*Business and Human Rights Journal* (2025), **10:** 260–266
doi:10.1017/bhj.2025.18

Business and Human Rights Journal

DEVELOPMENTS IN THE FIELD

# Litigating Climate Justice in Renewable Energy Projects: Reflections from *Unión Hidalgo v EDF*

Chloé Bailey[1] and Cannelle Lavite[2]

[1]Senior Legal Advisor, European Center for Constitutional and Human Rights, Germany and [2]Co-Director Business and Human Rights, European Center for Constitutional and Human Rights, Germany
**Corresponding author:** Chloé Bailey; Email: bailey@ecchr.eu

## Abstract

Reflecting on the civil claim filed in France under the French Duty of Vigilance law (LdV) by members of the Union Hidalgo community in Mexico against the energy company Electricité de France (EDF), this article explores interactions between human rights due diligence in renewable energy projects. The lawsuit is one of the first cases brought under the LdV, and the first case claiming violations of Indigenous rights. The rights violations experienced by the community—the lack of free, prior and informed consent and violence against human rights defenders—epitomize the reality of harmful corporate tactics in the energy and extractive industries. Whereas the LdV enshrines a process through which communities affected by harmful corporate practices can access transnational legal avenues for redress, inconsistencies and ambiguities within the law call into question its ability to effectively regulate the human rights activities of French corporations involved in renewable energy projects.

**Keywords:** civil liability; human rights defenders; human rights due diligence; Indigenous rights; *Unión Hidalgo v EDF*

## I. Introduction

The shift away from fossil fuels to renewable sources of energy has become a hallmark corporate response to the climate crisis among European energy companies. Yet these projects have been linked to a broad array of human rights violations, including displacement of communities, impacts on access to land, water and housing, environmental pollution and attacks on human rights defenders.[1] Many are located on lands inhabited by peoples that have a deep economic, social, political and cultural connection to the land which serves as the foundation and object of collective processes and rights, such as property. While affected communities have taken action to assert their rights under domestic and regional legal frameworks, the relatively recent introduction of human rights due diligence laws in Europe establishes a new mechanism to access transnational legal avenues for prevention and redress. However, a case filed by members of the Indigenous community of Unión Hidalgo

[1] Human Rights Council, 'Report of the Special Rapporteur on the rights of indigenous Peoples' A/HRC/39/17 (10 August 2018) 36.

© The Author(s), 2025. Published by Cambridge University Press. This is an Open Access article, distributed under the terms of the Creative Commons Attribution licence (http://creativecommons.org/licenses/by/4.0), which permits unrestricted re-use, distribution and reproduction, provided the original article is properly cited.

https://doi.org/10.1017/bhj.2025.18 Published online by Cambridge University Press

in Mexico to prevent human rights violations resulting from the development of a wind park by French energy company EDF on their lands suggests that these laws are currently failing to meet this objective. As one of the first cases filed under the French Duty of Vigilance law, and the first to claim violations of Indigenous rights, the numerous obstacles to justice faced by the plaintiffs pose important questions on the adequacy of current corporate accountability legal mechanisms in adjudicating Indigenous rights violations in the context of the green transition.

## II. *Unión Hidalgo v EDF*: Challenging Indigenous Rights Violations in the Wind Farm Industry

Over the past decade, the Isthmus of Tehuantepec in the state of Oaxaca, Mexico, has seen a surge of investment from European energy companies seeking to capitalize on the extensive wind power in the region.[2] In parallel, Indigenous communities living on this land have experienced human rights violations connected to the development of this industry. This includes violence and attacks against land and human rights defenders opposing the encroachment of private enterprises onto commonly held land without their consent.[3] In addition, Indigenous communities have been excluded from the financial and social benefits of these projects, becoming further marginalized at the expense of private landowners and the government.

Electricité de France (EDF), a multinational energy company headquartered in France, is one of many corporations to have invested in the development of wind farms in the region. Operating via its local Mexican subsidiary Eólica de Oaxaca, in 2015 EDF started negotiations to develop the Gunaa Sicarú wind park, located in the Indigenous community of Unión Hidalgo. Despite the land being communally held according to Mexican law and therefore requiring the consent of the communal assembly to approve its sale or use,[4] the company gained access to nearly 5,000 hectares of land by concluding usufruct contracts with individual members of the community presenting themselves as 'landowners.' By 2017, EDF had secured an energy supply contract and signed a memorandum of understanding with the Oaxaca state government to construct the wind farm—all in the absence of any prior consultation of Unión Hidalgo community members as required by international and Mexican law.[5]

Members of the Unión Hidalgo community challenged the legality of the usufruct and energy supply contracts under domestic law. Following a legal action brought by members of the Indigenous community in October 2018 the Federal Court ordered the Mexican government to carry out a formal Indigenous consultation process in accordance with the right to free, prior and informed consent (FPIC) protected by International Labour Organization (ILO) Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).[6] Despite this, civil society organizations documented

[2] PODER and ProDESC, *The Dirty Side of the Wind Industry: Development and Human Rights in the Isthmus of Tehuantepec, Oaxaca* (November 2011) 10.

[3] Peace Brigades International Mexico, *Wind Farms and Concerns about Human Rights Violations in Oaxaca* (March 2014).

[4] Presidential Decree published on 13 July 1964.

[5] For further details on the case, see ECCHR, ProDESC, CCFD Terre Solidaire, *Case report* (November 2020) https://www.ecchr.eu/fileadmin/Fallbeschreibungen/CASE_RESPORT_EDF_MEXICO_NOV2020.pdf.

[6] Judicial decisions regarding the writs of amparo No. 376/2018, 377/2018 and 554/2018 issued by the First District Federal Court in State of Oaxaca, Mexico (2018).

https://doi.org/10.1017/bhj.2025.18 Published online by Cambridge University Press

continued failures to guarantee FPIC,[7] resulting in social unrest and conflict within the community.[8]

Therefore, members of the community decided to pursue legal action against EDF under the French Duty of Vigilance Law (LdV). In 2019, with the support of Mexican non-governmental organization (NGO) ProDESC and the European Center for Constitutional and Human Rights (ECCHR), the plaintiffs issued a formal notice to EDF, requesting that it comply with its vigilance obligation by implementing appropriate measures to prevent human rights violations associated with the Gunaa Sicarú project. After EDF dismissed this request, in October 2020 the groups filed a civil lawsuit under the LdV.[9] The lawsuit argues that EDF's Vigilance Plan fails to adequately identify—and take appropriate measures to mitigate—the serious risks of violations of the Indigenous communities' rights to consultation as well as their physical integrity resulting from the project.[10]

In February 2021, the plaintiffs presented a request for precautionary measures to the French court.[11] The urgent request stipulated that the project be suspended until EDF complies with its duty of vigilance. In November 2021 the French civil court dismissed the claim under Article 1 of the LdV for procedural reasons.[12] In a controversial interpretation of the law, the court stated that the lawsuit did not refer to the same vigilance plan of EDF as that mentioned in the formal notice and therefore was not valid. This overly formalistic approach to the vigilance obligation was criticized for misunderstanding the preventive objective of the law and creating barriers to justice for affected communities.[13] In June 2024 the Paris Court of Appeals overturned this decision, ruling that the adoption of a new vigilance plan after the submission of a formal notice does not render the legal action void.[14]

## III. Ambiguities and Inconsistencies: Gaps in Protection under the LdV

Union Hidalgo's struggle for their rights is emblematic of the negative impacts associated with renewable energy projects. However, ambiguities within the text of the LdV pose substantial challenges in recognizing and preventing impacts on land and Indigenous rights. Shortcomings in the implementation of the LdV also illustrate a missed opportunity to promote a fair and sustainable response to the climate crisis by integrating the energy transition within a human rights framework.

[7] Renata Bessi, 'Secretaría de Energía desconsidera recomendación de CNDH e inicia consulta en Unión Hidalgo,' *Avispa Midia* (12 April 2018) https://avispa.org/secretaria-de-energia-desconsidera-recomendacion-de-cndh-e-inicia-consulta-en-union-hidalgo/ (accessed 27 January 2025).

[8] Observatory for the Protection of Human Rights Defenders, a joint program of the OMCT and FIDH, MEX 007/0619/ OBS 051 (18 June 2019); Human Rights Council, 'Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico' A/HRC/39/17/Add.2 (June 2018).

[9] ECCHR, 'Civil lawsuit: French energy company EDF must comply with human rights obligations' (13 October 2020) https://www.ecchr.eu/en/press-release/klage-nach-franzoesischem-lieferkettengesetz-energie-gigant-edf-muss-menschenrechte-achten/ (accessed 3 May 2024).

[10] ECCHR, ProDESC and CCFD, note 5.

[11] This request was presented before the juge de la mise en état in the pre-trial civil proceedings (art 789 of the French civil procedural code).

[12] ProDESC, 'EDF in Mexico: Paris court misses opportunity to prevent human rights violations' (1 December 2021) https://prodesc.org.mx/en/press-release-edf-in-mexico-paris-court-misses-opportunity-to-prevent-human-rights-violations/ (accessed 21 January 2025).

[13] ECCHR, 'Indigenous community seeks access to justice in important hearing before Paris Appeals Court' (5 March 2024) https://www.ecchr.eu/en/press-release/edfs-windpark-in-mexico/ (accessed 3 May 2024).

[14] Paris Court of Appeal, 'Premières décisions de la chambre 5-12 en matière de devoir de vigilance des sociétés' (18 June 2024) https://www.cours-appel.justice.fr/sites/default/files/2024-06/communiqu%C3%A9%20de%20presse%20arr%C3%AAts%205-12_devoir_de_vigilance.pdf (accessed 21 January 2025).

https://doi.org/10.1017/bhj.2025.18 Published online by Cambridge University Press

The vigilance obligation requires that companies take all reasonable measures to identify and prevent severe violations of 'human rights and fundamental freedoms, the health and safety of people and the environment resulting from their activities or those of their subsidiaries, suppliers or subcontractors.'[15] This poses three key challenges for Indigenous communities negatively impacted by renewable energy projects considering asserting their rights under the law.

First, there is no definition in the LdV in which 'human rights and fundamental freedoms' fall within the scope of the vigilance obligation. The collective and land rights of Indigenous Peoples are not enshrined within the French legal system but are recognized in tILO Convention No. 169 and UNDRIP and as such should unequivocally be covered by the obligation. The UN Guiding Principles on Business and Human Rights (UNGPs) frame the responsibility of business enterprises to respect human rights by reference to 'internationally recognized human rights'[16] and state that businesses may need to consider additional human rights protecting individuals belonging to specific groups or populations that require particular attention[17], yet do not explicitly refer to ILO Convention No. 169 and UNDRIP. Further, the revised version of the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises refers to particular adverse impacts on individuals who may be at heightened risk, including Indigenous Peoples, and mentions UNDRIP.[18] Yet the newly adopted Corporate Sustainability Due Diligence Directive fails to adequately protect Indigenous Peoples' rights, only referring to UNDRIP and FPIC in the recitals.[19]

Past or present conflicts over access to and status of land, and the failure to obtain FPIC of Indigenous Peoples prior to the development of large-scale infrastructure projects, are precisely the types of risks that businesses should consider when developing renewable energy projects and adopt reasonable measures to mitigate. In these contexts, it is essential that companies identify their responsibility: to respect international human rights standards, irrespective of whether they are integrated into the domestic legal systems of the countries in which they operate.

Second, the determination of what constitutes 'reasonable measures' is fundamental to the effective implementation of the vigilance obligation—yet the law is silent on the scope and methodology of this obligation of means. When adjudicating cases under the LdV, the French judiciary is tasked with assessing whether the measures taken by a company, operating extraterritorially, were adequate to prevent the realization of human rights risks. In the silence of the law, the UNGPs and OECD Guidelines should be the reference point. These standards emphasize that human rights due diligence requires a dynamic and context-based analysis of risks rather than a general compliance 'catch-all' assessment.[20] For renewable energy projects, companies should assess whether appropriate consultation has taken place both prior to and during project development, taking into account the specific cultural, legal, political and social context in which the company is operating and the vulnerabilities of rights-holders that may be affected by its activities.[21] The extent to

[15] French Commercial Code Article L. 225-102-4, I.

[16] Human Rights Council, 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework,' A/HRC/17/31 (21 March 2011) Principle 12.

[17] Ibid, 14.

[18] OECD, 'Guidelines for Multinational Enterprises on Responsible Business Conduct' (2023) 45.

[19] Directive (EU) 2024/1760 of 13 June 2024 on corporate sustainability due diligence, Recital 33.

[20] Human Rights Council, note 16, Principle 17 (c); OECD, note 18, 19.

[21] Human Rights Council, 'Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises: Extractive sector, just transition and human rights,' A/78/155 (11 July 2023).

https://doi.org/10.1017/bhj.2025.18 Published online by Cambridge University Press

which French courts will be willing to engage on these elements has yet to be tested and will be a key indicator of the future usefulness of the LdV for impacted communities.

Finally, the limitation of the vigilance obligation to suppliers and sub-contractors of French companies where there is an 'established commercial relationship'[22] does not provide an adequate framework for addressing social conflicts linked to renewable energy projects. It imposes an overly restrictive threshold of application, in comparison to the UNGPs, which refer to the broader notion of 'business relationships.[23] The systematic violation of FPIC regularly leads to criminalization and violence against human rights defenders.[24]The perpetrators of these acts are often community members who have no direct business relationship with the project developer yet have been incentivized through corporate tactics that influence and undermine the FPIC process.

This can be seen in Unión Hidalgo, where testimonies from community members show that EDF started discussions with selected individuals to gain rights to the land as early as 2015, offering privileged spaces for information and negotiation. This process led to the emergence of self-described 'landholders committees,' referred to by EDF in project materials as 'commercial partners.' These groups, motivated by the economic benefits promised by EDF, became important supporters of the project. Once the consultation process began, local human rights observers documented coercive acts committed by the landowners, including vote manipulation, intimidation and violence against human rights defenders in the community.

This behaviour is contrary to international standards of responsible business conduct: corporations operating in contexts where there are legal uncertainties over land tenure or pre-existing social and intra-community conflicts should exercise heightened due diligence —similar to what prevails in the situation of conflict-affected or high-risk areas.[25]

## IV. Justice Out of Reach? The Impact of Procedural Challenges

The inequality of arms between individuals and communities predominantly based in the Global South, against powerful corporate defendants in LdV cases is a key cause for concern. Despite the potential of the LdV in supporting access to justice, in practice, the claimants in the EDF case have faced numerous obstacles in asserting their rights under the law.

Corporations have vast financial resources at their disposal and access to specialized legal teams that place them at a significant advantage compared with claimants seeking respect for their rights. This power imbalance is reinforced by the fact that the burden of proof is on the claimants to demonstrate a violation of the vigilance obligation. Claimants are required to not only argue that a vigilance plan is insufficient or inadequately implemented but also prove how compliance with the law could have prevented their own individual damage. Yet vigilance plans published by companies currently only provide a cursory overview of the implementation of the obligation; more detailed information relevant to an assessment of the vigilance measures adopted to address specific risks is withheld by the companies themselves.

The ability to request conservatory measures in contexts where rights violations are ongoing or imminent is an essential element of access to justice and a fundamental function of human rights due diligence. However, for the Unión Hidalgo community, this process has

[22] Art L. 225-102-4, I of the French Commercial code, para 3.

[23] Human Rights Council, note 15, Principle 13 (b).

[24] Business and Human Rights Resource Centre and Indigenous Peoples Rights International, *Protector not prisoner: Indigenous peoples face rights violations and criminalisation in climate actions* (November 2022) 4.

[25] OECD, 'Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas: Third Edition' (2016).

https://doi.org/10.1017/bhj.2025.18 Published online by Cambridge University Press

also been beset with challenges. Following an appeal by EDF, their request for conservatory measures was denied by the civil pre-trial proceedings judge on the basis that the legal claim requesting EDF to modify its vigilance plan (the 'injunction claim') was not admissible under French civil procedural law.[26] The judge considered that the request for conservatory measures was linked to the Article 1 claim, and therefore, without even considering the merits of the latter, rejected both claims on procedural grounds. The claimants filed an appeal in December 2021, which was again challenged by EDF. This second appeal was finally dismissed in March 2023.

The recent decision from the Paris Court of Appeal finally paves the way for a judicial evaluation on the merits of the claim—albeit four years after the case was filed. Yet the Court of Appeal again rejected the request for conservatory measures, despite evidence that community members have continued to face threats and violence due to their opposition to the wind farm.[27] Although the Mexican government announced in 2022 that it had cancelled the power supply contract,[28] the official cancellation of the project remains subject to ongoing legal proceedings. There therefore remains a clear risk that the project may be restarted, and lead to further rights violations of community members.

Similar legal challenges have been encountered in other cases filed under the LdV that have sought to use interim measures or injunctions to modify vigilance plans to prevent ongoing rights violations.[29] This is compounded by corporations making use of procedural challenges to lengthen the proceedings, using their immense financial resources to file new appeals and identify legal loopholes through which to evade responsibility.

## V. Conclusion

As the long overdue political acknowledgement by Global North actors of the climate crisis is met with the adoption of policies supporting the energy transition, the centrality of human rights within this framework must not be forgotten. The energy transition cannot be sustainable if it does not reflect and respond to the factors that have caused the climate crisis, including the over-exploitation of resources and the marginalization of communities by corporate actors. The respect of FPIC and the understanding of what it ultimately protects —the right to self-determination and the possibility for communities most affected by the climate crisis to participate in an energy transition that is just and equitable—is fundamental. This will not be achieved through short-sighted and abstract compliance exercises, implemented with the same extractive industrial logic.

Human rights due diligence laws have the potential to address the longstanding imbalance of power between corporate actors and impacted communities asserting their rights. Instead, the first years of implementation of the LdV suggest an opportunity missed: corporations have been able to pursue extractive projects despite clear evidence of human rights violations, while affected communities navigate complex legal and procedural hurdles in order to prevent further harm. Looking forward, these laws can be used to support a rights-respecting transition to net-zero and ensure access to justice. This will

[26] Based on Article L. 225-102-4 of the French Commercial Code.

[27] ECCHR, 'Paris Appeal Court admits civil lawsuit against EDF's windpark in Mexico' (18 June 2024) https://www.ecchr.eu/en/press-release/paris-appeal-court-admits-civil-lawsuit-against-edfs-windpark-in-mexico/ (accessed 21 January 2025).

[28] Windpower Monthly, 'Mexico cancels contract with controversial EDF wind farm' (7 June 2022) https://www.windpowermonthly.com/article/1788903/mexico-cancels-contract-controversial-edf-wind-farm (accessed 3 May 2024).

[29] See Duty of Vigilance Radar, 'Cases' https://vigilance-plan.org/court-cases-under-the-duty-of-vigilance-law/ (accessed 3 May 2024).

https://doi.org/10.1017/bhj.2025.18 Published online by Cambridge University Press

require legislators, judges and corporations to shift their approach and adopt an interpretation of the law that corresponds to and is shaped by existing standards on human rights due diligence.

**Competing interest.** Both authors work at the European Center for Constitutional and Human Rights, which is a party to the *Union Hidalgo v EDF* case that is the subject of this piece.

**Cite this article:** Chloé Bailey and Cannelle Lavite, 'Litigating Climate Justice in Renewable Energy Projects: Reflections from *Unión Hidalgo v EDF*' (2025) *Business and Human Rights Journal* 10, no. 1: 260–266. https://doi.org/10.1017/bhj.2025.18

https://doi.org/10.1017/bhj.2025.18 Published online by Cambridge University Press