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Defining and Addressing Community Opposition to Wind Development in Oaxaca

A Case Study by Equitable Origin

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Updated January 2016



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Introduction

The last two years mark the beginning of what could prove to be an energy revolution in Mexico—a time of expansion and reorganization with consequences that will reverberate through the global economy and geopolitical system. For the first time since the 1930s, Mexico’s energy resources are open to foreign development and investment, an opening that is driving a development boom. One of several hot spots in this boom is the Isthmus of Tehuantepec, the narrowest land area between the Pacific Ocean and the Gulf of Mexico in the southern state of Oaxaca that holds massive potential for electrical generation from wind power.

The Isthmus is home to a dynamic that is becoming increasingly common around the world as a consequence of the expansion of energy development into new and remote areas: energy development projects within the legal and/or traditional territories of Indigenous Peoples.

On the Isthmus, this overlap of indigenous territories and large-scale energy development has sparked intense conflict between a number of indigenous communities and Mexican government agencies working in support of energy development companies. By most accounts, government attempts thus far to address the concerns of Indigenous People or otherwise defuse conflict in the region have been inadequate and ineffective.

The purpose of this case study is to examine indigenous communities’ opposition to wind energy projects in Oaxaca and make recommendations based on the EO100™ Standard and elements of the Equitable Origin System to address concerns driving that opposition.

Context: Oaxaca’s Wind Energy Boom

The state of Oaxaca is the wind energy capital of Mexico. It is home to 21 wind energy projects encompassing some 1,600 turbines that generate 90 percent of the nation’s wind power.¹ The state is set to continue dominance in wind energy generation, with numerous wind projects in the approval or planning phases. One such project, Eólica del Sur, would be the largest wind project in Latin America upon its completion, with 132 turbines planned for installation and an expected generation capacity of 396 megawatts (MW).²

Mexico’s Wind Power Plan announced in January 2015 is aimed at tripling Mexico’s wind capacity by 2018.

A driving force behind explosive development of wind energy resources is the Wind Power Plan announced by the Mexican government in January 2015. The plan is aimed at tripling Mexico’s generating capacity to 9.5 gigawatts (GW) by 2018, building upon a record-breaking year for installation in 2014, during which time capacity increased by 1 GW to bring the national total to 2.6 GW.³ The foundation for continued fast-paced growth is already in place: state-run Mexican utility Comisión Federal de Electricidad (CFE) plans to auction development rights for five large wind projects from 2015 to 2020.⁴

The goals set by the Wind Power Plan are ambitious—perhaps unattainable—but leave no doubt that the Mexican government is fully committed to supporting and incentivizing large-scale wind projects in Oaxaca for at least the next five years. In pursuit of these goals, the government has

¹ Oaxaca leads the way in Mexico wind, *BNAmericas*, 24 September 2015

<http://www.bnamericas.com/en/news/electricpower/oaxaca-leads-the-way-in-mexico-clean-energy>

² Ibid

³ Analysis: Mexico aims to triple wind capacity, *Wind Power Monthly*, 19 January 2015

<http://www.windpowermonthly.com/article/1329854/analysis-mexico-aims-triple-wind-capacity>

⁴ Mexico Oaxaca wants to boost wind power to 5.5 GW by 2024, *SeeNews Renewables*, 9 September 2015

<http://renewables.seenews.com/news/mexico-oaxaca-wants-to-boost-wind-power-to-5-5-gw-by-2024-492186>

increasingly relied on public-private partnerships (PPPs) to plan and implement wind power projects. Critics claim that the processes to form partnerships and allocate government funds are opaque and not open to public scrutiny.⁵ Community reaction to many of the current and planned wind projects in Oaxaca bear out those criticisms.

Areas of Conflict: Land Rights and Community Consultation

The issue of land rights and fair compensation for land use is a flashpoint for conflict in Oaxaca, where “more than 75 percent of the territory ownership is under the social property model...[which] means that in order to build a wind project, developers need to convince hundreds of individuals to agree to a project.”⁶ Land rights clashes have arisen between communities and companies as a result of landowners’ belief they were given an unfair deal.⁷ According to one report, the community of San Dionisio del Mar signed a contract with investors in the Mareña Renovables project, a massive 396 MW wind farm planned for construction in the community, granting them a 30-year lease on the land in 2004 but then in 2011 alleged that they had been given incomplete information and that the developers had unilaterally increased the number of turbines allowed by the agreement.⁸

The fact that communities in Mexico have insecure land tenure exacerbates these conflicts. The federal Ley para Aprovechamiento de Energías Renovables y el Financiamiento de la Transición Energética (Law for the Utilization of Renewable Energy and the Financing of the Energy Transition, known by its Spanish acronym, LAERFTE) specifies that project developers must “integrate local and regional communities through public meetings and interviews provided by the municipality, *ejido*⁹ or communal council administrations” and “promote social development of community in line with international best practices and meeting standards applicable to sustainable rural development, environmental protection and land rights.”¹⁰ Where land rights are communal, as in the case of the Mareña Renovables project area, the community must come to an agreement in an assembly about land use. However, in some cases, attendance lists from information sessions that did not include disclosure of project impacts have been misleadingly presented as proof of community consent for developers to access land.¹¹

Despite the stipulations of LAERFTE and a requirement in the Wind Power Plan for “public consultancy procedures”¹² around project planning, many communities, comprised largely of Indigenous Peoples, have fervently opposed current and future projects. The methods employed by these communities to express their opposition range from physically blocking access to development sites to filing grievances with governments and international investors in wind

⁵ Mexican Government Depends More and More on Private Business Partners, *InterPress Service*, 28 September 2015 <http://www.ipsnews.net/2015/09/mexican-government-depends-more-and-more-on-private-business-partners/>

⁶ Renewable Energy in Mexico’s Northern Border Region, *Woodrow Wilson International Center for Scholars Mexico Institute*, April 2015 <https://www.wilsoncenter.org/publication/renewableenergymexicosnorthernborderregion> p. 15

⁷ Land right protests hold up construction in Oaxaca, *Wind Power Monthly*, 1 December 2012 <http://www.windpowermonthly.com/article/1161708/land-right-protests-hold-construction-oaxaca>

⁸ Dutch Wind Farm in Trouble in Mexico, *Radio Netherlands Worldwide*, 24 January 2014 <https://www.rnw.org/archive/dutch-wind-farm-trouble-mexico>

⁹ Communal groupings of land formed under the Agrarian Reform <http://www.mexicolaw.com/LawInfo02.htm>

¹⁰ Windmills: The Face of Dispossession, *Land Deal Politics Initiative*, January 2014 http://www.iss.nl/fileadmin/ASSETS/iss/Research_and_projects/Research_networks/LDPI/LDPI_WP_55.pdf

¹¹ Ibid

¹² Ibid (note 3)

projects. The largest and most intense protests are based on claims of inadequate or improper engagement and consultation with local populations.¹³

Communities and nongovernmental organizations (NGOs) have complained about the lack of free, prior and informed consent (FPIC) as well as noncompliance with International Labour Organization (ILO) Convention 169 Concerning Indigenous and Tribal Peoples and the U.N. Declaration on the Rights of Indigenous Peoples, which Mexico has ratified and signed, respectively.

Indigenous communities have also complained of intimidation (see sidebar¹⁴) and lack of respect for their collective land rights. Specifically, the projects present risks to indigenous land, territory and resources by partitioning community lands and altering their traditional use; threatening cultural heritage and spiritual sites; obscuring cultural identity, values and customs by introducing outside influences; threatening food security and traditional subsistence economies; impacting biodiversity in soil and wildlife; and causing other social and environmental impacts related to increased vehicular traffic and transport of heavy machinery.

In December 2012 the Indian Law Resource Center filed a complaint on behalf of 225 inhabitants of seven indigenous communities with the Inter-American Development Bank's (IDB) Independent Consultation and Investigation Mechanism (MICI) regarding the bank's US\$75 million loan to the Mareña Renovables project. The complaint requests a Consultation and a Compliance Review process by IDB and seeks compensation for social and environmental damages. As of January 2016, the complaint was still under investigation.¹⁵

"They threaten us, they insult us, they spy on us, they block our roads. We don't want any more wind turbines; they have to respect our territory because it is the last land we have left." – Zapotec Indigenous Leader

In addition to souring public relations for wind development companies and the government agencies working with them in Oaxaca, public opposition has significantly slowed wind development activities. Community resistance has indefinitely delayed some projects and ultimately led to the cancellation of the Mareña project. Persistent blockades of access roads led by two indigenous communities, in addition to aforementioned community grievances proved to be obstacles too large for investors in the

project to overcome.¹⁶ The Mareña project is a powerful cautionary tale for wind developers and investors in Mexico. Despite bringing together many advantages—shared ownership by international energy giants, secure financing from international backers, engagement by IDB, and pre-identified customers in the form of two huge industrial facilities¹⁷—it was ultimately felled by inadequate consultation with vocal local communities. The project has been recreated and restructured with the same investors and developers but in two new locations as the Eólica del Sur project, which has already faced community complaint and opposition similar to that which brought down Mareña.

¹³ Native Communities in Mexico Demand to be Consulted on Wind Farms, *InterPress Service*, 3 June 2015 <http://www.ipsnews.net/2015/06/native-communities-in-mexico-demand-to-be-consulted-on-wind-farms/>

¹⁴ Ibid

¹⁵ Inter-American Development Bank Independent Consultation and Investigation Mechanism <http://www.iadb.org/en/mici/complaint-detail.1804.html?id=ME-MICI002-2012>

¹⁶ Ibid (note 7)

¹⁷ The Resurrection of Mareña Renovables, *Renewable Energy Mexico*, 17 September 2014 <http://www.renewableenergymexico.com/the-resurrection-of-marena-renovables/>

As of December 2015, Eólica del Sur was indefinitely delayed by a court-ordered “definitive suspension”¹⁸ while District Seven of the Federal court considered claims from community groups that the consultation process for the project violated their human rights by failing to conform with ILO Convention 169 and the Mexican Constitution. According to a response to the injunction issued by a group identifying itself as belonging to “the Binnizá Indigenous people,” the ruling “is a major achievement for the country’s indigenous peoples in the struggle for land conservation: it confirms that there have been violations of the rights of our peoples by various authorities.”¹⁹ However, there are diverse views on Eólica del Sur within the Binnizá community in the region, and the statement should not be taken as a representation of the entire indigenous population there.

Independent observation of government-organized consultation events by James Anaya,²⁰ Professor of Human Rights Law and Policy at the University of Arizona’s College of Law and former United Nations Special Rapporteur on the Rights of Indigenous Peoples, in February 2015 did not include assertions that Indigenous Peoples’ rights had been violated in the Eólica del Sur consultation process, but did identify serious deficiencies indicating that the process almost certainly fell short of “international best practices” required by LAERFTE.

In a written report,²¹ Anaya lauded the government for making a strong effort toward appropriate and inclusive consultation with indigenous communities, but specified several areas that needed improvement. He noted that community consultation meetings needed to be more “culturally adequate” by using less technical language, more clearly visible visual aids, and a question-and-answer format better oriented toward clarifying participants’ concerns.²² More generally, Anaya noted that certain segments of the indigenous population of Oaxaca “resent the accelerated development of the wind industry without the corresponding benefits for indigenous communities that one would hope for” and that some “see the wind industry as ‘new conquistadors.’”²³ In a “Clarifying Statement” issued in April 2015, Anaya specified that the deficiencies in the consultations that he observed and reported did not constitute human rights violations by the Mexican government. Furthermore, he noted Convention 169 would only be violated if construction of Eólica del Sur were to begin without adequate consultation with the community and that construction was not yet underway.²⁴

Even in the absence of specific human rights violations, Anaya’s assessments of the consultation process, along with the injunction issued by a federal court offer a strong indication that community consultation on the Eólica del Sur project has not yet met the standards set forth by LAERFTE or ILO Convention 169. Intense community opposition to wind projects as seen with

¹⁸ Da juez “suspensión definitiva” a proyecto eólico en Juchitán, *Grupo Noticias*, 16 diciembre 2015 <http://www.noticiasnet.mx/portal/istmo/general/laboral/318688-da-juez-suspension-definitiva-proyecto-eolico-juchitan>

¹⁹ Juez Séptimo de Distrito en el Estado de Oaxaca, otorgó suspensión definitiva de parque eólico “Eólica del Sur” en Juchitán, Oaxaca, *Centro de Derechos Humanos Tepeyac del Istmo de Tehuantepec A.C.*, 16 diciembre 2015 <https://cdhtepeyacoficial.wordpress.com/2015/12/16/juez-septimo-de-distrito-en-el-estado-de-oaxaca-otorgo-suspension-definitiva-de-parque-eolico-eolica-del-sur-en-juchitan-oaxaca/>

²⁰ Professor James Anaya is a member of Equitable Origin’s Board of Directors. His perspectives that appear in this study are drawn from his reports on the community consultations that he observed at the invitation of the government of Mexico and indigenous representatives of the area. They do not necessarily reflect his endorsement of the perspectives, findings or recommendations presented in this study.

²¹ Observaciones del Profesor James Anaya Sobre la Consulta en el Contexto del Proyecto Energía Eólica del Sur en Juchitán de Zaragoza <http://fundar.org.mx/wp-content/uploads/2015/03/Juchitan-observaciones-Anaya.pdf>

²² *Ibid* (p. 4)

²³ *Ibid* (pp. 3 and 5)

²⁴ Comunicado Clarificador del Profesor S. James Anaya en Relación a las Observaciones Sobre la Consulta en el Contexto del Proyecto Energía Eólica del Sur en Juchitán de Zaragoza de Fecha 23 de Febrero de 2015 <http://equitableorigin.org/file/anaya-comunicado-clarificador-consulta-oaxaca-abril-2015>

Eólica del Sur and the international attention it is attracting has tempered enthusiasm for and slowed the pace of development in Oaxaca as stakeholders consider how to resolve current conflicts and prevent similar clashes in the future.

Stakeholder Map

The first step toward effective engagement that fosters conflict resolution, responsible development practices, and shared benefits is identifying key stakeholders, their interests, and their concerns. In the context of Oaxaca's wind boom, stakeholders include: government and regulators; industry; communities; NGOs and international development agencies; and project investors.

Government and Regulators

At the federal level, Mexico's Comisión Federal de Electricidad (CFE) was instrumental in stimulating the earliest wind projects in Oaxaca. As wind development has expanded and accelerated, CFE has shifted its focus to planning and managing the transmission infrastructure needed to carry wind-generated electricity to consumers. According to some analysts, CFE has prevented the development of innovative wind energy business models like community co-ownership.²⁵ These models have proven effective at resolving community concerns and facilitating benefit-sharing around wind energy developments in Europe. By creating an environment that is inhospitable to funding and ownership structures that involve local communities in decision-making on project development, CFE (and by extension, the federal government) has expressed a clear preference for a status quo business model for wind generation projects. This model is a partial cause of social conflict that increases risks and costs, making for less efficient project planning and construction.

The federal energy commission Comisión Reguladora de Energía (CRE) is the central regulatory authority for investment in and execution of energy development projects, charged with granting permits and approving investment frameworks. In its evaluation of wind development contracts, CRE focuses on economic and technical viability, including interconnection with existing grid infrastructure, accountability for generation capacity claims, and compensation systems.²⁶ The federal environment agency, Secretaría de Medio Ambiente y Recursos Naturales (SEMARNAT), evaluates and regulates the environmental impacts of energy development, including wind projects. Its purview extends to project compliance with social regulations and community engagement requirements, including provisions related to FPIC of Indigenous Peoples.²⁷

Primary responsibility for facilitating and monitoring community consultation for energy projects belongs to the federal Secretaría de Energía (SENER). The agency is the authority specified by LAERFTE to develop and coordinate the public consultation programs. As a result, SENER has been the government entity to receive the most criticism from community groups and outside parties calling for improved community consultation. In July 2015, SENER declared that community consent for Eólica del Sur had been granted at a public assembly and that the agency had observed all national and international guidelines in its consultation with over 1,300 indigenous representatives. SENER's claim of lawfully and ethically securing consent from indigenous communities was vigorously disputed by indigenous organizations. One spokesman

²⁵ Energía Eólica en el Istmo de Tehuantepec Desarrollo, Actores y Oposición Social, Sergio Juárez-Hernández y Gabriel León, *Revista Problemas del Desarrollo*, 178 (45), julio-septiembre 2014
<http://www.revistas.unam.mx/index.php/pde/article/download/47838/43017>

²⁶ CRE website http://www.cre.gob.mx/pagina_a.aspx?id=67

²⁷ SEMARNAT website <http://www.semarnat.gob.mx/leyes-y-normas/leyes-federales>

for a community group claimed that the public assembly that gave its consent to move forward with the project was manipulated by government representatives from SENER, as well as labor interests from outside of the region.²⁸ In his report on the consultation process, James Anaya called on SENER in particular to seek out and implement mechanisms for more equitable distribution of benefits from the Eólica del Sur project.²⁹

Due to the primacy of the federal government in facilitating and approving energy development, the state government of Oaxaca plays a comparatively small role in wind projects; its oversight is limited to the issuing of construction licenses. However, the state has embraced the wind development boom and its expected economic benefits by helping to attract and bring together international investors and developers.³⁰

Similarly, municipal governments have little involvement in the permitting and planning of wind projects, but they do exert some local control of land use. However, there are cases in which municipalities have acted in defiance of their limited authority. The municipality of Juchitán de Zaragoza instituted its own taxation system on wind projects without consulting with the Federal Government,³¹ an indication that the current regulatory structure for wind development is unsatisfactory not only for certain communities, but for some local governments as well.

Industry

The private firms involved in PPPs with government entities for wind development in Oaxaca are overwhelmingly foreign, with Spanish companies dominating the market.³² As of January 2015 Spanish company Acciona operated 556 MW of capacity and was building an additional 66 MW. International wind energy powerhouse Iberdrola operates 230 MW of wind capacity and also has 66 MW under construction, with plans to invest US\$5 billion in renewables projects in Mexico. Gamesa, another major Spain-based international developer, has planned investments in approximately 500 MW of new wind capacity by 2017.

Mexico's national wind energy industry group Asociación Mexicana de Energía Eólica (AMDEE) represents the interests of the industry in public and policy debates and collects and aggregates wind energy data. According to an AMDEE tally in early 2015, Mexico is home to nearly 2.6 GW of installed wind capacity, with 732 MW under construction and 3 GW more in the pipeline.³³

For the most part, project developers have remained quiet on the issue of community resistance and inadequate consultation, leaving most of the responses to federal or local authorities. However, some operators in the region have made commitments to social engagement and/or investment. In 2014, a corporate responsibility representative for Acciona, said the company's goal was to spend 5 percent of its budget on social development over the 20-year life of its projects. Up to that point—the first four years of the company's work in the region—Acciona had

²⁸ Sener: oaxaqueños aprobaron parque eólico; se viola amparo: pueblos indios, *La Jornada*, 5 de agosto 2015
<http://www.jornada.unam.mx/2015/08/05/economia/027n1eco>

²⁹ Ibid (note 26, p. 3)

³⁰ Derechos municipales y proyectos eólicos: el caso Juchitán, Oaxaca, *Animal Político*, 4 de junio 2015
<http://www.animalpolitico.com/blogueros-inteligencia-publica/2015/06/04/derechos-municipales-y-proyectos-eolicos-el-caso-juchitan-oaxaca/>

³¹ Ibid

³² Analysis: Mexico aims to triple wind capacity, *Wind Power Monthly*, 19 January 2015
<http://www.windpowermonthly.com/article/1329854/analysis-mexico-aims-triple-wind-capacity>

³³ Ibid

spent only one-tenth of one percent of its Oaxaca wind budget on social programs; around US\$913,000.³⁴

Communities

The Tehuantepec Isthmus is home to five major indigenous communities, the two largest being the Binnizá (Zapotec) and the Ikoojt (Huave). Local communities have formed associations, like the Isthmus of Tehuantepec Peoples' Assembly for the Defense of Land and Territory (APIITDTT),³⁵ the Union of Indigenous Communities of the Northern Zone of the Isthmus (UCIZONI),³⁶ and the Asamblea Popular del Pueblo Juchiteco (APPJ),³⁷ to resist or influence wind projects.

International NGOs Yansa³⁸ and Peace Bridges International have both stated that their greatest concern in the Mexican wind sector is the inability of the federal government and private companies to proactively engage in consultation with communities and build benefit sharing

A Mexican Federal Court issued an injunction against the Eólica del Sur project due to lack of proper consultation

programs. These organizations have also reported that neither the rights of local communities nor human rights activists are protected on development sites by the authorities.³⁹

In October 2015, the Inter-American Commission of Human Rights in Washington, D.C. held a hearing for the Popular Assembly of Juchitán, where the community group alleged human rights violations by development company Energía Eólica del Sur, the re-formed consortium behind the Eólica del Sur project. The group described noncompliance with FPIC, lack of consultation in the Zapotec language, and intimidation, including threats, harassment and defamation.⁴⁰

In September 2015, the Binnizá (Zapotec) community secured a provisional injunction against all “the authorizations, permits, clearances, approvals, licenses and land use changes” associated with the Eólica del Sur project from the Seventh District of Mexico’s federal court. The injunction came in response to a petition signed by 1,166 indigenous residents of the Isthmus of Tehuantepec that claimed “there was no public consultation” on the project, and that a consultation planned for January 2015 that took place in June was nothing more than a “simulation” according to Binnizá spokesperson Bettina Cruz.⁴¹ An attorney for the community claimed that SEMARNAT did not comply with international FPIC standards in its management of the consultation process for the project. Binnizá leaders and organizers allegedly received death threats as a result of their opposition to the project.⁴² This injunction preceded the

Growing concerns about allegations of improper engagement and consultation practices around wind development is drawing attention of international NGOs.

³⁴ Mexico’s Renewables Revolution Creates Tension, *Institute of Electrical and Electronics Engineers (IEEE)*, 17 November 2014 <http://spectrum.ieee.org/energy/policy/mexicos-renewables-revolution-creates-tension>

³⁵ Wind Farms and Concerns about Human Rights Violations in Oaxaca, *Peace Bridges International*, 14 March 2014 http://www.pbideutschland.de/fileadmin/user_files/groups/germany/Dateien/Wind-Farms_Mexico.pdf

³⁶ Union of Indigenous Communities of the Northern Zone of the Isthmus (UCIZONI) website <http://www.redindigena.net/organinteg/ucizoni.html>

³⁷ Asamblea Popular del Pueblo Juchiteco (APPJ) website <https://asambleapopulardelpueblojuchiteco.wordpress.com/>

³⁸ Yansa website <http://www.yansa.org/wind/>

³⁹ *Ibid* (note 34)

⁴⁰ Proyecto de Derechos Económicos, Sociales, y Culturales, A.C. <http://www.prodesc.org.mx/en/?p=750>

⁴¹ Ordena juez frenar obras de megaproyecto eólico en Oaxaca, *Proceso*, 12 octubre 2015 <http://www.proceso.com.mx/?p=417980>

⁴² *Ibid*

aforementioned “definitive suspension” of the Eólica del Sur project issued by the same court in December 2015.

NGOs and International Development Agencies

Oaxaca’s extensive wind potential and its unique ecological and sociological makeup have drawn the attention of socially and environmentally oriented NGOs as well as international development agencies interested in the economic and climate benefits of renewable energy projects. In general, NGOs’ involvement tends to come in the form of support for or advocacy on behalf of indigenous communities impacted by wind projects. At the same time, international development organizations tend to be involved as financial supporters of development projects (see next section). As such, these organizations have growing concerns about allegations of improper engagement and consultation practices around wind development in the region.

Environmental groups involved in wind development in Oaxaca face a paradox that is confronting environmentalists worldwide: renewable energy is a valuable and urgently-needed weapon against global climate change, but renewable development projects can negatively impact local people and environments. The provocative and sometimes radical environmental NGO Greenpeace has made public statements against wind development in Oaxaca,⁴³ but took a neutral position on the subject in its 2014 Wind Energy Outlook.⁴⁴ The Interamerican Association for Environmental Defense (AIDA) and the Mexican Environmental Law Center (CEMDA) discuss the “push/pull” of growing clean energy while protecting the environment in Oaxaca and also noted that Environmental Impact Assessments are not being conducted for wind projects.⁴⁵

Social and human rights NGOs active on Oaxaca wind development issues largely support the community activists seeking redress of grievances and obstructing development activities to make their voices heard. Amnesty International has launched “Urgent Action Alerts” asking their members to take action against alleged human rights abuses related to wind development.⁴⁶ A smaller social advocacy group, Grassroots International, sponsored a campaign in 2013 to solicit support for community activists in San Dionisio del Mar who opposed the Mareña project.⁴⁷

Investors and Funders

Investors in Oaxaca’s wind projects are a diverse collection of public, private, governmental, and multinational entities, including the U.S. Export Import Bank, the Macquarie Mexican Infrastructure Fund, Mitsubishi Industries and PGGM, a Dutch pension fund. PGGM faced criticism for its responses to community opposition,⁴⁸ with one PGGM spokesperson stating that ensuring fair distribution of payments by the fund to local communities was “not our

⁴³ Militants stop 396MW Mareña project in Mexico, *Wind Power Monthly*, 16 May 2013

<http://www.windpowermonthly.com/article/1182572/militants-stop-396mw-marena-project-mexico>

⁴⁴ Global Wind Energy Outlook, *Greenpeace*, October 2014

<http://www.greenpeace.org/international/Global/international/briefings/climate/2014/GWEO-2014-final.pdf>

⁴⁵ The Challenge of Deploying Wind Energy in Mexico – The case of the Isthmus of Tehuantepec, *Carbon Market Watch*, 21 December 2012 <http://carbonmarketwatch.org/the-challenge-of-deploying-wind-energy-in-mexico-the-case-of-the-isthmus-of-tehuantepec-watch-this-4/>

⁴⁶ Urgent Action: Community Activists in Mexico Receive Threats, *Amnesty International*, 5 February 2013

<https://www.amnesty.org/download/Documents/12000/amr410042013en.pdf>; Urgent Action: Threats Due to Wind

Farm Opposition Continue, *Amnesty International*, 5 April 2013 <http://www.refworld.org/pdfid/51768c734.pdf>

⁴⁷ Wind Farm Project in Oaxaca Sparks Resistance & Death Threats, *Grassroots International*, 24 January 2013 http://act.grassrootsonline.org/p/dia/action/public/?action_KEY=12621

⁴⁸ PGGM embroiled in conflict with Mexican wind farm, *The Wind Action Group*, 26 July 2013

<http://www.windaction.org/posts/37827-pggm-embroiled-in-conflict-with-mexican-wind-farm#.VjILVK6rTR0>

responsibility.”⁴⁹ IDB’s MICI consultation mechanism includes a website where stakeholders can access information on complaints and due diligence processes.⁵⁰

International development agencies with substantial financial resources are a key source of funding for wind projects in Oaxaca as well as important access points for communities demanding better consultation and more equitable sharing of benefits. In addition, these entities are often bound to appropriate consultation by the terms of their own “performance standards,” such as those of the International Finance Corporation of the World Bank.⁵¹

In January of 2014, two indigenous communities delivered a petition with more than 2,000 signatures to the IDB. The petition went beyond the 2012 request for a review of consultation practices, demanding that IDB rescind its investment in the Mareña project.⁵²

Conclusions and Recommendations

Wind energy generation projects in the Isthmus of Tehuantepec are part of Mexico’s future economy and energy infrastructure. Current and future wind projects in the region hold potential benefits for regulators, funders, investors and communities, but these benefits can only be realized through better consultation and communication between stakeholders that resolve current conflicts.

Furthermore, the problems relating to land rights and community consultation (particularly consultation with Indigenous Peoples) are not confined to the Isthmus of Tehuantepec region or to wind projects, as presciently explained by the Wilson Center in a 2013 research publication:

The difficulties experienced by Mexican and foreign companies that operate in the wind generation fields of Oaxaca as they face local communities will probably be repeated in other projects such as solar and the production of biofuels. These challenges are surmountable. How? Simple: with cultural sensitivity and the will to insure that all the participants benefit and feel that they are justly compensated.⁵³

It is clear that proper consultation, fair compensation, and cultural sensitivity are the keys to a more respectful, less controversial, and more streamlined future for the wind industry in Oaxaca and throughout Mexico. To facilitate improved engagement and communication and reduce risk for investors, we recommend two main courses of action based on the Equitable Origin (EO) System and EO100™ Standard for Responsible Energy Development (see appendix):

1. Major expansion of community engagement efforts by industry and regulators.

The root cause of the social conflicts around wind development projects in Oaxaca is inadequate or nonexistent community engagement by government and project developers. Both stakeholder groups should invest in engagement efforts that include (a) consultation with more communities

⁴⁹ Dutch Wind Farm in Trouble in Mexico, *Radio Netherlands Worldwide*, 24 January 2014 <https://www.rnw.org/archive/dutch-wind-farm-trouble-mexico>

⁵⁰ MICI Independent Consultation and Investigation Mechanism: How to file a request? *Inter-American Development Bank*, accessed on 26 January 2016 <http://www.iadb.org/en/mici/how-to-file-a-request.8170.html>

⁵¹ IFC Performance Standards

http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/ifc+sustainability/our+approach/ri sk+management/performance+standards/environmental+and+social+performance+standards+and+guidance+notes

⁵² Oaxaca’s wind farm surge produces clean power - and protests, *Thomson Reuters Foundation*, 6 June 2014 <http://www.trust.org/item/20140605124619-k9pav/>

⁵³ Renewable Energy in Mexico: Policy and Technologies for a Sustainable Future, *Woodrow Wilson International Center for Scholars Mexico Institute*, August 2013 <https://www.wilsoncenter.org/publication/renewable-energy-mexico-policy-and-technologies-for-sustainable-future#sthash.tN97Gclj.dpuf>, p.23

and individuals, (b) clearer communication of details of the development process and expected impacts, and (c) explanation of opportunities for community members to benefit from the projects throughout their lifetimes. These steps would be best taken with the aid of independent experts in community engagement, especially those familiar with the culture and language(s) of indigenous communities in the region. The EO100™ Standard provides a robust framework for community engagement by establishing best practices and implementation guidance for project developers and enabling an independent and credible evaluation of a project’s social and environmental performance.

2. Development and application of international standards for social and environmental performance to wind projects by regulators and funders.

Investors and other funders of wind projects in Oaxaca should support the development of international standards for wind projects and incorporate those standards into their due diligence processes and investment agreements that condition funding on meeting international social and environmental standards of performance. The EO system provides a credible and independent mechanism to develop these standards with stakeholder consultation and apply them to projects. By tying financial support for projects to clear and internationally-recognized benchmarks, funders/investors and other stakeholders can encourage project developers to implement improved practices while mitigating risk. Regulators should also look to international standards for guidance on how to improve development, interpretation and enforcement of legal requirements.

APPENDIX: Equitable Origin and the EO100™ Standard

Equitable Origin (EO) is a nonprofit organization with roots in Latin America, incorporated in the United States. Founded in 2009, EO's mission is to protect people and the environment by ensuring that energy development is conducted under the highest social and environmental standards.

The EO100™ Standard is the foundation of the EO system. Developed through a three-year, multi-stakeholder consultation process, it provides a framework to promote and incentivize enhanced social and environmental performance, greater transparency, more accountability, and better outcomes for local stakeholders in energy projects. It is based on six universal principles that consolidate and align globally-recognized management systems, performance and reporting indicators, and industry guidelines. It provides an objective method to measure and independently certify social and environmental performance at the site level.

The EO100™ Standard Principles include:

-  1 Corporate Governance, Accountability & Ethics
-  2 Human Rights, Social Impact & Community Development
-  3 Fair Labor & Working Conditions
-  4 Indigenous People's Rights
-  5 Climate Change, Biodiversity & Environment
-  6 Project Life Cycle Management

The Standard includes extensive requirements and guidance on fair and representative stakeholder consultation, respect for the rights of Indigenous Peoples and sustainable community investment to promote economic opportunities.

Using the EO100™ Standard as a basis for all energy projects, EO is developing standards for renewable energy projects to address key stakeholder concerns. Many of these projects require vast tracts of land and have significant social as well as environmental impacts. Where these impacts have been ignored or mismanaged, renewables projects have been significantly delayed, relocated at great cost or even shut down. EO believes in the importance of mitigating local impacts of renewables projects that could create barriers to development in order to ensure that renewables are able to scale up rapidly enough to meet global goals on combating climate change.

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