Renewable energies in Colombia: All that glitters is not gold

The struggle against climate change can be neutralized by the circumstances and conditions under which the clean energy transition is carried out. The behavior of wind-energy companies in La Guajira, the territory of the Wayuu indigenous people, serves as an illustrative example.

By Joanna Barney - 1st December 2020

La Guajira is a unique place. Located in the northern-most part of Colombia, it borders on the Caribbean Sea and features a desert landscape adorned with the rare vegetation of the dry, subtropical forest. As one delves deeper into the region, to the so-called Alta Guajira, the flora diminishes until there is nothing but thorny bushes called trumpillos. Likewise, the comforts of Western civilization also fade out as one gets farther from the coast.

As the urban centers are left behind, the highways are replaced by dusty roads, while houses made out of yotajoro, the dry heart of the cardomo cactus, substitute the houses built out of bricks and zinc roofs. In this land, electric energy is also absent, and only a few electricity posts remain as evidence of previous, tepid attempts to electrify a region where corruption leaves nothing behind.

However, the most hurtful scarcity is that of water, which is, in part, a consequence of climate change. According to the 2014 Agricultural Census, the number of goats in the region goes up to a million, and these are in crisis due to their lack of access to the minimum necessary water to breed new litters. “Their milk dries out before the calf can even feed itself,” says an indigenous leader, with sadness. The aqueduct, a promise of every electoral campaign, has never managed to materialize, and the water only reaches the region through expensive water tank trucks, stored by the communities next to their houses.
La Guajira is the land of the Wayuu indigenous people: the sons of the desert. According to the last National Population and Housing Census conducted by the National Administrative Department for Statistics (DANE) in 2018, their bi-national population goes up to 380,460 members, and estimates suggest that that number may be even higher, given the migratory flows from and towards Venezuela, and despite the resistance of some to being registered by the census. Nevertheless, the ethnic group is the most populous one in Colombia, as well as one of the most misunderstood.

The violation of the Wayuu people’s fundamental rights is so extreme, that even the Colombian Constitutional Court has ruled in their favor in several rulings. Amongst these judgements stands ruling T-302, from the 8th of May 2017, which establishes that the conditions suffered by the Wayuu people are unconstitutional. This ruling is in line with the precautionary measures adopted by the Inter-American Court of Human Rights (ICHR) to address the non-compliance of the Colombian National government, and La Guajira’s departmental and municipal government policies with the minimum applicable constitutional standards. While this measure seeks to safeguard the Wayuu children’s fundamental rights to healthcare, drinking water, food and food security through the legal guardianship of the government, it also obliges the latter to guarantee the beneficiaries’ fundamental right to participation.

A desert of natural resources

In contrast with this harsh reality, the Wayuu people are surrounded with energy and mineral riches. In their subsoil are stored more than 3,670 million tons of thermal coal, which originate 35% of the gas extracted in Colombia and contain deposits which would guarantee gas supply for the coming years. All of this without even accounting for the speculations around off-shore oil in the region, which come and go, or the mining of talc and other construction materials. As if this was not enough, now a great wind and solar energy potential for the region is being discussed. All this wealth is concentrated in an area of 1,080,336 hectares: a territory protected as an indigenous shelter by the 1991 Constitution.
In spite of this legal demarcation, at least a dozen multinational and multilatina companies pretend to develop Colombia’s wind farms in La Guajira. The powerful investors reached these lands abandoned by the State to establish land use agreements with hundreds of communities. The State never oversaw the information and coordination processes to ensure that the rights of the Wayuu people and other inhabitants of the region are respected. The State’s lack of responsibility has left to chance both the fate of the people of La Guajira and the legal certainty of investments.

The message sent out to the companies has been clear: to continue with their projects. The governments’ official motto towards energy mega-projects in the peninsula seems to be: “Move forward with your projects, we will sort out your legal issues as they arise.” For communities, the reality of what is intended to be done with their territories is slowly being revealed, along with the promise of trinkets to co-opt them. Some communities have been approached for years; with some granted with the oversight of the measurement towers required to approve projects before the Regulatory Commission for Power and Gas (CREG) in the zones pretended for the solar and wind farms. Other communities have taken the road of standing back and observing the workings of the company that operates in their territory for some time before starting talks, but, before long, that company sells its business to another one: generating, as a result, confusion and mistrust throughout the region.

Currently, communities in the vicinity of the wind farms in Alta Guajira claim that prior consultations have not reached a conclusion, while, in some cases, they did not even begin. Ignoring the fact that these consultations must be done beforehand, companies have already closed several deals to sell energy to the State. They have even purchased wind turbines from foreign companies worth between one and two million dollars, depending on their capacity. In this context, the last pending procedure should have been the first one: the consent of the communities that own the territory.
The pronouncement of the Inspector General’s Office regarding prior consultations

In response to the denunciations and the report elaborated by INDEPAZ *El viento del Este llega con revoluciones* (*The easterly wind arrives with revolutions*), in August 2020, the Inspector General’s Office urged the Ministry of Mines and Energy, the Mining and Energy Planning Unit, the Environmental Licenses Authority, Copoguajira and the Ministry of the Interior to *not forget the principle of administrative morality*. Thus, Colombian Justice requested the suspension of the project known as “Transmission Line Associated to the Cuestecitas-Colectora Connection 1-500kv”, until the Prior Consultation procedure is completed, and the Free, Prior and Informed Consent of the ethnic communities that inhabit the area is obtained.

The construction of la Colectora was commissioned to Energía de Bogotá in 2017 through a tendering process, and it is essential for the transmission of the electrical energy that will be generated in the wind farms of Alta Guajira. Said construction depends on the implementation of prior consultations to 248 indigenous communities in the surrounding area. The current regulations stipulate that there cannot be buildings or settlements in a 60-meter wide strip beneath high voltage lines. In addition to the permanent freedom of transit granted to the company, the construction implies the resettlement of the peasant and indigenous peoples that inhabit this zone.

Although some communities had reached advanced stages of the Prior Consultation, INDEPAZ found evidence that the procedure had to start anew by petition of these communities, due to confusion and misunderstandings among the leaders. The same happens in the case of the wind farms, as community members are delegitimized for lacking the support of ancestral owners or maternal uncles, and must restart the consultations, as long as the companies approve it.

It is helpful to explain that the Wayuu function as federate units; each *urruku* or ranch has the authority to decide the future of its family. Nevertheless, each unit must be
guided by the ancestral owner of its territory, a tradition that has led to fragmentation and face-offs within the communities.

**Defending the companies’ interests**

The Colombian government has not skimped on efforts to accelerate the procedure of Prior Consultations for companies: from the attempt to simplify it, called “Guajira consulta y actúa”; to the notice that enabled virtual consultations; all the way through platforms promoted by contracts with multilateral, international organizations that strongly favored the companies. In the same vein, amidst the pandemic, the 2020 Decree 990 authorized officials of the Ministry of the Interior to visit indigenous communities, which were stricken by Covid-19, in order to put pressure on them.

But the final strike on Prior Consultation procedures would come with the Presidential Order Nº 8, issued last year on September 9, titled *Guide for carrying out prior consultations*. This order introduces the controversial term known as “proportionality test”, which can be applied by the government if, after a period no longer than three months since the initial contact with the communities, no agreement is reached, due to the non-attendance of authorities or the lack of representation of the ethnic community. This last condition seems to target the Wayuu community, in which conflicts between ancestral leaders —who take the real decisions about the territories and the *achones*— and the nephews —who hold no power over the decisions— are ever-present in the wind energy projects.

It goes without saying that the purpose of this test is to enable the government to determine the adequate measures for preventing, correcting and mitigating direct problems. However, concealed by euphemisms, the government limits the communities’ right to decide over their territory and forces them to adapt to the schedules imposed by the Ministry of the Interior and the companies. This goes against the very essence of Prior Consultations, as conceived in Convention 169 of the ILO.

The communities of La Guajira have approached the Colombian State in several ways, urging it to intervene as a safeguard of the Wayuu Nation’s rights, not as a mere ally of
multinational corporations. On this issue, the voices of various indigenous leaders have stood out and, above all, those of the female leaders that reject mega-projects which pose a threat to their communities. Other authorities ask for agreements and prior, informed consents, in fair terms and with real benefits, taking into account the transformation that these mega-projects would imprint on their territory until as far as the year 2100.

The inhabitants of La Guajira have a lot of questions about the occupation of their territories for the production of renewable energies; meanwhile, licenses to extract coal, gas and oil are simultaneously increasing. The order of the Inspector General’s Office must be an opportunity to review the execution of these contracts and to set a precedent in regards to the respect for the Wayuu Nation’s rights. This is a necessary step to move towards an energetic transition with genuinely clean projects, instead of trampling and threatening an entire indigenous group, and sacrificing it on behalf of the so-called green energies.

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