Defending Indigenous Territories Through Law and Collective Power

Some Reflections on the Experience with Accompanying Territorial Defense

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Law's capacity to transform unequal power relations depends on how legal action supports community organising and whether this support remains guided by communities' own priorities and decisions. This matters because energy projects begin to transform territories before construction starts: Contracts establish claims over land, permits authorise particular uses, and administrative procedures determine whose participation counts. Indigenous peoples challenging these projects must therefore engage with institutions whose decisions helped make them possible.

This blog post draws on the experience of the Project on Economic, Social and Cultural Rights (ProDESC) and the Transnational Justice Initiative (IJT) with accompanying territorial defence in Unión Hidalgo, Mexico, and Pilmaiquén, Chile. From this situated perspective, the post examines how legal interventions can support community authority over the purposes, priorities and acceptable costs of defence. As will be shown, access to a legal forum can expand the possibilities for action while leaving the underlying distribution of decision-making power largely intact. The analysis thus adopts a reflexive view of globalisation, treating transnational law as a site where global power is not only exercised, but contested. As such, the promise of law rests in its contribution to people's capacity to shape decisions affecting their lives. Comprehensive defence must be judged by how it supports that capacity through concrete struggles, including the moments when communities decide that the available legal response is insufficient.

Law and the Organisation of Territorial Defence

Katharina Pistor's account of the legal coding of capital helps identify what is at stake. Law gives assets qualities that protect and preserve wealth, including priority and durability.[1] Applied to territorial conflicts, this perspective directs attention to the legal arrangements that make land and resource use available for investment. A contract or authorisation can help stabilise a company's expectations while leaving community claims contested, fragmented or awaiting recognition.

For Indigenous peoples, that fragmentation matters because territorial relationships exceed the categories through which institutions administer them. Property, environmental protection and cultural heritage may be addressed in separate proceedings, each with its own evidence requirements and remedies. Communities must navigate these divisions even when the harm they describe concerns an interconnected way of life. A decolonial approach to legal practice must therefore examine how institutional categories distribute authority and whose understanding of territory they recognise.

ProDESC and IJT's Comprehensive Defence Methodology tackles this problem by connecting litigation with investigation (both academic and corporate research), advocacy, communication, collective learning and organisational accompaniment. Investigation can identify the company responsible for investment decisions; advocacy can bring community demands to institutions capable of influencing it. Legal proceedings can create openings that organising

[1] Katharina Pistor, *The Code of Capital: How the Law Creates Wealth and Inequality* (Princeton University Press, 2019), DOI: 10.2307/j.ctvc777c1.

helps communities use. The value of this approach lies in how these activities respond to a collectively defined strategy. Such coordination requires choices. Public attention can support a legal claim and increase exposure to threats. Judicial deadlines can compete with the time needed for deliberation. Specialised expertise can become a source of authority over the people it is intended to serve. Finally, accompaniment must make these tensions discussable and preserve the possibility of changing course. Its credibility depends on how it handles disagreement and unequal access to information.

Unión Hidalgo and the Reach of Corporate Accountability

In Unión Hidalgo, in the Mexican state of Oaxaca, members of the Zapotec community have challenged the Gunaa Sicarú wind project developed through the Mexican subsidiary of Électricité de France (EDF). The dispute concerns territorial rights, free, prior and informed consent, and the risks faced by people opposing the project. Individual land agreements form part of this conflict, but they cannot answer the separate question of how an Indigenous people participates in decisions affecting its territory. Agrarian rights and Indigenous collective rights require distinct analysis, even where their protection overlaps.

The case shows why the quality of participation cannot be assessed solely through the existence of consultation meetings. People need accessible information and conditions in which they can deliberate without intimidation or any other kind of pressure. Participation also depends on who can attend, who is treated as a legitimate interlocutor, and whether care responsibilities or unequal standing prevent women from influencing decisions.

In October 2020, community defenders, ProDESC and the European Center for Constitutional and Human Rights (ECCHR) brought proceedings against EDF in France under the so-called Duty of Vigilance Law.[2] The claim challenged the adequacy of EDF's vigilance regarding the project, including risks to territorial rights and human rights defenders. In June 2024, the Paris Court of Appeal admitted the action, opening the way to examination of its merits. It did not grant the requested suspension of the project.[3]

That distinction is central to understanding the contribution of transnational litigation. Admissibility created an avenue for judicial scrutiny of the parent company's conduct. It did not establish the alleged violations or provide all the immediate protection sought. A procedural advance and continuing vulnerability can coexist. Evaluating the strategy requires attention to both, particularly for people who bear the consequences of judicial delay in the territory.

The French proceedings also reveal the organisational demands behind access to justice. Sustaining a claim across jurisdictions requires documentation and legal expertise, but its political legitimacy depends on continuing relationships with those whose rights are invoked. Community deliberation must remain meaningful as arguments are translated into the categories of another legal system. The challenge for accompaniment is to make that translation useful to the defence while preserving community influence over what the proceedings seek to achieve.

Pilmaiquén and the Fragmentation of Territory

The second case concerns the Mapuche-Williche communities, who defend a territory in southern Chile affected by hydroelectric projects associated with Statkraft, a Norwegian State-owned company. The claims by these communities articulate relationships between the Pilmaiquén River, ceremonial practices, ancestral burial grounds and spiritual authority. In the account advanced by the communities, accompanied by ProDESC and IJT, protecting a particular site cannot be separated from the territorial relationships that give it meaning.

The dispute consequently crosses administrative boundaries between environmental assessment, archaeological protection and land restitution. Each

[2] Law No. 2017-399 of 27 March 2017 on the Duty of Vigilance of Parent Companies and Ordering Companies.

[3] Estefania Diaz, *El Tribunal de Apelaciones de París Admite Demanda Civil Contra el Parque Eólico de EDF en México*, ProDESC Blog, 18.06.2024, https://prodesc.org.mx/el-tribunal-de-apelaciones-de-paris-admite-demanda-civil-contra-el-parque-eolico-de-edf-en-mexico/, last accessed 16.10.2026.

process can recognise an aspect of the claim while leaving other dimensions unresolved. Recognition of archaeological significance, for example, does not itself settle questions about collective authority over the territory. This fragmentation places an additional burden on communities, which must pursue connected demands through institutions that treat them separately.

In September 2023, representatives of the communities submitted a complaint concerning Statkraft to Norway's National Contact Point for the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.[4] Around one year later, an initial assessment issued by the Contact Point accepted parts of the complaint for further examination, including due diligence, meaningful stakeholder engagement, environmental impacts and disclosure.[5] In 2026, representatives of the communities, supported by ProDESC and IJT, also submitted a complaint to the Norwegian Consumer Authority under Norway's Transparency Act.[6] The complaint asks the Consumer Authority to investigate Statkraft's compliance with its human rights due diligence obligations in connection with the company's projects, including concerns about Indigenous consent, cultural and spiritual rights, and the safety of human rights defenders. This brings an additional dimension to the strategy: scrutiny by an administrative authority empowered to issue orders requiring compliance with statutory obligations.[7]

The significance of this filing lies in the communities' attempt to make Norway's domestic regulation answerable to territorial realities in Chile. It asks whether legally mandated due diligence can address the harms and risks identified by Indigenous rights holders, including dimensions of territory that corporate assessments may overlook. Statkraft's public ownership gives this question additional political weight as Norway is being called upon to apply its regulatory standards to a company it owns. Corporate obligations, regulatory enforcement and the state's exercise of ownership remain distinct responsibilities, but the strategy brings their relationship into view.

The OECD Guidelines provide a basis for examining these connections by distinguishing impacts a company causes, contributes to, or is directly linked to through business relationships.[8] Norway's Transparency Act requires due diligence in accordance with those Guidelines and provides an enforcement framework within domestic law. The two avenues therefore offer different ways of pursuing accountability, whose value depends on how they respond to the communities' concerns.

For comprehensive defence, filing the additional complaint creates an opportunity whose practical effects must still be assessed. Regulatory scrutiny may strengthen pressure for changes in corporate conduct, but submitting a complaint does not itself secure protection or restore community authority over territory. Accompaniment must help the Mapuche-Williche communities use these mechanisms while keeping their territorial priorities central and assess whether the resources invested in proceedings translate into greater capacity to influence decisions affecting their collective life.

Conditions for Strengthening Collective Power

The two presented cases illustrate how legal action can widen the institutions before which communities make claims. They also show why widening access should not be equated with redistributing power. A court may hear a case without granting immediate protection. A complaints mechanism may accept a

[4] See National Contact Point for Responsible Business Conduct Norway, *Specific Instances Concerning Statkraft AS and Its Chilean Subsidiaries*, 14.09.2023, https://files.nettsteder.regjeringen.no/wpuploads01/sites/597/2025/08/Mapuche-Williche-complaint-Statkraft-AS.pdf, last accessed 16.10.2026.

[5] National Contact Point for Responsible Business Conduct Norway, *Mapuche-Williche Communities v Statkraft AS: Initial Assessment*, 19.09.2024, https://nettsteder.regjeringen.no/wp-content/uploads/sites/597/2025/08/NCP-Initial-Assessment-Mapuche-Williche-vs-Statkraft-AS.pdf, last accessed 16.10.2026, p. 1-2.

[6] Act Relating to Enterprises' Transparency and Work on Fundamental Human Rights and Decent Working Conditions.

[7] Initiative for Transnational Justice and ProDESC, *Indigenous Communities File Complaint in Norway Against Statkraft Under Transparency Act: Initiative for Transnational Justice: ProDESC*, PR Newswire, 18.08.2026, https://www.prnewswire.com/news-releases/indigenous-communities-file-complaint-in-norway-against-statkraft-under-transparency-act–initiative-for-transnational-justice—prodesc-302854337.html, last accessed 16.10.2026.

submission while narrowing the issues it will consider. The political value of these openings depends partly on what communities can do with them and on the costs of sustaining their participation.

For comprehensive defence, the first condition is continuing community authority over strategy. Consent to an initial action cannot replace ongoing deliberation about negotiations, public statements or remedies. Accompanying organisations need to explain available choices and their consequences in accessible terms. They must also account for the people whose views are less likely to be heard within formal meetings, including women whose participation may be constrained by care work or unequal recognition.

A second condition is sufficient support to sustain that authority. Translation, travel, preparation and protection take resources. When these burdens fall disproportionately on a few human rights defenders, formal participation can conceal growing exhaustion. Collective organisation may provide support and strengthen the ability to respond, but it does not guarantee safety or relieve states and companies of their responsibilities. Increased visibility should be assessed alongside its possible consequences for those who remain in the territory.

A third condition concerns how success is evaluated. Favourable decisions matter, particularly when they prevent harm or enable a remedy. Assessment must also ask whether communities gained usable information, maintained control over negotiations, and strengthened their capacity to decide together. These are questions for joint evaluation, not achievements that organisations should infer from the prominence of a case. An unfavourable judgment likewise cannot automatically be recast as a political victory.

These conditions give practical content to a critical use of law. They also require accompanying organisations to examine their own power. Professional expertise, access to international audiences and control over resources can reproduce the distance that accompaniment seeks to overcome. Accountability to community processes must therefore remain part of the method, including when it complicates a legal strategy or an organisation's preferred narrative.

In sum, the experience of accompanying territorial defence in Unión Hidalgo and Pilmaiquén does not establish that legal institutions can resolve the conflicts they help organise. Rather, it shows the importance of contesting those institutions while sustaining sources of collective authority beyond them. For territorial defence, the promise of law rests in its contribution to people's capacity to shape decisions affecting their lives. Comprehensive defence must be judged by how it supports that capacity through concrete struggles, including the moments when communities decide that the available legal response is insufficient.

[8] OECD, *Guidelines for Multinational Enterprises on Responsible Business Conduct* (OECD Publishing, 2023), DOI: 10.1787/81f92357-en, chapter II, commentary 21-23, and chapter IV.

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