

## Specific instance “EDF and EDF Renewables in Mexico”

### Follow-up Statement of the French NCP (12 July 2022)

The NCP notes the deepening of EDF’s corporate policy and the conduct of work on human rights and stakeholder engagement. These measures respond to the NCP’s recommendations. It terminates the monitoring of this specific instance.

As stated in the Procedural Guidelines of *the OECD Guidelines for Multinational Enterprises*, following a specific instance procedure and after consultation with the parties involved, the NCP will make the results of the procedure publicly available.

The French NCP issued a final statement containing three recommendations addressed to EDF and EDF Renewables regarding their Gunaa Sicarú wind farm project in Mexico. This statement reports on the follow-up to its recommendations.

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### Overview of the French NCP and its role

The French National Contact Point for the Implementation of the OECD Guidelines for Multinational Enterprises (“NCP”) is a State-based tripartite body for the non-jurisdictional grievance mechanism to the implementation of the Guidelines for Multinational Enterprises. Its mission is to ensure the effectiveness of the Guidelines by promoting them and by contributing to the resolution of issues raised in the context of the specific instance procedure through its good offices, mediation and conciliation. It shall endeavour to examine the issues raised as soon as possible, and if possible within 12 months of receipt of the specific instance. It will publish its decisions on its website.

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## Executive Summary of handling the specific instance between 2018 and 2020

The NCP received a specific instance on 12 February 2018 submitted by a Mexican non-governmental organisation ProDESC and two rights defenders representing the agrarian and indigenous sub-community of Unión Hidalgo. The instance concerned the EDF Group and EDF Renewables (former EDF EN) concerning a project to build a wind farm, “Gunaa Sicarú”, located in the territory of two municipalities, Unión Hidalgo and La Ventosa, in the municipality of Juchitan de Zaragoza in the state of Oaxaca, Mexico. After accepting the specific instance, the NCP offered its good offices to the Parties who accepted them.

The NCP carried out its good offices and a mediation between June 2018 and July 2019. On 29 July 2019, the complainant NGO ProDESC issued a press release, co-signed by several organisations, indicating its withdrawal from the proceedings and commenting on it. In accordance with its Bylaws, the NCP then moved to the conclusion phase of the procedure. The French NCP adopted a [Final Statement on 10 March 2020](#) in which it examines issues related to the OECD Guidelines. It addresses several recommendations to EDF and EDF Renewables and indicates that it will follow up. The present statement reports on the Group's follow-up to its recommendations.

For more information on the procedure followed between February 2018 and March 2020:

- French NCP dedicated webpage "[EDF and EDF RENEWABLE in Mexico](#)"
- [French NCP Initial Assessment Statement of 12 June 2018](#): “Following its initial assessment, the French NCP offers its good offices to the EDF Group and EDF EN, the Mexican NGO ProDESC and representatives of Union Hidalgo indigenous community”.
- [French NCP Intermediate Statement of 14 May 2019](#): “The NCP keeps on delivering its good offices to EDF Group and EDF EN, Mexican NGO ProDESC and representatives of the indigenous and agrarian community of Union Hidalgo”.
- [French NCP Progress Communiqué of 17 October 2019](#): “Statement of the French NCP following complainant's withdrawal from the NCP's good offices in the present case”.
- [Final Statement of the French NCP of 10 March 2020](#).

## 1. The proceedings of the NCP to follow up on its recommendations

The final communiqué of the NCP of 10 March 2020 addressed 3 recommendations to EDF and EDF Renewables and provided for their follow-up: *“In accordance with Article 32 of its Bylaws, the NCP decides to follow up this specific instance. Given that the Complainants withdrew from the procedure, it called on EDF and on EDF Renewables to keep it informed of the progress of the Gunaa Sicarú project and to keep it informed of the follow-up given to those recommendations in six months (September 2020) and then in one year (March 2021)”*.

The NCP has carried out actions to follow up on this specific instance. It decided to extend the monitoring of the specific instance in order to take account of the health constraints imposed by the Covid-19 pandemic and the opening of litigation in France on the project. The NCP considers that the continuation of this litigation does not preclude the publication of this statement.

During its follow-up, the NCP took note of contextual elements brought to its attention. The NCP regularly requested information updates about the local situation from the Mexican NCP and the Regional Economic Service of the Embassy of France in Mexico. The NCP noted the suspension of the

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local indigenous consultation between March 2020 and June 2021<sup>1</sup> due to the Covid-19 health crisis. The NCP took note of the formal notice and the litigation opened in France in September 2019 and October 2020 by the former Complainants concerning EDF SA's duty of vigilance in relation to the Gunaa Sicarú project.

The NCP had exchanges with EDF and EDF Renewables, including a hearing on 27 September 2021. The Group responded to the NCP's questions while stressing that elements of its response could not be communicated to the NCP due to the continuation of the litigation about Gunaa Sicarú project before French courts.

The NCP adopted a draft follow-up statement on 25 May 2022 and forwarded it for comments to the Group and the Mexican NCP. The NCP took note of their comments and reviewed its draft. The former Complainants were informed of the preparation of this follow-up statement. The NCP the adopted Follow-Up Statement on 12 July 2022. The NCP forwarded the statement for information to Group and the Mexican NCP as well as to the former Complainants before publishing it on its website and notifying it to the OECD.

## 2. Outcomes of the Follow-up of the Specific Instance

The NCP thanks EDF and EDF Renewables for their participation in the follow-up to the referral. It also thanks the Mexican NCP and the Regional Economic Service in Mexico for their support.

### The NCP takes stock of the implementation of 3 recommendations made in March 2020 related to the effectiveness of the OECD Guidelines:

*RECOMMENDATION 1: The NCP recommends to the EDF Group and to EDF Renewables to adapt their policy of engagement with stakeholders, in particular with regard to indigenous peoples and communities potentially affected by its different projects. In particular, it will be important to make arrangements for engaging with all stakeholders potentially concerned by these projects, particularly with those bearing social and cultural interests. To this end, the NCP invites them to take as a reference questions 8, 9, 10 and 11 of the OECD [Due Diligence Guidance for Responsible Business Conduct](#). The NCP also invites them to take into account annexes on indigenous peoples of the [OECD Due Diligence Guidance for meaningful engagement with stakeholders in the extractive sector](#), adopted in 2016, and the [OECD/FAO Guidance for responsible agricultural supply chains](#) adopted in 2017.*

**The NCP notes that the Group has taken action in response to this recommendation:**

**i. The NCP notes that the Group has strengthened its corporate policy contributing to due diligence and due vigilance at substantial and organizational levels, in particular:**

- EDF formulated its purpose (or "raison d'être") on 7 May 2020<sup>2</sup>. Adopted by its General Assembly, it is included in the company's statutes;
- In March 2021 EDF elaborated its policy paper called "*Human rights and fundamental freedoms, Health and safety, Environment and Business ethics: the EDF Group's commitments and requirements*" which it its framework for the "duty of vigilance". This document was discussed with the Group's Trade Unions via the monitoring committee of the global framework agreement between EDF and IndustriALL Global Union and Public Services International<sup>3</sup>. This framework is published on EDF's website<sup>4</sup>. It incorporates in particular

<sup>1</sup> Judgments of 3 May 2021 and 29 June 2021

<sup>2</sup> EDF source: <https://youtu.be/MEfKJ-pRkic>

<sup>3</sup> Source EDF "[EDF signs global responsible employer agreement with IndustriALL and PSI](#)" (EN)

ISP source: Text of the EDF Group's global framework agreement on social responsibility: [French](#), [Spanish](#), [English](#)

<sup>4</sup>Source EDF [CSR: our commitments | Duty of Vigilance | EDF Group](#) in [Group's Duty of Vigilance Framework](#)

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international standards of the United Nations and the ILO on the rights of indigenous communities and peoples (see extract<sup>5</sup>);

- EDF adopted 16 CSR commitments in March 2021, including “Ethics and Human Rights” commitment. These commitments are presented in its 2020 Universal Registration Document<sup>6</sup>. These commitments are implemented in the form of policies and operational actions. They are divided into four issues, including the issues of “well-being and solidarity” and “sustainable development”. These commitments are set out in the policy document *“Human rights and fundamental freedoms, Health and safety, Environment and Business ethics: the EDF Group’s commitments and requirements”*. These commitments apply to the activities of the Group and of all the companies it controls;
- EDF strengthened its Group-wide duty of vigilance with the appointment of a Group’s Due Vigilance Manager at the end of 2020 and the appointment of Due Vigilance Managers in EDF’s management and for its subsidiaries in June 2021;
- EDF informed the NCP about the deployment of in-house training on several dimensions of responsible business conduct, in particular on “consultation with stakeholders within the territory”.

**ii. The NCP notes that the Group has established engagement processes with its stakeholders and is working to formalise it.** EDF has engaged in discussions with stakeholders (experts, NGOs, trade unions, companies) to improve the process of developing the vigilance plan. In January 2021, EDF set up a new Group’s Stakeholder Advisory Committee (*“Conseil des Parties Prenantes”*), which brings together 13 personalities from civil society around the CEO<sup>7</sup>. The Committee is a consultative, gender-equal and multidisciplinary body. EDF has started works to develop practical arrangements for the engagement with stakeholders concerned by projects of EDF SA’s and its subsidiaries. The Group presented to the NCP tools used by EDF Hydro. The NCP notes that this subsidiary is more advanced than EDF Renewables on these issues.

**iii. The NCP notes that the Group has engaged in discussions on the situation of human rights defenders which incorporate feedback from the specific instance.**

**iv. The NCP notes that in 2021 EDF Renewables changed its environmental policy to develop a new “Environmental and Social Policy”.** EDF points out that engagement with stakeholders has been strengthened and that 4 out of the 7 objectives set for the subsidiary relate to engagement with stakeholders and local communities. These are: dialogue and consultation with relevant stakeholders, respect for and promotion of human rights and the rights of local communities, assessment and mitigation of social and environmental risks in the supply chain, local economy creating social and environmental value.

*→ Result of the follow-up to Recommendation 1: The NCP notes that EDF has strengthened its policies and tools contributing to carry out its due vigilance and due diligence; which it welcomes. This strengthening illustrates the impact of the action of the NCP. The NCP notes, however, that the Group has not yet put in place a systematic mechanism of engagement with all stakeholders potentially concerned by its projects, particularly with actors who defend social and cultural interests, but it also notes that works are under way on this subject; which it welcomes. The NCP underlines that the referral has shown the importance of carrying out due diligence while taking into account the local context (contextualization) and of engaging with the diversity of stakeholders concerned by its projects’ implementation. The NCP encourages the Group to finalise these works in order to formalise and harmonise its stakeholder*

<sup>5</sup> Source EDF [Group’s Duty of Vigilance Framework](#) Abstract p. 9 “Respect for the rights of indigenous populations : The EDF group is committed to respecting the rights and distinctive features of indigenous populations as defined in the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO Convention 169. The UNDRIP in particular stipulates that “Indigenous peoples shall not be forcibly removed from their lands or territories. No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned and after agreement on just and fair compensation.”

<sup>6</sup> EDF source: See in particular p.e 131 [EDF / 2020 Universal Registration Document \(cld.bz\)](#) ; [CSR – Our CCSR commitments](#)

<sup>7</sup>Source EDF [EDF Group’s Stakeholder Advisory Committee](#)

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*engagement policy for the Group's projects and its policy on the situation of human rights defenders, in particular for EDF Renewables. It invites the Group to inform the NCP of the outcome of these works.*

**RECOMMENDATION 2:** *In the case at hand, the NCP recommends that the EDF Group to accompany its subsidiary EDF Renewables Mexico with the establishment of a CSR committee composed of external stakeholders and the designation of a person responsible to manage relations with these external stakeholders. This would enable the Company to have a permanent and transparent framework for dialogue for all wind farm projects EDF Renewables is developing or plans to develop in Mexico, in particular Gunaa Sicarú. This could be done in other countries and in other entities of the Group, in particular in conjunction with the vigilance plan managed by EDF.*

During the follow up of the specific instance, EDF Renewables Mexico committed to setting up a CSR committee for each of its future projects as recommended by the NCP. In order to minimize interferences and overlapping with the existing follow up committees included in the framework of the Mexican FPIC consultation process (see supervision phase), CSR committees of future projects – including for Gunaa Sicarú project - will be put in place after each project's FPIC consultation process for is over.

The NCP notes that EDF Renewables Mexico designated an officer in charge of the relations with stakeholders, the "Key Liaison Officer". The NCP note that EDF Renewables Mexico has a large local team (14 people) including three Regional Managers for Social Relations. This team is dedicated to the relations with stakeholder. It is divided into three regional offices, including one in Juchitan de Zaragoza competent for Unión Hidalgo and La Ventosa. Members of this team answer questions from local communities and landowners concerned by the subsidiary's projects.

The NCP notes that EDF Renewables Mexico updated its alert and complaint mechanism in September 2020.

With regard to the deployment of CSR committees in other countries, EDF indicated that it would proceed on a case-by-case basis according to the countries of intervention and instead favour a project-level scheme, since it seemed more appropriate to the specificities of the field.

**➔Result of the follow-up to Recommendation 2:** *The NCP welcomes EDF Renewables Mexico's commitment to set up « CSR Committees » for its future projects in Mexico, where the Group has several wind farm projects, when the indigenous consultation for Gunaa Sicarú's project will be over. The NCP invites it to make sure that all stakeholders potentially concerned by its projects will participate to this committees. It invites it to examine the setting up of an equivalent stakeholder engagement framework for its existing wind farms. The NCP invites EDF to continue the follow up of this issue as part of its work on stakeholder engagement mentioned above.*

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*RECOMMENDATION 3: When projects of the EDF Group raise land-tenure issues linked with indigenous peoples, the NCP recommends to EDF Group and to EDF Renewables to consult various stakeholders. In the case at hand, it recommends to make sure that this issue will be addressed in an appropriate framework in the context of the indigenous consultation in order to prevent future litigation.*

During the follow-up, EDF recalled that the Group is committed in its internal policies to implement the rules of dialogue of the international standards of the IFC (World Bank Group) and the Ecuador Principles. EDF assured the NCP of its commitment to respect the rights of indigenous peoples and, more specifically, related land issues. EDF also highlighted that its work on homogenisation of its stakeholder engagement's modalities could also enable EDF to develop a specific tool on the rights of indigenous and tribal peoples, which would address land issues in particular to provide advice and guidelines to the Group's project teams worldwide.

In the case at hand, the NCP found that EDF and EDF Renewables are monitoring the progress of the indigenous consultation of the Gunaa Sicarú project, which as per Mexican regulation, has to be led and managed only by Mexican authorities. EDF explains that EDF Renewables Mexico joins the indigenous consultation in the appropriate phases and whenever the Mexican authorities ask to, in order to provide the indigenous community with technical, environmental and social information. The discussion with the NCP remained general due to the continuation of litigation before Paris' Judicial Court.

*→ Result of the follow-up to Recommendation 3: The NCP notes that EDF is conducting works on stakeholder engagement that integrate issues related to indigenous and tribal peoples' rights and related land issues; which it welcomes. It invited the Group to inform the NCP of the outcome of this works. The Group's ability to engage with the former Complainants is directly affected by the withdrawal of the former Complainants from the good offices of the NCP in July 2019 and by the proceedings they initiated against EDF SA in France as of September 2019.*

### 3. Conclusion

The NCP notes that the local context surrounding Gunaa Sicarú project remains complex and that administrative and litigation procedures are ongoing in Mexico and France.

**The NCP ceases to follow up on this specific instance.**

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*Website of the French NCP:*

*<https://www.pcn-france.fr>*

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