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Wind Farms and Concerns about Human Rights Violations in Oaxaca

Introduction:

While wind energy is recognised globally as a cleaner, more environmentally friendly alternative to fossil fuels, in the case of Oaxaca, the development of wind farms has been linked to a significant increase in human rights violations including threats, intimidation, surveillance, acts of aggression, shootings, and killings. PBI Mexico has observed with concern an increased risk for human rights defenders (HRDs) and community leaders who work in the region within this context.¹

The Development of Wind Energy Projects in the Isthmus of Tehuantepec, Oaxaca.

- Oaxaca is located between the Pacific Ocean to the south and the State of Veracruz, which gives way to the Atlantic Ocean, to the north. The landscape between these two oceans is characterised by both mountainous regions and flat terrains creating a virtual wind tunnel through Mexico's narrowest point.²
- According to the Mexican Association for Wind Energy (AMDEE), Oaxaca has the potential to produce 10,000 megawatts of energy,³ enough to provide 18 million people with power.⁴
- The construction of wind farms in Oaxaca began in 1994 with the pilot project Venta I, jointly funded by the Mexican Government and the World Bank.⁵ It was followed in 2006 and 2008 by the Venta II and Venta III wind farms. These three wind farms demonstrated a capacity to collectively produce 186.5 megawatts of energy.⁶ This capacity was surpassed in 2009 by the EURUS wind farm in Juchitan de Zaragoza, which was the largest wind farm in the world at the time.⁷ In 2010, the capacity of EURUS was also surpassed when a further three privately funded wind farms became operational.⁸
- In 2012, AMDEE confirmed that of the 14 wind farms operating in Oaxaca, the Federal Energy Commission (CFE), the State body responsible for energy, was involved in four such projects, with the others being run by private companies, including Iberdrola, Acciona, Gamesa, Eyra, and Renovalia from Spain, EDF from France, Enel from Italy, among others.⁹ Manufacturing equipment is also provided by foreign companies such as Vestas from Denmark, Acciona and Gamesa from Spain and Clipper from the US.¹⁰ The majority of energy harnessed from these wind farms is therefore controlled by private, foreign companies.¹¹
- Currently, there are 14 fully operational wind farms in the Isthmus of Tehuantepec, with a further six to be constructed in the future occupying an area of over 60,000 hectares of land.¹² The companies in charge of constructing these new farms are mainly Spanish in origin (Preneal, Eolia and Gas Natural Fenosa among others).¹³

1 Nuevas Estrategias de Cooperación al Desarrollo de la Unión Europea en América Latina: La Facilidad de Inversión LAIF (Report) (June 2013) p. 33

2 AMDEE – Panorama General de la Energía Eólica en México 2010 (Presentation), Available at: <http://bit.ly/1hJx3Rw> accessed on 1 March 2014

3 Ibid

4 Sipaz 'Enfoque: Impactos y afectaciones de los Proyectos de Energía Eólica en el Istmo de Tehuantepec' Sipaz Vol XVIII (Report) (3 September 2013) Available at: <http://bit.ly/1dyCtW> accessed on 1 March 2014

5 L. Hamister, 'Wind Development of Oaxaca: Mexico's Isthmus de Tehuantepec: Energy Efficient or Human Rights Deficient?' (2012) Mexican Review Law Vol. V . No. I. p.154 Available at: <http://bit.ly/1c5C6fH> accessed on 1 March 2014

6 Ibid, and AMDEE (n. 2)

7 Cemex Press Release 'Cemex announces completion of EURUS wind farm construction' (Cemex website 23 November 2009) Available at: <http://bit.ly/MLmS3h> accessed on 1 March 2014, and Hamister (n. 5) p. 154 - 155

8 These wind farms are EURUS II, Bii Nee Stipa and La Mata – La Ventosa. Hamister (n. 5) p. 154 - 155

9 AMDEE website: <http://bit.ly/1i4C0Dt>, and Secretaría de Energía 'Energías Renovables' (Report) (May, 2013) p. 11. Available at: <http://bit.ly/1fF081N> both accessed on 1 March 2014

10 Ibid

11 Sipaz (n. 4)

12 Los Derechos Humanos en Oaxaca 2009 – 2012, Informe Ciudadano Una Deuda Pendiente (Report) (16 October 2013) p.9 – 10. Available at: <http://bit.ly/1mT4Dtw> accessed on 1 March 2014

13 AMDEE (n. 2)

- PBI, through its accompaniment of the Integral Defence Committee of Human Rights “Gobixha” (Código DH), has observed the escalating tensions and consequently the increased risk for HRDs and community leaders in the context of wind farm construction in San Dionisio del Mar (San Dionisio del Mar project is run by Mareña Renovables) and Juchitán de Zaragoza (Bii Hioxo project is run by Gas Natural Fenosa).

Oaxaca's affected population:

- Of Oaxaca's 3.8 million inhabitants,¹⁴ 56 percent consider themselves to be indigenous.¹⁵ In the Isthmus of Tehuantepec there are five indigenous peoples, with the Binniza (Zapotecs) and the Ikoajt (Huave) being the most populous, having inhabited the region for almost three millennia. They rely on the land for farming and fishing.¹⁶ According to the United Nations and the International Working Group on Indigenous Affairs, although no working definition of indigenous peoples exists, there is general agreement that the concept of a strong link to ancestral land and territory is central.¹⁷ The UN Declaration on Indigenous Peoples, as well as Convention 169 of the International Labour Organisation protect the rights of indigenous peoples to their land stipulating that they have a right to free, prior and informed consent regarding their land.¹⁸
- In Oaxaca, there are also other communities, whose inhabitants are not indigenous, but who farm the land, or *ejido*, in a communal way, whereby the land is not under individual ownership, rather each member of the community has an equal say in how it is used.¹⁹ The Mexican Constitution and Agrarian legislation protect the rights of *ejidatarios*.²⁰
- Many of those affected by the wind farms have formed local assemblies in their particular communities. In 2007 they collectively formed the Isthmus of Tehuantepec Peoples' Assembly for the Defence of Land and Territory (APIITDTT).²¹ Through these assemblies, community leaders defend the rights of local populations affected by wind farms.

Through meetings and by accompanying local HRDs, PBI has been able to gather their main concerns:

Concerns regarding the Consultation Process

- Although Mexican and Oaxacan legislation require that an interpreter is present when persons who do not speak Spanish as their native language are negotiating a contract, in many instances it was reported that contracts were signed in Spanish, by Ikoajt and Binniza peoples, without an interpreter.²² Furthermore, up to 60 percent of the population is reportedly illiterate, and therefore unable to read contracts.²³
- Contracts often make reference to annexed documents which are not made available to the signatories at the time of signing. Signatories were reportedly misled regarding the duration of contracts, which sometimes permit for extensions without requiring further consultation with the local population.²⁴
- Signatories are often allegedly pressured into accepting unfair or extremely low prices for the use of the land, which do not accurately reflect the profits made by wind energy companies, nor do they

14 Instituto Nacional de Estadísticas y Geografía website: <http://bit.ly/1eSeZod> accessed on 1 March 2014

15 OHCHR 'Advancing Indigenous Peoples' Rights in Mexico' (7 July 2011) Available at: <http://bit.ly/1fFhWUO> accessed on 1 March 2014

16 Poder 'The Dirty Side of the Wind Industry – Development and Human Rights in the Isthmus of Tehuantepec, Oaxaca' (Report) (November 2011) p. 9, and J. Smith 'Indigenous Communities in Mexico fight Corporate Wind Companies' (1 November 2012) published on Upside Down World website: <http://bit.ly/1onWkaX> accessed on 1 March 2014

17 UN Permanent Forum on Indigenous Issues 'Indigenous Peoples Indigenous Voices' Factsheet 1, Available at: <http://bit.ly/1c5HDTm> International Working Group on Indigenous Affairs website: <http://bit.ly/1czlQQI> both accessed on 1 March 2014

18 UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295, available at: <http://bit.ly/MLpz59> accessed 1 March 2014. Most relevant articles: 8, 10, 26, 27, 28, 29, and International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, available at: <http://bit.ly/1hGXUOz> accessed 1 March 2014. Most relevant articles: 6, 7, 13 – 19. Both have been signed and ratified by Mexico.

19 For further information on *ejido* see Hamister (no. 5) p. 165 - 166

20 Mexican Constitution, Article 27, Agrarian Legislation

21 Asamblea de los Pueblos del Istmo de Tehuantepec para la Defensa de la Tierra y el Territorio: <http://bit.ly/1lwTnBH> In February 2013 the Popular Assembly of Juchitán – APPJ was formed. Other assemblies include San Dionisio del Mar, San Mateo del Mar, Alvaro Obregón, Santa María Xadani and Unión Hidalgo.

22 Poder (n. 16) p.14

23 R. Garduño, 'Parques Eólicos en México: pagos raquíticos, ganancias millonarias' *La Jornada* (Mexico, 27 October 2013) Available at: <http://bit.ly/1hGYb44> accessed on 1 March 2014

24 Poder (n. 16) p. 14

adequately compensate for the damage caused to the land.²⁵

- Those affected by wind farms claim that they were ill informed of the permanent damage which would be caused by construction of wind farms, particularly to natural drainage systems or to land exposed to a lubricant which the turbines emit during construction or if they malfunction.²⁶

Concerns regarding the Planning Process:

- Local access routes have been blocked off, restricting inhabitants from accessing their lands.²⁷
- Land which contains shrines, and medicinal herbs and plants, sacred to indigenous peoples and central to their way of life, have been used for wind farms or have become inaccessible.²⁸
- Wind farms constructed in relatively close proximity to local towns create constant noise pollution due to the continual flow of wind.²⁹
- Impact studies on the local environment have not been adequately carried out which means that long term negative consequences may not be anticipated in advance.³⁰

Concerns regarding profits made from wind energy:

- The vast majority of energy harnessed from wind farms does not enter Mexico's national energy grid, nor is it made available to the CFE, instead is owned by private companies, or consortiums of companies who sell it to third parties. Therefore, the energy is privatised both in the manner in which it is harnessed, as well as the profits made when it is sold, with no real benefits for the population.³¹
- Under the terms of the Kyoto Protocol, the concept of emissions trading was formalised, introducing a new commodity on to the international market known as carbon credits. Wind energy companies based in Oaxaca earn credits for producing green energy, which they may sell on the international market to other companies or governments at huge profits.³² The local population does not benefit in any way from the trading of carbon credits.
- Low maintenance costs coupled with extremely low land rental costs, averaging at roughly US\$12 per year per hectare, mean huge profits for wind energy companies. While in other countries these companies tend to pay land owners a rental fee which is four percent of the overall profits, in the case of Mexico, it has been found that on average, wind energy companies pay rent of as low as 0.025 percent of total profits, far below international practice.³³
- Employment opportunities may be created for the local population during construction. However, the types of contracts offered are often on a weekly basis, inhibiting workers from registering with the Mexican social security system and accessing its services.³⁴ Upon completion, construction workers become unemployed and maintenance work is carried out by highly skilled engineers.

Concerns regarding increased violence related to wind farms

Throughout 2013, PBI observed with concern an increase in the level of violence in the context of wind farms, particularly against HRDs and community leaders whose work involves the defence of those affected by these developments. PBI believes that HRDs are essential actors in promoting environmental and social justice, highlighting the importance of respecting human rights norms in the context of large scale economic projects. They have in-depth knowledge of the local context and play a key role in capacity building with the local population. Without their support, communities become even more vulnerable to human rights abuses.

- Gun violence has become increasingly frequent. On 21 July 2013, Hector Regalado Jimenez, member

25 Garduño (n. 23) and Climate Connections 'Somos Viento' (11 July 2013) Available at: <http://bit.ly/1c6b3Rq> accessed on 1 March 2014

26 PBI 'Indigenous Rights and Wind Farms in the Tehuantepec Isthmus, Oaxaca' (March 2009) Available at: <http://bit.ly/1iaUdne>, accessed on 1 March 2014, Poder (no. 16.) p. 12-14, and Climate Connections (n. 25)

27 S. Hassi and MEP S. Keller, Open Letter to Wind Energy Operators in Istmo de Tehuantepec, Oaxaca, Mexico (10 July 2013) Both S. Hassi and S. Keller are Members of the European Parliament. Letter available at: <http://bit.ly/1c6bnja> accessed on 1 March 2014

28 Código DH website: <http://bit.ly/1mTqPnt> accessed on 1 March 2014

29 Sipaz (n. 4)

30 Cemda and AIDA 'The Challenges of Deploying Wind Energy in Mexico: The case of the Isthmus de Tehuantepec' (17 December 2012) Available at: <http://bit.ly/1hJVdSe> accessed on 1 March 2014

31 Sipaz (n. 4) and AMDEE website provides information on contracts: <http://bit.ly/1mTr0z4>

32 Climate Connections (n. 26) and UN Framework Convention on Climate Change website: <http://bit.ly/1g8YhR> and Carbon Trade Exchange website: <http://bit.ly/1oolBeS> both accessed on 1 March 2014

33 Garduño (n. 23)

34 Poder (n. 16) p. 17

of the Juchitán Popular People's Assembly (APPJ) was shot dead, and two other members of the same assembly were injured, some days after the APPJ had participated in a protest against wind farms in Juchitán de Zaragoza. Sara Lopez, a community leader and defender, was the victim of a knife attack. Some journalists were also targeted.³⁵

- Death threats were issued against a number of HRDs, community leaders and journalists working on wind farm issues in Oaxaca.³⁶
- Protests and demonstrations frequently turned violent. In one instance, protestors were doused in petrol and threatened that they would be set alight.³⁷ On 17 July 2013 assembly members suffered acts of intimidation and harassment following a protest held in front of the Department of Public Affairs in Juchitán de Zaragoza. On 15 October 2013 and again on 28 January 2014, the APPJ protest camp, located in their communal territories, was razed to the ground.³⁸
- Private security companies, allegedly supported by Municipal, State and Federal security forces, have been hired by wind energy companies to protect their interests, increasing the presence of armed personnel in the region, provoking tensions which sometimes spill over into violent clashes with the local population.³⁹
- On 3 April 2013, the offices of Código-DH were broken into, searched, and documents directly related to their work in the Isthmus of Tehuantepec were stolen.⁴⁰
- At least two HRDs were arbitrarily arrested and detained.⁴¹ In one such case, on 2 April 2013, Mariano López Gómez of the APIITDTT was arrested by State Police and accused of extortion. He was later acquitted because there was no evidence against him.
- Bribes have allegedly been paid by wind energy companies to convince assembly members, community leaders, or local politicians to support wind farm development, leading to deep divisions and mistrust in society.⁴²
- PBI has observed with concern that although many defenders have protection measures granted by Mexican and Inter-American protection mechanisms, these have not been sufficient in protecting the HRDs, nor have they been effective in reducing their risk. PBI has also observed dialogues held between authorities, HRDs (Código-DH and the APIITDTT) and members of the communities affected by wind farms, and has noted with concern that these dialogues were not attended by high ranking state officials or representatives of companies, and therefore progress was limited.⁴³

PBI recommends the following:

To Federal and Oaxacan State Authorities:

- Conduct full, impartial, and independent investigations with a view to bringing those responsible for the aforementioned violent acts, as well as other crimes and human rights violations, to justice, in line with international legal standards;
- Guarantee that protection measures granted to HRDs are adequately implemented, reducing their risk, and permitting them to continue with their legitimate human rights work;
- Guarantee meaningful participation of HRDs and communities in the development of proposals and in any other procedures undertaken by states and companies before and during the development of wind farms. Ensure that international legal standards with regard to land, free, prior and informed consent are adhered to during the consultation and planning process and that environmental and social impact assessments are conducted. Ensure that the results of such consultations are respected, particularly when a mega-project is rejected, and that the conclusions of impact assessments are taken into account by all actors involved. In cases where the wind farms have been or are approved, ensure that those directly affected are compensated accordingly;
- As a matter of urgency, draft domestic legislation, at both federal and state level, which regulates the

35 PBI website, article published 13 September 2013 Available at: <http://bit.ly/1kvM38Z> y OMCT website, article published 7 October 2013 Available at: <http://bit.ly/MADICN> both accessed on 1 March 2014

36 Sipaz (n. 4), Climate Connections (n. 26)

37 Climate Connections (n. 26)

38 Front Line Defenders Urgent Appeal (31 January 2014) Available at: <http://bit.ly/1gKdlaT> accessed on 1 March 2014

39 Código DH website (n. 28), Climate Connections (n. 26)

40 OMCT Urgent Appeal (5 April 2013) Available at: <http://bit.ly/1fFjLXy> accessed on 1 March 2014

41 PBI (n. 35)

42 Sipaz (no. 4), Climate Connections (n. 26)

43 Código DH website (n. 28)

consultation and operational phases of wind farms and other large-scale economic projects as outlined in international legislation and jurisprudence. Consult with civil society during the drafting stages, permitting their continued participation. Ensure that legislation includes measurable indicators for engagement with HRDs and communities as a way of addressing levels of inclusion, imbalance of power, and inequality in decision processes. Ensure that such legislation is implemented as stipulated in international law, guaranteeing free, prior and informed consent, and respecting final decisions of those involved in the consultation process.

- Deliver a public statement in recognition and support of the valuable and legitimate work carried out by HRDs and community leaders, as actors which bring about positive social change, acknowledging the risk associated with such work.

To Foreign Governments

- Implement the UN Guiding Principles on Business and Human Rights. In particular, develop National Action Plans on Business and Human Rights in consultation with HRDs and civil society organizations, as recommended by the UN. Include in these Action Plans a clear and comprehensive outline as to how they will support and protect HRDs' work in this context.
- Take positive measures, such as those specified in the EU Guidelines for HRDs,⁴⁴ to support and enable HRDs to exercise their rights and freedoms. These measures should
 - (1) acknowledge the crucial role played by HRDs and promote their protection and the respect of community rights;
 - (2) facilitate the inclusion and consultation of HRDs and communities prior to the implementation of wind farms;
 - (3) give opportunities to HRDs and community leaders to share concerns and establish a stronger relationship with diplomats allowing for further exchange of information;
 - (4) analyse the implementation of UN Guidelines, share best practices and explore ways to overcome challenges together. In this connection, consider the following:
 - Visit areas affected by wind farms in Oaxaca and meet local HRDs and communities;
 - Organise roundtables between all of the stakeholders implicated (authorities, companies, HRDs, communities and the diplomatic corps);
 - Host annual meetings with HRDs working on land and environmental issues, especially those working on wind farms in Oaxaca. Consider inviting other stakeholders to these meetings (authorities, companies, diplomatic corps).
 - If the aforementioned actions are carried out, make this information public.
- Ensure coherence between human rights and trade policies by mainstreaming human rights standards and guaranteeing that these standards are taken into account in cooperation, investment and trade policies.
- Disseminate among companies willing to invest in Mexico, especially in the aeolian sector, the UN Guiding Principles on Business and Human Rights and international standards regarding consultation and human rights impact assessments. Duly remind companies of their duty to respect human rights and the work of HRDs.

PBI considers it a matter of urgency that adequate security and protection measures are put in place to guarantee the physical and psychological integrity of HRDs and community leaders working in the context of wind farms in Oaxaca, permitting them to continue with their legitimate human rights work in a safe environment.

⁴⁴ European Union, *Ensuring Protection - European Union Guidelines on HRDs*, 14 June 2004, 10056/1/04, Available at: <http://bit.ly/Nt0htf> accessed 1 March 2014