

## LEGAL VICTORY FOR THE MEMBERS OF THE COMMUNITY OF UNIÓN HIDALGO: PRECEDENT TO DEFENDING LAND AGAINST WIND FARM ABUSES

- Agrarian Tribunal declares nullity of lease contracts of 11 community members of Unión Hidalgo.
- It establishes that wind energy companies that want to install projects in Oaxaca must make contracts with assemblies of community members and not with private owners or individual landowners.
- "The wind farms that are operating on the lands of Juchitán de Zaragoza are openly illegal": ProDESC.

**Oaxaca, Oaxaca, 6 September 2022** - After a nine-year long trial, the the Agrarian Tribunal of Tuxtepec, Oaxaca, granted 11 community members of Unión Hidalgo the nullity of the land lease contracts of a wind farm in Juchitán de Zaragoza, Oaxaca.

The desition against Desarrollos Eólicos Mexicanos S.A de C.V. (Demex), a subsidiary of the Spanish company Renovalia Energy, states that the land where they built their power generation project was improperly considered private property when in fact it is communal land.

The nullity ruling recognises that the General Assembly of Communal Inhabitants of Juchitán de Zaragoza and its annexes Xadani, Chicapa, Unión Hidalgo, La Ventosa and El Espinal is the only body that can determine the use, destination and enjoyment of the land, since the territory belongs to a communal property regime and that Unión Hidalgo is an agrarian and indigenous community that preserves its traditional practices.

Although Demex is not yet obliged to dismantle the wind farm, since the company was unable to install wind generators on this specific premises, the ruling nullifies the contracts of the 11 non-conforming community members. The ruling also sets a precedent so that any community member throughout the country can in the future declare the contracts null and void if they have been authorised individually and not by agreement of a General Assembly of Community Members.

### THE RULING SETS A HISTORIC PRECEDENT

Juan Antonio López, Transnational Justice Coordinator at Proyecto de Derechos Económicos, Sociales y Culturales, A.C. (ProDESC), stated in a press conference that the ruling of the Agrarian Tribunal "*establishes a historic precedent in the defence of land and territory for agrarian and indigenous communities by recognising the legal nature of the lands of Unión Hidalgo as common use lands, as established by the Presidential Resolution for the Recognition and Titling of Communal Property dating from 1965*".

This resolution establishes that all contracts signed in contravention of the Agrarian Law can be declared absolutely null and void at the request of the communal landholders.

*"The parks installed and operating on the lands of Juchitán de Zaragoza are openly illegal"*, says the representative of ProDESC, a Mexican non-profit organisation.

### **A LONG JUDICIAL PROCESS**

In 2004, representatives of Demex came to the community of Unión Hidalgo to convince them to lease their land for the installation of the Piedra Larga wind farm. From 2006 to 2011, Demex carried out the formalisation of civil lease contracts for the land with individual possessors.

On 11 June 2013, the 11 eleven members of the community and ProDESC, filed agrarian lawsuits against Demex before the Agrarian Tribunal (TUA) in the 22nd district, based in Tuxtepec, Oaxaca, in which they requested the nullity of the contracts signed with the company, for contravening the Agrarian Law, since the contracts were improperly considered private property when in reality they were communal lands.

Surprisingly, the Magistrate of the TUA decided to declare himself incompetent to hear the case for "reasons of subject matter", as he considered that the lawsuit should be heard by a civil judge.

It was then when the affected members of the community filed a lawsuit (amparo indirecto) under file number 890/2013 before the District Court in the State of Oaxaca. On 4 February 2014, the Agrarian Court admitted it for processing, and on 21 October 2016, it declared the lease contracts signed through civil proceedings to be valid, arguing *"the good faith of the company due to the fact that it was unaware of the agrarian quality of the land"*.

For this reason, the community members of Unión Hidalgo filed an appeal against the resolution. On 22 June 2017, the Court Appeal granted an amparo to protect the plaintiffs, and ordered the Magistrate of the Agrarian Court to reinstate the procedure for the recognition of the lands as a communal territory and to respect the cultural specificities of the indigenous community inherent to the form of signing contracts.

Thus, on 5 August 2022, the authority declared the nullity of the lease contracts signed between various possessors of the Unión Hidalgo community and the Demex company.

The press conference was attended by Guadalupe Ramírez, member of the Hidalgo Community, as well as Dolores González Saravia, President of the Executive Council of Serapaz.