert from civil society, October 11, 2022.
¹⁵⁷ Interview with expert from private sector, November 29, 2022.
¹⁵⁸ Interview with expert from private sector, November 29, 2022.
According to an expert from the private sector, the population in the region is increasingly supporting wind farm projects. Recently, there was a march in favor of wind farms because of the community’s fear that the new local government might implement measures against the companies. Moreover, the landowners who did not initially rent the lands to the companies are now regretting and closing roads and extorting, asking to be included in the projects.\textsuperscript{159}

On the other hand, and in a less positive note, a civil society interviewee pointed out that there is a disruption of the social fabric due to the sharp division between those who support the project and those who oppose it. She states that renewable energy projects are often linked to other investment projects of other large companies, aiming to benefit the companies instead of the local communities. According to a civil society expert, there is a common practice where renewable companies seek to supply not the national electricity system, but themselves and other companies, such as Coca-Cola, CEMEX.\textsuperscript{160}

However, the private consultant interviewee argues that electricity distribution does not belong to companies but to the government as the state-owned CFE controls it. Nevertheless, there is a general complaint that electricity bills continue to be high in areas where wind energy is produced and that the towns often do not have electricity.\textsuperscript{161}

c. Gender impacts

According to a civil society interviewee, women have been disproportionately affected by the \textit{Gunaa Sicarú} wind farm. There was low participation of women in the

\textsuperscript{159} Interview with expert from private sector, November 29, 2022.
\textsuperscript{160} Interview with expert from civil society, October 11, 2022.
\textsuperscript{161} Interview with expert from private sector, November 29, 2022.
consultation processes; however, experts called for broadening the analysis to look at other gender-differentiated impacts beyond the consultation. 162

There is a secondary deficit among most of the Indigenous peoples of Latin America where women and girls are not involved in community affairs because the communities have very strong traditional patterns. For instance, Unión Hidalgo has never had a female municipal president, and most of the ejidatarios and members of the Assemblies are men. Women are traditionally in charge of the households and are often excluded from political positions. 163

Domestic dynamics are changing with the arrival of wind farms in the region. Traditionally, men worked in the fields, and women sold their produce in the market, as well as managing the household income and expenses. However, since men are predominantly landowners, they now receive the monthly rent from the companies. As a result, alcoholism rates were found to have increased significantly. 164

Access to energy also has an important gender dimension. According to a development and renewable energy expert, increasing access to energy can reduce time poverty. Facilitating the use of household appliances speeds up household chores and thus decreases the burden of household work and increases the time women can devote to personal care or work. This shows the potential of the benefits wind farms in Oaxaca could bring, however, there is no evidence of this happening as a result of wind farm projects. 165

Women who oppose the project face a component of gender-based violence, as they receive threats, harassment, and even domestic violence for disrupting gender stereotypes and neglecting the home. Interviewees highlighted that companies in the

162 Interview with expert from academia, December 9, 2022.
163 Interview with expert from academia, November 15, 2022.
164 Interview with expert from academia, December 9, 2022.
165 Interview with expert from United Nations System, November 22, 2022.
region had implemented measures to protect women, such as promoting better lightning in town or improving footpaths; however, it is the State’s duty – and not the companies – to guarantee women’s safety.166

According to civil society, there are claims of health impacts because the windfarms are placed at a distance that does not comply with regulations, and the sound becomes disruptive to daily life, especially for women who spend more time at home. Also, there are allegations that using oils for wind turbines often contaminates water, land, and soil, which impacts crops.167

However, a private sector interviewee claims that many beliefs and myths in the communities are false regarding the impacts of wind farms. Also, some confusion between the roles and duties of the companies and governments tend to affect companies’ reputation. For instance, according to her, it is up to the State to implement civil protection and safety laws that maintain a healthy distance between homes and wind turbines. If turbines are correctly placed, the sound should not be disruptive, and they should not affect the quality of the land or agriculture, so cattle can continue their usual cycle.168

There is a “very strong and existing tension between women's right to participate and peoples' self-determination,” claimed a scholar interviewee. However, he claims that such tension is resolved in the Mexican Constitution as it clearly states the primacy of article one of the Mexican Constitution – equality and human rights – over collective rights foreseen in article 2.169 Additionally, a United Nations systems expert shared that uses and customs are sometimes called ”abuses and customs.”170

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166 Interview with expert from civil society, October 11, 2022.
167 Interview with expert from civil society, October 11, 2022.
168 Interview with expert from private sector, November 29, 2022.
169 Interview with expert from academia, November 15, 2022.
Although the mandate of the State to protect Indigenous women is clear, there are political and economic interests for which the gender dimensions are often disregarded within wind energy projects.\textsuperscript{171} As stated by an interviewee, companies “need to get along with the community leaders, they do not want to defy gender roles in a way that will make the male leaders angry, so companies are not in an easy situation with regard to gender issues.”\textsuperscript{172} The interviewee suggested that gender training and workshops should be done through third-party experts because it is a socially sensitive issue, and “companies do not want to expose themselves.”\textsuperscript{173}

As per the consultations in the Unión Hidalgo case, experts identified that they were conducted without gender considerations: first, the meetings were held at times that were not compatible with the domestic work that traditionally corresponds to women; second, the dissemination of information from the meetings was not accessible to all women and girls; third, women want to participate but are also afraid because of the violent context they are surrounded by; fourth, by speaking up, human rights defenders defy gender roles and stereotypes and, thus, receive threats and social exclusion for doing so which creates a disincentive for women to continue to speak out; and fifth, consultation sessions were held mostly in Spanish and not in Indigenous languages, which exclude women particularly.\textsuperscript{174}

Indigenous languages should be considered in the consultation processes. It is important to ensure that women have access to full participation in the consultation processes, so consultations should be held also in Indigenous languages.\textsuperscript{175}
d. The Companies’ performance

Participation and consultation are not the same; it is important to clarify this. The “consultation” required in order to seek free, prior, and informed consent is a State’s obligation, whereas participation of women is a broader concept where companies can intervene positively by ensuring gender-sensitive policies and by including women in the negotiations with the local communities, among others.\textsuperscript{176}

It is crucial for companies such as EDF and EDO to understand how to facilitate women’s participation in the consultation process and other aspects of the wind farm project without interfering with the State's consultation process.\textsuperscript{177} For example, this could include hiring women in the company, incorporating gender-inclusive internal policies, and providing information to women to include them in the negotiation sessions with ejidatarios.\textsuperscript{178}

According to a civil society interviewee, EDO has not made significant efforts to comply with human rights.\textsuperscript{179} She raised concerns alleging that agreements and rental contracts were given under unfair conditions, with very low monthly payments and without interpreters for the Zapotec-speaking ejidatarios and landowners. There was no translation at the time of negotiations.\textsuperscript{180}

Although the company has human rights policies, there are no follow-up mechanisms to monitor these policies’ implementation.\textsuperscript{181} Likewise, according to a civil society expert, EDF and EDO did not comply with a due diligence plan as required by French oversight law.\textsuperscript{182}

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\textsuperscript{176} Interview with expert from academia, November 15, 2022. \\
\textsuperscript{177} Interview with expert from civil society, October 11, 2022. \\
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\textsuperscript{181} Interview with expert from civil society, October 11, 2022. \\
\textsuperscript{182} Interview with expert from civil society, October 11, 2022. \\
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A private consultant in an interview pointed out that since men in Indigenous communities in Mexico are in charge of decisions according to their customs and habits, companies find themselves with limitation to include women more directly in decision-making processes. However, an alternative that some companies in the region are implementing is programs to empower and encourage in a more general approach.\(^{183}\)

Regarding the Unión Hidalgo case, a human rights expert highlighted that the EDO was not hiring enough women, as many of the job offers are in security or construction positions.\(^{184}\)

e. Business and Human Rights

A Business and Human Rights scholar from Mexico pointed out that the main structural challenge in the BHR context in Mexico is that there is the perception that companies do not impact human rights beyond labor rights. There is a limited scope where human rights are perceived in relation to governments rather than companies. Even when there is environmental damage, it is often not perceived as a human rights issue.\(^{185}\)

Another structural problem is the idea that everything renewable is good. There is an important limitation when talking about just transition\(^{186}\) since international advocacy seeks to guide all economies to the logic of green transition without integrating the development and human rights agenda, as well as the public and private sector narratives.\(^{187}\)

There needs to be more knowledge about the existing rights of the potentially affected communities and the obligations of the States to guarantee them. Although, the

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\(^{183}\) Interview with expert from private sector, November 29, 2022.

\(^{184}\) Interview with expert from civil society, October 11, 2022.

\(^{185}\) Interview with expert from academia, November 15, 2022.

\(^{186}\) Just Transition is a vision-led, unifying and place-based set of principles, processes, and practices that build economic and political power to shift from an extractive economy to a regenerative economy.

\(^{187}\) Interview with expert from academia, November 15, 2022.
main responsibility lies with the States, they often lack a legal infrastructure or local capacity to understand and integrate the dynamics of development and human rights in renewable energy projects. They are often focused on attracting greater private investment in renewable energy. This is the case in Mexico, according to our interviewee.188

Renewable energy must be accompanied by a development that enhances the promotion and protection of human rights. Development is based on achieving economic progress along with social improvement. However, the social factor is considered an afterthought, secondary thinking, because States often prioritize the economic part.189

On the other hand, the BHR expert raised another concern regarding civil society. The expert claimed that often (not referring to Unión Hidalgo case though) there is a refusal of international and national NGOs to recognize that, in many cases, the potentially affected peoples have the capacity and knowledge to make decisions for themselves.190

There is much confusion and little understanding of the distinction between the role of the State and that of the company, which are not the same. Under no circumstances should the company replace the State in fulfilling its obligations under international and national law. For instance, companies can get involved in the consultation process, but on a voluntary basis, without substituting the State's obligation. 191

The BHR expert highlighted that a common challenge in Mexico is that parent companies may understand human rights issues and have policies accordingly, but the subsidiaries often do not understand what human rights are beyond equality and non-discrimination. Thus, parent companies may distance themselves from the subsidiary,
preserving certain autonomy to avoid legal consequences. According to the expert, the parent companies often hire local law firms, usually from private law practice, who frequently ignore the human rights implications the case might have, resulting thus in litigation, as it happened in the Unión Hidalgo case.  

**f. Judicial Mechanisms – Lawsuit in Mexico**

As mentioned in Chapter II, the lawsuits in Mexico were filed by community members and NGOs against the State, while the lawsuit in France is a civil trial against EDF.  

Since the judicial decision regarding the cancellation of the electricity supply contract between EDF and CFE is not public yet, the interpretation of this ruling is based on collecting data from experts. According to an interviewee, ProDESC presented the termination of the electricity supply contract as a legal victory for the Zapotec community. However, he suggests that the reason for the contract’s cancellation might be the energy policy of the current Mexican government rather than the NGO’s advocacy. Therefore, "one thing might not have nothing to do with the other."  

Also, the cancellation of the electricity supply contract was ordered by a state judge, so there is still a possibility of appeal.

**g. Judicial Mechanisms – Lawsuit in France**

The lawsuit in France against EDF will test the effectiveness and limitations of human rights due diligence laws. The French trial’s *litis* is EDF’s failure to comply with the Duty of Vigilance Law by disregarding the Indigenous peoples’ right to FPIC.

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192 Interview with expert from academia, November 15, 2022.  
193 Interview with expert from academia, November 15, 2022.  
194 Interview with expert from academia, November 15, 2022.
The plaintiffs claim that EDF did not provide for FPIC in its vigilance plan; in response, EDF argued that such right is an exclusive responsibility of the State of Mexico. The pre-trial judge affirmed the court’s jurisdiction and allowed the plaintiff’s civil liability claims to proceed, recognizing Indigenous peoples’ right to FPIC. However, the court has not resolved if the obligation to ensure FPIC was violated in this case.\textsuperscript{195}

As it is a civil lawsuit, the most that can be achieved is to order compensation. However, in Latin American cases involving Indigenous communities, it is not compensation that they usually seek, but rather a public apology or non-repetition measures. However, a civil court in France cannot mandate such measures as it exceeds the civil court’s powers and jurisdiction. Another aspect to consider is that in France, the trial is conducted through civil law, while in Mexico through constitutional law.\textsuperscript{196}

Also, the French court has some limitations regarding sovereignty, as it cannot go beyond its mandate; for instance, ruling on the resolutions of the Mexican court could signify an intrusion into sovereignty principles. In this regard, "each Law - civil, international, constitutional - has its limits, and understanding how they can best relate is the pending task."\textsuperscript{197}

France has not ratified the ILO 169 Convention, and according to a scholar interviewee, "it is a miscalculation to expect that a French court where the French State does not recognize the right to free, prior and informed consultation, can dictate measures requiring the company to comply with a right that the State does not recognize."\textsuperscript{198} For this reason, the scholar considers there is a high probability that the French litigation will not turn out positively for the Zapotec community and ProDESC. Even if it turns out to

\textsuperscript{195} Ewell, “Reimagining the Renewable Energy Transition: The Potential for Mandatory Corporate Due Diligence to Ensure Respect for the Right to Free, Prior, and Informed Consent,” 334.
\textsuperscript{196} Interview with expert from academia, November 15, 2022.
\textsuperscript{197} Interview with expert from academia, November 15, 2022.
\textsuperscript{198} Interview with expert from academia, November 15, 2022.
be a negative resolution, the ruling will allow a better understanding of these judicial trials and the limitations of this French law and jurisdiction. Overall, the ruling of this lawsuit will give clarity to companies about what they can and cannot do. 199

In contrast, there are opposing opinions regarding the potential of FPIC being included in the French Duty of Vigilance Law. For instance, although the Vigilance Law does not mention FPIC, it is “arguably included in the law’s scope, because it enacts a corporate duty of vigilance to prevent human rights abuses and fundamental freedoms.” 200 The FPIC is recognized as integral to other human rights, such as self-determination and the right to non-discrimination. The “free, prior and informed consent of affected parties” is an international law principle that “should inform companies in implementing vigilance plans.” 201

As per gender consideration, the Duty of Vigilance Law does not mandate a gender-sensitive approach to the vigilance plan; nor does it address any gender consideration. 202

h. Next steps

According to a scholar interviewee, the Unión Hidalgo case can become a milestone case depending on the rulings in France and potential appeal in Mexico. “This is a beautiful case to take to the European Court of Human Rights (ECHR),” since the French State failed to comply with its obligation to guarantee access to justice and prevent human rights violations abroad by a state-owned company. An abuse of law could also

199 Interview with expert from academia, November 15, 2022.
be argued in the European Court of Human Rights, based on a claim that a French public company violated human rights abroad by not ensuring prevention and not guaranteeing access to justice.\textsuperscript{203} Another alternative could be requesting precautionary measures from the Inter-American Commission on Human Rights.\textsuperscript{204}

To conclude, the key insights from informants help to understand the scope of the Unión Hidalgo case but also show a broader scenario of large-scale wind farms in Mexico and some of the challenges communities – particularly women –, companies, and local authorities are facing.

\textsuperscript{203} Interview with expert from academia, November 15, 2022.
\textsuperscript{204} Interview with expert from academia, November 15, 2022.
Chapter VII. Conclusions

The previous chapters have addressed each of the main issues intersecting in the Unión Hidalgo case, aiming to highlight the gender dimensions of each subject. This chapter aims to succinctly underline some key takeaways from the information gathered throughout this research and interviews.

a. Unión Hidalgo case

There is a plurality of positions toward the Gunaa Sicarú wind farm in the community of Unión Hidalgo; some people approve the project because of the economic gains it might bring to the community, while others claim that their biocultural heritage will be affected, as well as their cosmovision and social fabric. Others approve wind energy projects overall only if human rights are respected.

However, in this case, Mexico failed to ensure free, prior, and informed consent of the Zapotec community potentially affected by the wind farm. This constitutes a national and international law violation since authorities granted licenses to EDF even before consultation processes took place. From a gender approach, it was not identified that the judicial resolutions in Mexico mandated any special measures to include women in the unfinished consultations; and women continue to be at risk of violence without having obtained protection measures from the authorities to date.

Regarding the lawsuit in France, it is recognized as an advance that the court has admitted the competence and jurisdiction, as well as the recognition of the possible liability of EDF and not of the subsidiary. However, it will be necessary to wait for the resolution to see if compensation or non-repetition measures are recognized. From a gender perspective, it was not identified that the Duty of Vigilance Law includes gender-sensitive provisions. Also, although France does not recognize ILO no.169, EDF should
have included the FPIC, which is mandated by Mexican law, in their vigilance plan mandated by the French *Loi de Vigilance*.

Overall, the Mexican government, EDO, and EDF failed to implement a gender perspective throughout the stages of the Unión Hidalgo case. No special measures were identified to increase and enhance the participation of women in negotiations or consultations.

**b. Integrating a gender lens**

Indigenous women face multiple dimensions of oppression since they encounter social exclusion at a national level, within their own communities, and even within hegemonic feminisms. The Indigenous feminist theory analyzed proposes an understanding of women’s issues that demands addressing indigenous women not as “Other” but rather highlighting their diversity and particular approach to collectivity and community. In this case, an honest and respectful dialogue with Zapotec women is needed to achieve gender-sensitive actions.

A feminist approach to Indigenous women’s matters must include a *gender, Indigenous women and girls, intersectional, intercultural, and multi-disciplinary* perspective, as stated in the CEDAW Committee’s General Recommendation 39. The Recommendation may provide guidance to both State and non-state actors involved in large-scale projects affecting indigenous communities.

Both EDO and the Mexican government may use as a guide the Working Group’s Report on the gender dimensions of the UNGPs, to implement gender-responsive assessment, gender-transformative measures, and gender-transformative remedies.

To ensure full, meaningful, and equal participation of women in consultation and other decision-making processes regarding approval of wind farms, States and wind farm
companies must expand their gender considerations beyond the consultation process and incentivize women’s participation in decision-making positions, such as in formal and informal politics, workforce, and as beneficiaries of social programs.

To ensure women’s participation in the consultation process for large-scale projects potentially affecting them, it is crucial to include a gender justice approach in every stage of the consultations, for instance, including comprehensible hours for consultations that do not interfere with domestic duties, dissemination of information in an accessible language (including Indigenous languages), additional protection to women from violence, and incentives to include women, girls, and boys.

c. Recommendations

In countries like Mexico, human rights abuses are often deeply rooted in a lack of the rule of law where local legislation and regulations are not implemented. Thus, a distinction between the State’s duties and a company’s responsibilities must be clear to avoid companies substituting the States’ human rights duties.

The responsibilities of companies must not be affected by the shortcomings of a government. In this sense, the company must respond to its assumed human rights standards even if the State fails to protect human rights. When companies make public commitments on human rights, as is the case of EDF, they become accountable for their responsibility to prevent human rights abuses and earn a Social License to Operate, provide benefit-sharing programs, and integrate gender-sensitive policies.

Mexico must strengthen its legal framework to ensure women’s participation in consultation processes in large-scale projects affecting Indigenous communities. Securing land tenure for Indigenous women is also urgent.205

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France must refrain from funding projects involving human rights violations and ensure full implementation of the French *Loi de Vigilance*.

The French *Loi de Vigilance* must include a preventive, human-rights-based approach with a gender and intersectional perspective to enhance its purpose. Interviewees highlighted the need to increase a locally based approach in order to consider the particular needs of the potentially affected people; and specifically address gender considerations.\(^{206}\)

If the wind farm in Union Hidalgo is reactivated, Mexico must provide for free, prior, and informed consent of the affected communities that considers a gender perspective and ensures women's full, equal, and meaningful participation. Likewise, EDF must undertake a gender impact assessment of the project and adopt policies that ensure equal opportunities for women. It must also include internal policies to remove existing gender barriers for women to benefit equally from the project and its profits.

EDF, EDO, and Mexico should consider implementing programs for the Zapotec community with a gender perspective, assessed by experts, including development partnerships.

Opinions of directly affected women must be at the center of the policies adopted by EDF, EDO and Mexico. Only with the Indigenous women’s knowledge and experience can the benefits of the *Gunaa Sicarú* wind farm be maximized, and the harms can be prevented and mitigated. No one knows their needs better than the local community.


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As part of CEDAW, General, promote and protect their rights.


