

In focus

Understanding indigenous rights risks in renewables

May 2023

Demand for renewable energy continues to grow strongly as society recognises the need to transition to a net zero economy. However, with this will come growth in land demand to accommodate these projects. There is a notable overlap between land that is ripe for renewable energy generation and land that is held by indigenous communities. While enshrined in international laws, indigenous land rights are often not respected at a national level – either by states or the private sector. This presents potentially mispriced risk for renewable firms and investors. In this paper on renewables and indigenous rights, we focus on the causes of such risk to companies and highlight case studies of where issues have arisen.



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“Disregarding the rights of local communities and Indigenous populations in the race to a decarbonized economy by 2050, in particular those impacted by the boom in the extraction of the minerals needed for the transition, and by land-intensive renewable energy projects, is short-sighted.”

Letter to United Nations Framework Convention on Climate Change (UNFCCC) and COP27 Nations from Business & Human Rights Resource Centre and Indigenous Peoples Rights International

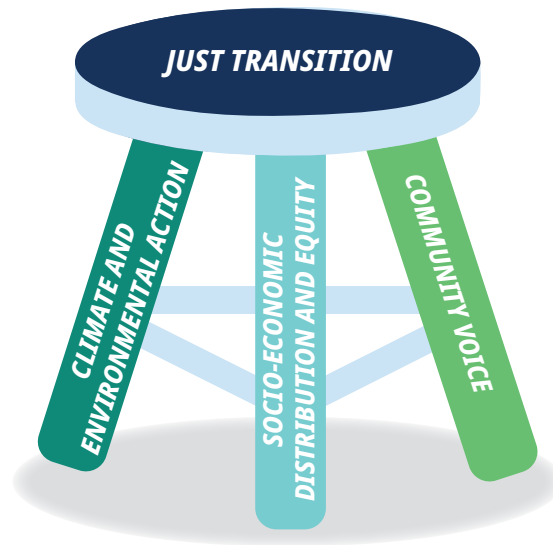
1. INTRODUCTION

We are facing an unprecedented challenge in the form of climate change. In order to address this, a substantive shift is required in our energy systems as we move away from finite fossil fuels to renewable energy and a reliance on widespread electrification. While the energy transition is typically portrayed in a very positive light, it carries embedded risk – especially the negative impact it could have on people. In anticipation of this, the concept of

the “just transition” was built into the 2015 Paris Agreement, with a particular emphasis on protecting the workforce as the economy shifts.

A just transition means “designing and delivering climate action so that it tackles existing inequalities and delivers social progress”. [1]

Depicting the just transition



Source: Impact Investing Institute.

Literature and narrative around the just transition tends to focus more heavily on the labour impacts of moving toward a greener economy – for example the need for reskilling workforces in traditional industries lest they be excluded from job opportunities going forward. Even the nod to the just transition in the Paris Agreement explicitly focuses on the creation of decent work. However, there is a much broader range of social impacts that need to be considered. These include: human rights impacts

associated with the energy transition, such as encroachment on indigenous and community rights; energy affordability and availability; and broader climate justice.

Investors should anticipate and challenge companies on the core human rights impacts of the climate transition as they can lead to financial, legal and reputational risk.

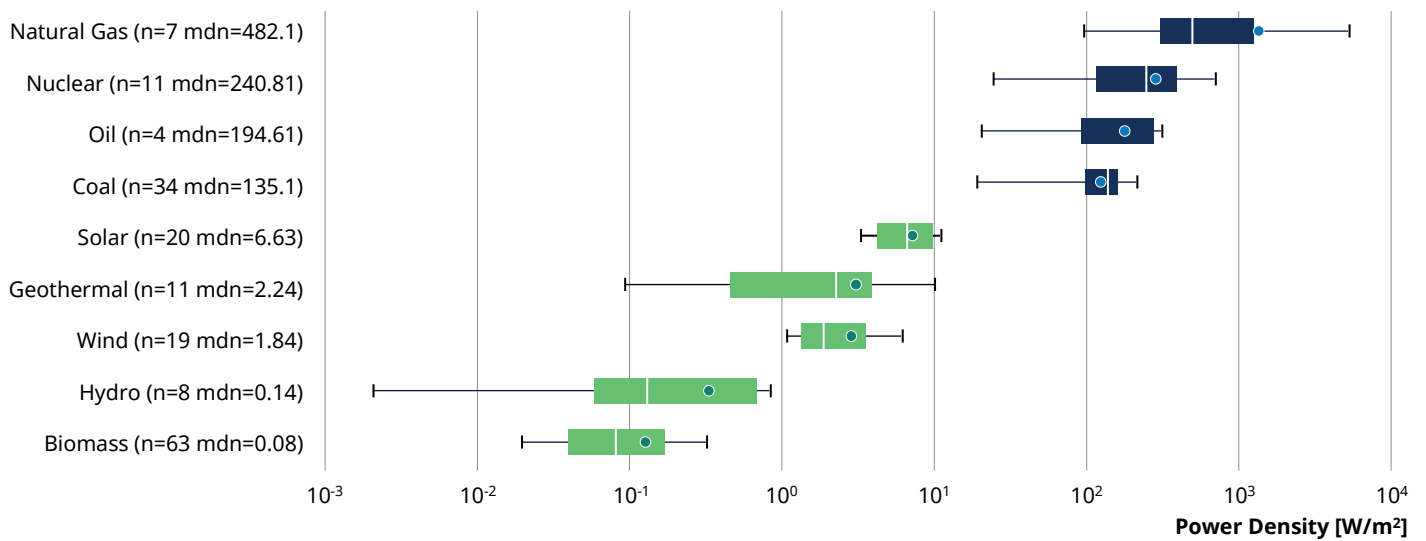
2. RENEWABLE ENERGY AND LAND USE

It has long been acknowledged that the extraction and transportation of fossil fuels has had a profound impact on community rights – especially indigenous peoples. An example of this was the recent controversy surrounding the Dakota Access Pipeline [DAPL]. The pipeline aimed to transport crude oil from North Dakota to Illinois, cutting across the traditional lands of the Standing Rock Sioux tribe. The project has been embroiled in significant litigation following extensive protests by the indigenous peoples and supporters. [2]

However, there is also an interplay between the establishment of renewable energy projects and respect for community and

indigenous rights. Renewable energy case studies similar to the DAPL example are highlighted throughout this paper. This tension is predominantly due to the land intensive nature of such projects. Wind and solar generation require at least 10 times as much land per unit of power produced than coal- or natural gas-fired power plants, including land used to produce and transport the fossil fuels. [3] The power density of fossil fuels and nuclear consistently outstrips renewables – where power density is the electric power produced by m² of surface area. However, it should be noted that land for renewable energy projects can be multi-use (e.g. agriculture) in a way that is not possible with fossil fuel energy production.

Power density of energy types



Source: Energy Policy. [4]

Land rights are notoriously complex, with land tenure systems varying drastically across the globe. This is particularly the case where indigenous peoples are present, given legal rights to land have been overlaid on pre-existing ownership structures.

An estimated 1 to 2 billion people globally live on and use commonly held land and territories, over which they have no official legal title. [5] Indigenous peoples are a subset of this group, which exacerbates marginalisation and increases

vulnerability. Whilst they account for 6% of the global population, indigenous peoples manage or have tenure rights over a quarter of the world's land surface across 90 countries. [6] However, in reality, this is rarely officially recognised. This evidences the scale and likelihood of infringing on indigenous people's collective rights to traditional land.

Indigenous peoples and their rights

There is no one definition of indigenous peoples, however a principal component is usually "self-identification". The ILO Convention 169 on Indigenous and Tribal peoples identifies indigenous peoples as those which are "in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonization or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions."

The United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP] agreed in 2007 set forth the minimum standards for the survival, dignity and well-being of the indigenous peoples of the world. One convention states "indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation and, where possible, with the option of return."

Free, prior and informed consent [FPIC] has been a central concept related to indigenous rights:

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- **Free:** no coercion, intimidation, manipulation, or undue influence or pressure
- **Prior:** consent is to be sought sufficiently in advance of any authorization or commencement of activities and respect is shown to time requirements of indigenous consultation processes
- **Informed:** information is provided that covers a range of aspects, including the nature, size, pace, reversibility and scope of any proposed project or activity; the purpose of the project as well as its duration; locality and areas affected; a preliminary assessment of the likely economic, social, cultural and environmental impact, including potential risks; personnel likely to be involved in the execution of the project; and procedures the project may entail [7]

While enshrined in international laws and articulated under human rights instruments, indigenous land rights are often not respected at a national level – either by states or the private sector. Large scale land grabbing has occurred in the context of the expansion of other industries, such as mineral extraction and agriculture. This pattern is likely to repeat as land becomes increasingly in demand for the shift to renewable energy.

Climate change demands that the energy system transitions to renewables. The land required to achieve this transition in the context of informal land ownership structures will, if handled poorly, likely result in the mistreatment of indigenous peoples and/or the perpetuation and expansion of inequalities that are already present across society. At a time where focus is sharpening around the topic of human rights, as mandatory human rights due diligence legislation has started to proliferate in Europe and beyond, the importance of mitigating and addressing risks associated with indigenous rights is notable.

Mismanagement can lead to substantial project disruption and pronounced financial downside.

The table below provides an indication of the interplay between indigenous rights and renewable energy production. We outline country renewable energy capacity with the prevalence of indigenous peoples and indigenous-held land. Countries with energy capacity originating from more land intensive renewable energy forms (i.e. hydro and wind) coupled with higher % of indigenous peoples and indigenous held lands are more likely to be at risk of infringing on indigenous rights without proper care. For example, Guatemala, Kenya and Mexico all have relatively high indigenous peoples representation, as well as a greater portion of hydro and wind renewable energy capacity. As a result, it makes sense that the frequency of past land-based allegations associated with these countries monitored by the Business & Human Rights Resource Centre [BHRRC] are high or very high.

Country renewable energy capacity, indigenous representation and land-based allegations

Country	Renewable share of installed capacity 2021	Renewable capacity mix 2021	Indigenous peoples as % of population	% of land held by indigenous peoples (officially and unofficially)	Frequency of Past Land Allegations
Australia	43%		2.8%	81.6%	Low
Brazil	83%		0.4%	19.1%	Very high
Cambodia	57%		3.0%	5.3%	Very high
Canada	69%		4.9%	61.9%	Low
Chile	54%		4.6%	12.8%	High
China	43%		8.5%	49.8%	Low
Colombia	68%		13.2%	38.2%	Very high
France	43%		N/A	N/A	Low
Germany	61%		N/A	N/A	Low
Guatemala	70%		39.3%	29.8%	Very high
Honduras	65%		15.9%	14.0%	Very high
Iceland	96%		N/A	N/A	Low
India	32%		8.6%	21.4%	Moderate
Indonesia	15%		20.0%	22.5%	Low
Italy	49%		N/A	N/A	Low
Japan	31%		1.1%	No data	Low
Kenya	76%		25.0%	55.0%	High
Mexico	31%		14.9%	52.5%	Very high
Morocco ¹	30%		28.0%	36.3%	High
New Zealand	78%		16.5%	5.5%	Low
Norway	97%		1.1%	26.8%	High
Philippines	28%		10.0%	31.8%	High
Republic of Korea	17%		N/A	N/A	Low
Russian Federation	20%		0.2%	4.4%	Low
Spain	56%		N/A	N/A	Low
Sweden	76%		0.2%	57.8%	Low
Turkey	53%		N/A	N/A	High
United Kingdom	46%		N/A	N/A	Low
United States	27%		1.8%	5.9%	Low
Vietnam	56%		14.7%	No data	Low

Renewable capacity mix key: ■ Hydro ■ Wind ■ Geothermal ■ Solar ■ Other

Source: Schroders, IRENA, Landmark, BHRRC. [8] [9] [10] Countries in this figure were chosen either because they are top 10 capacity country for hydro, wind, geothermal or solar energy, or the country was determined as exposed to higher indigenous rights risks based on past land-based allegations against renewable energy companies. ¹Note that Morocco land-based allegations relate to Western Sahara, which is a non-self governing territory. The disputed territory is not legally recognised as Morocco.

3. MATERIAL RISKS TO RENEWABLE ENERGY COMPANIES

There is repeated evidence of inadequate respect for indigenous rights causing detrimental impacts for renewable energy projects. Social disruption caused by infringement of indigenous rights can cause delays and cancellations. To put this in perspective, S&P deems a delay of one month during project construction, or just one day during operations, a 'significant effect'. Our review of the existing literature suggests the costs of implementing policies and

practices that mitigate social risks are around 2% of project costs. This compares to potential financial damages of 24–37% of the net present value of investments in higher risk geographies. [11]

The following section lays out the various financial risks posed by inadequate management of indigenous rights at renewable energy projects.

COMPLIANCE WITH INTERNATIONAL CONVENTIONS

Indigenous rights conventions

International Convention	Description
UN Guiding Principles on Business & Human Rights [UNGPs]	Unanimously adopted in 2011, the UNGPs stipulate a company's responsibility to undertake human rights due diligence. The UNGPs are only 'soft law', but they have served as an international benchmark for company action on human rights. The content of the UNGPs has since been integrated into the OECD Guidelines for Multinational Enterprises.
United Nations Declaration on the Rights of Indigenous Peoples [UNDRIP]	UNDRIP defines the individual and collective rights of indigenous peoples, including their ownership rights to cultural and ceremonial expression, identity, language, employment, health, education, and other issues. It is the most comprehensive instrument addressing indigenous rights and has been adopted by 146 countries. Whilst not legally binding, it does reflect international expectations and norms.
ILO Indigenous and Tribal Peoples Convention 169	An international treaty that becomes legally binding on ratification – which 24 countries have done to date. The convention is based on respect for the cultures and ways of life of indigenous peoples and recognizes their right to land and natural resources and to define their own priorities for development.

Source: Schroders.

While these conventions are not widely legally binding, they do set out international expectations and norms. States that have ratified them have a duty to uphold these rights, and ensure those within their boundaries do the same. It is possible that breaching these conventions could be construed as a breach of global norms, resulting in failure of tests such as the EU SFDR's "Do no significant harm" criteria. For instance, MSCI added ENEL SPA to its UNGC Violator Watch List due to concerns over potential adverse impact of proposed windfarms on Wayuu indigenous communities in Colombia.

MANDATORY HUMAN RIGHTS DUE DILIGENCE

Human rights legislation has changed substantially in the last few years. Of note, Europe has seen a spate of mandatory human rights due diligence [mHRDD] legislation emerge. The most advanced mHRDD laws are:

- French Duty of Vigilance (effective 2017);
- German Supply Chain Due Diligence Act (effective 2023);
- Norwegian Transparency Act (effective 2022);
- Dutch Bill for Responsible and Sustainable International Business Conduct (effective 2023); and
- EU Corporate Sustainability Due Diligence Directive (in proposal, anticipated 2026).

These laws tend to apply to a company's direct operations and

supply chain, if not the whole value chain. The different laws use various approaches to enforcement, spanning civil liability and financial penalties of up to 2% of annual turnover. The EU, French and Dutch laws all focus on civil liability and have no defined financial penalty (although there is speculation that these fines will be in line with those levied for non-compliance with competition law or data protection laws). In contrast, the German and Norwegian laws are oriented around specified pecuniary sanctions.

These mHRDD laws will cover renewable energy company operations. There is therefore a risk of civil liability or fines should insufficient action be taken to anticipate adverse impacts on indigenous peoples.

Case study: Civil lawsuit against Electricité de France [EDF]

Whilst a civil lawsuit in France is ongoing, in June 2022, Mexico's state power utility cancelled the power supply contract signed with EDF for a wind energy project due to the continued controversy.

In 2017, EDF sought to build the €310 million Gunaa Sicaru wind park on the land of the indigenous community of Union Hidalgo in Oaxaca, Mexico.² There have been allegations that EDF failed to properly gain the FPIC of the indigenous community, nor did it sufficiently assess the potential adverse impacts of the proposed operations. Representatives of Union Hidalgo, the Mexican human rights organisation ProDESC and the European Center for Constitutional and Human Rights subsequently filed a civil lawsuit under the French Duty of Vigilance in October 2020. [12]

The issue revolved around the fact that EDF started negotiations with selected individuals in Union Hidalgo, who did not represent the entire community. The land is communal and all decisions should be taken by established community assemblies. Shortly after, EDF signed energy supply contracts with the Mexican authorities and solicited a permit without consulting the indigenous peoples. There are also reports that EDF interfered with consultations, with representatives offering money, food and other promises to persuade community members to support the project.

A rift has emerged within the community, with violent conflict emerging between residents who are in favour of the promise of jobs and investment, and those who fear environmental degradation and loss of access to their lands. As a result, there have been multiple incidences of violence against human rights and land defenders of the community to date.

The civil lawsuit is not the first time that Union Hidalgo people raised the disregard for their rights. In 2018, a complaint was filed with the French National Contact Point – an entity established by the OECD to facilitate human rights remediation. However, this action was abandoned, as violence was escalating at the site and Union Hidalgo found the proceedings ineffective.

REVOKED LICENSES

In order to gain access to land for a designated project, a renewable energy company will likely require a permit or license for operation from relevant state entities. These licenses will often be tied to conducting business in line with international conventions, such as the UNGPs or UNDRIP.

If inadequate action is taken to behave in line with such requirements, there is a risk that licenses can be revoked – halting development or operation, and disrupting associated revenue.

Case study: Norwegian wind farm licenses revoked by Supreme Court

The Supreme Court unanimously ruled that the two wind farms in Fosen had the potential to significantly impact the cultural rights of the Sámi people, so revoked the relevant licenses. A final decision on their continued operation is still outstanding.

Fosen Vind is a joint venture owned by the Norwegian utilities TrønderEnergi and Statkraft, and the European investor consortium Nordic Wind Power DA. Initiated in 2016, the \$1.3 billion Fosen peninsula development was set to be Europe's largest onshore wind farm.

Figure 8: Fosen Vind development



Source: Fosen Vind. [13]

Any reference to sectors/countries/stocks/securities are for illustrative purposes only and not a recommendation to buy or sell any financial instrument/securities or adopt any investment strategy.²The region of Oaxaca, Mexico has become a major centre for wind energy in the last decade. The EDF case is only one of several ongoing allegations of indigenous rights breaches. Mexico has particularly complex systems of land tenure and has actively integrated indigenous rights into its own national and sub-national constitutions. Consequently, it is ripe for these kind of issues, so companies investing in this area should proactively consider the human rights implications of development.

The Fosen Peninsula is home to the indigenous Sámi people – a group which undertakes traditional reindeer herding, a protected cultural practice. The operation of the wind farms has allegedly disturbed this practice. Under the UNDRIP convention that states “indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices”, the Sámi people brought a case to the Norwegian Supreme Court.

Despite TrønderEnergi and Statkraft being state-owned entities, at the end of 2021, the Norwegian Supreme Court stripped two wind farms of their license to operate. The court unanimously ruled that the wind power plants, without satisfactory mitigating environmental measures, would have a considerable negative effect on the Sámi people’s cultural rights, which would represent a breach of international law. [14] The court has not mandated the dismantling of the 151 turbines, and there is still debate as to how the case will resolve as the Petroleum and Energy Minister has granted concessions in the following months before making a final decision. As a result, there is continued disruption and confusion for the Norwegian energy companies. However, the ruling could constitute a legal precedent that affects other infrastructure projects on Sámi-populated lands in Norway and neighbouring countries.

The case has gained renewed attention recently as Greta Thunberg and Sámi activists protested the continued existence of the turbines by blocking the entrance to Norway’s energy ministry in February 2023. [15] [16] The ongoing nature of the controversy continues to lead to reputational risk for the companies involved and could dissuade future development in the same region.

WITHDRAWAL OF PROJECT FINANCING AND INVESTMENT

There have been several cases where funding has been revoked from projects given breaches of indigenous rights. This is in the context of increased requirements for investors to assess and manage environmental and social risks. For instance, within project financing, the Equator Principles – which are based on Environmental and Social Sustainability standards from the IFC

– have become the global norm for risk management among banks and financial institutions. Conflict with investors’ values and commitments, and associated reputational damage often leads to exit in the wake of indigenous rights controversies. This can cause extensive disruption to projects.

Case study: Agua Zarca Dam and the exit of FMO

Dutch development bank ceased funding of the Agua Zarca dam due to death of human rights defender.

An indigenous community leader was protesting the Agua Zarca hydropower project, claiming failure of the Honduran project developer – DESA – to obtain the FPIC of the Lenca people. The human rights defender was killed on the site, triggering a large questioning of the security of renewable energy projects. FMO, the Dutch development bank, was invested in the project. After undertaking an independent assessment, FMO issued a report which confirmed FPIC was not obtained prior to project approval. As a result, FMO has exited the project and undertook a process to consult with the communities on how to do so responsibly. Since the exit, FMO has improved its ESG policies, specifically on human rights, human rights defenders and indigenous as well as culturally diverse communities. It now provides mandatory human rights training for all employees, advanced human rights training for all ESG staff and strengthened measures around FPIC. [17]

Case study: Dakota Access Pipeline and financial consequences

Banks mass exited the Dakota Access Pipeline project due to intense public scrutiny around infringement of indigenous rights.

Whilst not a renewable energy project, the Dakota Access Pipeline [DAPL] case provides valuable learnings. As mentioned previously, DAPL faced numerous delays in its construction and operation due to extensive opposition from the Standing Rock Sioux Tribe and their supporters. The parent company, Energy Transfer Partners, saw a 20% decline in its stock price over the period and the total cost of the project reached \$7.5 billion due to the delays – nearly double its predicted initial cost. Investors also suffered, escalated by the extensive #NoDAPL divestment campaign. [18] There was a spate of banks that offloaded their debt, including Norwegian DNB which sold more than US\$331 million dollars in loans. Odin Fund Management decided to sell shares worth US\$23.8 million in companies connected with the pipeline. Nordea has since banned investment in Energy Transfer Partners. [19]

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COMMUNITY PROTEST AND DISRUPTION

In cases where indigenous peoples have not been adequately engaged, and FPIC has not been legitimately gained, projects have experienced extensive backlash. This can manifest in protests from locals and the wider international community, including NGOs. This has the capacity to cause physical disruption to the construction and operation of a project, as well as derail existing financing and support for the project due to raised international attention. For context, Standard & Poor deems a delay of one month during project construction, or just one day during operations, a 'significant effect'. A study of company-community conflict in the extractives sector by the Harvard Corporate Social Responsibility Initiative found that the company cost of

preventable conflicts could amount to \$379 million in asset write-offs. [20]

In more extreme cases, violence and attacks have been known to break out. The BHRRC has found that the renewable energy sector is related to 10% of all recorded attacks on human rights defenders – placing it as the 3rd most dangerous sector. [21] Between 2015 and 2021, the Resource Centre recorded 369 attacks against defenders³ – including 98 lethal attacks. Most attacks were related to hydropower projects, with 4 in 5 attacks occurring in Central and South America. [22]

Case study: Conflict and blockades at the Marena Renovables wind project

Local communities blocked progress at the wind project for almost two years, leading to its ultimate relocation.

A joint venture between Eolia, Macquarie, Mitsubishi Corp and PGGM, the Marena Renovables project is one of the most frequently cited examples of a renewable energy project gone wrong. Located in Oaxaca, Mexico, the 132-turbine project was accused of failure to obtain FPIC, a lack of fair compensation for the indigenous peoples' land, interference with cultural practices and corruption regarding project permits. Local communities created physical blockades and filed for non-judicial and litigative action for almost two years. Eventually the \$1.2 billion project was relocated and renamed Eolica del Sur. Ahead of this relocation, the Mexican Government initiated a consultation process, but this has still been criticised by community members and civil society as insufficient and surface-level. A court consequently issued an injunction, which has further stalled the project. [23]

REPUTATION OF RENEWABLES

There is a risk that if renewable energy development is embroiled in community protests, adverse media coverage and revocation of finances due to encroachment on protected lands, notable reputational damage could occur, leading to a weaker case for the such projects. This may hinder appetite for renewable energy investment in certain regions, even in an environment where demand for clean energy is high.

Any reference to sectors/countries/stocks/securities are for illustrative purposes only and not a recommendation to buy or sell any financial instrument/securities or adopt any investment strategy. ³"Human rights defender" is a term used to describe people who, individually or with others, act to promote or protect human rights in a peaceful manner.

4. POTENTIAL HARMS TO INVESTORS

The risks to companies that arise from inadequately addressing indigenous rights risks are passed through to financial services companies that are providing funding for renewable energy companies. Potential harms to investors are outlined in the table below.

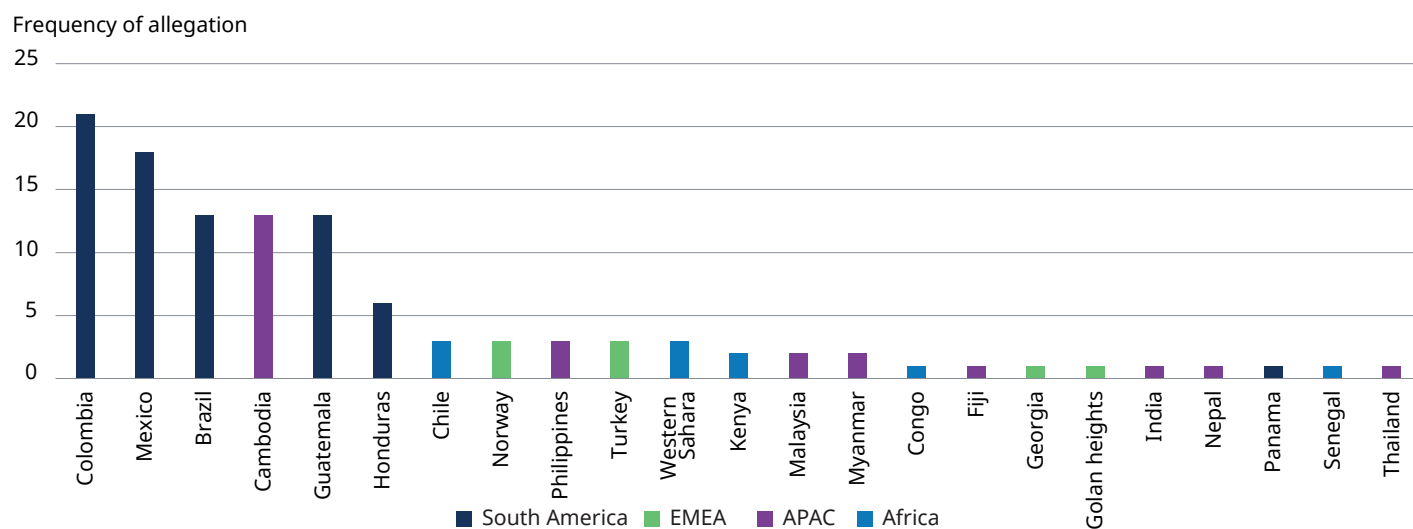
Potential harms to investors

Potential harm	Explanation
Increase in capital expenditure and one-off costs	Planning/construction <ul style="list-style-type: none"> - Extension of planning and/or construction phase costs - Modification of project design and associated expenses and sunk costs
	Legal/semi-judicial <ul style="list-style-type: none"> - Lawsuits over violations of local and national laws - Complaints under the OECD Guidelines and similar grievance mechanisms via National Contact Points
Increase in operating expenditure	General <ul style="list-style-type: none"> - Higher insurance costs and risk rating: potential withdrawal of coverage - Material damage to property - Delivery delays or broken supply chain - Increased public relations expenditures - Increased need for security and associated fences, patrols, transport
	Personnel <ul style="list-style-type: none"> - Staff time redirected to risk and conflict management - Risk of injuries to staff - Retention and recruitment may become costlier, turnover may increase
	Redress <ul style="list-style-type: none"> - Compensation, fines and increased social and environmental obligations to the community
Delayed or reduced monetisation	<ul style="list-style-type: none"> - Uncertainties around start/finish of project - Delays in start of production of power - Shutdowns - Reduction of value of property or compromised opportunity for future expansion - Potential loss of concession, land rights or land lease - Loss of access to optimal sites for renewable power facilities
Reduction or loss of ability to raise capital	<ul style="list-style-type: none"> - Legacy or reputational damage leading to difficulty raising new capital - Debt servicing problems - Reduction in investor confidence and enthusiasm - Share price instability and/or reduced demand in secondary market - Spill-over effect affecting unrelated investments

Source: BHRRC. [23]

To gain an indication of which countries have historically been higher risk for renewable energy projects, we analysed a BHRRC database of human rights allegations linked to indigenous rights, land rights and FPIC. The most frequent allegations tend to arise in South America. Projects in such regions require heightened caution and proper due diligence around indigenous rights.

Frequency of land-related renewable energy allegations by country



Source: Schroders, BHRRC. [10]

As demonstrated in the previous section, the case studies of disruption are mounting. A compilation of such case studies is evidenced in table below.

When considering the value of this disruption, we can look to estimates of the EV/MW coefficient for different renewable energy types.⁵ Using these figures as a broad indicator, we can approximate the value at risk for potential faltering of a project by multiplying the EV/MW multiple by the intended production capacity. While part of the variation in EV/MW coefficients may

relate to capital intensity, Levelised Cost of Electricity (LCOE) or the maturity of different renewable technologies, one can sense check the numbers generated by this process as a sensible starting point for scaling value at risk. It is important to consider that value at risk will also be heavily influenced by the stage of the project and local project financing. In addition, it should be noted that onshore production from solar, onshore wind and hydropower is most likely to overlap with indigenous rights risks given the inherent land dependent nature.

Renewable energy projects disrupted by indigenous rights issues and land-based allegations

	Company	Energy	Project name	Location	Country	Size (MW)	Year(s) initial dvmt	Status
Cancelled	DESA	Hydro	Agua Zarca Dam	Gualcarque	Honduras	21.3	2015	Cancelled in 2016
	Eolia, Macquarie, Mitsubishi, PGGM	Onshore wind	Marena Renovables	Oaxaca	Mexico	396	2007	Complaint filed in 2012, project halted in 2015
	Comezhidro, Conduit Capital Partners	Hydro	Cerro de Oro	Santo Domingo	Mexico	15	2010	Construction halted in 2011, then suspended indefinitely
	CPI	Hydro	Myitsonne Dam	Kachin	Myanmar	6,000	2008	Put on hold in 2011
	CFE	Hydro	La Parota	Guerrero	Mexico	900	2009	Postponed in 2009, planned for 2021, cancelled in 2020
Delayed	KenGen	Geo-thermal	Olkaria V plant	Olkaria Ward	Kenya	158–170	2016	Construction temporarily delayed in 2016 but now online
	EDP	Onshore wind	Alpha and Beta	La Guajira	Colombia	500	2021	Construction halted in 2022
	Rio Tinto	Hydro	Kemano	British Columbia	Canada	960	1995	Cancelled in 1995, restarted in 2018
	NEA	Hydro	Kali Gandaki "A"	Gandaki Province	Nepal	144	1996	Project delayed 51 days

Any reference to sectors/countries/stocks/securities are for illustrative purposes only and not a recommendation to buy or sell any financial instrument/securities or adopt any investment strategy. ⁵Deloitte has published analysis on this based on a dataset of renewable energy project transactions which have then been analysed with a regression model to identify MW/EV multiples for different stages of a project. The multiple regression analysis is a market-based valuation approach, as it is based on data from historical transactions. The Credit Suisse analysis is based on the overall installed capacity and EV of pure-play hydro companies.

	Company	Energy	Project name	Location	Country	Size (MW)	Year(s) initial dvmt	Status
Plans ongoing but questioned	Total, Vega Solar	Solar	Ticul 1	Yucatan	Mexico	300	2023	Community sued govt in 2020, construction planned for 2023
	CFE	Hydro	Chicoasen II	Chiapas	Mexico	240	2015	Put on hold in 2015; resumed in 2020; to start operating in 2025
	EDF	Onshore Wind	Gunaa Sicaru	Oaxaca	Mexico	252	2021	Permitting still to be confirmed
	TronderEnergi, Statkraft	Onshore Wind	Fosen Vind	Fosen Peninsula	Norway	1,057	2016	Licenses declared invalid, looking for new operating licenses
	JinkoSolar	Solar	Yucatan Solar Park	Yucatan	Mexico	180	2016	Sued 2019, judge ruled against development in 2020; company trying to keep project alive as private venture without state contract
	Suman SAPI de CV	Solar	Oxcum-Uman	Yucatan	Mexico	123	2023	SEMARNAT stopped endorsing in 2019, but construction expected to start 2023 if no changes before then

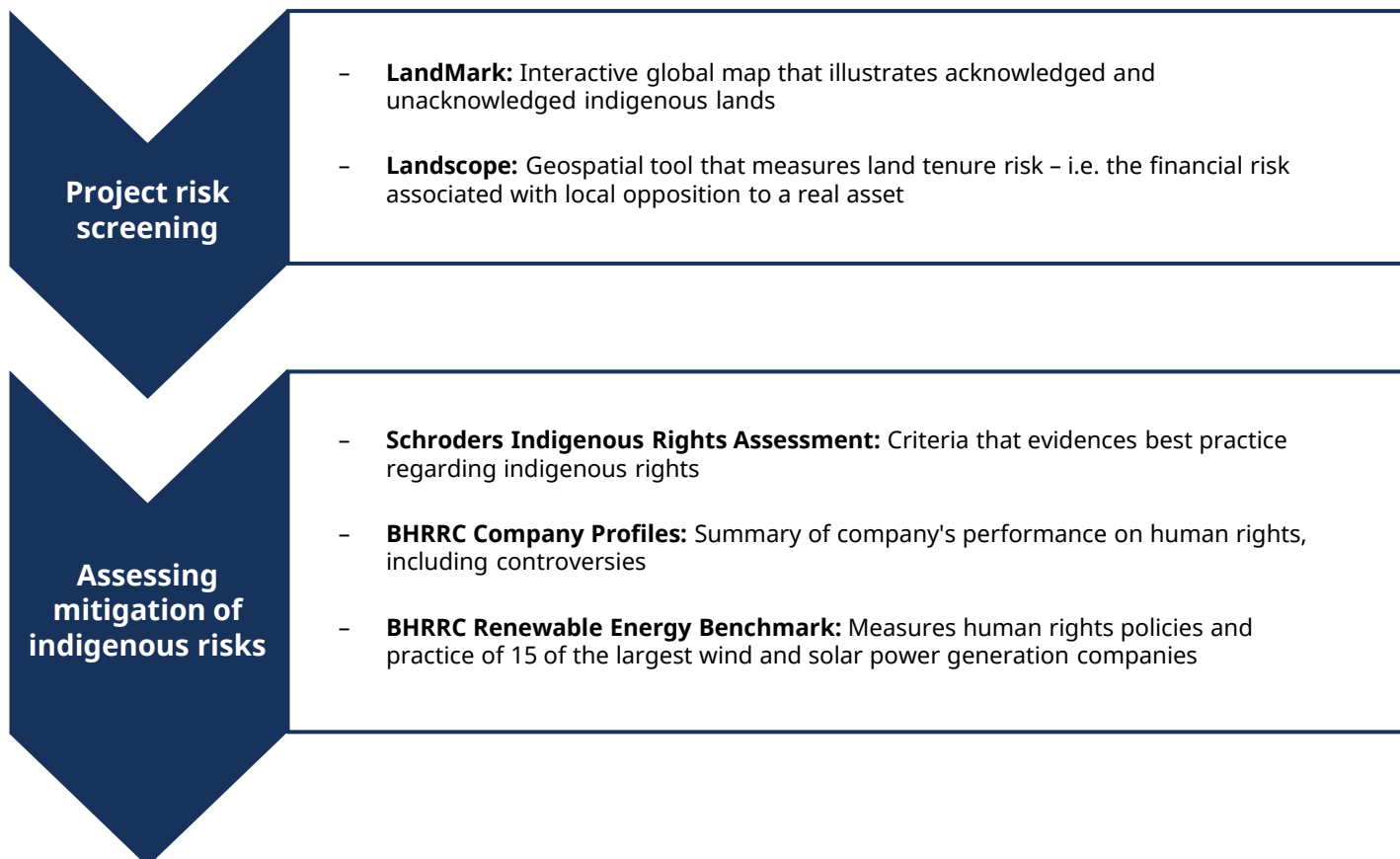
Renewable energy type	EV/MW coefficient	Source	Year
Onshore wind	1.5	Deloitte	2017
Offshore wind	4.7	Deloitte	2017
Solar	2.2	Deloitte	2018
Hydropower	0.83	Credit Suisse	2021

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5. A TOOLKIT FOR EVALUATING PROJECT AND COMPANY EXPOSURE

Inadequate management of indigenous rights risks can lead to financial costs and a loss of social license to operate. In order to equip investors to anticipate this, we have set out a suite of third party and proprietary resources for identifying whether a renewable energy project is particularly exposed to indigenous rights risks and analysing the depth and quality of a company's overarching performance on indigenous rights.

Schroders indigenous rights toolkit – a suite of resources



Source: Schroders, BHRRC.

SCHRODERS INDIGENOUS RIGHTS ASSESSMENT

We developed a Schroders assessment regarding company practice on indigenous rights. When assessing and engaging renewable energy companies on indigenous rights, investors can look for the criteria outlined in the table below to be reassured risks are being adequately mitigated. The assessment was informed by the World Benchmarking Alliance's Corporate Human Rights Benchmark methodology, the BHRRC Renewable Energy and Human Rights Benchmark methodology, and the underlying principles within the UNDRIP and the ILO's Indigenous and Tribal Peoples Convention 169. Application requires in-depth analysis of company communications and disclosures on human rights, specifically indigenous rights. This may come from sustainability reports and corresponding webpages, human rights reports, community engagement policies, and fact-finding conversations with companies.

We have indicated with an '!' in the table which assessment criteria should be viewed as most important based on our research. A particular emphasis should be placed on understanding the quality of the company's effort to engage and consult local stakeholders. The Overseas Development Institute state that social dialogue is the most effective form of risk mitigation. [11] It fosters trust with local people and is considered excellent value for money.

This assessment, used in conjunction with the other resources highlighted in the Toolkit – namely Landscape and LandMark risk screening, and BHRRC materials – can help to build a picture of how exposed a renewable energy company is to indigenous rights risks.

Schroders Indigenous Rights Assessment

	Criteria	Description	Most important criteria	Example
Human Rights policy	Addresses indigenous peoples	The company explicitly addresses indigenous peoples rights in its policy commitments.	!	Enel's Human Rights Policy has a specific section on respecting the rights of indigenous and tribal peoples.
	Addresses human rights defenders	Policy commits to not tolerating threats, intimidation, physical or legal attacks against human rights defenders.	-	First Solar's Labour and Human Rights policy contains a clause stating "We do not tolerate retaliation of any kind against anyone who reports an issue, nor do we tolerate unlawful threats, intimidation, physical or legal attacks against human rights defenders in relation to our operations."
Risk assessment	Identification of salient risks	The company describes how it identifies salient human rights issues related to renewable energy projects.	!	Engie undertakes an annual risk assessment and establishes a corrective action plan for any risk identified. In addition, any new activities – such as a new project, or entry into a new country – are also subject to an initial human rights risk assessment. Engie use Verisk Maplecroft indices to highlight high risk countries and look for activities such as presence of security forces or indigenous populations.
	Mapping of land rights	The company outlines how it maps land rights in the region in which it is proposing to operate.	-	For each of its projects, Eletrobras has mapped the indigenous lands that are affected. The groups of indigenous peoples are disclosed in its Annual Report.
Consultation	Identifying affected communities	The company outlines how it identifies communities which are affected by its activities. This should take a rights-based approach – i.e. examine what potential rights could be affected, rather than just looking at distance from project etc.	-	As part of the strategy and model for creating shared value with communities, Enel map and weight the main stakeholders and their needs when establishing a project. Enel recognise the need to develop a thorough knowledge of each territory in which it operates and the needs of the people who live there. This heavily depends on proactive communication with stakeholders.
	Sensitive consultation	The company describes how it ensures consultation is sensitive to barriers – linguistic, cultural, gender or other.	!	Better Energy describe how the company organises community meetings early in the development process – for example through town hall meetings and individual discussions with affected stakeholders.
	Respecting FPIC	The company describes how it ensures FPIC has been obtained for projects affecting indigenous peoples. The company acknowledges FPIC is an ongoing process.	-	Ørsted have a separate Stakeholder Engagement Policy which sets out its principles for engagement and acknowledges respecting FPIC.
	Adjustment of plans following consultation	The company communicates how it adjusts and modifies plans based on community feedback.	-	Enel commit to guaranteeing that concerned parties are suitably involved in the design of a project though early community involvement. When defining creating shared value plans, Enel ensures it reflects the issues which emerged from stakeholder engagement.

	Criteria	Description	Most important criteria	Example
Grievance mechanism and remediation	Grievance mechanism for indigenous peoples	The company has a locally sensitive and available grievance mechanism which accommodates indigenous peoples.	!	Iberdrola has a channel to report grievances relating to local communities which was updated in 2020 with a formalised procedure for the classification, monitoring and control of concerns.
	Transparently respond to allegations	The company transparently responds to allegations of human rights abuses by external parties, such as civil society.	-	EDF explicitly break down the issues raised through its grievance mechanism in its Duty of Vigilance document. The company states what corrective action is taken to address the whistleblowing reports.
	Access to remedy	The company commits to providing access to remedy where it is found to cause or contribute to adverse impacts on indigenous peoples.	-	Acciona states that it has a grievance channel that is reliable and confidential, offers adequate protection from retaliation, is culturally appropriate and is accessible in physical and linguistic terms. It ensures adequate remediation through substantive consultations with groups that are affected to communicate and jointly define the applicable mitigation and remediation measures in the event of human rights abuses.
Tracking effectiveness	Process to track effectiveness of activities	The company describes how it monitors the implementation of its policy commitments around indigenous rights. Monitoring might include on site visits and audits, reviewing reported grievances and stakeholder engagement.	-	Vestas reports on three human rights performance indicators related to its projects: number of community grievances received; number of direct beneficiaries from community engagement activities; and share of projects that have undergone the company's 'social due diligence' process.

6. CONCLUSION

In order to avoid replicating the indigenous rights abuses that have been heavily associated with traditional land-intensive fossil fuel extraction projects, renewable energy projects must proactively ensure they have the appropriate practices in place to mitigate harm from occurring and proactively address concerns should they arise.

There is considerable financial incentive for renewables firms to do so, and material downside associated with inadequately respecting indigenous rights, namely:

- Litigative action;
- Revocation of license to operate;
- Loss of financing;
- Physical disruption; and
- Reputational risk.

These costs are then passed through to investors through increased CapEx and OpEx, delayed or reduced monetisation and/or loss of ability to raise capital. As a result, investors should

analyse renewable energy holdings on their performance on indigenous rights, namely focusing on:

- The existence of a human rights policy that acknowledges indigenous rights;
- The company's human rights risk assessments of renewable energy projects;
- The company's engagement and consultation of potentially affected and actually impacted stakeholders;
- The existence of a grievance mechanism and commitment to access to remedy; and
- How the company tracks the effectiveness of its activities on respecting indigenous rights.

Ensuring companies act in a way that is responsible for both the environment and people is critical in securing and promoting a just transition, as well as protecting value. In the case of poor performance, investors should look to engage on these issues to encourage actions that will mitigate the risks outlined above.

“The renewable energy sector has a fleeting opportunity to transform its industry business model and ensure shared prosperity for communities and workers, so that it can deliver its essential contribution to a fast and fair transition... Investors, on the other hand, have a critical chance to influence the development of a renewable energy industry that respects human rights – while simultaneously securing sustainable and secure investments, in addition to benefits for communities and a just transition to clean energy.”

Business & Human Rights Resource Centre and Indigenous Peoples Rights International



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