

INVESTOR BRIEFING: RENEWABLE ENERGY IMPACTS ON COMMUNITIES

MANAGING INVESTORS' RISKS AND RESPONSIBILITIES



Business & Human Rights
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EXECUTIVE SUMMARY

The Paris climate agreement and the Sustainable Development Goals have signalled clearly that the future of energy is renewables - not only to curb the devastating effects of climate change but to provide clean and affordable energy to all. Investment in renewable energy projects has increased close to fivefold over the past 12 years, from \$62 billion in 2004 to \$287 billion in 2016.¹ As technology costs continue to drop, investments in renewable energy are increasingly recognised as providing a competitive advantage.

“Perhaps the biggest impact of the Paris Agreement is that the shift to a low-carbon economy is now seen as inevitable over some extended timeframe, not pie in the sky.”

Michael Liebreich, founder of Bloomberg New Energy Finance (The Times, Future of Energy)

However, the way in which these projects are developed and implemented matters – both for local communities and for investors. There has been a rise in reports of renewable energy projects negatively affecting the communities where they operate including impacts on land, indigenous peoples, threats, intimidation, and even killings. This causes operational delays, legal costs and reputational risks, which are likely to translate in diminished financial returns for investors, as well as increased operational and capital expenditure. Fifty companies involved in renewable energy projects were approached with 10 questions on their approach to human rights in November 2016; their responses revealed weaknesses in commitments and practices to prevent negative

impacts on communities. Only 10% of companies referred to the international standard of free, prior and informed consent in their responses and three out of these five companies faced allegations from communities on implementing this commitment on the ground.²

Examples from the extractives sector show that company-community conflicts incur significant costs, with companies writing off up to \$379 million in assets and \$1.33 billion in projected reserves.³ Renewable energy investors have an opportunity to learn from this and implement their responsibility to respect human rights in line with the UN Guiding Principles on Business and Human Rights.

“It is not acceptable for any business to ignore their impacts on peoples’ land rights, security or livelihoods - the renewable energy sector is no different”

Mary Robinson, President, Mary Robinson Foundation – Climate Justice

Investors can engage companies to mitigate risks and improve human rights practices. By doing so they reduce risk to their investments and to local communities, while contributing to a just transition to a low-carbon economy that benefits everyone.

Investors should drive conversations with companies, particularly on achieving high standard of human rights due diligence and community engagement. Specific actions investors can take include (outlined in detail on page 26):

- **Prior to investment:** Ensure human rights due diligence is undertaken as per UN Guiding Principles on Business and Human Rights (UNGPs) as a condition for investing and structure investments so as to maximise the ability to influence respect of human rights.
- **During investment:** Monitor human rights performance of investments and engage with companies to encourage respecting communities’ rights as per the UNGPs. If the company is not receptive, increase pressure e.g. through collaboration with peers or divest.
- **Both prior to and during investment:** Engage with companies or asset managers with specific questions on human rights and take steps to verify information; engage with governments, civil society, trade unions, communities, and others to encourage community-led best practices and renewable energy that respects human rights.

1. <https://www.bnef.com/dataview/clean-energy-investment/index.html>

2. <https://business-humanrights.org/en/towards-responsible-renewable-energy>

3. https://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf



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"Clean energy wind combine"; ThoroughlyReviewed/Flickr 2017 (CC BY 2.0)

1. INTRODUCTION

Audience

This briefing is intended for any investor holding or considering investments in renewable energy projects, whether directly or indirectly. A more detailed breakdown by asset classes and best opportunities for engagement is available in Sections 4 and 5.

Scope

The briefing takes the need for a **just transition to a low-carbon economy** as its starting point. Referenced in the Paris climate agreement, this concept calls for ensuring that no one is left behind as fossil fuels are phased out in favour of low-carbon alternatives.⁴ A just transition requires action by a wide range of stakeholders and attention not only to rights impacted by renewable energy, but to workers and communities affected by the closure of oil, gas and coal sites. Addressing these issues in a holistic manner is key to ensuring that the transition protects the most vulnerable groups likely to be negatively affected by it and is supported by them. The ILO has issued guidelines on a just transition agreed at a tripartite level.⁵

Within a just transition, the briefing focuses on **human rights impacts on local communities** and draws primarily on examples from **wind and small or medium hydropower projects**.⁶ This is due to the more detailed research currently available on these issues and types of projects, as well as concerns around the sustainability of large hydropower projects. Solar projects, among other land-intensive renewable energy sectors could encounter similar issues. Other human rights issues could be relevant for these projects, including labour rights, rights of women and children, and responsible supply chain management.

While this briefing primarily discusses investments in emerging markets, investors in projects taking place in developed economies will also benefit from being attentive to the concerns raised in this report (see case studies from France, Norway/Sweden).

Table 1 on page 15 details the numerous ways in which poor management of human rights has harmed investments in land-reliant sectors

4. <http://unfccc.int/resource/docs/2015/cop21/eng/l09.pdf>
5. http://www.ilo.org/wcmsp5/groups/public/---ed_emp/---emp_ent/documents/publication/wcms_432859.pdf
6. See here for some of the concerns around the sustainability of large hydropower projects: http://www.aida-americas.org/sites/default/files/featured_pubs/a_civil_society_manifesto_for_real_climate_solutions.pdf

Why should investors pay attention to human rights?

Failing to adequately consider human rights impacts when pursuing renewable energy investments not only goes against international standards and legal obligations, but could also jeopardise the financial returns and long-term success of an investment, considering the associated legal, reputational and operational risks.

The human rights challenges of land-reliant renewable energy projects are similar to those in the extractive industry because of their common large land-use footprints. Within the extractive sector, research shows significant costs to investors as a result of the disregard of human rights.⁷ These costs arise from a range of factors including an erosion of social license to operate, administrative proceedings, litigation, poor

publicity, demonstrations, blockades, damage to property, violence and deaths.

Integrating human rights considerations early on in the investment decision-making process, and building strong and equitable relationships with affected communities, can reduce the likelihood of conflicts that might undermine a project's success and help ensure that all stakeholders benefit from the investment.

Investors have an opportunity to shape a new energy system that holds human rights at its core and emerge as champions of best practices in multi-stakeholder processes. Investing in community-led projects is an alternative to ensure this is achieved and that projects respond to the visions and desires of a community and safeguard its control over the land, while producing a financial return.

Labour rights and social dialogue in a just transition

Social dialogue between workers, employers and government is key to ensure that labour rights are respected in a just transition to a low-carbon economy. Crucially, this includes respecting the rights of fossil fuel workers whose jobs and livelihoods are at risk due to closure of operations as well as workers in the renewable energy sector. In the renewable energy sector, respecting labour rights entails providing decent work for all in line with the core ILO conventions throughout company supply chains. Although this briefing does not cover labour rights, these are also relevant for renewable energy investors including health and safety, freedom of association and collective bargaining, migrant workers' rights, etc. For more information see the International Trade Union Confederation's [Just Transition Centre](#).

7. https://static1.squarespace.com/static/556c0de7e4b0518b1fa5df44/t/57165311a3360ca1d47d2301/1461080851778/IAN_Managing+Ten-ure+Risk_FINAL_.pdf

2. INVESTORS' HUMAN RIGHTS RESPONSIBILITIES



The [UN Guiding Principles on Business and Human Rights](#) (UNGPs) set out states' duty to protect against human rights abuse by third parties; companies' responsibility to respect human rights, which is independent of states fulfilling their own human rights duties; and both actors' differentiated roles in providing, or facilitating, access to remedy when human rights abuses occur. These responsibilities extend to investors as they may cause or contribute to adverse human rights impacts, or their operations, products, or services may be directly linked to an adverse impact. Investors are especially well situated to drive best practices in the projects in which they invest.

While the investors' response will depend on the nature of their involvement with adverse impacts, the expectation of the UN Guiding Principles is that investors, like other businesses, undertake meaningful human rights due diligence to establish whether they could be causing, contributing to, or be linked to adverse human rights impacts. The UNGPs state: "Where a business enterprise contributes or may contribute to an adverse human rights impact, it should take the necessary steps to cease or prevent its contribution and use its leverage to mitigate any remaining impact to the greatest extent possible. Leverage is considered to exist where the enterprise has the ability

to effect change in the wrongful practices of an entity that causes a harm."⁸

Although investors' leverage may vary, all investors have a responsibility to undertake human rights due diligence and cease or prevent contributions to any adverse impacts. When a company identifies that it has caused or contributed to adverse impacts, the UNGPs expect it to provide for, or cooperate in, remediation of the impacts; if a company or an investor is linked to impacts, it should encourage the entity causing the harm to provide remedy, including through grievance mechanisms.

In 2017, the [OECD](#) has released guidance to clarify how to apply due diligence for responsible business conduct for institutional investors.⁹ The guidance establishes investors' responsibility to extend effective due diligence systems with regard to minority ownership stakes and addresses passive investment strategies and index funds.

Various international finance institutions (IFIs) have introduced human rights language into their lending requirements. The latest revision of the [World Bank's social and environmental safeguards](#) now includes a reference to free, prior and informed consent (FPIC) and meaningful consultation.¹⁰

8. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

9. <https://mneguidelines.oecd.org/rbc-financial-sector.htm>

10. <http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/EXTPOLICIES/EXTSAFEPOL/0,,menuPK:584441~pagePK:64168427~piPK:64168435~theSitePK:584435,00.html>

Similarly, the [International Finance Corporation \(IFC\)'s Performance Standards](#) require private sector projects receiving funding from the IFC to secure FPIC under most circumstances and incorporate affected communities' input into their project planning.¹¹ These standards can be used by investors as a starting point to assess human rights risks per sector and to set key performance indicators for companies.

However, given on-going human rights allegations about IFI-funded projects, investors should be aware that investment by an IFI does not imply that a project's human rights risks and impacts have been fully addressed.¹² Therefore, conducting rigorous human rights due diligence separately is key even if IFI funding is present.

Guidance on human rights for investors

This page includes tools and guidance on human rights for finance and banking, including by the Equator Principles, UNEP Finance Initiative, Institute for Human Rights and Business, and others.

11. http://www.ifc.org/wps/wcm/connect/Topics_Ext_Content/IFC_External_Corporate_Site/IFC+Sustainability/Our+Approach/Risk+Management/Performance+Standards

12. <https://business-humanrights.org/en/outsourcing-development-lifting-the-veil-on-the-world-bank-group%E2%80%99s-lending-through-financial-intermediaries>



Residents of Magumu in Kinangop, Nyandarua County during protests on the Naivasha-Nairobi highway; Rapahel Njorge/Nation Media Group

3. WHAT ARE THE HUMAN RIGHTS ISSUES AND RISKS AT STAKE?

This briefing discusses three human rights issues renewable energy projects can impact: (1) rights to land and natural resources, (2) indigenous peoples' rights, and (3) security issues (including intimidation, threats, violence, killings). These three areas represent key risks in the sector based on information provided to Business & Human Rights Resource Centre between 2005 and 2017.

They do not cover the full scope of human rights impacts renewable energy companies can have; other rights including labour rights, right to health and a clean environment, and rights of women and children may also be impacted. It is important for investors to ensure that companies they invest in undertake a full human rights impact assessment.¹³

A key concept related to all three types of impacts discussed is free, prior and informed consent (FPIC).

What is Free, Prior and Informed Consent?

Free prior and informed consent (FPIC) is an internationally recognised principle that a community or group of individual smallholders has the right to give or withhold its consent to proposed projects that may affect the lands its members traditionally own or use.¹⁴

- Free: no coercion, intimidation or manipulation.
- Prior: sufficiently in advance of authorisation or start of activities respecting length of indigenous decision-making processes.
- Informed: information provided on all relevant aspects of the project including its nature, size, duration, locality and areas affected; likely economic, social, cultural and environmental impact, etc.
- Consent: groups may give or withhold their consent following a participative consultation process.¹⁵

13. <http://www.ungpreporting.org/key-concepts/salient-human-rights-issues/>

14. <http://www.forestpeoples.org/guiding-principles/free-prior-and-informed-consent-fpic>

15. Adapted from OHCHR guidance: <http://www.ohchr.org/Documents/Issues/IPeoples/FreePriorandInformedConsent.pdf>

One of the key steps companies can take to prevent and address human rights impacts related to land and natural resources, indigenous peoples, and security is to ensure respect for FPIC. However, it is important to note that FPIC is a procedural right setting out a mechanism that underpins respect for other substantive rights. As such, investors must ensure that they respect community livelihoods as well as substantive rights, such as the rights to life and self-determination, throughout and parallel to their use of the FPIC process.

FPIC is set out as an obligation for States in the UN Declaration on the Rights of Indigenous Peoples and ILO Convention 169. However, even when States do not fulfil this obligation, companies have a responsibility to respect rights, including those of indigenous peoples, under the UN Guiding Principles on Business and Human Rights.

Despite this responsibility, only 10% (5 out of 50) of wind and hydropower companies referred to FPIC in their policy commitments

when contacted by the Business & Human Rights Resource Centre in October 2016. Three out of the five companies referencing FPIC face allegations about this principle on the ground, suggesting a need for improvement both at a policy and implementation level (see infographic below).¹⁶

This underscores the importance of rigorous and rights-based implementation of FPIC. A number of factors and incentives can distort the process even if a company has policy commitments in place, including pressures to initiate project construction and limitations in implementing national FPIC regulations.¹⁷ Official government consultation processes often start after project sponsors have spent significant time and resources on the project and building relationships with authorities leading to an imbalanced set-up for consultations with communities.¹⁸ As the next section discusses, superficial or transactional FPIC processes can increase risks for investors down the line.

Beyond Free, Prior and Informed Consent: Community-based renewable energy

Although FPIC is essential, it cannot on its own guarantee respect for human and collective rights. Its limitations are particularly acute in communities where many persons depend on common resources and customary rights, and have a deep spiritual relation to their environment that cannot be negotiated or compensated. In these contexts, community-centered methods, which focus on empowering communities to make decisions around the use of their resources are more appropriate for renewable energy development. Examples include Grupo Yansa's community-based model for wind farms¹⁹ and the Akwé: Kon Guidelines of the UN Convention on Biological Diversity.²⁰

16. <https://business-humanrights.org/renewable-energy-human-rights>

17. http://dplf.org/sites/default/files/informe_consulta_previa_2015_web-2.pdf

18. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2132887

19. <http://www.yansa.org/about/our-story/>

20. <https://www.cbd.int/doc/publications/akwe-brochure-en.pdf>

WIND POWER

COMMUNITY CONSULTATION COMMITMENTS

	Rights-based identification of affected communities		Commitment to consultation		Free, prior & informed consent
	Yes	No	Yes	No	
Acciona	●		●		○
Dong Energy	●		●		
EDP Renewables	●		●		
Gamesa					
GE*					
Goldwind*					
Guodian United Power Technology					
InfraVest					
Kenwind					
Lake Turkana Wind Power	●		●		
Nareva					
NextEra Energy			●		
Renovalia Energy			●		
Siemens Wind Power*					
Statkraft**			●		○
Statoil	●		●		○
Suncor			●		
Suzlon*					
Vestas*	●		●		●

UTILITY FIRMS (WIND & HYDRO)

COMMUNITY CONSULTATION COMMITMENTS

	Rights-based identification of affected communities		Commitment to consultation		Free, prior & informed consent
	Yes	No	Yes	No	
Berkshire Hathaway Energy					
CLP					●
EDF					●
EGAT					●
Eletrobras			●	●	
Endesa			●	●	
Enel Green Power					●
Engie			●	●	●
E.ON			●	●	
EPM			●	●	○
Ethiopian Electric Power			●	●	
Furnas					○
Iberdrola					●
Mulilo					●
NRG Energy					
Odebrecht Utility					
RWE			●	●	
Shalivahana Green Energy					
Vattenfall					●

HYDROPOWER

COMMUNITY CONSULTATION COMMITMENTS

	Rights-based identification of affected communities		Commitment to consultation		Free, prior & informed consent
	Yes	No	Yes	No	
Comexhidro	●		●		●
Desarrollos Energéticos (DESA)					●
Ecoener-Hidralia					
Genisa					●
Hidro Santa Rita					●
Isagen	●		●		○
Ontario Power Generation	●		●		
Rushydro					●
Sarawak Energy					●
Sinohydro					●
SN Power			●	●	
Statkraft**					●
Three Gorges					●

- = showed commitment in questionnaire
- = showed detailed commitment in questionnaire
- = did not respond to questionnaire; showed commitment on website
- /○ = showed commitment to free, prior & informed consultation; not full consent

* = wind turbine manufacturer without own wind farms

** = primarily hydropower; also owns wind farms

Note: Rights-based identification of affected communities refers to taking human rights impacts into account when identifying communities to consult with.

2.1. Key issue: Land and natural resources

What is the human rights issue?

Renewable energy projects often rely on government permission for access to land or waterways. However, government permission does not guarantee a green light from communities or individuals who may rely on these resources for their livelihoods. This situation gives rise to conflict, which can sometimes escalate, lead to more human rights harms, and be costly for developers and investors.

Mismanagement of land, fisheries and forests could lead to **forced or inequitable displacement** and impacts on communities' **rights to food, access to water, health and livelihoods**. Human rights issues related to land are also inextricably linked to **indigenous peoples' rights and to livelihoods of rural agricultural families** (see section 2.2).

It is estimated that 65% of the world's land area is held by local communities and indigenous peoples under customary systems. However, only 18% of land is formally recognised by governments as such.²¹ Recognition of rights and secure land tenure by governments is key; where it is absent, investors can take steps to ensure rights are respected.

A Harvard University study found significant costs for extractives companies as a result of company-community conflicts, with write-offs up to \$379 million in assets and \$1.33 billion in projected reserves.²² In the case of land-reliant projects, renewable energy companies and investors may be exposed to and have an opportunity to prevent similar costs.

Tools and guidance

[Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests](#)

[New Alliance/Grow Africa Analytical Framework For Land-Based Investments](#)

[Office of the High Commissioner for Human Rights' compilation of key resources on land rights](#)

Risks to investors

See Table 1 on page 15 for further detailed risks to investors

Companies and investors not only have a responsibility to respect rights to land and natural resources, but can also benefit from doing so. Failure to recognise and address land use and rights impacts could lead to:

- increased capital and operating expenditure (i.e., delays in construction, legal costs, etc.);
- delays to or reduced monetisation (delays in production of power, shutdowns, project cancellation);
- lower ability to raise capital (reputational damage, drop in trust); and
- in more extreme circumstances loss of all capital invested.

Investments particularly exposed to risk

- All renewable energy projects requiring land (wind, hydropower, solar, etc.) or water (offshore wind farms near fishing areas, hydropower projects);
- Investments in countries with primarily customary or informal land tenure, weak land governance and natural resource management systems, poor state capacity to implement systems or poor human rights records;
- Projects undertaken by companies with weak land rights commitments (i.e.: no commitment to zero tolerance of land grabs), poor human rights due diligence, consultation and remedy processes.

Questions for investors to ask companies

See page 20 for questions to ask companies on human rights, including land and natural resources



21. http://www.rightsandresources.org/wp-content/uploads/GlobalBaseline_web.pdf

22. https://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf



Kinangop wind construction – from oilnewskenya.com

2.1. Key issue: Land and natural resources

Case #1: Kenya: Kinangop wind park cancellation over land disputes

Investors and project developers cancelled the Kinangop Wind Park (KWP), a \$150M, 61MW wind farm in Kenya in February 2016 following land disputes, protests and a court case over the location of the project.²³ The project consortium was led by Norfund and Africa Infrastructure Investment Fund II, in turn owned by Old Mutual Investment Group and Macquarie. In a statement, the developers said: "due to the consequent material delay, project funds have been depleted and the project can no longer be completed by the shareholders."²⁴ Shareholders reportedly invested Sh6.7 billion (\$66 million) in the project.²⁵

Case #2: France: Benefits of early consultations for offshore wind farm

Engie's wind farm off the islands of Yeu and Normoutier in France illustrates the value of early consultations. After 2.5 years of consultations and negotiations, Engie was able to receive consent from local fishermen originally opposed to the project.²⁶

The project is currently undergoing development with construction planned to begin in 2019. The wind farm is planned to be operational until 2041, providing decades of stable profit for a comparatively short period of consultations. Having received the consent of the local community early on, Engie has been able to avoid conflicts or protests that could have been costly and delayed project development.

Case #3: Western Sahara/Morocco: Investors decline funding solar project planned in disputed territory

International investors including KfW Development Bank and the European Investment Bank have stated they will not fund solar energy projects in Western Sahara, a disputed territory controlled by Morocco.²⁷ Local advocates and NGOs have raised concerns about the location of upcoming solar projects by the Moroccan Agency for Solar Energy at Boujdour and El Aaiun in Western Sahara, citing the need to obtain consent of the Saharawi people for projects taking place on their lands.²⁷ Moroccan investors continue to be involved.

23. <https://www.equitableorigin.org/2016/04/kenya-wind/>

24. <http://news.trust.org/item/20160223123846-9mdhy?source=fiOtherNews2>

25. <https://www.equitableorigin.org/2016/04/kenya-wind/>

26. <https://business-humanrights.org/en/engie-renewable-energy-human-rights>

27. <http://uk.reuters.com/article/morocco-solar-idUKL5N0L92J220140204>

28. <http://www.wsrw.org/a105x3692>

2.2. Key issue: Indigenous peoples' rights

What is the human rights issue?

With approximately 250-350 million people worldwide, indigenous peoples make up 5% of the world's population. Many indigenous communities have been historically marginalised, including groups pushed into hot and windy lands that had once been considered resource scarce, but are now attractive for renewable energy projects.

As climate change threatens the existence of many indigenous peoples, they can be natural allies for renewable energy if their rights are respected.

Although indigenous peoples' rights to self-determination and governance are set out in international law, they are often not respected in national contexts. Projects can negatively impact indigenous peoples' rights through forced relocation, restricted **access to culturally significant territory and/or territory with critical ecosystem services (i.e. farmland, water resources)**, negative impacts on their **livelihoods and cultures**, failure to respect their **right to free, prior and informed consent**, and failure to pay **just and fair compensation**.

International norms and conventions

[UN Declaration on the Rights of Indigenous Peoples](#)

[ILO Convention 169 - Indigenous and Tribal Peoples Convention](#)

Tools and guidance

[Tools, guidance from NGOs and others](#)

[Equator Principles III](#)

[IFC Performance Standards and Guidance Notes](#)

[European Investment Bank's Standard 10](#)

Risks to investors

See Table 1 on page 15 for further detailed risks to investors

Companies and investors not only have a responsibility to respect indigenous peoples' rights, but can also benefit from doing so. Failure to address impacts on indigenous peoples' rights could lead to:

- increased capital and operating expenditure (i.e., delays in construction, legal costs, etc.);
- delays to or reduced monetisation (delays in production of power, shutdowns, project cancellation);
- lower ability to raise capital (reputational damage, drop in trust); and
- in more extreme circumstances loss of all capital invested.

Investments particularly exposed to risk

- Investments in countries with indigenous populations, whether or not these are formally recognised by the government, particularly in jurisdictions with a history of permitting projects on indigenous lands against their wishes, carrying out violence against or forced relocation of indigenous peoples.
- Projects undertaken by companies with weak commitments to respecting indigenous peoples' rights (including lack of commitment to robust community consultation or FPIC)
- Projects undertaken by companies with weak human rights due diligence, consultation and remedy processes.

Questions for investors to ask companies

See page 20 for questions to ask companies on human rights, including indigenous peoples' rights





Protest against Oaxaca wind farm, mexiconewsdaily.com 2015

2.2. Key issue: Indigenous peoples' rights

Case study #1: Mexico: Oaxaca wind farms delayed over concerns around FPIC

Eólica del Sur (formerly known as Mareña Renovables) is the largest of several wind farm projects planned in the Mexican Isthmus of Oaxaca. Preneal, a Spanish development company, obtained a land lease from the State Government of Oaxaca and sold the rights to a consortium of Mexican and international investors. The Mareña Renovables project reached financial close in February 2012, with loans from a syndicate of banks led by the Inter-American Development Bank (IDB).

The land leased to Mareña Renovables was under a customary open-access use regime that benefited primarily landless fisherfolk, who have a strong spiritual relation to the project site.²⁹ Conflicts broke out over the failure to respect their right to free, prior and informed consent, which they alleged was not obtained under the original land lease.³⁰ In December 2012, a federal judge issued an injunction to suspend the project in response to a lawsuit presented by community members. The same month, seven indigenous communities submitted a complaint to the

grievance mechanism of the IDB. The consortium eventually decided to put the project on hold in early 2013.

In 2014, the planned project was moved to a new site and renamed Eólica del Sur. For the first time after the energy reform, the Mexican Government undertook a consultation process. Shareholders were closely monitoring the consultation to assess whether this time ILO Convention 169 was respected and to potentially reinvest in the new site. Community members and civil society observers alleged serious shortcomings with the process, including verbal threats by state authority representatives, contracts and authorizations signed prior to and during the consultation, and governmental interference in the process in favour of the project.³¹ The Mexican Government closed the consultation in June 2015, claiming that the community had given its free, prior and informed consent to the project. A few weeks later, more than 1,200 community members filed a lawsuit contesting the government-sponsored consultation. The court issued a second injunction halting the project, and some of the shareholders decided at this point not to proceed with the investment. The project continues to be stalled as of March 2017.

29. <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40671375> ; see also: <https://tierrayterritorio.wordpress.com/2012/02/01/la-asamblea-de-comuneros-ikojts-de-san-dionisio-del-mar-desconoce-y-revoca-contrato-con-empresa-eolica-preneal/>

30. <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=40671375>

31. <http://redtdt.org.mx/wp-content/uploads/2015/06/Tercer-reporte-de-la-Misi%C3%B3n-de-Observaci%C3%B3n-de-la-consulta-ind%C3%ADgena-en-Juchitan.pdf>



Accountability Counsel

2.2. Key issue: Indigenous peoples' rights

Case study #2: Kenya: Lake Turkana Wind Power faces concerns around indigenous peoples' rights

Lake Turkana Wind Power is poised to build the largest wind farm in Africa, with a planned capacity of 310 MW covering 162 km². The project has been linked to allegations of increased alcoholism, prostitution, and violence due to an influx of people into the area, as well as failing to respect indigenous peoples' rights, land rights, and FPIC. Lake Turkana Wind Power states that it has respected the rights of all affected communities in the area. It previously held that the pastoralist groups affected by the project are not indigenous and therefore FPIC was not necessary.³² More recently, the company has stated that it respects indigenous peoples' rights and would engage with affected communities regardless of indigenous status.³³ The project has been subject to legal and administrative disputes. It is due to begin operations in 2017.

Case study #3: Sweden: Statkraft wind farm adopts changes following concerns around indigenous peoples' rights

In 2012, the indigenous Jijnjevaerie Saami village submitted a complaint to the Swedish and Norwegian National Contact Points (NCPs) to the OECD Guidelines concerning Statkraft's planned wind power project in the area where villagers engage in reindeer herding.³⁴ In February 2016, the NCPs found that Statkraft complied with the OECD Guidelines, but also provided recommendations for how the company could work in a manner that better promotes indigenous peoples' rights.³⁵ Following the decision by the NCPs, Statkraft and the community reached an agreement in six months.³⁶ The project experienced delays that may have been avoided through earlier agreements with the local communities. However, the company's openness to enhance its approach following the OECD complaint has been key to ensure that the project is now able to move ahead.

Case study #4: Mexico: Dam cancelled following concerns from indigenous communities

The Cerro de Oro dam in Mexico was co-owned by Comexhidro and the Latin Power III fund (managed by Conduit Capital Partners), and partially financed by the Overseas Private Investment Corp (OPIC).³⁷ Indigenous communities submitted a complaint to OPIC's Office of Accountability raising concerns about the impact of the dam on their safety, access to water, and fishing areas. The project had been planned to be a three-year, \$30 million project, and construction had already begun in 2010. However, the complaint and community protests forced construction to be halted in February 2011, resulting in losses for the investors. After dialogues with OPIC, local and regional government officials, the project was suspended.³⁸

32. <http://business-humanrights.org/en/kenya-report-on-renewable-energy-projects-impacts-on-indigenous-communities-lake-turkana-wind-power-responds#c133647>

33. <https://business-humanrights.org/en/lake-turkana-wind-power-renewable-energy-human-rights>

34. http://www.oecdwatch.org/cases/Case_280

35. http://www.oecdwatch.org/cases/Case_280/1576/at_download/file

36. http://nettsteder.regjeringen.no/ansvarlignaringsliv-en/files/2016/08/ENG_Press-release-on-agreement_FINAL.pdf

37. <https://business-humanrights.org/en/mexico-cerro-de-oro-dam-impacts-indigenous-communities-near-santo-domingo-river>

38. <http://www.accountabilitycounsel.org/communities/past-cases/mexico/the-case/>

2.3. Key issue: Security

What is the human rights issue?

Ensuring the security of operations while respecting the rights of local communities, workers and contractors is a key concern for renewable energy projects, particularly in areas of weak governance, conflict or post-conflict zones.

Whether security arrangements involve public forces, private contractors or a mix of both, taking potential human rights impacts into account is key. Although the level of control companies can exercise over public security forces varies, this does not shield them from responsibility and consequences of human rights allegations involving security personnel protecting their operations.

Potential impacts can range from **threats** and **intimidation** of community members or human rights defenders, to the use of **violence** by security forces, and in extreme cases to **killings**.

Who are human rights defenders?

Human rights defenders are individuals or groups involved in the peaceful promotion or protection of human rights. This term covers a wide range of actors from community members or workers advocating for their rights, to civil society representatives, human rights lawyers, and many others.

Global Witness estimates that 2015 was the worst year for killings of environmental and human rights defenders, with the hydropower sector linked to 15 killings. In 2016, the UN Special Rapporteur on Human Rights Defenders called on companies to adopt a zero-tolerance approach to killings and violence against defenders.³⁹

Tools and guidance

[Voluntary Principles on Security and Human Rights](#)

[Security and human rights knowledge hub \(DCAF & ICRC\)](#)

[Security and human rights: UN Global Compact Dilemmas Forum](#)

Risks to investors

See Table 1 on page 20 for further detailed risks to investors

Companies and investors not only have a responsibility to respect human rights related to security, but can also benefit from doing so.

Failure to address security impacts could lead to:

- increased capital and operating expenditure (i.e., delays in construction, legal costs, higher security costs, etc.);
- delays to or reduced monetisation (delays in production of power, shutdowns, project cancellation);
- lower ability to raise capital (reputational damage, drop in trust); and
- in more extreme circumstances loss of all capital invested. Investments particularly exposed to risk

Investments particularly exposed to risk

- Investments in countries with weak governance, poor human rights records or in conflict or post-conflict zones
- Projects undertaken by companies with weak commitments to respecting human rights in the context of security (including requiring human rights training for public and private security forces)
- Projects undertaken by companies with weak human rights due diligence and remedy processes
- Projects undertaken by companies without a process to evaluate and remedy security and human rights risks or a commitment to zero tolerance to killings and violence against human rights defenders.

Questions for investors to ask companies

See page 15 for questions to ask companies on human rights and security



39. https://www.protecting-defenders.org/sites/protecting-defenders.org/files/environmentaldefenders_0.pdf



Community protest against Agua Zarca Dam; SOMO 2016

2.3. Key issue: Security

Case study: Honduras: International investors consider divesting from Agua Zarca dam following killing of indigenous rights defender

Berta Cáceres's killing in 2016 was a grave reminder of security concerns around renewable energy projects. The indigenous community leader and human rights defender was protesting the Agua Zarca hydropower project claiming the failure of the project developer, DESA, to obtain the free prior and informed consent (FPIC) of the Lenca people. COPINH, the organization she led, continues to protest the project on behalf of the Lenca people and continues to face threats and intimidation.⁴⁰ DESA, whose staff members are under investigation for Berta's murder, recently stated that all security forces hired by the company abide by human rights policies and that FPIC was secured for the project, indicating a disconnect between the company's policies and events on the ground.⁴¹

FMO, the Dutch development bank investing in the project, conducted an independent fact-finding mission and issued a report, which found that FPIC was not obtained from the Lenca people prior to project approval. It also raised concerns about the impact that divestment could have on those communities who supported the project. COPINH has been vocal about its opposition to FMO's mission report, claiming that it ignores DESA's responsibility for the violence in the area and instead blames the local communities. FMO has announced its intention to exit the project and has undertaken a process to consult with communities on how to do so responsibly.⁴²

40. <http://www.goldmanprize.org/recipient/berta-caceres/>

41. <https://business-humanrights.org/en/desarrollos-energ%C3%A9ticos-desa-renewable-energy-human-rights>

42. <https://www.fmo.nl/agua-zarca>

Table 1 summarises ways in which poor management of human rights can harm investments in land-reliant sectors.

TABLE 1: POTENTIAL HARMS TO INVESTORS

<p>Increase in capital expenditure and one-off costs</p>	<p>Planning/construction</p> <ul style="list-style-type: none"> • Extension of planning and/or construction phase costs • Modification of project design and associated expenses and sunk costs <p>Legal/semi-judicial</p> <ul style="list-style-type: none"> • Lawsuits over violations of local and national laws • Complaints under the OECD Guidelines and similar grievance mechanisms⁴³
<p>Increase in operating expenditure</p>	<p>General</p> <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, etc. <p>Personnel</p> <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 <p>Redress</p> <ul style="list-style-type: none"> • Compensation, fines and increased social and environmental obligations to the community
<p>Delayed or reduced monetization</p>	<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
<p>Reduction or loss of ability to raise capital</p>	<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

43. <http://sloanreview.mit.edu/article/investors-required-by-oecd-to-broaden-due-diligence/>



4. WHAT IS THE ROLE OF INVESTORS?

"Hydropower station 1", Lukas Pb/Flickr 2013 (CC BY 2.0)

Investments in renewable energy take place through a number of different capital tools. These range from direct investments, to indexed products, to pooled vehicles. Some investors have decision-making authority over projects, while others have no visibility into the underlying investments of the vehicle to which they have committed. Investors may also play a role in financing renewable energy projects through their positions in financial services companies, such as banks, that in turn provide financing for projects (as highlighted recently in the Dakota Access Pipeline project).

As investors consider their exposure to, and ability to address, human rights challenges, their approach will vary by asset class (see Table 2 below). Investors may be as intimately involved in an investment as holding a board seat within a development company, or they may hold their exposure in an indexed fund where transparency, and ability to direct the investments, are more limited. Depending on the asset class, and the number of intermediaries, investors may be many steps removed from the projects on the ground.

Some asset classes – such as fixed income and public equities – are highly liquid. They offer investors the opportunity to use their ownership rights through voting and engagement all the way

to divesting. Others, such as private equity, real estate and real assets, may require a multi-year commitment, perhaps lasting a decade or more. They provide a meaningful opportunity for investors to advance a human rights agenda pre-commitment. Once this commitment is made, unless restrictions have been placed into the initial agreement, investors may lose the ability to require that human rights policies or practices be implemented and it may be costly, or unfeasible, to leave the investment (see private equity funding spotlight on page 19).

A recent study focused on the mining industry found that the most effective management of mining companies' community relations involved "front-loading" the company's investment in engagement – that is, investing early on in the planning of a project to win community support and goodwill, prior to construction and operations. It found that similar efforts later in project lifecycles were more expensive and far less durable,⁴⁴ since lack of community support early on may require the need for greater investment later, with no guarantee of regaining community trust.

Taking human rights into account prior to investments is the most impactful, particularly for illiquid investment.

44. https://www.hks.harvard.edu/m-rcbg/CSRI/research/Costs%20of%20Conflict_Davis%20%20Franks.pdf

TABLE 2: INVESTMENT OPTIONS, TIMING AND INFLUENCE, BY ASSET CLASS

	Climate Change, Energy or Resources	Timing and liquidity	Investors' ability to influence	Best moment of intervention
Fixed Income	Tax-Exempt Green Bonds, Corporate Commitments, Screened Corporate Bonds	Relatively liquid	Limited; can be increased by signalling pre-issuance appetite for bonds based on criteria	As part of investment selection criteria; potential influence over use of proceeds
Public Equity	Actively Managed Sustainability Funds, Corporate Commitments Sustainability-Focused Equity Strategies	Highly liquid	Potentially significant via shareholder engagement, resolutions, and divestment	Interventions can be successful prior to, as well as during, the holding period
Hedge Funds	Green Long/Short, Renewable Energy Projects and Managers	Dependent on product structure	Dependent on product structure	Prior to subscription
Private Equity	Renewable Energy Projects, Infrastructure	Lock-up periods may last more than 10 years	Extremely strong prior to capital being committed or renewed	Prior to commitment
Power Purchase Agreements and Direct Investments	Renewable Energy Projects and Managers, Infrastructure	Lock-up periods may last more than 10 years	Generally extremely strong prior to capital being committed or purchase agreement finalized	Prior to investment
Private Debt	Infrastructure, Renewable Energy Projects	Relatively illiquid, time period variable according to agreement	Strongest prior to capital being committed	Prior to lending
Real Estate	Green REITs, LEED Certified Properties	Lock-up periods may last more than 10 years	Strongest prior to capital being committed	Prior to subscription
Real Assets	Power Infrastructure	Lock-up periods may last more than 10 years	Strongest prior to capital being committed	Prior to subscription
Financial Institutions	Debt financing across projects	N/A	While technically not an asset class, investors in financial institutions can exert pressure, based on their type of investment and the institution's willingness to finance specific projects	While holding a position

While the best moment for engagement for most asset classes is prior to investment, there are steps investors can take if human rights allegations are uncovered after an investment has been made (see examples below). Even investors who are connected to projects with human rights allegations through shares in banks or entities that are ultimately providing project financing have an opportunity to speak out by calling on their intermediaries to act.

An active stance on human rights issues by investors can be a strong complement to the pressure applied on projects and companies from public policy makers and civil society

organizations to respect human rights.

While divestment from a problematic asset has historically been a way of avoiding exposure to its negative consequences, it is but one among many strategies to improve policies and practices. In particular, divestment may prevent investors from exercising their leverage to improve the human rights situation. In the public markets, coordinated shareholder campaigns have been successful in improving the human rights records of traded companies, and their experiences can be replicated in the context of renewable energy projects.

A Stranded Assets Approach to Human Rights Issues?

The concept of stranded assets has been used as a measurement of the impairment of an asset to be recorded on a balance sheet as a loss of profit. The term has become prominent in environmental investment circles as a way of conceptualizing the environment-related risk factors affecting fossil fuel companies. In a low carbon demand scenario, the value of a company would be eroded by investments that may be stranded. In the same way as the stranded asset approach has been used in the fossil fuel context, it can provide a framework for investment decisions in the case of significant human rights risks. The lack of proper human rights policies and practices can increase the risk that an investment becomes a stranded asset if widespread opposition leads to a cease of operations, for example, as in the case of the Cerro de Oro dam profiled in the case study above.

Spotlight: The role of private equity funds

Given the major role of private equity in the renewable energy space, we analyse in more detail some strategies for this asset class to elevate human rights best practices.

As noted previously, investors have the most influence on a fund's practices with respect to human rights at the time they are negotiating a capital commitment to a fund. In particular, the initial anchor investor is fundamental to the successful fundraise of a private equity fund, which affords it special clout in getting the fund's sponsor to agree to strong human rights practices for the fund. Other prospective limited partners (LPs) also have a strong ability to influence the fund.⁴⁵ In general, LPs can condition their commitment to a fund on:

- (i) the sponsor abiding by certain investment restrictions or guiding principles which can be linked to human rights (referred to as "human rights principles" below);
- (ii) negotiating for certain rights that allow the LP to monitor the fund's operations during the life of the fund and adherence to the human rights principles agreed to; and
- (iii) negotiating for certain rights in the case the fund does not follow the human rights principles as initially negotiated. These terms can be negotiated to be included in the Limited Partners Agreement and therefore apply to the whole fund and every investor, or can be included in a side letter provision that will apply only to the specific LP.

See Annex I on page 27 for a few highlighted examples of provisions that fall into the above categories.

45. In the case of an anchor or LP in the first of a series of funds, the fund sponsor is especially sensitive to satisfying LPs so that they invest in the whole fund family in the future. An LP can therefore use the potential investment in future funds as leverage for the consideration of human rights factors.

12 QUESTIONS FOR INVESTORS TO ENGAGE WITH COMPANIES

The following questions can serve as a starting point to help investors evaluate whether renewable energy companies in their investment portfolio are addressing human rights adequately – both directly and via investments into funds and other pooled vehicles. Asset owners can request that their asset managers ask companies these questions.

Investors must be cautious not to rely solely on company reporting and wherever possible corroborate data and input from local community members or other affected individuals and groups. Collaboration with other investors can help pool resources and ensure input from a wider range of stakeholders. To ensure this happens more broadly in the sector, proactive investors can also exchange best practice through dedicated networks, fund and support field-wide research and data gathering.

The questions are primarily focused on renewable energy project developers. If investments are in other types of actors in the renewable energy sector (turbine manufacturers, engineering and construction contractors, operation and maintenance providers), investors should seek to understand how these companies are ensuring that the project developers with whom they are working follow these standards.

In addition to these questions, investors should engage with companies in-depth when specific concerns arise (see actionable next steps in section 6).⁴⁶

Note: For more in-depth engagement, investors can use Equitable Origin's performance standards⁴⁷ developed specifically for renewable energy and Ojuso, a new collaboration platform connecting investors to communities to enhance accountability and dialogue in the renewable energy economy.⁴⁸



POLICY COMMITMENTS

- 1 Does the company have a publicly available commitment to respect human rights referring to international standards? Does the company expect its business partners to adhere to the same human rights commitment?
- 2 Does this commitment address land, indigenous peoples' rights and security as well as other human rights issues found to be salient for the project (including labour rights)?

EVALUATING COMPANY RESPONSES

Click for further [tools and guidance on policy commitments](#)

- Investors should look for human rights policy commitments in place referring to international standards (including the International Bill of Rights or the UN Guiding Principles on Business and Human Rights) as well as an expectation that business relationships (e.g. co-developers and key suppliers) adhere to the same level of commitments. The expectation of business partners is especially relevant to renewable energy companies that are not directly developing the project (i.e.: turbine manufacturers, engineering and construction contractors, operation and maintenance providers).
- Companies should have policy commitments in place including but not limited to respecting land rights (including zero tolerance for land grabs and participatory consultations with both land owners and land users), indigenous peoples' rights (including FPIC, right to self-determination referencing UN Declaration on the Rights of Indigenous Peoples and/or ILO 169) and security of communities, workers and human rights defenders (including zero tolerance of killings, violence, and intimidation; respecting human rights while carrying out security). Other salient human rights issues for which companies should have a policy could include labour rights.

46. Note: To address workers' rights more specifically, the Committee on Workers' Capital has developed Guidelines for the Evaluation of Workers' Human Rights and Labour Standards: http://www.workerscapital.org/images/uploads/CWC_Guidelines-Workers%20Human%20Rights%20and%20Labour%20Standards_final_Feb17.pdf

47. https://d2oc0ihd6a5bt.cloudfront.net/wp-content/uploads/sites/1738/2016/05/EO100_Standard_for_Responsible_Energy.pdf

48. <http://www.ojuso.org/>

DUE DILIGENCE AND EMBEDDING HUMAN RIGHTS

- 3 Does the company have a human rights management and governance system in place that assigns day-to-day responsibility for human rights issues and provides for board oversight?
- 4 How does the company identify its salient human rights issues⁴⁹ related to renewable energy projects and which issues has it identified?
- 5 Does the company have a human rights due diligence process in place to manage human rights issues and if so, what changes has it made as a result of this process?

EVALUATING COMPANY RESPONSES

Click for further [tools and guidance on due diligence](#)

- Investors should encourage companies to demonstrate lines of responsibility for managing human rights impacts, from the project and managerial level, through the executive suite and the board. Board oversight may include charging specific board committees with overseeing and addressing human rights issues. Linking board member, executive and managerial compensation to the company's human rights policy is a good indication of clear responsibilities.
- Companies should explain how they identify which human rights issues are the most salient (at risk of the most severe negative impact through the company's activities and business relationships) to their renewable energy operations. This process should include inclusive and participatory consultations with affected individuals and groups.
- Due diligence processes should involve undertaking risk and impact assessments that include a human rights dimension, integrating and acting on findings, tracking and evaluating actions, and managing two-way ongoing communications externally including to affected individuals and groups. Investors should favour companies that have robust human rights due diligence processes in place and report on their policies, practices and performance, as well as lessons learned and changes made over time.
- Companies should have qualified team expertise (internal or contracted), appropriate to the size, nature, and impacts of a given project, who are trained in identification and management of human rights impacts of projects.

CONSULTATIONS

- 6 How does the company identify and consult with affected communities to ensure their rights are respected?
- 7 How does the company ensure free, prior and informed consent (FPIC) has been obtained for projects affecting indigenous peoples? Does FPIC extend to non-indigenous peoples?
- 8 Are there third party mechanisms in place to monitor company relations with community members and ensure that all necessary steps are taken?

49. The human rights at risk of the most severe negative impact through the company's activities and business relationships. For more information, see here: <http://www.ungpreporting.org/key-concepts/salient-human-rights-issues/>

EVALUATING COMPANY RESPONSES

Click for further [tools and guidance on consultations](#)

This section is primarily relevant to project developers. However, investors should seek to understand how other companies in the sector in which they may invest (turbine manufacturers, engineering and construction contractors, operation and maintenance providers) are ensuring that the project developers with which they are working follow these standards.

- Companies should explain how they identify potentially affected, individuals or groups using a rights-based approach. This involves examining what potential rights could be affected rather than using other indicators such as distance from the project or officially recognized indigenous peoples to establish boundaries for potential impacts. Directly engaging with communities and local experts in this process is key.
- Companies should explain their processes for undertaking consultations prior to beginning a project. This includes how they ensure the information provided is accessible to affected groups as well as how their consultations are culturally sensitive and inclusive of all community members, especially those who may be marginalised for reasons of gender, race, ethnic origin, social status, age, religion, wealth or income or other considerations. This requires close collaboration with local experts to secure trust. They also should demonstrate how they ensure that consultation is a two-way process, and community input is incorporated into risk identification and mitigation planning. If the project involves resettlement, negative impacts to livelihood, or loss of access to critical resources / ecosystem services (e.g. water bodies, farmland, grazing land), these inclusive consultations should cover resettlement plans, benefit sharing, compensation to be set in agreement with affected groups, as well as grievance and redress mechanisms. Consultations should be on-going rather than one-off processes and two-way, such that communities have opportunities to have their feedback on project design and execution considered. Grievance mechanisms should be easy to access, fair and without risk of retribution to those who use it (see more information below)
- If projects affect land users and rights holders (both women and men), companies should have processes in place to ensure FPIC has been obtained. This involves verification of government consultation processes through engagement with local groups or undertaking their own consultations to seek consent if they find it has not been obtained. Companies should explain their processes to adjust and modify plans based on communities' feedback. This is meant to be a substantive, not merely a procedural right.

SECURITY

9

What steps does the company take to ensure that its own personnel, private security companies it contracts with, and/or government forces providing security to its projects, respect the rights of workers and community members, including those who may oppose its projects?

10

Have the company's projects been linked to violence against external stakeholders in the past and if so how was this addressed?

EVALUATING COMPANY RESPONSES

Click for further [tools and guidance on security](#)

- Companies should cite steps they take to ensure security providers respect human rights. This can include providing information on human rights trainings to security forces, clauses in contracts regarding zero tolerance of killings, violence and intimidation, implementing practices outlined in the Voluntary Principles on Security and Human Rights or only contracting with companies certified under the International Code of Conduct for Security Providers. Companies can include breach of contract provisions based on security violations.
- If projects have been linked to violence against external stakeholders in the past, the company should be able to describe how this was addressed including remediation and changes to its policies and management systems to ensure prevention of recurrence.

REMEDY

- 11** How does the company ensure its non-judicial grievance mechanism is effective in addressing concerns and providing remedies for negative human rights impacts to affected communities and workers at each project site?
- 12** How does the company respond to allegations of human rights abuses by external parties (such as civil society)?

EVALUATING COMPANY RESPONSES

Click for further [tools and guidance on remedy](#)

- When a company identifies that it has caused or contributed to adverse impacts, the UNGPs expect it to provide for, or cooperate in, remediation of the impacts; if a company is linked to impacts, it should encourage the entity causing the harm to provide remedy, including through grievance mechanisms.
- Companies should demonstrate that they have grievance mechanisms accessible to affected community members and workers. These mechanisms are key to ensuring affected individuals and groups are able to raise concerns with the company and can prevent these from escalating if concerns are addressed at an early stage.
- In order to explain how companies ensure their grievance mechanisms are effective, companies can use the set of criteria outlined in the UN Guiding Principles on Business and Human Rights under Principle 31. This includes ensuring grievance mechanisms are legitimate, accessible, predictable, equitable, transparent, rights-compatible and based on continuous learning and consultations.⁵⁰ Involving affected communities and workers in the design and evaluation of the grievance mechanism, including its set-up and the types of remedies it provides, can be a useful indicator for rights-based approaches.
- Companies should establish clear and enforceable redress practices to ensure the performance of commitments, such as in the case of community benefit agreements or resettlements (commitments should have timelines and budgets associated with them in order to ensure accountability).

50. http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Examples of investor engagement

The following examples detail efforts of investors in the oil, gas and mining sectors related to indigenous peoples' rights that renewable energy investors can draw on. It also includes some emerging engagements in the renewable energy sector:

- In 2008, Trillium Asset Management and NEI Investments co-filed a resolution requesting Enbridge to produce a report assessing the costs and benefits of adopting a policy requiring FPIC, which won support from 32% of investors.
- In 2008, after NGO and shareholder engagement led by Intermón Oxfam and Boston Common Asset Management, Repsol adopted its Policy on Relationships with Indigenous Communities with a section related to FPIC and it referenced the UN Declaration on the Rights of Indigenous Peoples and ILO 169. Shareholders led by Storebrand Asset Management and Boston Common Asset Management encouraged Repsol to avoid areas with indigenous peoples living in voluntary isolation such as suspected in Peru's Block 39. Repsol exited Block 39 in 2014.
- In 2009, Talisman Energy, a Canadian multi-national oil and gas company, agreed with the request from investors Batirente and Regroupement pour la Responsabilite Sociale et l'Equite for a third party to conduct a costs and benefits assessment of adopting an FPIC policy and publish the report publicly, with oversight from the World Resources Institute. The company approved a new policy in 2010.
- In 2011, after five years of engagement led by Boston Common Asset Management and Church of the Brethren Benefit Trust, ConocoPhillips, an American multinational oil and gas corporation, revised its human rights position and adopted a policy on indigenous peoples that included specific reference to the UN Declaration on the Rights of Indigenous Peoples and ILO 169.
- In 2015, Boston Common Asset Management staff facilitated the participation of a Maasai activist at the UN Permanent Forum on Indigenous Issues. The activist raised awareness on the problems caused for his people by geothermal power development in Kenya's Rift Valley and possible solutions and remedies.
- In 2015, Sonen Capital led 38 investors in writing to Google (part of Alphabet) expressing concern over its announced commitment to the Kenyan Lake Turkana wind farm, after hearing of community opposition and allegations of human rights abuses.
- In 2017, a coalition of over 130 investors led by Boston Common Asset Management and joined by Storebrand Asset Management, Calvert Research and Management, CalPERS and the Comptroller of the City of New York and representing over \$685 billion assets under management, called on the 17 banks financing the Dakota Access Pipeline to address the Standing Rock Sioux Tribe's request to reroute the pipeline and avoid their territory. The investors cited concerns over reputational and financial risks for banks linked to the pipeline if concerns are not addressed. The banks funding the project earlier agreed to commission a report by a human rights expert identifying opportunities for pipeline companies to adopt international best practice with respect to indigenous peoples in the United States.⁵¹
- In 2016, Norway's \$835 billion Government Pension Fund Global excluded Cairn Energy and Kosmos Energy from its portfolio citing their continuing investment in oil exploration off the coast of Western Sahara. The fund cited further concerns that according to UN law on non-self-governing territories, exploitation of natural resources in such areas can only take place in accordance with the wishes and interests of local people.

51. <https://blog.citigroup.com/2016/11/our-statement-on/>



5. ACTIONABLE NEXT STEPS

"Viewing destruction of the Arroyo Sal, Oaxaca, Mexico"; credit to Accountability Counsel

What can investors do?

Investment into renewable energy is key to tackle climate change. However, there are certain steps investors can take in order to ensure our transition to a low-carbon economy is just, including for the people it affects the most. One way investors can be certain that their renewable energy investments respect human rights is to invest in community-led projects, as these are designed and developed by

the people whose lives will be impacted by such projects. Other investors may choose to put their money into bigger funds or companies. Either way, ensuring meaningful engagement with affected individuals and groups including local community members is key.

The following steps outline key ways to ensure renewable energy investments respect human rights:

PRIOR TO INVESTMENT: ENSURE HUMAN RIGHTS DUE DILIGENCE IS UNDERTAKEN AS PER UN GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS (UNGPS) AS A CONDITION FOR INVESTING:

- **Retail investors:** Include human rights due diligence as per UNGPs in investment selection criteria as a condition for investing.
- **Private equity and/or debt:** As a potential LP, condition commitment to a fund on the sponsor's willingness to abide by certain restrictions or guiding principles on human rights, and require as a condition of investment the provision of rights to ensure the respect of that commitment.
- **Direct investments (private or public equity):** Undertake own human rights due diligence on project/company in line with UNGPs, including by conducting an assessment of the human rights risks involved in the transaction with strong community engagement. Set time-bound action plans as requirements in investment or loan documentation to close performance gaps (e.g. as conditions precedent, covenants, representations or warranties). Require ongoing monitoring and reporting on human rights management and impacts.
- **All investors:** Engage with companies or asset managers using specific questions around human rights (see above) and verify information through engaging with affected individuals and groups or ask asset managers to do so either directly or through a representative organization.

- If human rights issues arise with no indication that the company is adequately addressing these, either:
 - » Decide not to proceed with investment, or
 - » Decide to proceed with investment with strong engagement with the company to address human rights issues.

DURING INVESTMENT: MONITOR HUMAN RIGHTS PERFORMANCE OF INVESTMENTS AND ENGAGE WITH COMPANIES TO ENCOURAGE RESPECTING HUMAN RIGHTS AS PER THE UNGPS. IF THE COMPANY IS NOT RECEPTIVE, INCREASE PRESSURE E.G. THROUGH COLLABORATION WITH PEERS OR DIVEST:

- **Retail investors:** Initiate and/or support shareholder resolutions seeking specific information from companies on respecting and mitigating human rights impacts.
- **Private equity and/or debt, large institutional investors:**
 - » **Direct investment:** Require ongoing human rights monitoring and reporting as per UNGPs in screening criteria for holdings. Engage with portfolio companies facing human rights allegations to encourage respect for rights and work with them to overcome potential obstacles to implement best practice.
 - » In cases where investment is through intermediary institution (i.e.: a bank or company in which investor owns shares provides the project financing): Call on the intermediary institution to engage with relevant companies facing human rights allegations to encourage respect for rights and work with them to overcome potential obstacles to implementing best practice.
- **All investors:** Engage with companies or asset managers using specific questions around human rights (see above) and verify information through engaging with affected individuals and groups or ask asset managers to do so either directly or through a representative organization.
 - » If human rights issues arise, engage with company (directly or via asset manager) to enquire how they have responded and what remedy they provided.

BOTH PRIOR TO AND DURING INVESTMENT: ENGAGE WITH GOVERNMENTS, CIVIL SOCIETY, TRADE UNIONS, COMMUNITIES, AND OTHERS TO ENCOURAGE RENEWABLE ENERGY THAT RESPECTS HUMAN RIGHTS:

- **Engage with communities:** Ensure that community voices are heard at all stages of a project and that communities play a role in defining the due diligence and remedy processes of projects that affect them. Respond to concerns raised by affected communities and civil society and engage with groups raising concerns to ensure responses adequately address concerns.
- **Engage with policy-makers:** Collaborate in joint investor statements or speak out individually to call for a just transition to a low-carbon economy, including strong human rights safeguards in national energy policies and international frameworks (e.g.: UNFCCC's Sustainable Development Mechanism.)
- **Engage with other investors:** Raise awareness of human rights impacts in renewables among peers, and join with other investors in pledge to invest in renewable energy that respects human rights. Use joint investor engagement to call on investee companies to respect human rights when allegations are raised against them.

ANNEX: The role of private equity funds

A practitioner's note: The ability to negotiate for any of the following provisions is often contingent on the size of the investment and the relationship of the LP with the fund sponsor.

i. Investment Restrictions and Guiding Principles

Investment restrictions or investment guidelines to be included in the LPA constrain the ability of a portfolio manager to invest in portfolio companies in the case of potential human rights abuses. This can take the form of an outright ban on such investments, or a limit on how much of a fund's capital can be committed to portfolio companies that do not adhere to the stated policies on human rights, or a percentage limit on the amount of capital that can be committed to any one company that does not meet certain policies. Actions can include:

- Advisory Committee consent to deviations from FPIC or other limiting provisions, to be laid out in the Private Placement Memorandum (PPM) and the LPA. E.g. "Without the consent of the Advisory Committee, the GP will not invest in ____." (This provision, combined with LPAC membership discussed below, gives ongoing governance rights over human rights issues.)
- Inclusion of a fund's commitment to a Human Rights Policy in a side letter, including respect for FPIC. An LP's human rights policy, for example, may be imposed on the fund. E.g., "LP operates under a human rights investment policy and expects funds to have such a policy in place; LP will take the existence of such a policy into account when evaluating investments into funds". If a fund already has a Human Rights Policy in place, an LP can insist that a gap analysis be undertaken to determine if the fund's policy is sufficient and whether any gaps between the two policies should be remedied prior to an LP making a commitment to the fund.
- Pass-through of the Human Rights Policy to the company/investment level. E.g.: "LP operates under a human rights investment policy and expects funds to have such a policy in place; LP will take the existence of such a policy into account when evaluating investments into funds AND will expect the fund to seek implementation or establishment of such a policy in the individual entities or projects in which it invests."
- In connection with such acknowledgements from the fund sponsor, an LP can request certain reporting based on the LPs or the fund's Human Rights Policy – see below.

ii. Monitoring rights

- An LP can ensure that changes are not made to the human rights practices negotiated at the time of commitment by requesting a seat on the limited partner advisory committee (LPAC) of the fund. The LPAC is an advisory committee to the GP that can exert meaningful influence throughout the life of the fund. It is often consulted if any deviation is to be made from the rights and limitations provided for in the LPA.
- LP can require periodic reporting on the human rights policies and practices of portfolio companies for itself or for all investors. For example, reporting provision based on a sample report, with the request that the report be compiled periodically with information from the portfolio companies prior to an investment by the fund.
- Key Person provision linked to a portfolio manager that is particularly committed to human rights. If such Key Person leaves the fund, it can trigger a suspension of the investment period or a termination of the fund, all of which will require discussion with LPs and a vote to continue the fund or not depending on the individual a fund sponsor recommends to replace the Key Person.

iii. Removal and Exit/Excuse Rights

- No-fault termination that allows removal of the GP or Investment Manager with a certain percentage of LP consent. A low threshold should be set (50%-65%) such that LPs have an ability to remove an investment manager that is not satisfactorily abiding by the human rights principles. This is an especially useful tool if several LPs are aligned on the issue.
- For-cause removal that allows removal of the GP or Investment Manager based on a violation of the human rights provisions.
- Exit/Excuse rights from the fund, as a whole, or excuse from certain investments if they do not meet the LPs human rights principles, e.g. if the target of 50% of investments into entities that have subscribed to FPIC is not met or there is one investment that does not meet the standard of the particular LP on human rights issues.

About this briefing

The lead authors of this briefing are Eniko Horvath (Business & Human Rights Resource Centre), Meredith Benton (independent), and Andrea Armeni (Transform Finance), with support from Pascale Deau, Danielle Jezienicki, William Morgan (Sonen Capital) and Kasumi Maeda.

Organizational support:

Business & Human Rights Resource Centre is an international NGO that tracks the human rights impacts (positive and negative) of over 7000 companies in over 180 countries making information available on its nine language website. We seek responses from companies when concerns are raised by civil society. The response rate is over 70% globally.

www.business-humanrights.org

Sonen Capital is a dedicated impact investment management firm. Our name is derived from Social and Environmental investing, and reflects our values and our conviction that investing to generate financial returns and lasting social and environmental impact are not only compatible, but also mutually reinforcing objectives.

www.sonencapital.com

Transform Finance is a field building NGO working with investors and communities to turn capital into a tool for real, transformative social change. Its investor network has committed over \$1.8 billion to be invested in accordance with the transformative finance principles of deep community engagement, non-extractiveness, and fair allocation of risks and returns.

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Note: Experts provided feedback at various stages of the briefing, but did not have discretion over the final content.