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**THE ROLE OF JUSTICE IN COLOMBIA'S RENEWABLE ENERGY TRANSITION:
WIND ENERGY DEVELOPMENT IN WAYÚU TERRITORY**

A Thesis Submitted to the Faculty in partial fulfillment of the requirements for the degree of

Master of Arts in Liberal Studies

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Abstract

Amidst the defining issue of our time – climate change – the world faces an imperative to shift from fossil fuels to renewable energy, aligning with the 2015 Paris Agreement goals. This global focus on low-carbon energy infrastructure has brought forth local socio-environmental conflicts, and at the heart of this transition lies La Guajira, a peninsula in northern Colombia, home to the indigenous Wayúu people and abundant wind energy resources. This research delves into the critical role of energy justice as large-scale wind energy projects expand in La Guajira. By examining the struggles faced by the Wayúu people provoked by wind energy development in their ancestral territory, the study integrates the energy justice framework with qualitative data collected through fieldwork in Colombia. The investigation focuses on perceived injustices by Wayúu communities during indigenous consultation processes, examined in relation to procedural, distributional, and recognition justice. The research approach includes 22 semi-structured interviews with stakeholders, including community leaders, grassroots organizations, government authorities, industry representatives, and scholars; it also draws from participant observations, site visits, and policy analysis, all gathered within a collaborative research process with Wayúu female leaders. By amplifying the voices of the Wayúu people and acknowledging historical imbalances, this research aims to contribute to a more inclusive and sustainable energy transition policy in Colombia and beyond. The findings shed light on the multiple injustices endured by the Wayúu community, including the lack of recognition of their culture, biased consultation procedures, and at times reinforcing broader structural inequalities. The study advocates for restorative justice and an intersectional approach to inform energy policies and indigenous consultation laws. Achieving a just energy transition in La Guajira is paramount, not only to reconcile historical resistance against the fossil fuel industry but also to align with the urgent goals of combatting climate change. Ignoring energy justice concerns risks perpetuating grave injustices, threatening indigenous communities' cultural integrity, livelihood, and environment.

Acknowledgments

I am deeply grateful as I stand on the threshold of completing my journey as a master's student in the Liberal Studies Program at Dartmouth College and submitting this thesis. This endeavor has been a labor of love, and it would not have been possible without the support, guidance, and encouragement of numerous individuals and institutions. With profound appreciation, I extend my heartfelt thanks to the Wayúu people, that welcomed me with open arms and shared their traditions, stories, and struggles; your collaboration has been a humbling privilege. This thesis stands as a tribute to your resilience.

First and foremost, I express my sincere gratitude to Dartmouth and the MALS Program for allowing me to pursue my academic interests in climate justice. Dartmouth's resources, faculty, and community have enriched my knowledge and broadened my perspectives. I am grateful to MALS, The Ethics Institute, and The Irving Institute, whose generous grants made this research possible. I want to thank my thesis advisor, Dr. Sarah Kelly, for her unwavering support and invaluable insights throughout this journey. Her guidance and constant motivation have been instrumental in finding my voice and shaping my research trajectory on energy justice. I am grateful for her countless hours offering constructive feedback and pushing me to explore new depths in my research. I am equally thankful to my second thesis reader, Dr. Peter DeShazo, for his thoughtful engagement with my thesis and for sharing his expertise. His critical evaluation and constructive comments have significantly enhanced the quality of my work. My gratitude also extends to my third thesis reader, Dr. Martina Broner, for her thoughtful and meticulous evaluation of my thesis. Her insightful suggestions and expertise in Latin America have been instrumental in refining my research. I must also acknowledge the immeasurable support of my friends and colleagues at MALS and the Energy Justice Clinic. Their camaraderie and encouragement have been a constant source of inspiration throughout my academic journey. Lastly, I owe my family and my life partner a debt of gratitude for their unconditional love and continuous belief in me. Their support has been the bedrock of this milestone, and I am eternally grateful for their encouragement, patience, and understanding.

Thank you to all those who have contributed to my growth as a scholar and individual.

With sincere appreciation,
Adriana P. Fajardo Mazorra

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Acronyms

ANLA	National Environmental Licensing Agency
CDM	Clean Development Mechanisms
CREG	Energy and Gas Regulation Commission
COP	Climate Change Conference
DANE	National Administrative Department of Statistics
DNP	National Planning Department
EIA	Environmental Impact Assessment
EPM	Empresas Públicas de Medellín
FPIC	Free, Prior, and Informed Consent
GDP	Gross Domestic Product
GEB	Grupo de Energía de Bogotá
GHG	Greenhouse Gasses
GW	Giga watt
GWh	Giga watt per hour
IACHR	Inter-American Court of Human Rights
IDB	Inter-American Development Bank
IDEAM	Institute of Hydrology, Meteorology and Environmental Studies
IEA	International Energy Agency
IMF	International Monetary Fund
ILO	International Labor Organization
IPCC	Intergovernmental Panel on Climate Change
IRENA	International Renewable Energy Agency
LAC	Latin America and the Caribbean
LTPC	Long-Term Power Contracts
MADS	Ministry of Environmental and Sustainable Development
MME	Ministry of Mines and Energy
MW	Mega watt
NDC	National Determined Contribution
NGO	Non-Governmental Organization
NIMBY	Not in My Backyard
ONIC	National Indigenous Organization of Colombia
OPEC	Organization of Petroleum Exporting Countries
O&G	Oil and Gas
RELAC	Renewables in Latin America and the Caribbean
RETIE	Technical Regulations of Electrical Installations
SER	Renewable Energy Association
SIN	National Interconnected System
UNDP	United Nations Development Program
UNDRIP	United Nations Declaration of the Rights of Indigenous Peoples
UNGRD	National Disaster Risk Management Unit
UPME	Mining and Energy Planning Unit
WEF	World Economic Forum

Words in Wayuunaiki

The following are some words in Wayuunaiki, the Wayúu language, that are mentioned throughout the following chapters. It is estimated that Wayuunaiki is spoken by more than 400,000 people between Colombia and Venezuela.

<i>Alaülashi</i>	Leader
<i>Alijuna</i>	Non-native person
<i>Eirruku</i>	Mother lineage
<i>Jagüeyes</i>	Artesian wells
<i>Jepirachi</i>	Winds of the north
<i>Jimotsü</i>	Fear
<i>Jouktai</i>	Wind
<i>Juyá</i>	Rain
<i>Kaa'ula</i>	Goat
<i>Kanash</i>	Animal
<i>Kashi</i>	Moon
<i>Kasha</i>	Drum
<i>Kata'ou</i>	Live/Living
<i>Maleiwa</i>	God
<i>Mma</i>	Mother Earth
<i>Pütchipü'üi</i>	Orators
<i>Wajiira</i>	Guajira

1. Introduction and methodology

1.1. Introduction

This research examines the role of justice in the transition to clean energy in Colombia by investigating the indigenous struggles for land sovereignty against large-scale wind energy development in La Guajira, home of the Wayúu people. Given its vast wind resources, the long-neglected land of La Guajira is the epicenter of Colombia's flourishing wind energy industry. Since the first wind farm was established in 2004, at least 57 wind energy projects have been formulated to operate by 2031 in this region. More than 600 Wayúu communities will be impacted by the 2,600 wind turbines to be installed in 98 percent of their indigenous territory (González Posso & Barney, 2019). Moreover, the recent history of La Guajira is marked by an extractivist coal economy that has left an unbalanced relationship between energy-related activities and local communities (Avilés, 2019). Therefore, exploiting the land and natural resources for producing energy in this indigenous territory has been central to the environmental justice debate in Colombia over time (Rubio Medina, 2020). However, these experiences show the lack of application of justice principles in the energy sector, as the energy planning in Colombia has only integrated "justice" as a central component in the most recent Energy Transition Plan 2022-2026 (IEA, 2020, MME, 2022).

Shifting our energy systems from fossil fuels to renewable energy technologies is essential to fight climate change and limit the rise in temperature below 1.5°C, ensuring compliance with the targets of the 2015 Paris Agreement (IPCC, 2021; IEA, 2021c). Renewable energy is essential for fostering economic growth, reducing energy poverty, and progressing the sustainable development agenda (IPCC, 2021; López et al., 2022). However, the growing number of conflicts emerging against renewable energy projects reflects that traditional development narratives continue placing the burdens of the energy systems on marginalized people (Kelly, 2019; Zárate-Toledo et al., 2019; Velasco-Herrejon & Bauwens, 2020). In particular, conflicts against large-scale wind projects are emerging in multiple geographies worldwide (Avila Calero, 2018), particularly in the Global South and on indigenous territories (Torres Contreras, 2022a; Hoicka et al., 2021; Datta & Hurlbert, 2020). Resistance to wind power is attributed to land use conflicts, cultural and environmental impacts, inadequate benefit sharing, lack of proper consultation procedures, concerns about gentrification and inequality, limited information dissemination, and potential social and economic

disruptions (Huber & McCarthy, 2017; Avila Calero, 2018; Kelly et al., 2021). Thus, the means to achieve the climate goals and the ends of such a transition have impacts on social justice, and it is entangled in conflicts on indigenous lands, making it relevant to explore the case of La Guajira from a justice perspective.

Today, the opposition to large-scale clean energy infrastructure that emerges through the defense of indigenous territories, local livelihoods, and community traditions embraces an environmental and social justice perspective challenging the present climate change politics' socially and geographically unequal patterns (Baker, 2021). As such, literature on justice concerns in the context of low-carbon transitions has exploded, enriching the energy justice scholarship. As an investigative field, energy justice aims to analyze where injustices occur throughout the energy lifecycle, from production to consumption (Heffron & McCauley, 2014; Jenkins et al., 2016), especially looking at the social and economic inequalities of those disproportionately harmed by the energy systems, low-income, Black, and Indigenous communities (Baker, 2021). Energy justice builds on environmental and climate justice to provide a future-oriented framework for the ongoing transformation of the energy systems (Jenkins et al., 2020). Therefore, energy justice theory provides an analytical framework to unpack critical justice issues surrounding energy transition dynamics in La Guajira. It offers an opportunity to integrate the indigenous communities' voices and recognize the structural inequalities that make them vulnerable to impacts in their territories.

The field of energy justice needs to hear more from the voices of the Global South (Lacey-Barnacle et al., 2020) and integrate the energy justice principles into a local scale of analysis (Jenkins et al., 2020). Conflicts over indigenous lands broaden the discussion about how the energy transition must be formulated through the energy justice lens, serving principles of equality, inclusion, and self-determination. The result of this study will forward the debate on just transition with wind energy in Latin America by bringing indigenous voices into conversation with the energy policy of Colombia. My research methodology integrates primary data collected from field visits, interviews, and participant observations to incorporate the perspectives of the local communities. It involves the triangulation of different data sources to provide evidence for energy injustice in the policies and practices of wind energy development in La Guajira. The participatory approach of this research learns from the collaboration and knowledge sharing from members of the community and other stakeholders, contributing to advancing methodologies for energy justice research from the Global South, amplifying the Wayúu voices, concerns, and hopes, reflecting on decarbonization, sovereignty rights, and renewable energy policies.

Colombia is undergoing an extraordinary energy transition of great significance for the country and the world. However, how the energy transition is achieved needs a balance between energy security, economic competitiveness, environmental effects, and the sovereignty rights of the Wayúu people, all of which impact societal justice. Nevertheless, till now, very few studies have focused on La Guajira's ongoing energy developments and those that have reported strong signals of justice concerns (Gonzalez Posso & Barney, 2019; Vega-Araújo & Heffron, 2022). In addition, since the arrival of the wind energy companies to La Guajira, human rights and grassroots organizations have reported indigenous rights violations and escalating conflicts across the territory (Indepaz, 2019; Nación Wayúu, 2021; Dejusticia, 2021). At the center of these concerns are the indigenous self-determination and participatory rights infringed by wind energy development, despite Colombia's adoption of the International Labour Organization (ILO) Convention 169, which requires that processes of Free, Prior, and Informed Consent (FPIC) be conducted with indigenous groups. Acknowledging that understanding the injustices perceived in the overall process of indigenous consultation is essential for fostering a just energy transition, this study examines the concerns of the Wayúu communities through the tenets of energy justice: procedural, distributional, and recognition justice (Jenkins et al., 2016; Heffron & McCauley, 2018). Therefore, this study addresses the following question: *How do Wayúu people and other related actors in renewable energy development in La Guajira perceive energy injustices in the indigenous consultation process for wind energy projects?*

Building on the tenets of energy justice, this study analyzes the injustices identified in the consultation procedures by Wayúu communities in la Guajira. Some of the issues related to the existing energy justice research concerning indigenous people in Latin America, such as the lack of recognition of indigenous culture and ways of knowing and the fragmentation of their social fabric by biased and bilateral consultations procedures (Avila Calero, 2017; Kelly et al., 2021; Barragan-Contreras, 2022; Vega-Araújo & Heffron, 2022). However, other results reveal concerns that have received scarce attention, particularly the intersection with the structural inequality and marginalization of the indigenous people and the legacy of unbalanced relations with extractivist projects in their territories.

This research looks at multiple forms of injustice faced by the Wayúu people negotiating their consent with this energy trajectory on their ancestral lands. However, "it is difficult to talk about prior consultation rights when the communities have not even been guaranteed their fundamental

rights to water, food, and a dignified life” (Interview D – NGO, December 2022). La Guajira and the Wayúu people account for Colombia’s highest poverty, malnutrition, and lack of public services (Dejusticia, 2022). Their condition of vulnerability triggers impact mitigation and compensation schemes subject to unbalanced bilateral company-community negotiations from where justice concerns emerge. The development of renewable energy projects in indigenous land has spiritual, cultural, and social implications that are not evident in the environmental assessments and that mitigation measures underestimate (Checker, 2007; Whyte, 2018; Kelly et al., 2021). The hidden impacts on the social fabric of the local communities that see the wind projects being developed in their territory as the solution for their historic deprivations resemble the stories of dispossession, displacement, and environmental impact of the coal boom in La Guajira. Therefore, the Wayúu have always been at the forefront of energy production, living among mines, coal railroads, and heavy machinery. The same territory will see the construction of wind towers and transmission lines on the path toward a green energy future. Thus, understanding energy justice in La Guajira requires an intersectional lens linking structural inequality and justice along the energy systems. The new development paradigm proposed by green energy disregards the historical resistance of indigenous peoples against extractivist fossil fuels industries and today threatens their cultural identity and self-determination (Franco & Borrás, 2019). The energy transition is imperative, but without restorative justice for the communities involved, the energy future will be at the expense of indigenous people, their culture, and the environment.

1.2. Following chapters

The structure of this thesis is as follows. Chapter 2 explores the energy transition background within the climate change politics narratives, introducing Colombia’s energy transition plan. Chapter 3 explores La Guajira and the Wayúu indigenous community in the intersection with the shift from fossil fuels to renewable energy. Chapter 4 explores the theoretical framework drawing from the energy justice literature and presents the analytical framework by triangulating the literature and the primary data collected from the interviews. Chapter 5 introduces the regulatory framework and the overall indigenous consultation and decision-making process. Chapter 6 explores the issues of energy injustice present in wind energy projects in operation and under construction. Chapter 7 expands the analysis of the injustices current on the energy transition in La Guajira using the analytical framework presented in Chapter 2. Finally, Chapter 8 concludes and proposes recommendations for further research.

1.3. Methodology

This research uses patchwork ethnography to integrate secondary and primary data. Patchwork ethnography refers to ethnographic processes and protocols designed around short-term field visits, collection of historical and recent data, using fragmentary yet rigorous data, and as well as interviews and collaborative research (Günel et al., 2020). This methodology was chosen based on the limited time to perform far-reaching ethnographic work. The secondary data used for this research comes from both peer-reviewed papers from electronic databases and grey literature, such as institutional reports, news articles, and other publicly available documents. In addition, access to video files from meetings between the government authorities and the communities was available from the open source of local and national news that has followed up the evolution of the energy transition in La Guajira. Primary data was collected through fieldwork in Colombia, held during December 2022 and January and February 2023. The fieldwork implies different qualitative research methods to collect ethnographic information from multiple stakeholders, including semi-structured interviews, participant observations, and site visits (Emerson et al., 2011). All the fieldwork activities followed Dartmouth College’s protocol for social science research, verified by the Institutional Review Board (IRB letter: STUDY00032625). Table 1 describes the fieldwork activities.

Table 1 Qualitative research methods

Research method	Activities
Semi-structured Interviews (22)	<ul style="list-style-type: none"> - 2 Interviews with scholars from Colombia - 3 Interviews with local NGOs and grassroots organizations - 2 Interviews with officials from the government authorities - 4 Interviews with representants of the industrial sector - 6 Interviews with community leaders - 5 Interviews with community members
Participant Observation (5)	<ul style="list-style-type: none"> - 2 community meetings in <i>Maku</i> and <i>Tekia</i>. - 1 Impact assessment workshop between advisors and community leaders in <i>Maku</i>. - 1 Evaluation session of a community-led project in <i>Tekia</i>. - 1 Information session about the National Development Plan 2022-2026 in <i>Uribia</i>.
Site visits (9)	<ul style="list-style-type: none"> - 1 Visit to wind farm <i>Jepírachi</i>. - 1 Visit to wind farm <i>Guajira I</i>. - 4 visits to indigenous communities: <i>Lanshalia</i>, <i>Kasiwoluin</i>, <i>Tekia</i>, and <i>Maku</i>. - 3 Visits to cultural places – <i>Jepíra</i>, <i>Cerro Kama’achi</i>, and <i>Taróa</i>.

Interviewing was used to prove the analytical framework and allow in-depth insight from key informants involved in the energy transition in La Guajira. Twenty-two semi-structured interviews ranging from 40 to 60 min were performed targeting five stakeholders: academia, grassroots organizations, government authorities, the industrial sector, and community members and leaders (see Table 2). Interviews were recorded following the consent protocol and the guiding questions available in the Research Project Information Sheet (See Appendix B). Due to the reputational risk involved, interviewees were anonymized through identifiers.

Due to the language diversity among the interviewees, out of the 22 interviews, 17 were conducted in Spanish, while the remaining five were conducted in Wayuunaiki, Wayúu Language, with the assistance of a local translator. The translator facilitated communication and understanding during the interview process.

Table 2 Interviews participants

Sector	No	Interview code	Identifier	Position	Organization / Community name	Date
Academia	1	Int-01-Aca	A	Professor	Universidad de la Guajira	Dec-22
	2	Int-02-Aca	V	Professor	Universidad de la Guajira	Feb-23
Grassroots organizations	3	Int-01-Org	D	Lead researcher	Non-profit organization	Dec-22
	4	Int-02-Org	H	Researcher	Non-profit organization	Jan-23
	5	Int-03-Org	O	Community advisor	Non-profit organization	Jan-23
Government	6	Int-01-Gov	C	Advisor energy projects	Local government	Dec-22
	7	Int-02-Gov	P	Former officer	National Environmental Licensing Authority	Jan-23
Industry	8	Int-01-Ind	F	Wind energy engineer	Independent	Dec-22
	9	Int-02-Ind	N	Consultant	Consulting firm for energy companies	Jan-23
	10	Int-03-Ind	S	Lawyer	Independent	Feb-23
	11	Int-04-Ind	U	Consultant	Consulting firm for energy companies	Feb-23
Community	12	Int-01-Com	B	Community leader	Alta Guajira - Uribia	Dec-22
	13	Int-02-Com	E	Community leader	Alta Guajira - Uribia	Dec-22
	14	Int-03-Com	G	Community member	Alta Guajira - Kasiwoluin	Jan-23
	15	Int-04-Com	I	Community advisor	Media Guajira - Tekia	Jan-23
	16	Int-05-Com	J	Community member	Media Guajira - Tekia	Jan-23
	17	Int-06-Com	K	Community leader	Alta Guajira - Lanshalia	Jan-23
	18	Int-07-Com	L	Community member	Alta Guajira - Lanshalia	Jan-23
	19	Int-08-Com	M	Community leader	Alta Guajira - Kasiwoluin	Jan-23
	20	Int-09-Com	Q	Community member	Media Guajira - Tekia	Jan-23
	21	Int-10-Com	R	Community leader	Media Guajira - Maku	Jan-23
	22	Int-11-Com	T	Community leader	Media Guajira - Maku	Feb-23

Interviews and observation notes were transcribed and coded using Nvivo software. Thematic content was analyzed based on the literature review on energy justice, applying an inductive coding based on common themes, such as words and phrases of interest that emerged with frequency (Glesne, 2016). Hence, the codes were linked to each energy justice tenet, leading to the analytical framework presented in Chapter 4.

1.3.1. Collaborative work in Wayúu territory

To the beat of the *kasha* (drums), the Wayúu people welcome visitors to their territory; the sound is a greeting to their ancestors and asks for harmony with land and nature. Arriving at the Wayúu community in *Maku* in January 2023, two people started playing the *kasha*. This sound represented the opportunity to learn from the community's knowledge and experiences. Visiting La Guajira and connecting myself with the powerful wisdom of the original ancestors of my home country, Colombia, allowed me to integrate their voices into this research. Working in collaboration with people from the Wayúu communities informed the analysis of the following chapters.

Members of the community and grassroots organizations made this journey possible. Their support allows me to perform this research and participate in community activities that otherwise would have been challenging. I was able to meet and interview people from the communities of *Kasiwoluin* and *Lanshalia* in El Cabo de la Vela (Graphic 1), Alta Guajira, and *Maku* and *Tekia* in Maicao, Media Guajira. In addition, meetings and interviews with other stakeholders were carried out in Riohacha, the capital, and Uribia, the second-largest city of La Guajira.

Figure 1 Photos of the interview process in Lanshalia and Maku (Jan 2023)



The fieldwork in La Guajira was designed in collaboration with community members by integrating their recommendations about the places that were appropriate to visit, their protocols to invite people to take part in the interviews, and the security measures to perform my visits. Furthermore, their ongoing feedback allowed me to continuously reflect on my research process and validate the

information in every step of the fieldwork. Their support and openness to have conversations before and after my visit to La Guajira were essential to this thesis's writing and analytical process.

The positive experience of collaborative work with the Wayúu people contrasts with the images of abandonment that appeared through my time traveling through the territory and spending time in some of the Rancherías (small villages). On the way to El Cabo de La Vela, the northernmost point of my field visits, where the two wind energy projects I visited were located, the landscape became drier and the roads harder to cross. The lack of infrastructure is evident, and the roads are more confusing and treacherous, making it difficult to reach some communities. The inhabitants of La Alta Guajira are isolated, lacking not only roads but connections to the grid, access to drinking water, and health and education facilities. On my way to reach some of the Rancherías, I came across the sadly famous "tolls," where two or more people stand holding a rope to prevent the cars from passing without first giving them food or water. It was impossible to count them, as one appeared every hundred meters or less. The vast majority were guarded by children, on weekdays, during school hours. In others, those who extended their hands were adults, mostly women carrying their children and wearing faded T-shirts with the name of some political party that, in election times, would have visited these isolated lands in search of votes. It was evident to me why for the Wayúu communities, access to electricity and water is at the top of the demands when negotiating consent with the clean energy companies. Spending time at the Rancherías of *Lanshalia* and *Maku*, I witnessed few services guaranteed by the State, such as school meals or water delivered in tanker trucks. Still, the reliability, frequency, and quality are not ensured. Those images are just a sample of the historical abandonment of La Guajira, which will not be easy or rapid to solve.

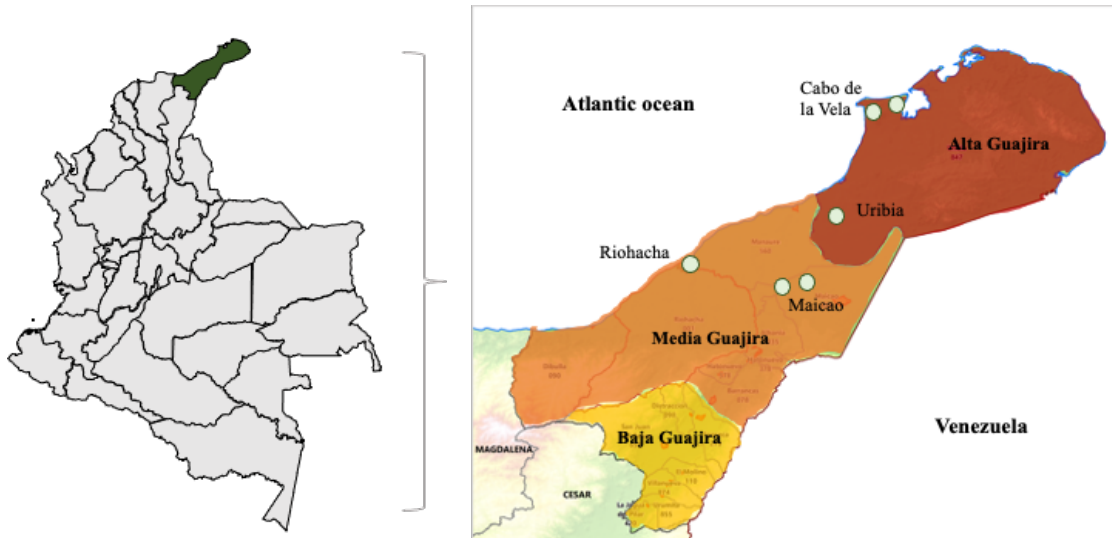
1.3.2. Geographic location of the study

The fieldwork of this study was performed in the Media and Alta Guajira regions, given the incidence of wind energy projects in those two areas. The selection of the sites was agreed upon with the community members and according to the availability of different actors to participate in this research. Graphic 2 presents a map identifying the areas where the interviews and observation occurred.

- **Riohacha:** The capital of the department of La Guajira is the location for all the government authorities and the University of la Guajira. Interviews with local leaders and scholars were held in this location.

- **Uribia:** Known as “the indigenous capital of Colombia,” it is the second-largest city in the region. Given its central location in the territory, consulting firms, energy companies, and local non-governmental organizations have offices in this city. Interviews with representatives of these institutions were held in this location.
- **El Cabo de la Vela:** The two wind projects in operation are located in this area. Thus, in this location were held interviews with the communities of *Kasiwoluin* and *Lanshalia*, given their proximity to the wind parks and their participation in the consultation procedures in previous years. El Cabo is also known for its desertic landscape and beaches, the most touristic area in La Guajira.
- **Maicao:** The third largest city in La Guajira is also the region’s commercial center, given its proximity to Venezuela. Also, Maicao will hold one of the substations of the transmission line that will connect the wind energy projects. Thus, visits to the *Tekia* and *Maku* communities were held in this location; the two are currently under consultation with the transmission line developer.

Figure 2 Geographic location of the study



Source: Made by the author using editable public maps.

1.4. Limitations

Due to the nature of this study and the challenges involved in conducting fieldwork, this section acknowledges the limitations present during the elaboration of this research.

Climate conditions

In the last decade, October and November 2022 marked Colombia's worst waves of heavy precipitation. La Guajira was one of the regions most affected. The passage of hurricane Julia in the Caribbean intensified the arrival of heavy rains, which caused flooding, road closures, and disruption of public services and transportation. The National Unit for Disaster Risk Management (UNGRD) identified that more than 12 thousand families were directly affected, and damages in vital infrastructure for the territory account for communication and transport disruption. Nevertheless, the emergency has been partially overcome, as the situation in La Guajira demonstrates the absence of State social investment in the region. The most affected areas were Alta and Media Guajira. Compared to rainy seasons in previous years, 2022 marked the most significant climatic emergency for La Guajira (UNGRD, 2022). The conditions during December 2022 prevented community visits; thus, all initial interviews were held in Riohacha and virtually from Bogotá.

Security concerns

Colombia is the second most dangerous country in South America, after Brazil, for social and environmental activists (Global Witness, 2021). In 2022, alone, 189 social leaders and human rights defenders were assassinated, of which 42 were members of an indigenous community (INDEPAZ, 2023). This reality of fear and lack of protection from the authorities causes community leaders and members of grassroots organizations to hesitate to talk about land rights reclamations and opposition to development projects. In addition, some social movement leaders have received threats against their lives and avoided travel to specific areas of the region. Considering these concerns, the fieldwork was limited to visits to safe travel territories and did not represent a security risk. Besides, the research does not deeply interrogate the topics of violence and conflict; the security restrictions delimit the site visits and the people willing to participate in the interviews.

Community engagement

The interviews for this research covered the perspectives of four indigenous communities that agreed to participate in this investigation. Constructing a relationship with a local community requires a long-time process. Due to the limited time for the visits, the fieldwork was limited to the communities I had previously contacted and established a relationship with. The introduction to the communities was possible thanks to the support of a local social worker who had supported communities in different environmental and social advocacy projects and the reference of members from local non-profit organizations—the period to visit and interview members of the communities

followed accordingly with their authorization and availability. Interview participants agreed to participate after socializing on the research aims and scope. People that refused to participate primarily indicated security concerns.

Energy stakeholders

Although integrating the point of view of energy companies with operations in La Guajira was essential for this research, interviews with the companies were limited. Policies of confidentiality and the current political tension around the development of the energy transition prevented the participation of industrial representatives. Requests for interviews were sent to three companies, from which only one informal discussion was possible. Thus, to integrate the industry's perspective, I interviewed representatives of the consulting firms and legal advisors that support the energy companies carrying out the consultation processes. In addition, information from the energy companies was analyzed from their publicly available reports, articles, and recorded interviews from local news.

2. Climate politics and the need for energy transition

Urgent action towards climate change is imperative, as the impacts are already being felt worldwide, exacerbating existing inequalities, especially among the most marginalized communities. In response, climate policy at the international, regional, and national levels aims to reduce greenhouse gas emissions and mitigate the impacts of climate change by setting targets, establishing regulations, providing incentives, and promoting clean energy technologies. This chapter explores the narratives and politics driving the route toward a sustainable energy future, looking at the improvements in adopting renewable energy. The first section provides an overview of the climate change policy worldwide, focusing on Latin America's energy transition and wind energy development. The second section reviews the Colombian context, examining the regulatory framework and the energy transition plan, which places La Guajira at the epicenter of this transformation.

Thus, this chapter provides the reader with an overall understanding of the opportunities and challenges of the energy transition. At the global and national scales, expanding renewable energy is celebrated as a clear step to promote green growth and sustainable development goals (IEA, 2018; IDB, 2019). However, growing conflicts, especially with indigenous communities, suggest that more complex dynamics are at play locally (Avila Calero, 2017; Meléndez et al., 2021). As in other territories around the globe, for the Wayúu people in Colombia, what is at stake in the energy transition is their sovereignty over their sacred and ancestral territories. Therefore, achieving a clean, prosperous, and secure energy future for all requires looking beyond targets and figures and bringing equity and justice to the center of the conversation.

2.1. The path to decarbonization

The warming of the climate system is unequivocal. The atmosphere and ocean have warmed, the amounts of snow and ice have diminished, the sea level has risen, and the concentrations of greenhouse gasses have increased, all evidence that can be attributed to human-induced climate change (Stott et al., 2000; IPCC, 2015). In scientific terms, the atmospheric concentrations of carbon dioxide have increased by 40 percent since pre-industrial times, primarily from fossil fuel emissions. Therefore, limiting climate change requires substantial and sustained greenhouse gas emissions reductions. The 2022 reports from the Intergovernmental Panel on Climate Change – IPCC (2022) have made clear that climate change already causes widespread and devastating impacts on nature and people and is expected to get worse with every fraction of a degree of

warming. The reports also emphasized that unless emissions are sharply reduced quickly across all sectors, limiting global warming to 1.5°C will become impossible – with catastrophic effects (IPCC, 2022). In the face of these threats, there is a consensus to move forward in replacing fossil fuels with renewable energy to mitigate the trend of global temperature increase. The international treaty on climate change, The Paris Agreement, was signed by 196 countries in December 2015 “to hold the increase in the global average temperature to well below 2°C above pre-industrial levels and to pursue efforts to limit the temperature increase to 1.5°C above pre-industrial levels” (UNFCCC, 2022). Achieving this goal requires the countries to reach global peaking of greenhouse emissions as soon as possible, looking to have a climate-neutral world by 2050. In 2020, each signatory country submitted its plan for climate action, known as nationally determined contributions (NDCs). Through their NDCs, each government has committed to limiting the greenhouse effect, among other objectives, by diversifying and adjusting the energy matrix using different sources and technologies, such as wind, solar, geothermal, biomass, and tidal energy.

The 2022 United Nations Climate Change Conference (COP27) was a reminder of the need to wind down fossil fuels and the urgency to stimulate the energy transition and move towards low-carbon development. The time is ticking, as is the need to spread the implementation of clean energy. Therefore, mobilizing climate finance towards renewables is at the top of the agenda, looking to increase innovation and accelerate the pace of the transition (UNFCCC, 2022). Worldwide, wind energy is one of the industries that has accelerated and matured, moving from 422 thousand GWh in 2011 to 1,488 thousand GWh in 2020 (IRENA, 2021). The World Wind Energy Council (2021) estimates that by 2030 wind energy will supply 25 percent of the world’s electricity, compared to 2,5 percent in 2021. The growth in solar and wind power has outpaced expectations, helped by falling battery costs, supportive policies, and increased industry investment (EIA, 2021a). As part of this trend, many countries in Latin America have introduced ambitious energy transition strategies.

Despite being responsible for only 12.5 percent of global greenhouse gas emissions, Latin America, and the Caribbean (LAC) countries are some of the most vulnerable to climate change. For this reason, it is imperative to cope with the impacts of the climate crisis and choose a low-carbon development path. In this sense, according to the International Renewable Energy Agency – IRENA (2021), renewable energy has the potential to become a new economic driver for LAC. The region’s energy matrix comprises 40 percent fossil fuels, 54 percent hydropower, and only 6 percent other renewable energy sources, including wind, solar, and biomass. However, this is

changing rapidly, and the region is taking advantage of its enormous renewable potential. It is projected in LAC that the use of non-hydro renewable energy could move to 20 percent of the region's energy matrix by 2050, where wind power plays a significant role, particularly for countries like Colombia and Chile (IEA, 2021a).

2.1.1. The decarbonization roadmap for Latin America and the Caribbean

LAC region is highly exposed to extreme weather and climate change impacts, including hurricanes, droughts and floods, coastal erosion, increases in sea level, and desertification (IPCC, 2021). Already, the increasing frequency of extreme weather had led to natural disasters such as Hurricane Maria and hurricane Iota in the Caribbean, changing in precipitation patterns had increased the impacts of “El Niño” and “La Niña” events in the tropical pacific of LAC, and rising temperatures had reduced agricultural productivity along the region (IEA, 2021b). The effects of climate change threaten the lives, livelihoods, and entire economies of the LAC countries. In economic terms, the Inter-American Development Bank – IDB (2013) estimates \$100 billion in damages annually by 2050 in the region, with significant losses in public infrastructure and disruption of agricultural and fisheries industries. Under this scenario, several LAC countries have enlarged their climate pledges towards climate mitigation and adaptation strategies, increasing efforts towards a cleaner energy matrix.

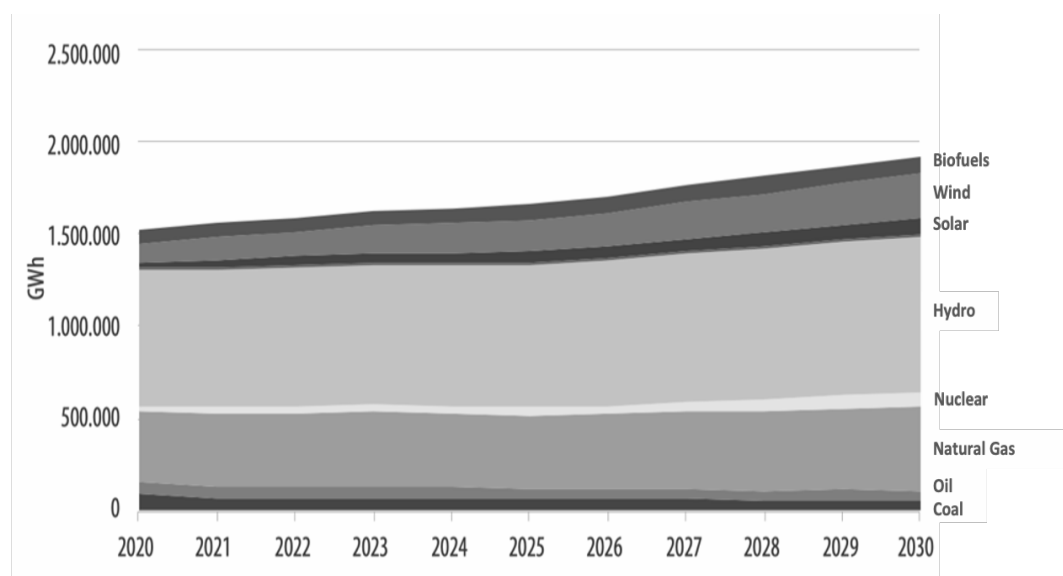
The LAC region ranks above the world levels in installed renewable generating capacity¹. However, renewable energy deployment in the region depends mainly on hydroelectric generation, particularly in countries like Brazil, Colombia, and Chile. Hydropower is Latin America's primary electricity generation source (IEA, 2021a). Reliance on hydropower has produced a higher exposure to droughts, and its infrastructure development has produced extensive opposition from local and indigenous communities in LAC (Duarte et al., 2015). In addition, climate change poses an increasing challenge to LAC's hydropower with rising temperatures, fluctuating rainfall patterns, melting glaciers, and the growing incidence of extreme weather events (IPCC, 2022). Therefore, the IEA (2021b) recommends that the LAC countries increase the share of non-conventional renewable energy sources in their total electricity generation. Thus, accelerating the

¹ IRENA renewable generation capacity statistics (2022). Renewable power generation capacity is measured as the maximum net generating capacity of power plants and other installations that use renewable energy sources, including hydropower, to produce electricity.

energy transition in LAC means increasing the deployment of wind and solar and exploring the potential of new technologies like green hydrogen².

Countries from LAC are on the path toward decarbonization of electricity generation. Since 2015, emissions from the electricity sector have decreased (IEA, 2021a). However, accelerating the transition towards renewable energy sources is essential to reach the goal of zero net emissions by 2050. Although there has been a reduction in the carbon footprint at the regional level, there is significant heterogeneity among countries. In the IDB (2022) estimations of emissions intensity per GWh generated per country, the 2030 levels marginally decrease in many economies compared to those observed in 2020. Increasing solar and wind energy participation is essential to achieve the necessary reduction, positively impacting the region’s energy matrix. Under the actual energy transition plans of LAC, the IDB (2022) estimates that by 2030, solar and wind power will increase compared to 2020. Graphic 3 shows the projected generation matrix of LAC during this decade. Throughout these years, IDB (2022) estimates that coal will be the energy source that will experience the most significant reduction, a major step towards sustainable development of the sector. On the other hand, non-conventional renewables, solar and wind, will boom with an increase of 10.4 and 9.1 percent, respectively (IDB, 2022).

Figure 3 Energy generation matrix projected in LAC, 2020-2030

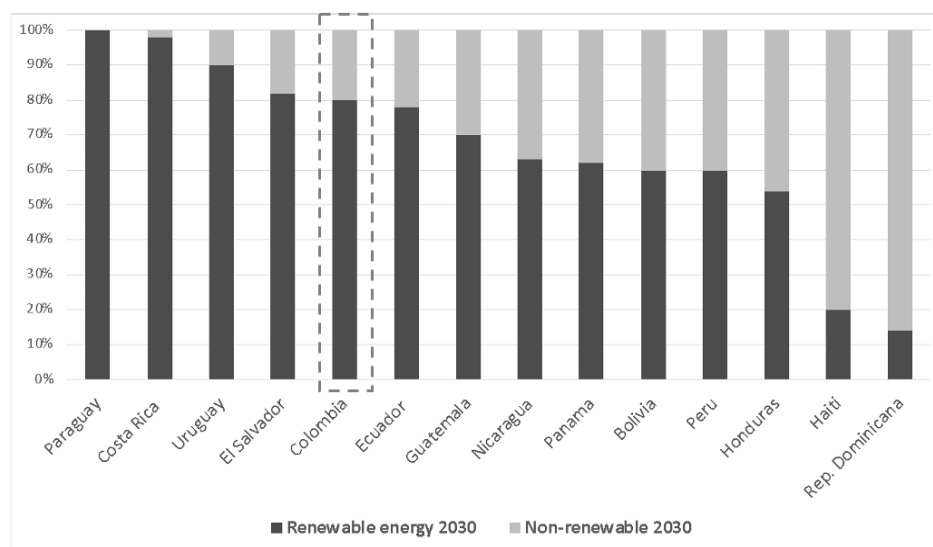


Source: Adapted from Inter-American Development Bank (2022).

² Green hydrogen is a clean burning fuel that eliminates emissions by using renewable energy to electrolyze water, separating the hydrogen atom within it from its molecular twin oxygen. Green hydrogen can be added to natural gas and burnt in thermal power or district heating plants. It can be used to replace the industrial hydrogen that gets made every year from natural gas.

In addition, regional initiatives are accelerating the decarbonization of the grid, one of which is the “Renewables in Latin America and the Caribbean” (RELAC) initiative. RELAC was created during the UN Climate Action Summit 2019 with the objective of reaching at least 70% of renewable energy participation in the region’s electricity matrix by 2030. As a result, for the first time, a group of countries in the region voluntarily agreed to promote renewable energies with a concrete target, operation, support structure, and monitoring mechanisms. Today, the RELAC initiative has 15 member countries, including Colombia, intending to generate at least 70 percent of their electricity from renewable sources by 2030. Moreover, Colombia is among the top five countries in increasing renewables participation, with a target of 80 percent by 2030. Graphic 4 shows the estimations for the percentage of electricity generated by 2030 from renewable sources in each RELAC member country.

Figure 4 *Estimated energy generation matrix of RELAC member countries in 2030*



Source: Adapted from Inter-American Development Bank (2022).

To achieve the 70 percent renewable generation target, investment in new technologies has to increase in the coming years. In particular, increasing investment in solar and wind is globally observed with great optimism. In recent years, these two technologies have lowered costs and increased efficiency (IRENA, 2021). At the same time, the region has moved towards regulatory frameworks to reduce entry barriers and risk perception for private investors to improve renewable energy deployment, particularly by implementing an energy auction mechanism (Lopez et al., 2022).

Long-term energy auctions are mechanisms to purchase electricity in a competitive environment, where private companies participate, and the winners are those that bid the lowest prices. First, the government calls for a tender to purchase a specific capacity or generation of electricity based on renewable energies. Second, project developers participating in the auction usually submit a bid with a price per unit of electricity at which they can realize the project. Finally, the auctioneer evaluates the proposals based on price and other criteria and signs a power purchase agreement (PPA) with the successful bidder (IRENA, 2015).

According to the Clean Energy Auctions in Latin America report (IDB, 2019), clean energy auctions offer several advantages, such as established long-term policy objectives and a stable investment environment, providing regulatory certainty and transparency. They can also facilitate long-term government planning by improving energy prices and capacity forecasting. In addition, auctions allow emissions reduction plans and can serve as a tool to diversify the energy matrix to enhance energy security and reduce price volatility. However, despite the benefits of clean energy auctions, the IDB (2019) warns that this mechanism may not necessarily be the right approach for all countries, as they can also involve high transaction costs for both the government and participants. In addition, they can also be affected by external factors, such as the country's overall investment climate, the buyer's credit risk profile, the market size, the transmission and distribution infrastructure availability, and the potential for renewable energy resources.

As a result, in the last auctions, solar photovoltaic has decreased its price by 80.2 percent, while onshore wind has reduced its price by 54.7 percent in only eight years (IDB, 2022). Although these cost reductions and technical innovations represent growing opportunities, LAC countries must increase investment in transmission lines and replace aging infrastructure to cope with the new technology's integration. Although grid expansion has been mainly centralized by public investment, the energy transition needs will require increasing the participation of the private sector (IDB, 2019). Therefore, moving toward LAC's 2030 decarbonization goals will require improving the regulatory framework, securing international investment, enabling private sector participation, and increasing national commitments to infrastructure renovation. Still, the road toward decarbonizing energy systems across the region has several equity concerns that must be considered. Governments and private stakeholders must ensure that the costs and benefits of the energy transition are distributed fairly across society, providing solutions and policies that understand the impacts on the most vulnerable communities and align with the rights of indigenous peoples and local communities. Therefore, addressing these concerns will require collaboration

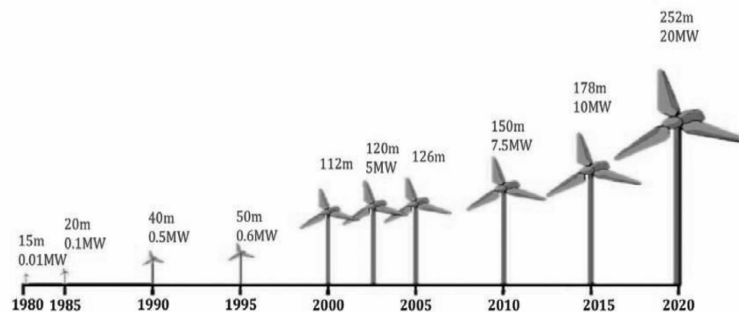
between governments, the private sector, and civil society to ensure that the transition to renewable energy is both sustainable and equitable.

2.1.2. Wind energy development

Wind energy came into commercial use around 1980, led by Denmark, after the oil price increase by the Organization of Petroleum Exporting Countries (OPEC) in 1973, leading to the oil crisis and forcing Western countries to become aware of their economic dependence on fossil fuels. In addition, climate change policies and national mandates have fostered the transition towards this renewable source globally. From then until today, the installed capacity of wind energy worldwide has increased, with an average annual growth of 15.2% in the last decade (IRENA, 2021).

The wind can produce electricity by converting the kinetic energy of air in motion into electricity. In modern wind turbines, wind rotates the rotor blades, which convert kinetic energy into rotational energy. This rotational energy is transferred by a shaft to the generator, producing electrical power. Thus, wind turbines are a structure that combines a tower that supports the rotor with its blades, built with large steel or concrete tubes placed on a cement base deep enough to ensure that they can withstand the impact of the wind and the weight of the wind turbine. Wind energy technology is advancing at high speed. Innovations such as more resistant materials are being used, and new models of blades and other devices are being introduced to receive the force of the wind (Interview F - Industry, December 2022). A tower with all its devices can reach the height of a 50-floor building. However, only the blades of the large models used in wind farms in Europe, China, and the United States are as large as a soccer stadium. A wind tower can be between 3 and 10 meters in diameter, depending on the wind turbine size (See Graphic 5 for reference).

Figure 5 Growth in size of wind turbines since 1980



Source: González Posso & Barney (2020); EIA (2021)

Wind turbines can be located in land or marine areas with adequate wind conditions to produce electric energy. In search of more significant cost savings and efficiency, several towers are placed in the same area, facilitating land negotiation, studies, assembly, operation, maintenance, and energy evacuation (Interview F - Industry, December 2022). These areas with several wind turbine towers are called wind farms.

Generally, wind farms occupy large areas, given that space between one tower and another must be between 300 and 500 meters to avoid interference from turbulence. The wind turbine towers are usually located at a greater distance from each other because of the wind turbulence created by the rotating blades (Interview F - Industry, December 2022). In addition, when several rows or towers are placed, the distance between rows must be between 300 and 800 meters. In other words, the area of a wind farm depends on the number of towers. In addition, the wind farm size also includes the collecting station for the continuous energy coming down from the turbines, the evacuation networks, roads to reach each tower, and corridors for the placement of the transmission towers.

In the last decade, Latin America's wind development has grown exponentially, with Brazil, Mexico, Chile, and Colombia leading in installed wind energy capacity. These countries have already carried out auction processes to increase the participation of renewable energy sources, thus creating a favorable scenario for investors and providing legal frameworks and financing incentives (IRENA, 2021). Brazil is the leading country in wind energy, not only in the Latin American context but also worldwide. The proliferation of wind energy has been possible due to the liberalization of the energy market and the Incentive Program for Alternative Electricity Sources (PROINFA) launched in 2002 (Ruiz, 2017). Furthermore, since 2009, Brazil has undertaken several auctions, becoming an attractive market for multinational companies. Another growing market in the region is Mexico, which launched the Energy Transition Law in 2015, implementing an auction system that has allowed an increase in the number of companies bidding for energy and, therefore, a decrease in the cost of electricity (Ruiz, 2017). Through this system, Mexico has opened its market to the participation of international developers. Following the same trend, Chile has made significant progress in its energy transition in recent years, diversifying its energy mix and reducing its dependence on imported fossil fuels. Since 2014, Chile has held 13 energy auctions, which have helped to bring international investment and increase amounts of renewable energy capacity at competitive prices, with the share of wind power in the country's electricity generation mix rising from less than 1% in 2010 to over 9% in 2020 (IRENA, 2021). However, there are still challenges

to be addressed, such as the need to modernize the grid and increase energy storage capacity to ensure the stability and reliability of the electricity system as renewable energy becomes a larger share of the energy mix across the region. The increasing renewable energy deployment in those countries also has increased debate around equity and justice as opposition and conflicts with local and indigenous communities are rising (Avila Calero, 2018).

2.2. Colombia's opportunity for decarbonization

Although Colombia remains one of the countries with the lowest carbon footprint, it represents only about 0.5 percent of global emissions and ranks 144th out of 184 nations; it has some of the most ambitious commitments made in the international arena in the Paris Agreement and the COP meetings in the last years. With a target of a 51 percent reduction in greenhouse emissions by 2030 and net zero by 2050, Colombia pledged to prioritize the transition to clean energy.

The energy transition has been one of the country's central axes in energy policy in recent years, leading it to position itself as a regional leader in this area. Its strategic position and the tax benefits for investors that have materialized in recent years made Colombia one of the regional leaders in the energy transition. In 2020, the country advanced nine positions in the World Economic Forum (WEF) index, moving from 34th to 25th place. Colombia achieved this indicator primarily due to progress in awarding two energy auctions³ in 2019, several incentives for large companies, and a new set of multinationals cascading into the country. Figures between 2018 and 2020 from the Investment Promotion Agency of Colombia – ProColombia (2021) show that foreign investors registered 41 new renewable energy projects.

One of the key drivers of Colombia's energy transition has been its energy auctions. The auctions aim to promote the diversification of the national energy mix by implementing energy projects based on renewable energy sources. As a result, auctions have become the tool of choice for attracting and facilitating investment in clean energy (IRENA, 2015). According to the Colombian Ministry of Energy (2019), the auction mechanism benefits the country on six fronts:

³ The auctions aim to allocate power obligations between generators and investors to ensure reliability in the long-term electricity supply at efficient prices.

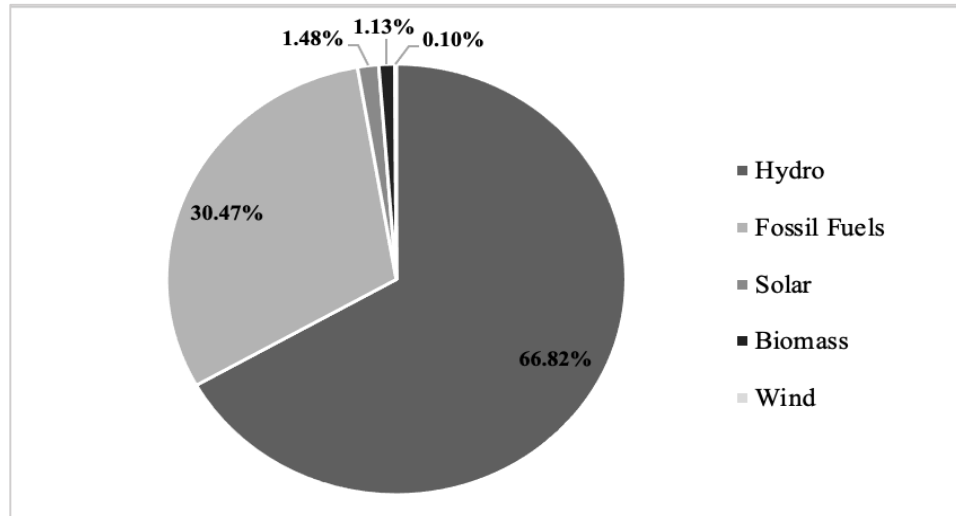
1. Promote private investment: The State does not need to invest in new generation plants since the investment is provided by private stakeholders, where the projects are paid through the energy sales.
2. Increased competition: Energy auctions create a competitive market for new energy capacity, which can help drive down energy costs and reduce the risk of price volatility.
3. Diversification of energy sources: Energy auctions encourage the development of new energy sources, including renewable energy, which can help to reduce the country's dependence on fossil fuels and increase energy security.
4. Economic development: The development of new energy projects can create jobs and stimulate economic growth. In addition, international investment can bring new capital and resources into a local economy, stimulating the local tax base and supporting the development of new businesses.
5. Environmental benefits: The adoption of renewable energy through energy auctions can help to reduce greenhouse gas emissions and mitigate the impacts of climate change.
6. Improved energy access: Energy auctions can help to increase access to electricity in rural areas by promoting the development of off-grid renewable energy projects.

Therefore, through the energy auctions accompanied by a market-driven regulatory framework (see the following section), Colombia has secured increasing participation of international investors in renewable energy. However, in Colombia, hydropower still represents 66,8 percent of Colombia's energy mix (Graphic 6), from which 78 percent corresponds to large developments and 22 percent to small hydropower (less than 20MW). Although hydropower produces clean electricity, dams, reservoirs, and the operation of hydroelectric generators can affect the environment (EIA, 2021a). In Colombia, local communities have highly opposed extensive hydropower developments, given their territories' escalating environmental and social costs (Duarte et al., 2015). In addition, the energy system's dependence on hydropower makes electricity generation extremely vulnerable to meteorological variables related to climate change⁴ (IEA, 2021b; Melo León et al., 2017). Therefore, Colombia's transition to low-carbon energy sources has been mainly driven by social and energy security concerns. Accordingly, Colombia's electricity matrix diversification made its first steps through power auctions in 2019, securing more than 2200 MW from 14 renewable energy projects planned for operation between 2022 and 2023 countrywide (See section 2.2.2 on long-term

⁴ Due to Colombia's location in the equatorial zone, there are no significant temperature changes during the year, nor seasons as there would be in mid-latitudes. Instead, seasonality is characterized by dry and rainy seasons, on whose behavior the country's diverse climatic systems depend.

energy auctions) (Gonzalez Posso & Barney, 2019). As a result, by the end of 2023, the current 1.5 percent share of renewable energy (Graphic 6) is expected to increase to 14 percent of the total capacity.

Figure 6 Colombian energy mix in 2022



Source: Made by the author using data from Sinergox, XM (2022).

However, delays in infrastructure building made it unlikely to achieve this goal by the end of 2023. According to the energy developers, consultation with local communities and uncertainties regarding the transmission lines are the major bottleneck to faster wind energy deployment (GEB, 2020), increasing risk perception for investors. To cope with the infrastructure requirements, the National Dispatch Centre (CND), a division of the state-owned power company, Interconexión Eléctrica S.A. (ISA), has implemented a procurement process through public tenders where public and private energy developers are invited to submit bids for transmission development, where the bidder guarantees the construction, in return for which the State pays a fixed tariff for 25 years to cover the investment (UPME, 2016). Therefore, in addition to ISA, several other companies are developing transmission lines in Colombia, including regional power companies, such as Empresas Públicas de Medellín (EPM) and Grupo de Energía de Bogotá (GEB), as well as private companies that have been awarded contracts to build and operate specific transmission projects.

According to the Colombian National Planning Department (DNP), by 2050, Colombia expects to meet its commitment to carbon neutrality, implying more significant energy transition investment from international and local developers. However, the cost of decarbonization and energy transition

is between 8 to 11 percent of the GDP per year (Cardenas, 2022), representing an average of US\$30 billion. Thus, beyond clean energy development projects, reducing emissions requires the country to invest primarily in upgrading and expanding the main grid transmission line, improving energy efficiency, and promoting innovation in high-emitting sectors such as transport and agriculture.

In addition to Colombia's pledges to the energy transition, the country has gained international relevance for its business opportunities to develop renewable energy projects. Colombia is one of the five most attractive developing nations to invest in renewable energies, according to Bloomberg NEF's most recent Global Climate Scope Ranking study (2022). The country is now ranked fourth worldwide, moving nine positions compared to the same survey in 2021. In recent years, Colombia has experienced a peak in investments in non-conventional renewable technologies such as solar and wind. During 2021, Climate Scope estimates a volume of investment of US\$952 million, mainly directed to wind energy development. The report indicates that one of the aspects that boost the country compared to other economies, is the availability of solid winds and solar irradiation, "The first thing is that there are resources of good quality, [...], especially in La Guajira," (BNEF, 2022). In addition, the report points out that one of the advantages is that Colombia is a market with clear and stable regulation, which makes investors feel more confident to bring capital. Although Colombia is one of the most desirable emerging countries to invest in renewables, there are several challenges that the industry has warned may interfere with investments. On the one hand, it is maintaining regulatory and macroeconomic stability under the pressure of high exchange and interest rates that may affect investment and financing. On the other hand, under the reservations of the left-wing government, foreign investment relies on having legal guarantees for long-term operations in the country.

On June 19, 2022, President Gustavo Petro was elected, becoming Colombia's first left-wing president. He came to the office offering a radical departure from a century of right-wing and centrist rule. Petro's vice-president, Francia Márquez, an environmental activist, became the first Afro-Colombian vice-president in the country's history. Petro's presidential slogan, "Colombia, the world power of life," is highly committed to reducing inequality, fighting climate change, and protecting the environment. Reducing fossil fuels extraction while compromising to foster the energy transition to renewables were some of the promises of his campaign. However, oil, coal, and minerals comprise around half of Colombia's exports, challenging Petro's big plans. In terms of the transition, followed by the national pledge to reduce emissions and the enormous potential of renewable energy, the current government is committed to consolidating a just energy transition

and sustainable economic growth. The 6-year (2022 – 2028) energy transition plan released through the National Council on Economic and Social Policy follows four pillars (CONPES, 2022):

1. Security and reliability in energy supply.
2. Knowledge and innovation in the energy transition.
3. Development and economic growth based on the opportunities offered by the energy transition.
4. Development of an energy system that contributes to reducing greenhouse gas (GHG) emissions.

Colombia's energy transition roadmap aims to provide clean energy incentives and market access, promote energy jobs, and improve the electricity infrastructure. This roadmap builds upon the efforts of the former President, Ivan Duque (2018 – 2022), to set the energy transition as the central public policy of the mining-energy sector in the country. Through Duque's term, the country reached 414 MW of photovoltaic solar energy and 38 MW of wind power plants connected to the National Interconnected System (SIC). In addition, his government facilitated the deployment of renewable energies, multiplying 30 times the installed capacity of these sources compared to 2018 (28 MW). Duque's government was also characterized by the broad impulse to increase foreign investment in the renewable energy sector through laws and market actions such as the energy auctions carried out during his term (See the following section). In addition, Colombia initiated green hydrogen, geothermal, and forest biomass production pilots (IEA, 2022). Therefore, the previous government left a more attractive regulatory and fiscal framework for investment in renewables and clean technologies.

2.2.1. Legal framework for renewable energy in Colombia

In the last two decades, the Colombian Congress has issued four laws to increase the share of renewable energy in the country's energy mix, reduce greenhouse gas emissions, and promote sustainable development. This new regulatory framework for renewable energy aims to develop a comprehensive strategy for the energy transition that includes a range of policy tools and incentives, as well as engagement with stakeholders across sectors. A key objective of these regulations has been to encourage investment in renewable energy projects by decreasing entry barriers for international companies and including a range of incentives, such as tax exemptions, subsidies, and financing options. According to the Ministry of Energy (2019), particularly tax incentives can be an effective way to encourage investment in clean energy technologies and accelerate the transition

to a low-carbon economy. By offering tax incentives, Colombia could attract more investment in renewable energy projects and other clean technologies, which could create new jobs, stimulate economic growth, and reduce the country’s greenhouse gas emissions. Thus, a favorable investment environment could help to position Colombia as a leader in the energy transition and attract more international investment in the country’s clean energy sector (UPME, 2016). Table 3 summarizes the decisions taken by each of the regulations. Over the last few years, the promotion of renewable energy in Colombia has gained momentum based on market opportunities and the availability of renewable resources.

Table 3 *Laws for the promotion of renewable energy in Colombia*

Policy	Main guidelines
Law 697 of 2001	- Targets and use of non-conventional renewable energies.
Law 788 of 2002	- Tax guidelines for renewable energies. - Sale of energy with wind energy source exempt from income tax for 15 years. - Sale of emission reduction certificates.
Law 1715 of 2014	- Promotion of the development of non-conventional renewable energies. - Special income tax deduction, accelerated depreciation, VAT exclusion, and exemption from customs duties for renewable energies.
Law 2099 of 2021	- Expand Law 1715 for the dynamization of the energy market. - Retain previous tax exemptions. - Prioritization of environmental procedures for energy sector projects.

Law 697 of 2001 was the first regulatory framework for renewable energies, providing the initial guidance for integrating non-conventional energy sources into the energy matrix. However, until Law 788 of 2002, the regulation developed tax incentives for energy projects that contribute to reducing emissions, aligned with the Clean Development Mechanisms (CDM) of the Kyoto Protocol. Lastly, Law 1715 of 2014 presents a panorama of promoting and developing non-conventional renewable energy sources through investor protection strategies based on four tax incentives (Congress of Colombia, 2001; 2022; 2014). Therefore, Law 1715 provided an energy sector liberalization framework, incentivizing the participation of international actors. Before the first auction in 2019, all the processes for renewable energy developers to access the incentives were already in place. In this legal context, Colombia has undergone an innovative approach of

institutional and legal reforms in the electricity sector, from where guidelines and mechanisms are issued to encourage the development of new wind energy projects from national and international investors (ANLA, 2018).

Finally, Law 2099 of 2021 prioritized the energy transition, the dynamization of the energy market, and the economic reactivation of the country through tax and tariff incentives for investors. This law promotes developing and researching next-generation energies from organic and other renewable sources to encourage their consumption and promote alternative uses. Additionally, it promotes the generation and use of green and blue hydrogen. It also facilitates the participation of territorial entities - departments and municipalities - in alternative energy projects, prioritizing the rural sector and local qualified and unqualified human resources.

2.2.2. Long-term energy auctions

The auctions are held by the National Mining and Energy Planning Unit (UPME), which is responsible for planning and regulating the energy sector in Colombia. Participants in the auction can be generators, traders, or energy distributors. The auction process is typically divided into two stages. In the first stage, participants submit their technical and financial proposals to the UPME. These proposals include details about the project, including its capacity, location, and expected generation profile, as well as information about the financing and ownership structure of the project. In the second stage, the UPME evaluates the proposals and selects the winning projects based on their technical and financial feasibility, as well as their price. The selected projects are then awarded a long-term power purchase agreement (PPA) with an energy distributor. The energy auctions in Colombia have been successful in driving down the cost of energy and increasing the share of renewable energy in the country's energy mix.

In Colombia, the award of the auction is Long Term Power Contracts (LTPC) between energy stakeholders and the State through a bilateral agreement, guaranteeing long-term energy supply reliability at efficient prices (UPME, 2022). In the last four years, Colombia held three auctions in February, October 2019, and October 2021 and is expecting a fourth one in 2023.

LTPC Auction No. 01 (February 2019).

In this auction, generating companies offered nine renewable energy projects, and energy trading companies offered 14 purchase agreements. However, after reviewing the economic and energy

offers, the auction auditor determined that the auction did not meet the competition conditions. Therefore, the auction was declared without bidders (UPME, 2019).

LTPC Auction No. 02 (October 2019)

In this auction, 38 projects for the sale of energy through renewable energy were offered by generating companies, and 23 purchase demands by trading companies. This number represents a 265% increase in the total of projects participating in the auction process compared to the first auction (UPME, 2019). In addition, to fulfill all the competition conditions, the companies that participated in the auction underwent a previous pre-qualification process where they demonstrated legal capacity, technical experience, and financial liquidity, thus complying with the auction guidelines (UPME, 2019).

In this auction, 22 energy trading companies and six wind energy projects were awarded, representing an installed power of 1077 MW, with an average price of \$95.65 \$/kWh, which is \$50 below the average generation cost (UPME, 2019). Table 4 shows the wind projects and companies awarded in the auction. The contracts from this auction are valid for 15 years, starting January 1, 2022.

Table 4 Wind energy projects awarded in the LTPC Auction No. 02

Wind energy project	Company	Capacity (MW)
Beta	EDP Renováveis	280
Alpha		212
Camelia	Empresa de Energía del Pacífico	250
Acacia 2		80
Casa Eléctrica	AES Gener – Jameiwaa Ka’I	180
Apotolorru		75

Source: UPME (2019)

LTPC Auction No. 03 (October 2021)

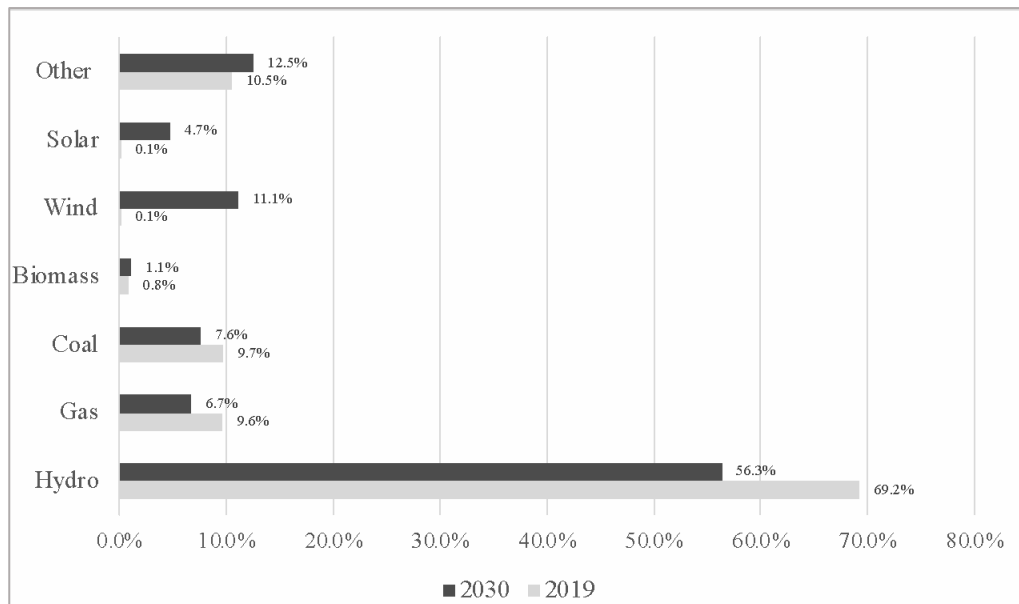
Through this action, long-term energy supply contracts were awarded to 9 generation companies with 11 generation projects with a capacity of 796.3 MW corresponding only to solar projects. This action did not award contracts to new wind energy projects. The

main focus of this last auction was to allocate solar energy for the consumption of large commercial and industrial energy consumers that carry out productive processes (goods and services).

2.2.3. Wind energy in Colombia

Colombia’s water resource richness has led to 66.8% of energy generation coming from hydroelectric plants (CEN, 2022). However, this high dependence generates inefficiencies in the definition of the cost per kW/h, mainly during periods of drought, which reduces the water reserves in hydroelectric power plants (UPME, 2017). Therefore, with the system's vulnerability to climate change exploring alternative sources has become a priority for the Mining and Energy Planning Unit (UPME). Following the national plan for climate change mitigation, one of the objectives outlined by the UPME (2019) is to supply 11 percent of the national electricity demand with wind energy by 2030, as shown in Graphic 7. However, by 2019, wind energy in Colombia provided only 0.1 percent of the national electricity demand through the first wind farm, Jepirachi, located near El Cabo de la Vela in the municipality of Uribia in La Guajira.

Figure 7 Colombia’s energy supply by source 2030 targets

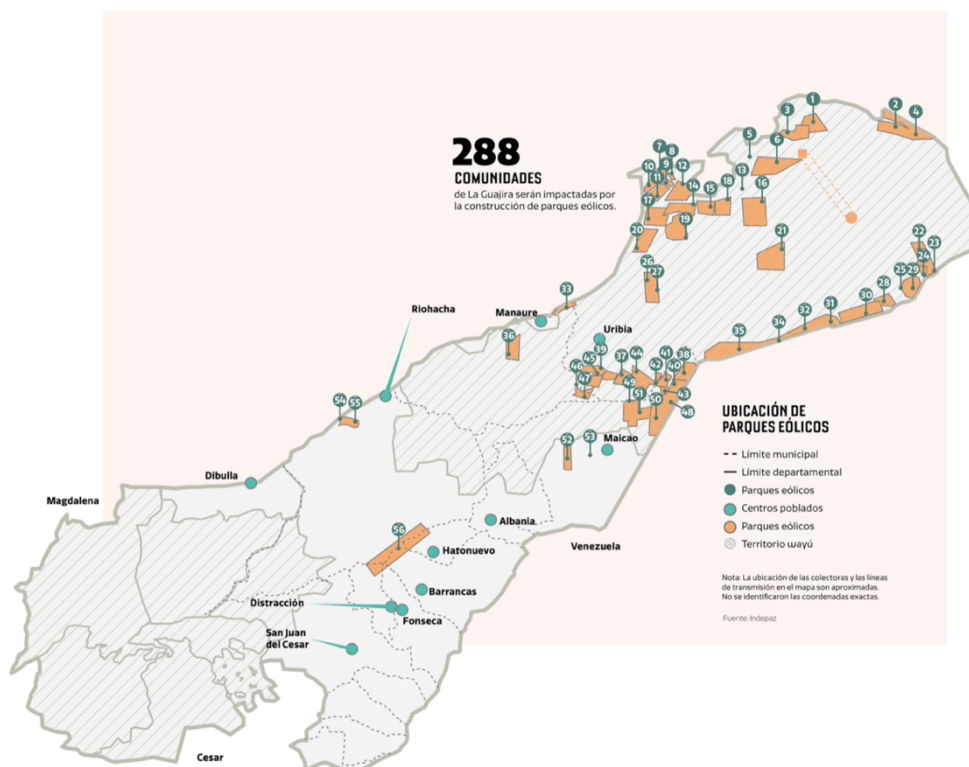


Source: Mining and Energy Planning Unit (UPME, 2019)

Wind energy investment in Colombia has presented exponential growth. Currently, 57 wind farm projects have been formulated in Colombia (See all the projects in Appendix A). Therefore, the

national plans are ambitious. The 57 wind farms will account for over 5000 MW of installed capacity by 2030 and double the capacity estimated by the end of 2023. Of the total wind energy projects, 97 percent are projected to be in La Guajira, in Wayúu indigenous territories (Gonzalez Posso & Barney, 2019). According to Graphic 8, out of the 57 wind farms projected, 54 wind energy projects are located within the indigenous *resguardo* (reserve) of the Wayúu people. The *resguardo* is a legal and socio-political institution formed by an indigenous community with a communal property title. The Wayúu people own their territory and manage it according to their internal rules and life. Therefore, the legal administration of the region depends on indigenous law or its cultural guidelines and traditions (Constitution of Colombia, 1991). Thus, developing wind energy in La Guajira intersects with the indigenous territorial rights of the Wayúu people given by the *resguardo*.

Figure 8 Location of the wind energy projects prospected in La Guajira



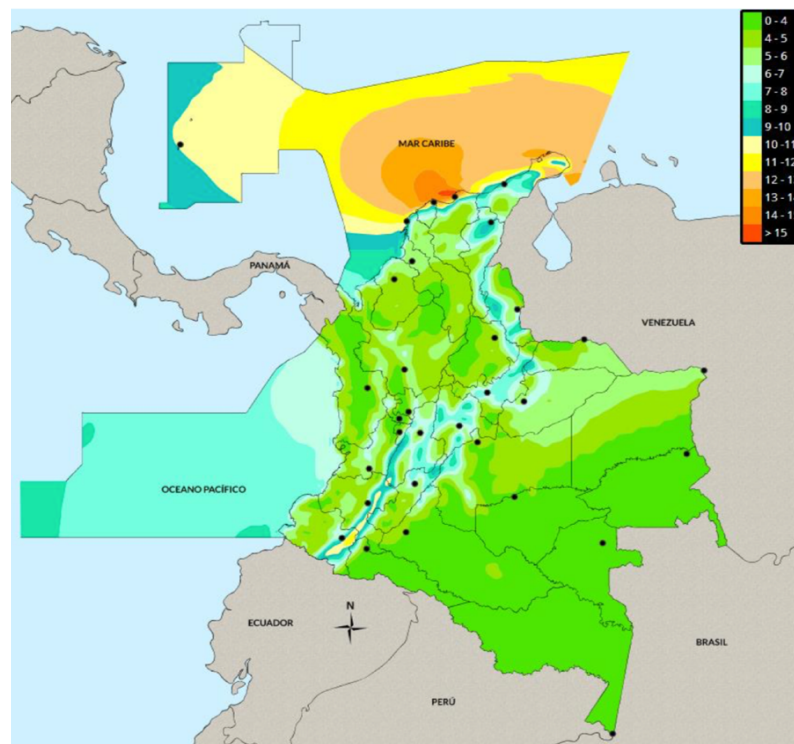
Source: Indepaz (2019)

"Uribia, the indigenous capital of Colombia, is one of the largest municipalities in La Guajira and covers the entire northern area. It is emblematic because it is home to Cabo de la Vela, Punta Gallinas, and an attractive wind potential for energy companies." (Interview C - Government, December 2022)

2.2.4. La Guajira has the most powerful wind.

The Guajira peninsula, mainly the Middle and Upper regions, receives the northeast winds and winds from the east and north with high regularity and speed. As a result, La Guajira presents the highest sustained rates throughout the year, according to wind maps published in 2017 (IDEAM, 2017). Concerning Colombia's possibilities in transforming the energy matrix, during the First International Meeting on Renewable Energies in Riohacha⁵, the government acknowledged that La Guajira was the region with the most significant potential to drive the transition to clean energy. “[...] the department of La Guajira, due to its location and low rainfall, is an optimal place to implement energy solutions based on solar radiation and wind” (UPME, 2017, p. 22).

Figure 9 Map of average annual wind speed Colombia



Source: IDEAM (2017)

As a destination for wind energy projects, La Guajira has the country's most prosperous wind resource conditions. Evidence from the annual average wind speed map from the Wind Atlas of the Institute of Hydrology and the Colombian Institute of Meteorology and Environmental Studies (IDEAM) is shown in Graphic 9. The efficiency of wind farms depends directly on wind flows and,

⁵ WEC-International Renewable Energy Meeting, Riohacha, March 29 – 30, 2017.

therefore, on the accuracy when selecting a location to build them (Interview F - Industry, December 2022). Thus, for Colombia, La Guajira represents the hub for the national energy transition plan.

Therefore, La Guajira is essential for the energy transition of Colombia. The wind blows at 9.8 m/s on average almost all year round, reaching winds of 11 m/s. In comparison, 5.0 m/s is the minimum for wind energy generation (Obregon et al., 2019), classifying it as Class Seven makes it, alongside the Patagonia region in Argentina, the only two regions in South America with such high wind prospects (IEA, 2020). The estimated potential of La Guajira alone is between 18 GW to 21 GW of capacity, similar to twice the current national demand for electricity (Carvajal-Romo et al., 2019). Wind energy development in the country can also be complementary to hydropower since, during periods of water shortage, the average wind speed tends to increase (Obregon et al., 2019).

“La Guajira is one of the Colombian geographic points with more wealth in renewable energy [...]; potentializing this area of the country as a renewable energy spot will be very important for the country. [...] it would help the country in this process of diversification of the energy matrix. It could also be an opportunity for Colombia to export electricity to other countries.” (Interview C, local government, December 2022)

The more significant participation in wind energy development in Colombia accounts for multinational companies due to their investment capacity and the experience acquired in projects worldwide. Most of these companies are in the pre-feasibility studies phase, holding prior consultations with the indigenous community and environmental impact studies. Some of these companies have already submitted bids to UPME in the auction processes of 2019 and 2021. In the records of the Ministry of Mines and Energy, the National Environmental Licensing Authority (ANLA), and the regional environmental authority – Corpoguajira, there are documents of 15 multinational companies and 3 local companies that are processing 57 wind farms, with the possibility of starting up in the next decade, in La Guajira. The following table shows the country of origin of the wind energy development companies (See Appendix A for complete information on each project). At the same time, the government, through the Reference Generation and Transmission Extension Plan 2015–2029 (UPME, 2016), awarded six public tenders for developing the transmission networks in LA Guajira that will allow sending the energy produced by the wind energy projects to the National Interconnected System (SIN). The expansion of the national grid in La Guajira is financed through a public tender, where the bidder provides the necessary resources for the construction, in return for which the State pays a fixed tariff for 25 years to cover the investment (UPME, 2016).

Table 5 Country of origin of the wind energy development companies

Country	Company names
Germany	1. Desarrollos Eólicos Alta Guajira 2. Desarrollos Eólicos Uribia 3. Sowitec
Austria	4. Vientos del Norte – Renovatio 5. Begonia Power
Brazil	6. Alupar
Canada	7. Isagén
The Unites States	8. AES Gener
Spain	9. Musichi 10. Guajira Eólica I 11. Guajira Eólica II 12. Guajira Eólica La Vela
Italy	13. Enel Green Power
Romania	14. Eviva Energy
Portugal	15. EDP Renovaveis
Colombia	16. Empresas Públicas de Medellín – EPM 17. Acquire 18. Empresa de Energías del Pacífico

Source: UPME 2020

The 57 ongoing investment projects will start operations in the next few years. The Ministry of Energy estimates that in the next decade, new developers will enter with wind and solar energy investments (MME, 2021). Until today, most wind projects are in phase I (preliminary), where the companies carry out consultations, pre-investment, and environmental impact studies. Four projects are in phase II, construction, and assembly. Only two projects have entered phase III operation, including the first national wind pilot project – Jepírachi, developed by Empresas Públicas de Medellín (EPM).

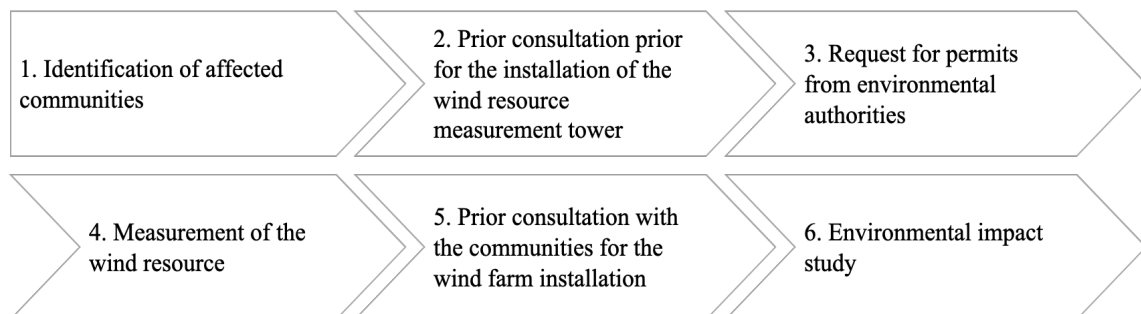
According to Mining and Energy Planning Unit (UPME, 2006), the government must overcome several obstacles to take advantage of all the wind potential of northern Colombia, La Guajira. First, the fulfillment of the infrastructure required for the interconnection of the generating

companies to the National Interconnected System (SIN) is still in development. Although the construction of power interconnection lines has been announced, their execution will depend on the definitive capacity to be connected to the system, which is still in negotiation. It is also necessary to overcome the political instability that La Guajira has experienced, which generates a risk factor in the processes carried out with the wind power developers. Finally, the territories with high wind potential are located in the Wayuu indigenous resguardo (reservation) of Alta and Media Guajira. Therefore, a prior consultation procedure is required for their operation, and the energy developers must fulfill this obligation to receive the environmental certification. Thus, the wind farm projects in development in La Guajira could radically change the landscape of electricity production in Colombia in the coming decades. However, the dimension and speed of the energy transition depend on many factors, in particular:

1. The negotiation for the definition of conditions and compensation, based on prior and informed consent with the Wayúu communities.
2. The construction and operation of the transmission grids necessary to evacuate the wind energy produced on time.
3. The adoption of national and local regulations that provide legal certainty to all parties.

Therefore, based on those risk factors for investment, the successful deployment of wind energy in La Guajira is highly dependent on the correct execution of phase I or the preliminary steps before construction. In phase I, the energy companies must identify and mitigate the social and environmental impact on their incidence area to receive the National Environmental License required to start the construction phase. The following graphic indicates the steps a wind energy company needs to follow in the preliminary phase.

Figure 10 Steps in the pre-construction phase



Source: Adapted from Gonzalez and Barney (2020)

The environmental certification is not only required to start the construction but also is one of the stages of wind energy projects to access tax incentives dictated by Law 1715 of 2014. This environmental certification is issued by the Ministry of Environment and Sustainable Development (MADS) through the National Environmental Licensing Authority (ANLA), according to the guidelines in Article 158-2 of the Tax Statute. For wind projects that exceed 100 MW of installed capacity, the environmental license is processed through the ANLA; however, for smaller capacity developments, the process is done directly with the departmental authorities, such as the Corporación Autónoma Regional de La Guajira (Corpoguajira). Obtaining the environmental certificate begins with submitting an application to the ANLA following all the requirements, including the consultations resolution documents (*Actas de Consulta*). Then, within 15 working days, the ANLA reviews the information provided and notifies the need for missing documentation or the approval of the documents to start the licensing process. Finally, the ANLA has 25 days to study the request and issue or deny the license (ANLA, 2018). Thus, the environmental license is the conclusive document that certifies that the company complies with the mitigation measures of all the wind farm's potential social and environmental impacts.

Within the preliminary phase, and to obtain the environmental license, the consultation process with the indigenous communities whose territories are under the influence area of the project is essential (See Chapter 5 on Free Prior and Informed Consent). In Colombia, the legal basis for the right to Free, Prior, and Informed Consent (FPIC) is in the National Constitution, the ILO Convention 169, ratified in 1991 by Congress. In addition, several rulings of the Constitutional Court, including T-382 of 2006, state that consultation is mandatory for any administrative or legislative initiative that impacts the collective territory or affects their culture or survival. The ruling above recalls that prior consultation is a fundamental right, which becomes a mandatory procedure that must be carried out following the uses and customs of each ethnic group every time a decision might affect the communities and territories. This fundamental right for indigenous people is further explored in Chapter 5. Previous studies of the energy transition in La Guajira have identified mismanagement and failures in the protocols to fulfill the consultations and the compensations agreed upon with the Wayúu communities (Gonzalez Posso & Barney, 2019; Schwartz, 2021; Vega-Araújo & Heffron, 2022). In addition, through interviews with community members in the area of direct and indirect influence of the projects, this research identified a lack of understanding of the content and scope of the norms regarding consultation and consent for wind

projects in La Guajira. Responding to the community concerns, as explained in the following quote from one of the human rights organizations interviewed:

“The arrival of energy companies such as Isagén, EPM, and Renovatio, among others, to indigenous territories is mediated by the right to prior consultation. This [FPIC] is the right of ethnic communities to approve or reject the arrival of a project in their territory to protect their cultural, social, and economic integrity and guarantee their participation. However, the Wayúu communities claim inconsistencies and omission of information on the impacts of the wind farms on their territory. All this has weakened the outcome of the consultation process. [...] there is a need for an in-depth review of the consultations, the ones completed and the ones in progress. But in the meanwhile, the communities are suffering the consequences” (Interview D - NGO, December 2022).

The following chapters describe the legal framework of indigenous people’s consultation and consent rights and expand on how in the Wayúu territory, this process is being held by the companies and (not) guaranteed by the national and local authorities. Given the stage of renewable energy development in La Guajira, understanding the justice and equity concerns in the consultation procedure becomes essential to build a just energy transition that does not leave anyone behind.

3. La Guajira: Between culture and development

Through the visits to La Guajira and interviews with community members, this study evidenced how the historical and cultural richness of the Wayúu people and territory intersect with multiculturalism policies and the expansion of transnational mining. Thus, this chapter aims to bring the reader closer to the Wayúu culture and their social, economic, and political reality, which, similar to other indigenous groups in Colombia, has been marginalized and long-neglected by the State. This chapter describes La Guajira and the Wayúu from different points of view. First, it explores the socioeconomic elements of La Guajira and the Wayúu's long struggle to preserve their culture, followed by a review of their cosmovision and relationship with the territory. Afterward, it reviews the legal recognition of indigenous people's territorial rights in Colombia. Finally, it explores the legacy of the extractive coal-based economy for the territory and the Wayúu identity.

3.1. The survival of the Wayúu people

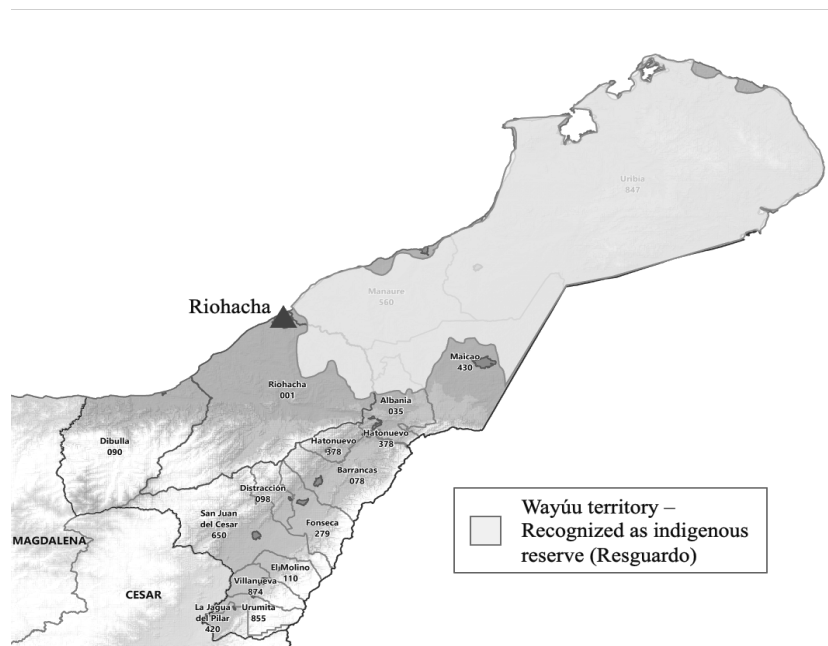
The Guajira is the peninsula between the northeastern tip of Colombia and the northwestern tip of Venezuela. It has an area of almost 25,000 km², is surrounded by the Caribbean Sea, and is covered by a mixture of semi-arid forest and desert (Graphic 10). Home of the Wayúu people, La Guajira (*Wajjira* in Wayuunaiki, the Wayúu language) is rich in culture and history. A large indigenous population, an extractive-based economy, and poor socioeconomic performance characterize La Guajira.

Figure 11 Photo from La Alta Guajira desert (February 2023)



The Wayúu are the largest indigenous group in Colombia, representing 277,000 people, 20% of the Colombian indigenous population and 42% of the population in La Guajira (DANE, 2018). La Guajira is one of Colombia's 32 departments and belongs to the group of departments of the Colombian Caribbean Region. La Guajira is one of Colombia's most remote and isolated areas, with arid landscapes that enjoy the breeze from the Atlantic Ocean. Primary indigenous land, the Wayúu territory, has an area of 15,380 km², equivalent to 73 percent of the extension of La Guajira (DANE, 2018). The Wayúu territory is a collectively owned *resguardo* (indigenous reserve) that, according to Article 63 of the Colombian Constitution, is unseizable, imprescriptible, and inalienable, which means that the land has no commercial value and, therefore, cannot be negotiated, as shown in the following graphic.

Figure 12 *Resguardo of the Wayúu people*



Source: Made by the author using editable public maps.

The indigenous territories recognized as *resguardos* (indigenous reserves) represent 30 percent of the national territory. However, within these territories lie hydrocarbon and mining deposits, which have generated one of the greatest challenges for the claiming of land rights of indigenous peoples. In particular, La Guajira is rich in fossil fuels, providing more than 60 percent of the natural gas production and over 40 percent of the national coal exports (González Posso & Barney, 2019). Since the 1970s, the extraction of thermic coal has marked the region's development. *El Cerrejón*, one of the world's largest open-pit coal mines and the largest in Latin America, has been

operating in the region for almost five decades. Therefore, the modern history of the Wayúu people has been defined by the extraction of fossil fuels. Although the region has one of the larger foreign investments⁶ from fossil fuels companies, La Guajira has the second highest poverty rate in the country, some of the lowest levels of schooling, and the rural areas lack access to drinking water and electricity (DANE, 2021).

Figure 13 Photo of Wayúu women cooking in Maku (Jan 2023)



La Guajira is one of the most impoverished and vulnerable regions in Colombia. Although poverty levels in the country have decreased in the last decade, the poverty indicators in La Guajira remain incredibly high, with 52.6 percent of the population living below the USD\$ 1,90 poverty line (UNDP, 2019), where many children die from malnutrition. In 2021, deaths associated with this cause were 35 percent of the national total (National Institute of Health, 2022). One of the leading causes of these deaths is the lack of guarantees on the right to access drinking water. According to figures from the Ministry of Housing (2022), in 2021, only 20 percent of the people living in the dispersed rural areas of La Guajira had access to drinking water. Most of the population is supplied through polluted sources such as *jagüeyes* (artesian wells). In La Guajira, the lack of access to fundamental human rights due to poverty, inequality, and structural discrimination is aggravated by corruption and a lack of institutional coordination (Dejusticia, 2022). Despite the profitable coal

⁶ Foreign investment in mining and oil and gas comes primarily from companies from the United States, Canada, Switzerland, and Brazil.

exploitation and the royalties allocated to La Guajira, local governments have been unable to consolidate socio-economic improvements in the region to guarantee the rights to water, food, a healthy environment, health, housing, employment, and education. Given those conditions, the Inter-American Court of Human Rights declared in 2015 precautionary measures to the Colombian state to grant special protection to the Wayúu communities (IACHR Resolution 60). Later, the Colombian Constitutional Court assigned the condition of the unconstitutional state of affairs in La Guajira, given the violation of constitutional rights, such as healthcare, access to water, and participation (Dejusticia, 2017). Besides the recognition as a vulnerable community, the conditions of La Guajira have not improved, being one of the regions that have suffered the most from the economic impacts of COVID-19 (Uniguajira, 2021). Thus, the case of La Guajira questions why one of the wealthiest departments in natural and mineral resources is also one of the poorest.

It is not unexpected, then, that the communities are skeptical about the promises of development and opportunities made by the energy transition plan of Colombia. The experiences with the long-standing extractives industries in La Guajira have left an unbalanced relationship between energy-related activities and the Wayúu (Avilés, 2019). In the last decades, there have been multiple cases of displacement, negative environmental impacts, and a lack of fair consultation processes (Rubio Medina, 2020). Today, La Guajira, and the Wayúu territory, are the epicenter of the country's most ambitious energy transition plans. However, the way this transition is being carried out represents a threat to the survival and identity of the Wayúu communities (González Posso & Barney, 2019). Current indigenous resistance and lack of acceptance of wind energy projects in their territory are embedded in a history of colonization and oppression, as described by a Wayúu community leader described in the following quote:

“We, indigenous peoples, have lived through at least four transitions: The first transition was the conquest because we had to go from indigenous people to colonized people, from people who owned their territories to people who did not own their land. But then came the next transition, from European colonialism to the republics, that maintained the rule over indigenous territories; during the republic were the *criollos* (creole), our brothers that decided over us. Later was a third transition, the expansion of the coal and oil economy, which turned from a rural country to supposedly a wealthy country. [...] But with this transition, we are miserable, and nobody wants us in South America or the world. So, we have been fleeing. This economy was a false development for the indigenous peoples because the principle of the West was to accumulate wealth only for their profit. [...] However, now there is a fourth one, beyond coal and oil. We do not care about oil anymore, says the West. We no longer care about coal because the Cerrejón mines destroyed our planet. Now, wind and solar energy are taking over our territories.” (Interview B - Community, December 2022)

Therefore, the resilience of the Wayúu people over colonization and the shape of the nation-state followed by the economic boom of fossil fuels extraction, and the current green economy represents an ongoing fight for their recognition and participation rights and a clear need for understanding minority groups as equal partners in the evolution of the Colombian society.

3.2. Tradition, territory, and identity

The Wayúu sense of time is non-linear, where past, present, and future interconnect and speak to their way of living and knowing. The spirits of their ancestors are the guiding forces of today and tomorrow, present through their dreams and the wisdom of their ancestral leaders (Interview G, Community member, January 2023). The Wayúu philosophy of life relies on the principle of *Sumak Kawsay* (“the good life” in the Kichwa language). This concept is not unique to the Wayúu people, it originates in indigenous cultures throughout the Andean and the Amazon rainforest.⁷ In La Guajira, *Sumak Kawsay* covers each community member’s material, social and spiritual well-being. Also, *Sumak Kawsay* refers to harmony among humans and non-humans, “never at the expense of other societies or through the exploitation and depletion of natural resources” (Interview E, Community leader, December 2022).

Furthermore, the Wayúu have a deep spiritual life with *Maleiwa*, the creator of all that exists. *Maleiwa* created the Wayúu people and today cares for humankind’s and nature’s well-being. Then the Wayúu territory is sacred, as it is where *Maleiwa* designated the Wayúu to be born and die. “*Maleiwa* commissioned the Wayúu to protect their land. We are the children of the land, the protectors of the territory, and the ones accountable for the balance with *Mma* (mother earth)” (Interview E, Community leader, December 2022). Other deities important to the Wayúu culture are *Juyá* and the *Jouktai*.

Juyá, associated with the rain, plays a central role in the Wayúu social and economic activities. Their sources of livelihood depend on the rainy seasons, which define the best time for agriculture and goat grazing. *Jouktai*, associated with the wind, plays an essential role in the spiritual life of the Wayúu. The wind is a messenger that has life and manifests through their dream. Also, the wind is an architect that shapes and changes the desertic landscape of La Guajira and advises the changes in the climate and the arrival of a new season. Through the wind, the ancestral spirits and forces

⁷ Different peoples and cultures define *Sumak Kawsay* in different ways; one common element is “living in harmony with nature.”

navigate, allowing the spirits to travel through the territory (Interview G, Community member, January 2023). Thus, the wind is not a resource that can belong to them; it is much more than that. For instance, people from the Cabo de la Vela (most north point of the peninsula) considered themselves children of the wind, who had inherited the fishery abilities of *Jepirachi* (winds of the north) (Interview A, Academic, December 2022). In this way, the spiritual world of the Wayúu becomes vital to understand their relationship with their territory and resources.

Figure 14 Photo of Wayúu men fishing in El Cabo de la Vela (Jan 2023)



The Wayúu are organized into 22 clans distributed by family and spiritual ties. Their social structure represents the spiritual relationship between nature and humans. Their community divides into matrilineal clans, described by a *Kanash* (an animal name). *Maleiwa* made animals and humans, and they are spiritually connected. “The *Kanash* represents the family’s history, the strengths of the people, and their community duties” (Interview E, Community leader, December 2022). Each clan has an authority responsible for managing and directing the daily activities—generally, an elder with experience and wisdom. However, the Wayúu social organization is structured around women. Women transfer the clan’s name and territory to their children (Schmit, 2021). In the Wayúu culture, the land will always belong to the clan of the territory, spiritually connected to the *Eirruku* (the mother lineage). Therefore, the territory is inalienable as property, and its sovereignty will always belong to the indigenous people even if it is temporarily given to a third party for its usufruct (Valbuena, 2011). Within the family, authority rests with the mother and the maternal

uncle, and women play an essential role in transferring knowledge and maintaining social relationships within their families. At the community level, women have the function of organizing their clan's social and economic activities. Therefore, in the long history of struggles for the Wayúu territorial rights, women have played a leadership role in claiming their land rights from the state and demanding reparations for the impacts on their territory (Schmit, 2021). Besides the essential role of the Wayúu women in society, the ancestral leader is, in most cases, a man, "*el tío*," who holds the political power to decide and negotiate for the best interests of his community.

The Wayúu relationship with their territory as original inhabitants of the desert and semi-desert zones of La Guajira has led them to adopt a mobile and dispersed residence pattern. They live in *rancherías* (small rural settlements), which comprise a group of households connected by family ties. Thus, belonging to the territory responds to the continued occupation by a family group or a clan in a *ranchería*, and their family cemeteries prove the antiquity of their settlement in a particular area (Guerra, 2013). However, mobility has historically been necessary for the Wayúu to access the essential means of life, particularly water. In addition, temporary migration to fertile regions has led to misconceptions about their ways of living and identity, as described by a Wayúu leader below.

"In school textbooks in Colombia, when they talk about the Wayúu, they always say that we are a nomadic people, which is false since mobility in a territory of low rainfall is obligatory. The Guajira peninsula is an ecological system. [...] that has generated a climatic rainfall system for thousands of years, making people move following fertile soils; life is mobility. [...] However, they told us throughout our education that the nomads were not civilized, which turned out to be the opposite. Nomadism is an expression of the highest civilization since it responds to the movements of nature and respect for our Mother Earth" (Interview B - Community, December 2022).

While their subsistence depends on mobility, their belonging is linked to their cemeteries and sacred sites, defining their identity to the territory. Land, beyond a Western definition of "a factor of production or a resource," is part of the indigenous identity, connecting feelings of belonging and social development to cultural identity (Boke, 2020) and the longevity of a people tied to a place to the collective indigenous identity (Gilio-Whitaker, 2019). The Wayúu relation with the territory transcends the material, involving the spiritual, "[...] the territory as the basis of culture and existence is the beginning and the end of the indigenous cosmovision [...]" (González Posso & Barney, 2019, pp 20). Therefore, the Wayúu way of living in their territory reflects a spiritual connection with the land, a profound understanding of nature, and harmony with *Juyá* and *Jouktai* (deities associated with rain and wind).

For the Wayúu, the territory is everything. The territory is much more than the land they inhabit; it is a social and evolutionary construction that feeds on the processes of meaning (Gonzalez Posso & Barney, 2019). Therefore, its social construction transcends the tangible and is related to Wayuu cosmovision. The territory of the Wayúu is where they take the meaning as an indigenous people and where their ways of life and ancestral knowledge are recognized. Their cosmovision obeys the patterns inscribed and described by the territory, drawing a roadmap for their life. Their social structure, traditions, and forms of subsistence respond to a deep and harmonic knowledge of nature and its resources. Their relationship with the rainy seasons and winds and the structure of their clans are based on their close connection with the territory (Rocha, 2010). However, their vision of the territory has historically confronted the constructions of Western culture.

The Wayúu have adopted and received modernization processes in their territories, but simultaneously, they have refused them when negative impacts on the land are evident (Gonzalez Posso & Barney, 2019). Despite having a cosmovision of extreme relationship with nature and the territory, the lack of opportunities and guarantees of their rights have led them to relax their customs, adapt to new ways of living with the territory, and share or cede control of the territory with *alijunas* (foreigners or non-Wayúu people). Still, for the Wayúu people, their sovereignty and traditions are violated by extractive projects imposed in their territories (Ulloa, 2020). Rather than understanding their culture and cosmovision, the Wayúu have been seen as an obstacle to so-called development, as mentioned by one of the community leaders interviewed:

“In the 70s and 80s, I do not forget, every time we attended a meeting with politicians and people like that, [...] they always talked about the indigenous problem. The indigenous peoples were a problem, the problem for development, and the problem for progress; why? Because supposedly, and this is how they [politicians] cataloged us, we were traditional cultures, and tradition tends to be reactionary, so it does not allow changes. [...] For the *alijunas*, we interfered with progress. We were the problem” (Interview B - Community, December 2022).

Therefore, understanding the Wayúu’s vision of the territory, their spiritual and ancestral connection, and their way of inhabiting it in different ways, mobilizing freely, and understanding themselves as one with nature, is essential to negotiate the use and implementation of energy projects in the indigenous territory. Contrary to legal authorities designated by the State, each clan decides its ancestral authorities, and they are the only ones that can decide on the use of the territory. Unfortunately, the lack of recognition and understanding of the Wayúu culture and their

relationship with the territory has led companies to conduct consultations, negotiations, and compensation mechanisms against their way of life (Valbuena, 2011).

3.3. A multicultural country

Demands for recognition and access to social rights and citizenship by ethnic movements in Colombia have led to reforms that recognized the multicultural component of the nation by granting specific collective rights. However, celebrating multiculturalism in Colombia's society does not inhibit the mounting social inequalities indigenous groups face. Therefore, to understand the struggle of the Wayúu, it is worthwhile to explore the narratives that have shaped the national ethnicities in Colombia.

Mestizaje (racial mixture) is a central component of nation-building in Colombia (Wade 2003). It is the product of the country's history of colonization and the uniquely hybrid composition of its population due to the cohabitation of Europeans, indigenous groups, and Africans. However, despite being promoted as a celebratory expression of racial democracy, it is a problematic ideology that created inequality and sustained racial hierarchies (Stepan, 1991). Paradoxically, behind the democratic discourse of *mestizaje* and racial harmony lies the hierarchical discourse of *blanqueamiento* (whitening) constructed as truths by elites, valorizing whiteness and disparaging Blackness and Indianness (Wade, 1993). The words from the Colombian president, Laureano Gomez, in 1928 represent the dichotomy between *mestizaje* and the invisibility of minorities in Colombian society: "Our race comes from a mixture of Spaniards, Indians, and Blacks. The last two streams of inheritance are stigmas of complete inferiority. In what we have been able to inherit from the Spanish spirit, we must look for the lines and guidelines of the Colombian character" (Gómez, 1952). Indeed, it was only until the mid-twentieth century that Afro-descendant and Indigenous peoples began to be incorporated as subjects of study by the academia, recognizing their identity and culture and creating a national history beyond colonization and racial mixture (Portocarrero Castro, 2010).

In the 1990s, the ongoing revalorization of Indigenous and African heritage was articulated by signing the new Constitution (Chavez & Zambrano, 2006). Officially, the law only recognized Colombia's diversity since the Constitution of 1991, when we understood ourselves as a multiethnic and multicultural country. In the new Constitution, once considered second-class citizens, the Indigenous and Afro-Colombian communities are recognized as collective subjects. In particular, in two articles of the Constitution (1991), minority groups are identified and protected.

- **Article 7** states, “The State recognizes and protects the ethnic and cultural diversity of the Colombian nation.”
- **Article 70** reads, “The State recognizes the equality and dignity of all cultures living in the country.”

Likewise, the Constitution established special seats in the Congress for Indigenous and Afro-descendants. It also promotes ethnic education and special quotas in public universities. These advances are progressively becoming a reality. However, these groups have to face the prejudices and interests rooted in a society still impregnated with whiteness-centered colonial values and reluctant to acknowledge their autonomy and self-determination rights (Restrepo, 2013).

The national constituent assembly that gave life to the Constitution of 1991 was part of an effort to achieve peace in Colombia. The assembly sought to integrate the voices of Indigenous and Afro-Colombian communities to establish a plurinational state. Therefore, the Constitution of 1991 legally defined Colombia as a plurinational State and refers to the people of Colombia as being “composed of various nations.” It also contains provisions on indigenous consultation, autonomous territories for indigenous groups and Afro-Colombian communities, and recognition of indigenous justice. Since then, indigenous communities have been legally granted the right to their territory. As a result, the indigenous peoples are recognized as having a role in safeguarding their territory. At the same time, in 1991, Colombia ratified the International Labor Organization convention 169 for indigenous and tribal peoples (ILO169). However, although plurinationalism aims to recognize different cultures within the boundary of a single state, social movements, and indigenous groups still hope this formal recognition of indigenous autonomy would guarantee their rights (Restrepo, 2013). indigenous people in Colombia have faced a long struggle for the restitution of land occupied by non-indigenous landowners and violations of their sovereignty rights by development projects in their territories (Wade, 1997).

In Colombia, ethnic recognition has certainly promoted policies of distributive justice. Since the signing of the constitution, more than 31,3 million hectares have been legally granted and titled as *resguardos* (reserves). Establishing the *resguardo* (indigenous collective property) marks the most relevant action to guarantee the sovereignty of indigenous people and land recognition. The Constitution of 1991 provides indigenous people the rights over their territory, the use of their natural resources, and the autonomy to exercise their norms.

- **Article 63** states, “The communal lands of ethnic groups are inalienable, imprescriptible, and unseizable.”
- **Article 246** indicates that “The indigenous authorities may exercise jurisdictional functions within their territory, following their own rules and procedures as long as they are not contrary to the Constitution and the laws of the country.”
- **Article 329** reads, “Indigenous reserves are collective property that cannot be sold.”

With these guarantees in the Constitution and the ratification of the ILO169, the Colombian state undertakes to consult indigenous peoples whenever legislative or administrative measures may affect their territory. It also establishes how indigenous peoples can participate freely, or to the same extent as other population sectors, in decisions affecting their territories.

For the Wayúu, the formation of their *resguardo* was influenced by coal mining companies operating in La Guajira, limiting their ancestral territory (Guerra, 2002). Their indigenous reserve was constituted not only based on the recognition of their traditions and identity to the land but on the guarantee that their territory was outside the coal mine development (Rubio Medina, 2020). In the location of the Wayúu *resguardo*, the State did not include the area of the *El Cerrejón* coal complex (mine and port) and excluded mining reserve areas and some beaches (Valbuena, 2011). Therefore, the composition of the *resguardo* has delimited their area of incidence, where they can live, and what resources they can access to survive as a community. The Wayúu are scattered in La Guajira and require constant movement around the territory following the availability of water and the rainfalls to practice agriculture. The delimitation of the territory had impacted their right to move freely on the lands that were ancestrally theirs (Rubio Medina, 2020). Conversely, the local communities outside of the *resguardo* and close to the mines and oil deposits had faced forced displacement from their ancestral lands, leading to the creation of urban settlements and increasing the levels of poverty in the major urban areas (Rubio Medina, 2020). The displacements have produced indigenous communities’ demographic, socioeconomic, and cultural changes. Away from their traditional practices of subsistence agriculture, pastoralism, and fishery, many Wayúu had turned to jobs in tourism, mining, and agriculture (Guerra, 2013).

The presence of illegal armed groups in the territory has also been a factor that has affected the Wayúu people from exercising their autonomy and sovereignty over their territory. In the late 1990s and the 2000s, illegal groups took possession of Wayúu sacred sites and grazing areas (Rubio

Medina, 2020). The legal figure of the *resguardo* has not limited the power of the illegal groups to operate in the territory, creating fear and insecurity for the Wayúu communities. For instance, on April 16, 2004, the Colombian paramilitary group AUC (*Autodefensas Unidas de Colombia*) committed one of the massacres that have marked the history of the Wayúu people – The massacre of *Bahia Portete*, related to land disputes and economic interests of its strategic geographical location. Reports suggest that the massacre occurred as a result of clashes between this armed group and the Wayúu people, who were defending their ancestral land and resisting the encroachment of this group. This is an example of how armed groups likely used violence to intimidate and eliminate resistance from indigenous communities. This massacre displaced more than 600 Wayúu from their ancestral and sacred territories in the north (Schmit, 2021). Among many other effects of the violence, the condition of displacement that has experienced the Wayúu within their territories is an example of how their territorial rights are not fully guaranteed and protected. In the collective memory of the Wayúu people, their rights, which the government needs to guarantee over their territory, are still aspirations but not a reality, as described by a Wayúu leader:

“They [the government] promise us that the situation will improve in every election campaign and community council. However, we have been waiting for many years. Our people have suffered enough due to the economic interests of the companies and the violence that has never stopped in our territory” (Interview E, Community, December 2022)

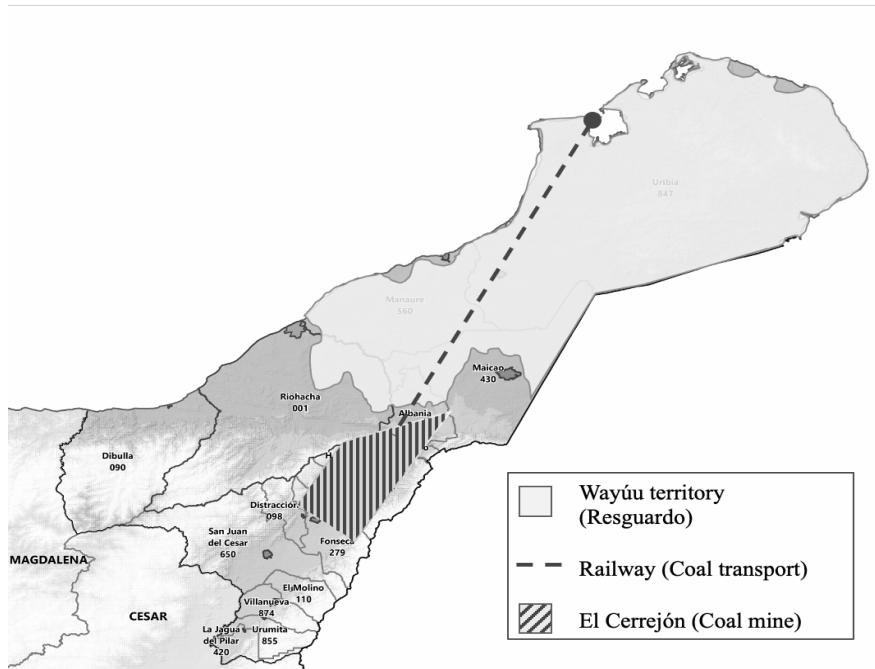
3.4. A long history with fossil fuels

In the late 1970s, the first coal deposits were identified in Guajira. The purchase of the first lands for coal exploitation began in 1981. Initially, *alijuna* (non-Wayúu) employees of *El Cerrejón* purchased lots from non-Wayúu landowners as part of their control over the area. This allowed them to close and destroy roads, restricting the mobility of Wayúu families, obstructing access to water from nearby streams, and exchanges between families from different *rancherías*, disrupting their livelihoods (Rubio Medina, 2020). The control of the area was not only over land ownership; armed surveillance and the targeting of Wayúu families claiming access to the land constituted a context of confinement of the communities in the area (Interview A, Academic, December 2022). Gradually, entire clans were displaced, forcing them to move their *rancherías* and cemeteries.

El Cerrejón, South America’s largest open-pit coal mine, started the exploitation of coal in 1983 through the state-owned commercial and industrial company *Carbocol*. Although coal extraction in Colombia began timidly at that time, the arrival of the US company Intercor allowed the

exponential growth of the mine. The two companies joined forces and formed *Asociación Carbocol Intercor*, later called *Carbones del Cerrejón*. In the early years of operation, the expansion of the mine displaced and relocated six Wayúu communities, in most cases without prior consultation, as Colombia ratified ILO 169 in 1991. Since then, the expansion of the mine, the arrival of heavy machinery, and the construction of the railway connecting the mine to the port have forced the communities to abandon their land, change their way of life and face environmental risks. In 1984, *El Cerrejón* finalized the railway construction that connects the mine with the port. The railway line crosses the Wayúu indigenous territory from south to north, dividing the region, forcing the communities to adapt their livelihoods, and bringing with it pollution (Schmit, 2021). Therefore, in the constitutional delimitation of the resguardo, the mine is outside of the Wayúu's area of influence (See Graphic 14). However, still today, some indigenous communities live on the land surrounding the mine outside the resguardo. In some cases, these communities have been relocated by the company. Nevertheless, in most cases, the communities have accused *El Cerrejón* of buying their land at low prices, taking advantage of the communities' lack of knowledge, using intimidation practices, and bribing indigenous leaders (Rubio Medina, 2020).

Figure 15 Location of the coal mine and its railway in La Guajira



Source: Made by the author using editable public maps.

Through the nineties and the commodity boom of Latin America, the coal production of Colombia gained relevance in the international market, and coal exports became one of the most significant industries leading the economic growth of the country (Melo González, 2020). Today, Colombia's second most important mineral is coal, with more than 60 percent of the national mining industry and 18 percent of the total exports, from which *El Cerrejón* owns 40 percent market share (MME, 2020). For decades, the coal economy has been a source of employment and capital for the region through taxes and royalties. However, the social and environmental costs for La Guajira are undeniable. *El Cerrejón* mining complex's development has seriously disrupted the Wayúu people's lives. The company built a railroad that divided their territory, while heavy environmental pollution began to affect the population (Graphic 15). But it is not only the interests of the mining company that have resulted in the displacement of part of the population (Schmit, 2021); the lack of State presence has allowed the expansion of paramilitary groups and drug trafficking in the region (Rubio Medina, 2020). Indepaz (2011) reported that the largest displacements of the communities from the south of La Guajira occurred between 2001 and 2004. Despite the communities' resistance processes, displacement has been the communities' constant experience with development.

Figure 16 Photo of the coal train (Jan 2023)



According to the International Monetary Fund (2012), natural resources have the potential to drive growth, development, and poverty reduction. Indeed, the coal bonanza was one of the vital elements

that allowed Colombia to grow economically, expand its social programs and reduce poverty rates nationwide (Melo González, 2020). In particular, coal exploitation has been essential for tax revenue and royalties. Royalties are necessary for the national public finances, especially for the regions where the mineral exploitation is located. Royalties in Colombia are distributed among all departments and municipalities, but producing departments receive an additional royalty allocation for their direct administration. For example, from 2013 to 2020, the local government of La Guajira received \$83.7 million in royalties. In addition, La Guajira, the region with one of the country's highest poverty levels, has received additional resources for regional compensation funds. Thus, coal royalties for La Guajira represent 65 percent of the annual revenue, designated primarily for infrastructure and social spending (López & Patzy, 2021). Still, the Wayúu leaders allude to their lack of decision-making participation in public spending as the reason for the disparity between the heavy royalty income of La Guajira and its poor social indicators. (Interview E, Community, December 2022)

The importance of the role of royalties in La Guajira differs from the social indicators and the high poverty levels. Despite being one of the departments that receive the most royalties in the country, its territory presents high figures for unsatisfied basic needs. In five decades of coal exploitation, La Guajira still does not perceive the expected welfare regarding access to drinking water, quality education, electricity, or roadway systems. Although the extractive industries play a decisive economic role in Colombia and the producing regions, many face weak governance challenges. According to Ulloa (2020), the resources from royalties that should strengthen the community needs in La Guajira have become the money that invigorates the corruption of the mining municipalities. Still, multidimensional, and monetary poverty rates in La Guajira are well above the national levels (UNDP, 2019). Over the years, the government discourse has emphasized the potential of job creation and economic development. However, the Wayúu people see these benefits with skepticism, described as “[...] “socially thin” investments driven by foreign capital and disconnected from local development needs” (Schwartz, 2021), rendering invisible their suffering, their rights, and their self-determination.

Besides, official national reports point to advances in social indicators and economic growth thanks to the coal exports; they cannot hide the fact that, despite the millions of dollars in royalties and taxes, the balance is harmful the most to the people of Guajira. Decades of extensive coal mining in La Guajira have resulted in deforestation, loss of water resources, and erosion of productive soils. Those environmental losses have translated into food insecurity and water poisoning in the

region, which has escalated to high levels of child malnutrition, aggravated by the impacts of climate change on the weather (Ulloa, 2020). According to Tierra Digna (2015), the ecological footprint of the extraction, land transport, and maritime export of coal are mainly, but not limited to:

1. The contamination of the resources that sustain life (air, water, and vegetation).
2. The progressive deterioration of the health of the people living near the mining activity.
3. The transformation (to worse conditions) of territories that previously gave the communities the possibility to carry out productive activities closely linked to their cultural identity.

First, pollution is severe on resources such as air, indeterminate but potentially harmful to water, and fundamentally destructive to vegetation. Second, the various types of pollution deteriorate the quality of life of the inhabitants of the communities surrounding the areas where coal mining activities are carried out, the emission of coal dust at all stages of the coal chain, the emission of toxic gasses from the mines, and noise from trains. Third, the deployment of the coal business has been gradually restricting the availability of resources and natural conditions (such as water, fauna, or soil fertility) of the surrounding communities. People who used to live from productive activities such as hunting, fishing, or agriculture have faced the transformation of their natural environment and have been uprooted from the being, knowledge, and doing that constitutes them as people.

Regarding the environmental impact of mining in Colombia, the state has tried to make interventions to protect the environment through regulatory provisions stipulated in the Constitution of 1991 and adherence to international environmental treaties. However, Castellanos (2017) states that the regulations have not been sufficient to reduce the impact generated by the mining sector, so actions must continue to be improved to minimize direct and indirect threats to the environment and the communities surrounding the mines. For La Guajira, the government is still behind in recognizing the extractive industries' historical environmental and social impacts and protecting their rights to compensation. The environmental evaluations needed to develop the extractive projects anticipated that operations from *El Cerrejón* generate deforestation, diversion of water flows, and the progressive increase of soil drought (Corpoguajira, 2016). In particular, the technical and environmental interventions of *El Cerrejón* to access the water from the river *Ranchería* and its water streams have dispossessed and transformed Wayúu peoples' cultural and daily relationships with water's territories. For the Wayúu communities neighboring the mining

areas that depend on the fauna, flora, and water resources that are endangered, *El Cerrejón* has represented a continuous threat to their physical and cultural subsistence (Ulloa, 2020). In the last decade, the company has made considerable improvements to mitigate its operations' social and environmental impacts. In particular, reforestation plans in the region, soil recovery strategies on former extractive sites, and projects for wildlife rescue and relocation (Cerrejón, 2019). Although the initiatives to improve the current situation, the long-lasting environmental effects of the mine and the ongoing Wayúu resistance against the expansion of the coal sector will continue to drive the energy dynamics on the Wayúu territory.

3.4.1. Is La Guajira at the end of the coal era?

The International Energy Agency (2021) forecasted 2025 as the year of the peak of the cycle of coal exploitation and export decline in the pace of decarbonization of the economies of Europe. In addition, approvals of new coal-fired plants have slowed dramatically in recent years, stemmed by lower-cost renewable energy alternatives and rising awareness of environmental risks (IEA, 2021). According to the commitments of the countries signing the Paris Agreement on climate change, by 2030, almost all European countries importing coal from Guajira will have closed many plants producing electricity from this source.

All this panorama indicates that the market dynamics in the next decade will tend to the decline of coal mega-mining in Colombia. Still, this market will also be determined by geopolitics and international commitments to limit carbon emissions further. Therefore, in the last decade's Colombia energy plans, internal decarbonization and the promotion of renewable energies have been gaining importance. However, decarbonization efforts have seen a drawback after the Invasion of Ukraine led to a demand increase for coal, representing a significant opportunity for the Colombian mining sector. As a result, in 2022, Colombia witnessed a 69 percent increase in mining income, which translates into \$2.2 billion in taxes and royalties (MME, 2023). Under this scenario, coal will continue playing a vital role in Colombia's economy, even knowing the imminent boom of renewable energies and the imperative of the climate crisis agenda. In La Guajira, the coal exploitation contract of *El Cerrejón* is expected to end by 2034. However, under the current global circumstances, the closing of one of the largest open-pit coal mines in the world is under question.

In addition, the experiences with the fossil fuels industries in La Guajira have left an unbalanced relationship between energy-related activities and local communities (Avilés, 2019). As a result, the Wayúu people have seen the so-called coal bonanza pass like a curse (Rubio Medina, 2020). Narratives of economic growth have silenced not only their diverse forms of resistance but continue placing the environmental and social burdens of an extractivist economy in their territory today. Now, the future of energy turns its eyes again to the Guajira and its extraordinary wealth of strong winds, bringing emergent forms of environmental change and inequality (González Posso & Barney, 2019). Under this paradigm shift, how to ensure that the wind energy in La Guajira leads to a just and equitable opportunity for the indigenous people who own the territory? The answer to this question depends on whether the energy transition required to face climate change is a blessing or a new curse for the people of La Guajira.

4. Theoretical framework

This section provides the theoretical background to analyze the injustices and inequality in the ongoing transition to renewable energy in the indigenous territory of La Guajira in Colombia. After introducing energy justice as a conceptual framework, this study explores the energy legacies of an economy based on extractivism and describes the tenets of energy justice. Later, it describes different cases of energy justice in wind energy development across different geographies. Finally, it presents the analytical framework by combining the energy justice scholarship and the qualitative analysis from the fieldwork in Colombia.

4.1. Energy Justice

The field of energy justice has grown significantly over the past two decades. The origins of energy justice are deeply rooted in environmental and climate justice scholarship. Environmental justice refers to equity and the disproportion of ecological harms to historically marginalized communities, while climate justice has been used to account for and contest how climate change has the most severe effects on those with the least responsibility for causing it among and within countries (Schlosberg, 2009; Dawson, 2010; Newell et al., 2021). Both environmental and climate justice movements center the conversation on those often excluded from political, economic, and ecological decision-making (Newell et al., 2021). Likewise, energy justice looks at the social and economic inequalities of those disproportionately harmed by the energy systems, particularly low-income, Black, and Indigenous communities (Baker, 2021). As an investigative field, energy justice aims to analyze where injustices occur throughout the energy lifecycle, from production to consumption, particularly in the context of low-carbon transitions (Heffron & McCauley, 2014; Jenkins et al., 2016). Thus, energy justice builds on environmental and climate justice to provide a future-oriented framework for the ongoing transformation of the energy systems (Jenkins et al., 2020).

Recently, climate negotiations have increased attention to the importance of just transitions and dealing with the justice implications of new technologies and market-based solutions (Leach et al. 2021), as seen in the Convention on Climate Change COP27 in 2022. In that sense, energy justice aims to make renewable energy accessible, affordable, decentralized, and democratically managed for all communities (Baker, 2021). It does so by applying justice principles to energy policy (McCauley et al., 2013), energy production and consumption (Hall, 2013; Heffron & McCauley,

2014; Jenkins et al., 2014), energy security (Sovacool et al., 2013), and climate change (Jenkins et al., 2016) while seeking to balance the energy trilemma of economics, politics, and the environment (Martínez & Castillo, 2019). Thus, the approach to energy justice has an interdisciplinary perspective involving insights from business, geography, anthropology, political science, legal studies, philosophy, and environmental studies.

As a recently emerged cross-cutting social science research, the majority of energy justice scholarship has been conducted from the Global North (Sovacool & Dworkin, 2014), led by western philosophical traditions and with greater attention to developed countries (Bickerstaff et al., 2013; Cross & Murray, 2018; Jenkins et al., 2017). Therefore, the field can benefit the most by bringing forward the Global South's voices and amplifying the bottom-up view from those on the frontline of the energy transitions (Lacey-Barnacle et al., 2020; Sultana, 2019). In recent years, the field of energy justice has moved toward decolonizing knowledge, with a growing scholarship coming from the Global South (Lacey-Barnacle et al., 2020). The decolonized perspective of energy justice involves understanding the structural inequalities that have burdened the most vulnerable and are excluding them from shaping just and equitable energy futures. Thus, in the context of low-carbon transitions, achieving energy justice demands challenging the universalistic assumptions of the Global North to tackle climate change and, instead, invites us to focus on local and indigenous perspectives, which do not feature as strongly in the current scholarship (Mehta et al., 2019). Then, energy justice aims to open energy policy and politics to a broader range of actors and voices, especially those most subject to energy-related injustices.

Within the climate change mitigation and energy transition agendas, energy justice provides a future-oriented framework to understand the injustices risen from the shift from fossil fuels to alternative sources; however, issues of energy justice in the Global South can also be understood through the legacies of an economy based in extractive industries. A history of extractivism has catalyzed conflicts over territories where local and indigenous communities have been at the forefront of the direct and indirect social and environmental harms (Bebbington, 2011). These extractivist histories are still very present in Latin America, as the region's economic development has been directly attached to the extraction of natural resources. The commodity boom of the seventies and the nineties' liberalization policies are examples of Latin American resources playing a vital role in the global market (Smith, 2012). In Latin America, discourses of development and progress and environmental interests concerned with large-scale, capital-intensive, and exportation-based fossil fuels, mining industries, and extensive agribusinesses gave rise to the

term *extractivismo* (extractivism) (Svampa, 2013; Gudynas, 2015; 2016). Since the early 2000s, extractivism has gained significant relevance in the debated relationship between nature and society.

Extractivism emphasizes that local resources are moving into the global market, perpetuating a dynamic of exploitation and domination of local and indigenous territories to satisfy the international demand for commodities (Gudynas, 2015). In doing so, extractivism weakens environmental regulations to attract investment, creates drastic territorial reshaping due to extractivist activities, trespasses human and ecological rights by increasing violence, and narrows social and environmental justice (Gudynas, 2016). Thus, the literature on extractivism suggests that extractive industries operate as enclave economies with extensive participation of foreign capital and limited government intervention, where human and environmental rights are systematically overlooked (Gudynas, 2016). Therefore, the concept of extractivism invites us to reconsider the development discourses of modern capitalism that have produced a global distribution of capital, labor, and resources, which, in turn, create geographies of accumulation, extraction, and dispossession where the Latin American indigenous peoples have been situated in a vulnerable position (Svampa, 2019). Indeed, there are many examples in Latin America where, for national interest, development, and using its legitimate sovereignty, the state ends up imposing extractive projects despite local resistance and self-determination (Acosta, 2013; Gudynas, 2009; Svampa, 2015). Thus, extractivism set a precedent for understanding energy conflicts and the resistance of local communities from a broader perspective. Those conflicts arise due to the development model based on extractivism, the appropriation, control, exploitation, and commodification of nature by public and private actors, generating social opposition in the attempt to access nature and land as means of life, sustenance for communities, and spiritual connection (Duarte et al., 2014). Local and indigenous resistance to renewable energy projects across Latin America follows the ongoing demands to guarantee the right self-determination, to remain in their ancestral territory, enjoy a healthy environment, reestablish their means of subsistence, and respect their traditional ways of life. Thus, indigenous peoples' lack of recognition and participation in the decision-making process over their territories imposed by extractivism is very present in today's dynamic of a green economy (Kramarz et al., 2021). Therefore, a just energy transition requires building new development narratives with local knowledge and indigenous wisdom.

4.1.1. Tenets of Energy Justice

The field of energy justice provides a framework for the energy industry to unpack critical socio-economic complexities and serve as a vehicle for decision-makers to engage with justice concerns (Heffron, 2021). A range of conceptual approaches has emerged from analyzing energy justice. Each framework attracts a different emphasis on the content and purpose of energy research. The following table presents a non-exhaustive list of the approaches:

Table 6 Theoretical approaches to energy justice

Theoretical approaches	Content	References
Energy Security	<ul style="list-style-type: none"> - Energy supply and production - Availability and pricing - Distributional unfairness 	Reames, 2016; Hernández, 2013, 2016; Ang et al., 2015; Mansson et al., 2014.
Three tenets of Energy Justice	<ul style="list-style-type: none"> - Distributional - Procedural - Recognition 	Heffron et al., 2015; Jenkins et al., 2021; Jenkins et al., 2016; McCauley et al., 2013; Sovacool & Dworkin, 2014; Sovacool et al., 2016; Astola et al., 2022
Four Pillars of Energy Justice	<ul style="list-style-type: none"> - Distributional - Procedural - Recognition - Restorative 	Baker, 2021; McCauley & Heffron, 2018
Eight Principles of Energy Justice	<ul style="list-style-type: none"> - Availability - Affordability - Due process - Transparency and accountability - Sustainability - Intra-generational equity - Inter-generational equity - Responsibility 	Sovacool et al., 2016; McCauley & Heffron, 2018

The energy justice theoretical construct encompasses the analysis of different forms of justice, focusing on three pillars: procedural, distributional, and recognition justice, commonly known as the “triumvirate of tenets” (Heffron & McCauley, 2018) that can be applied at various stages of the energy continuum, from energy generation to consumption to analyze where injustices occur (McCauley et al., 2013; Hernández, 2015; Jenkins et al., 2016). This framework functions as a toolkit to analyze case studies in terms of justice; on the other hand, it structures the evaluation of specific policies and decisions and aids in making policy recommendations. In applying the energy justice tenets, studies have focused the most on understanding the distribution component of the benefits and burdens of energy systems (Sovacool & Dworkin, 2014; Fuller & Bulkeley, 2013). On the other hand, compared to the other two tenets, recognition justice has been the most difficult to operationalize and measure based on the lack of consensus on its definition, being commonly reduced to the actors of society that are ignored, misrepresented, or impacted (van Uffelen, 2022). More recently, the pillar of restorative justice has become relevant to the field and transversal to the three tenets of justice, centering on structural injustices embedded in the energy systems and the impacts of energy development on frontline communities and Black, Indigenous and people of color (Baker, 2021). The last is particularly important given the growing scholarship looking at the intersection of energy justice and indigenous people’s rights (Ávila-Calero, 2017; Hurlbert & Rayner, 2018; Velasco Herrejon, 2021; Jara & Bruns, 2022). Still, the field of energy justice insufficiently recognizes the value of indigenous identities and their epistemic contributions to society, dismissing their needs, perspectives, concerns, and knowledge of energy contexts (Hurlbert & Rayner, 2018). More work must be done to foster a meaningful inclusion of indigenous concerns in energy justice research and policy development processes (Datta & Hurlbert, 2020; Hoicka et al., 2021). Therefore, improving energy justice research requires working with indigenous people and other vulnerable and marginalized groups to apply the tenets and understand the energy injustices that disproportionately affect those communities (Jenkins et al., 2022; Lacey-Barnacle et al., 2020). Following these considerations, this study adopts the energy justice framework, expanding on distributional, procedural, and recognition to analyze the justice implications of the ongoing energy transition in Wayúu territory in La Guajira.

4.1.1.1. Procedural justice

Procedural justice focuses on the ability of people to participate in non-discriminatory energy decision-making (Bullard, 2005), while decisions are made following due process and in compliance with the legal steps (Devine-Wright, 2005). Thus, procedural justice explores how

decision-makers have sought to engage with communities, ensuring the effective inclusion of affected stakeholders in the decision-making (Jenkins et al., 2016). In the context of low-carbon transitions, procedural justice has become essential to understanding community acceptance of renewable energy projects and associated infrastructure (Renn et al., 2020). However, inclusion in energy decision-making is particularly contested when it involves the participation of historically marginalized communities, like indigenous people (Zárate-Toledo et al., 2019).

Issues of procedural justice in energy development relate to the dynamics of extractivist economies that limit local communities' participation and self-determination rights. In Latin America, the extractivist model has advanced without the consensus of the local populations, where discourses of development have imposed extractivist projects on indigenous land ignoring local opposition (Svampa, 2015). In particular, extractivism dynamics have been present in large hydropower development (Göbel & Ulloa, 2014). For instance, conflicts with large hydroelectric dams in Colombia have led to dispossession and displacement, most immediately affecting Indigenous and Black communities (Duarte et al., 2014).

Indigenous people's struggles for cultural survival and sovereignty and resistance to imposed development in their territories have catalyzed advances in international law to include their rights to participation and self-determination. Despite the progress in recognizing and protecting indigenous rights, especially with instruments such as the International Labor Organization Convention 169 (ILO169) and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), these advances are contested given their limitations while being adopted in domestic legislations (Macías-Marín & Lapierre-Robles, 2021). In particular, indigenous communities' free, prior, and informed consent (FPIC) appeared to be one of the most significant advances to ensure their decision-making capacity regarding what happens in their territory (chapter x analyzes FPIC within the Colombian context). Elements of procedural justice, such as effective participation, early engagement in decision-making, timely information, impartiality, and information disclosure, are embedded in FPIC. The first bidding instrument establishing this right, ILO169, has been ratified by 15 Latin American countries since 1990. However, most countries in Latin America, including Colombia, interpret FPIC as a consultation procedure rather than a right of communities to grant or withhold consent for projects to proceed, leading to conflicts, and many times violent, around the environment and its resources (Macías-Marín & Lapierre-Robles, 2021). Thus, the intrinsic relationship between consultation processes and social conflicts (Schilling-Vacaflor, 2014)

depends on the exclusionary practices of indigenous peoples in the context of negotiations between the State, companies, and communities (Eichler, 2016).

4.1.1.2. Distributional justice

Distributional justice concerns the allocation of burdens, benefits, and responsibilities associated with energy production and use (Jenkins et al., 2016). It is inherently spatial, including infrastructure siting and energy services access (Heffron et al., 2015). Thus, distributional justice represents a call for the even sharing of benefits and ills among all members of society. The research agenda in this area range from the distribution of economic benefits (i.e., profit and compensation), social benefits (i.e., creation of jobs), and energy benefits (i.e., access to energy) to environmental and social impacts (i.e., noise, visual impacts, and land and biodiversity loss) (Mundaca, 2018; Hall, 2014). In the context of large-scale renewable energy developments, although seen as environmentally sound, they also have the potential to harm a community's well-being if the distribution of outcomes of the energy development is unfair (Yenneti & Day, 2016).

Issues of distributional justice in energy development, both from fossil fuels and renewable sources, are related to the location of natural resources (Hall, 2013). For instance, the location of wind resources defines the siting of the energy infrastructure, the project's size and scale, and the incidence area. Parallel to extractive economies, the availability of natural resources directly burdens the local communities (Acosta, 2013). The literature on extractivism establishes that the concentration of economic benefits is in the hands of companies, while local communities are at the forefront of the impacts on their territories (Svampa, 2013). While development discourses promote the benefits for local communities regarding jobs and social improvement, the drastic territorial reshaping created by extractive activities brings social and environmental effects that redefine the ways of life and livelihood for local communities (Duarte et al., 2014). The low energy density associated with wind and solar power compared with traditional fossil fuels means that those energy infrastructures require large areas of land to produce the same output (Huber & McCarthy, 2017). Thus, following the dynamics of extractivism, today's political agenda to tackle climate change has faced opposition, being the underlying power that facilitates land grabbing and commodification of natural resources, enabling land seizures to develop green energy projects affecting the most vulnerable populations (Franco et al., 2019).

The agenda for low-carbon transition mainly centers the attention on distributional justice (Sovacool & Dworkin, 2014). One of the critical aspects of distributive justice concerns the Environmental Impact Assessment (EIA) process companies have to carry out to identify potential harms in the local communities, including applying FPIC consultations in indigenous territories (Vega-Araújo & Heffron, 2022). The EIA is a detailed evaluation of the planned project's environmental and social impacts that should establish measures for minimizing, avoiding, or offsetting anticipated adverse effects. However, EIA heavily depends on scientific knowledge to identify risks, excluding the local experiences, susceptibility to, and perceptions of the potential impacts (Checker, 2007). Therefore, the EIA process, including FPIC, privileges mitigating anticipated and verifiable effects rather than recognizing the auto-determination of the communities at the forefront of the impacts in the first place (Luderer et al., 2019). This mitigation approach has led to market-based solutions, such as economic compensations for the people affected, managing distributive arguments, and other social and environmental impacts that accrue locally (Cowell et al., 2011). However, while such community benefit packages can be a tool for managing conflicts and increasing local acceptance, they have generally been found to do less to address scalar inequities and instead promote violence and corruption (Yenneti & Day, 2016).

4.1.1.3. Recognition justice

Recognition-based justice focuses on ensuring the protection and respect of the rights and identities of different groups of society (McCauley et al., 2013) by understanding structural social inequalities and acknowledging marginalized communities concerning energy systems. Thus, recognition-based justice moves research to consider which sections of society are ignored or misrepresented (Jenkins et al., 2016). A lack of recognition can occur in various forms of cultural domination, non-recognition, and disrespect (Fraser, 1999). In addition, recognition issues can also manifest as misrecognition or distortion of people's views rooted in social, cultural, ethnic, racial, and gender differences (Schlosberg, 2003). However, in the energy justice literature, recognition justice has different interpretations, limiting its application and often overlapping with procedural and distributional justice (van Uffelen, 2022). Although in the context of the energy transition, recognition justice, ensuring the protection and respect for rights and identities, remains a critical vehicle for achieving social acceptance of energy projects (Vega-Araújo & Heffron, 2022), it often omits issues of misrecognition related to the cultural and knowledge spheres, which are particularly important in recognizing indigenous voices.

Resistance against extractivism in Latin America focuses on the defense of nature as much as on rights to self-determination and territorial sovereignty; however, opposition to mining, oil, hydroelectric, and agribusiness projects has always been framed as anti-development and repressed with violence (Svampa, 2019). Thus, the struggles against extractive industries challenge the capital-development narratives by emphasizing indigenous peoples' ways of relating to the environment and proposing principles such as parity, solidarity, and reciprocity between human beings and nature (Acosta, 2019). However, systems that privilege settler knowledge have historically invalidated indigenous knowledge. Although recognizing international rights and adopting conventions at national levels has been essential for indigenous survival, their knowledge is rendered invisible via the western culture's authoritative representational, communicative, and interpretative practices (Townsend & Townsend, 2021). According to Fraser (2003), recognition-based justice is concerned with the cultural status order, which is always hierarchical, creating systems of cultural domination preventing people from participating equally in society. Therefore, underlying the extractivist economies that foster environmental and social harms is a hierarchical cultural status where policy and law are embedded in western knowledge, and indigenous resistance against development is criminalized. Thus, western ideas of human and land rights can be insufficient for advancing the self-determination and dignity of indigenous peoples (Santos, 2017), which is a central element to a just transition to a low-carbon economy.

Attention to recognition-based justice in the context of climate change policy has been central in the debates on land ownership and sovereignty rights. For instance, evidence about long-term nature conservation benefits by recognizing indigenous knowledge and territorial rights in highly deforested regions has increased attention over misrepresented voices in tackling the climate crises (Benzeev et al., 2023; Prioli Duarte et al., 2023). Not only do local and indigenous communities not participate in the climate agenda, but their knowledge and worldviews have always been misrecognized. Their voices are fundamental to finding context-specific solutions and building grassroots resilience, given their experience and perspectives for being at the forefront of climate change (Mehta et al., 2019). However, indigenous knowledge is invalidated when they must articulate it using legal terms that might not represent their ways of living and being (Townsend & Townsend, 2021). For instance, the delimitation of private property defines land ownership that creates an explicit division between humans and nature, imposing a hierarchical structure of domination over nature that denies the indigenous relation with their territory. This legal framework translates claims for sovereignty into the Western language of property, narrowing indigenous claims into legal terms that, in most cases, diverge from their ways of relating to their territory

(Townsend & Townsend, 2021). While the indigenous right to consultation and consent aims to enable recognition and intercultural dialogue, it can fragment indigenous identities, knowledge, and cosmovision during implementation in state legal frameworks (Kelly et al., 2021).

4.1.2. Energy justice and the conflicts of the wind

As renewable energies expand in response to the climate change crisis, a growing number of conflicts against large-scale clean energy projects are emerging in multiple locations worldwide, increasing debates over energy justice. This issue is particularly relevant in Latin America as the wind energy industry booms. According to the International Business and Human Rights Resource Centre (2022), over 50 percent of reported conflicts surrounding renewable energy projects in the past decade have been in Central and South America. This section explores different perspectives on the emergence of local opposition against wind farms. Although the opposition narratives have centered the debate around the landscape and environmental protection, resistance from the Global South is increasingly emerging through the defense of indigenous territories and local livelihoods (Avila-Calero, 2018). Opposition to renewable energy development creates tension between those who support industrial wind power's rapid expansion and those concerned with protecting the environment and the socio-economic impacts on local communities.

Much of the literature addressing opposition against wind farms has come from the Global North, concentrating on tangible socio-environmental impacts, such as visual and aesthetic impacts on the landscape and the detrimental effects of wind turbines' noise on people and wildlife (Avila-Calero, 2018). In the Global North, these concerns have led to "Not in My Backyard" (NIMBY) movements against the large-scale energy infrastructure nearby communities, which might affect their quality of life and the value of their property (Petrova, 2013). Although the term "NIMBY" seems to have appeared first in the mid-1970s, it was used in the context of the last effort by electric utilities to construct nuclear power in the United States (Petrova, 2013). Today, similar opposition faces the installation of wind power projects. For instance, opposition from residents to the Cape offshore wind energy project in Nantucket Sound, in Massachusetts, United States, has focused on the negative impacts on the landscape that translates into their property's devaluation.

“NIMBY” is also mentioned in environmental justice literature, raising concern about the intersectionality between energy infrastructure and the disproportionate impacts on minority communities (Bell et al., 2005). Although the impacts of wind energy infrastructure are less harmful than those posed by other, more toxic, unwanted land uses, its development is expanding conflicts over land uses deepen existing inequalities (Mueller & Brooks, 2020). Opposition to wind development is often more profound than simply “NIMBY” concerns, including questions regarding land access, use, and control.

The vast extension of land required to produce industrial wind power brings debates around ownership and land control to the fore. McDermott Hughes (2021) offers an ethnographic exploration of the effort to halt wind energy development by a small Spanish community surrounded by wind turbines, featuring the imbalances in the distribution of benefits. Focusing on the “ownership” of wind, McDermott Hughes (2021) identifies that the unequal distribution of land reproduces inequalities in the distribution of wind rents captured by landowners, where the concentrated land ownership pattern in Spain is reproduced as “*latifundios*⁸ of the air,” creating conflict between those who do and do not own land. Thus, land politics are a key element for understanding the differentiated reactions to wind power and different aspects of energy justice. In the Global South, resistance to wind energy development interacts with land tenure and territorial sovereignty (Torres Contreras, 2022). This has been particularly relevant in the ongoing conflict in Oaxaca’s Isthmus of Tehuantepec in Southern Mexico, where changes to Mexico’s land tenure regime enacted the introduction of private wind energy investment in the rural landscape, impacting indigenous and rural communities (Ramirez, 2021).

The business model of the wind that dominates in Mexico, similar to in other Latin American countries like Uruguay and Chile, is centered on the relationship between landowner and companies for a private business authorized and supervised by the State; this model includes leasing contracts, servitude, and other forms of authorization for the

⁸ Latifundio (latifundium) is an extensive parcel of privately owned land inherited from the feudal social and agricultural system of the Middle Ages, where the feudal lords dominated land ownership. This land ownership system was transferred through the colonies in Latin America, shaping the modern distribution of land.

exclusive and excluding use of the land (Ramirez, 2021). In one decade, from 2005 to 2015, Oaxaca became the leading producer of wind energy in Mexico, with 80% of the MW generated in the country. But, the enthusiasm of the first years was increasingly clashing with the discontent of the indigenous communities that owned the territory, who did not imagine that suddenly their ancestral land would be full of turbines, roads, highways, security guards, fences, electric transmission networks, and obligations for the local communities for 30 and 60 years, in exchange for low payments for land leases (Howe, & Boyer, 2016; Avila-Calero, 2017; Ramirez, 2021). The Isthmus region was distributed into land plots for private wind energy companies after controvertible consultations and compensation agreements with the indigenous communities (Avila-Calero, 2017). In response, the people of Oaxaca, through different means of opposition, have pressured new regulations to overcome the problems that have led to the conflicts, including submitting international complaints to the Inter-American Development Bank, one of the financial sponsors of wind energy in the region. However, despite improvements in the law, the causes of social opposition to wind power projects have not been resolved. Although the Electricity Law of 2014 improved the conditions of leasing contracts and the amount of compensation for local communities, the adverse effects of a transition without equitable rights of participation have left indigenous communities immersed in internal conflicts with their ways of life and livelihood fragmented (Avila-Calero, 2017). Thus, wind energy development in Mexico has fostered discussion about how to safeguard indigenous rights when they stand in the way of lucrative, albeit green, energy businesses (Juárez-Hernández y León, 2014).

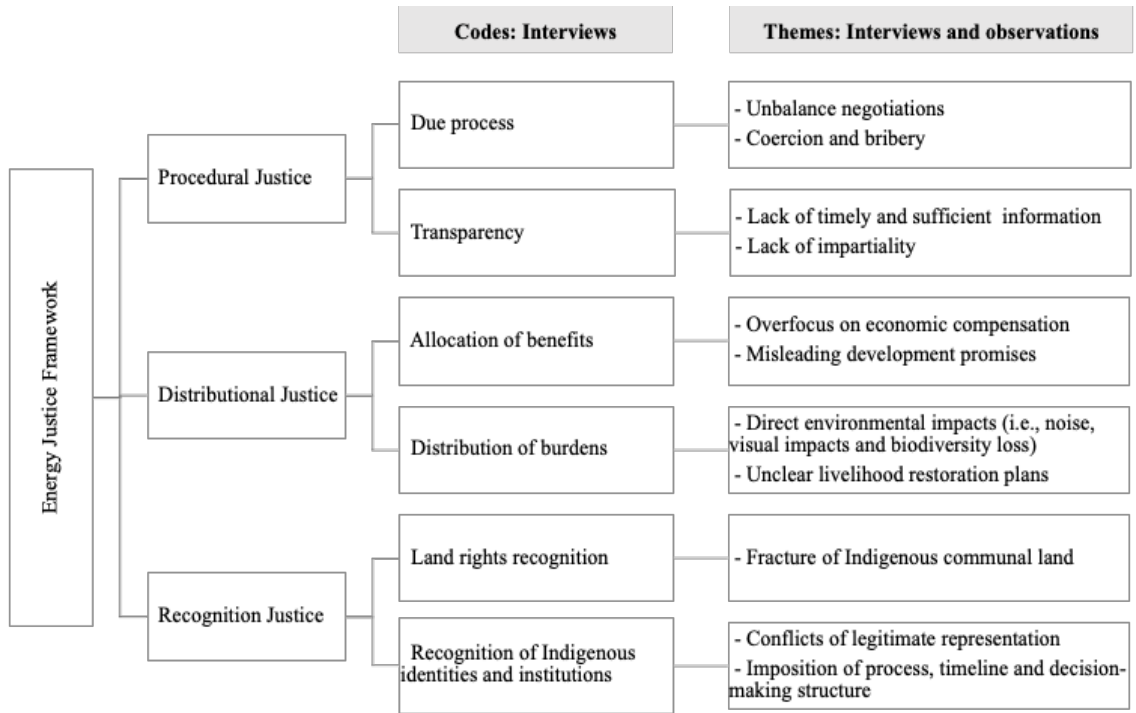
The cases cited illustrate the conflicts that arise when large-scale transformations occur due to investments of social interest, which are recognized as positive but do not have an adequate legal framework, nor do they consider the rights of local communities. For example, the wind conflict on the Isthmus shed light on procedural, distributional, and recognition injustices regarding indigenous land, where strong support from national and international agents to energy transition contrasts with negative impacts at the local scale. Thus, while energy decision-making is most commonly left in the hands of economists, engineers, and politicians, we might do better to think of energy transition as a concern that

needs more inclusive conversation with the communities at the forefront of those transformations. From this lens, local opposition and resistance cases should not be interpreted as selfish forces obstructing the must-need energy transition. Instead, be understood as political instances that enable a broader discussion about how the transition should occur.

4.2. Analytical framework

The analysis perspective of this research adopts the energy justice framework to analyze the literature review and the data collected through interviews with different actors and field visits. The graphic below presents the conceptualization of the analytical framework. First, the conceptual basis presented in this chapter, the tenets of energy justice, provided the guideline to define the coding categories to analyze the interview transcripts. The interviews were coded according to the issues of each type of justice recurrently mentioned through the interviews. Finally, combining the quotes analyzed from the interviews and the notes from the observations during the field visits, eleven themes were identified to drive the discussion section in Chapter 7. The list of themes does not pretend to be an exhaustive analysis of the injustices related to wind power development but rather a categorization of the issues specific to the case study. The proposed framework is a practical tool to analyze the emerging conflict between energy development and indigenous rights to participation and self-determination.

Figure 17 Analytical framework



5. The Indigenous right to Free Prior and Informed Consent

Understanding Free, Prior, and Informed Consent (FPIC) and its application within Colombian legislation becomes essential to answer questions regarding the consultation rights of the Wayúu people with the energy transition taking place in their territory. Through the interviews and dialogues with community members, academics, non-profit organizations, and other stakeholders, there are critical (in)justices perceived in the overall process of community consultation and decision-making. Thus, expanding on the legal framework of FPIC becomes critical to understand whether or not the consultations carried out by the wind energy companies in the Wayúu territory comply with the international resolutions on indigenous rights and the Colombian legal requirements to protect the rights to participation and auto-determination of its ethnic groups, as states by an academic from La Guajira in the following quote.

“Prior consultation in Colombia has different actors, and many have failed. It is a very flawed process here in Colombia. It has generated conflicts rather than solutions. There have been significant contributions from the State regarding the theoretical issues of the consultation [...], but not solutions to the problems caused by consultations in the territory. Even they recognized that the process had been significantly flawed. The present [consultations] and the ones already done concerning wind projects have failed. From it, there is a lot of discontent and frustration in the Wayúu territory” (Interview V - Academia, February 2023).

Therefore, this chapter reviews FPIC in general terms and within Colombian legislation. First, it provides an overview of international law on indigenous rights and its definitions. Later, it looks at the regulations that implement FPIC in Colombia, including a review of the steps and a mapping of actors of the consultation procedure. Finally, it explores the application of FPIC within the energy transition context. This chapter does not intend to be a full legal review of the consultation procedure; instead, it aims to clarify what this right entails for indigenous communities and how the Colombian State applies it.

5.1. An Overview of Free, Prior, and Informed Consent

Around the world, indigenous people’s struggle for cultural survival and sovereignty and resistance to imposed development in their territories have catalyzed advances in international law to include indigenous peoples’ rights to consultation and participation in decision-making affecting their lands, territories, and natural resources (Papillon & Rodon, 2017; Townsend & Townsend, 2020). The figure of FPIC appears legally in Convention 169 of the International Labor Organization

(ILO) in 1989 and the United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP), approved at the General Assembly in 2007, which aims to ensure the rights of indigenous and tribal peoples to their territory and the protection of their cultural, social, and economic values.

FPIC is a specific right that concerns indigenous peoples. In general terms, FPIC allows them to give or withhold consent to a project that may affect them or their territories. Furthermore, FPIC enables them to negotiate the conditions under which the project will be designed, implemented, monitored, and evaluated. Thus, FPIC is the fundamental right of indigenous peoples to decide on any measures affecting their territories and their survival (Townsend & Townsend, 2020). In particular, when projects, works, or activities are to be carried out within their land, thus seeking to protect their cultural, social, and economic integrity and guarantee the right to participation. FPIC is based on people's right to self-determination to decide their priorities concerning development processes that affect their lives, beliefs, institutions, spiritual well-being, and the lands they occupy and use (UNDRIP, 2007). Thus, the standard, FPIC, as well as indigenous peoples' rights to lands, territories, and natural resources, are embedded within the universal right to self-determination.

FPIC is not just a result of a process to obtain consent to a particular project; it is also a process by which indigenous peoples can conduct their own independent and collective discussions and decision-making (Papillon & Rodon, 2017). Moreover, they do so in an environment where they do not feel intimidated and have sufficient time to discuss in their language and in a culturally appropriate way. Lastly, it is essential to underline that the FPIC process does not guarantee consent. The result of an FPIC process can be any of the following outcomes:

1. Consent from the indigenous peoples' community on the proposed activity.
2. Consent after negotiation and changing the conditions under which the project is planned, implemented, monitored, and evaluated.
3. The withholding of consent.

In addition, according to ILO Convention 169, indigenous people can withdraw consent at any stage. Table 7 disaggregates the elements and definitions within the FPIC right. However, all elements within FPIC are interlinked, and they should not be treated in a separate manner.

Table 7 Definitions of Free, Prior, and Informed Consent

<p>Free</p> <p>The consent is free, given voluntarily, and without coercion, intimidation, or manipulation. A process that is self-directed by the community from whom consent is being sought, unencumbered by coercion, expectations, or timelines that are externally imposed.</p>	<ul style="list-style-type: none"> - Rights-holders determine the process, timeline, and decision-making structure. - Information is offered transparently and objectively at the request of the rights-holders. - The process is free from coercion, bias, conditions, bribery, or rewards. - Meetings and decisions take place at locations and times and in languages and formats determined by the rights-holders. - All community members are free to participate regardless of gender, age, or standing.
<p>Prior</p> <p>consent is sought sufficiently in advance of any authorization or commencement of activities.</p>	<ul style="list-style-type: none"> - Prior implies that time is provided to understand, access, and analyze information on the proposed activity. - The amount of time required will depend on the decision-making processes of the rights-holders. - Information must be provided before activities can be initiated, at the beginning or initiation of an activity, process, or phase of implementation, including conceptualization, design, proposal, information, execution, and following evaluation. - The decision-making timeline established by the rights-holders must be respected, as it reflects the time needed to understand, analyze, and evaluate the activities under consideration in accordance with their own customs.
<p>Informed</p> <p>The engagement and type of information that should be provided prior to seeking consent and also as part of the ongoing consent process.</p>	<ul style="list-style-type: none"> - Accessible, clear, consistent, accurate, and transparent. - Delivered in the local language and in a culturally appropriate format (including radio, traditional/local media, video, graphics, documentaries, photos, oral presentations, or new media). - Objective, covering both the positive and negative potential of the proposed activities and consequences of giving or withholding consent. - Complete, including a preliminary assessment of the possible economic, social, cultural, and environmental impacts, including potential risks and benefits. - Complete, including the nature, size, pace, duration, reversibility, and scope of any proposed project, its purpose, and the location of areas that will be affected. - Delivered by culturally appropriate personnel in culturally appropriate locations and include capacity building of indigenous or local trainers. - Delivered with sufficient time to be understood and verified. - Accessible to the most remote, rural communities, including youth, women, the elderly, and persons with disabilities, who are sometimes neglected. - Provided on an ongoing and continuous basis throughout the FPIC process, with a view to enhancing local communication and decision-making processes.

<p>Consent</p> <p>A collective decision made by the right holders and reached through a customary decision-making process of the communities.</p>	<ul style="list-style-type: none"> - A freely given decision that may be a “Yes,” a “No,” or a “Yes with conditions,” including the option to reconsider if the proposed activities change or if new information relevant to the proposed activities emerges. - A collective decision (e.g., through consensus or majority) determined by the affected peoples following their customs and traditions. - The expression of rights (to self-determination, lands, resources and territories, culture). - Given or withheld in phases over specific periods for distinct stages or phases of the project activities. It is not a one-off process.
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Source: Adapted from FPIC Toolkit (FAO, 2015)

Although the significant progress at the international level toward recognizing FPIC, its implementation continues to be highly controversial and context-specific. Besides the general mandate of the ILO convention, countries are autonomous to embrace its requirements and define the scope of consent required through state regulations and legislation, when it is enforceable, how it should be exercised, and to whom it applies (Papillon & Rodon, 2017; Townsend & Townsend, 2020). Thus, implementing FPIC can diverge according to the norms and legislation of each country. Still, governments worldwide are reluctant to establish formal requirements for FPIC, seen as a preferable standard rather than an obligation (Hanna & Vanclay, 2013; Fuentes, 2017). Thus, the ambiguity in the scope and application of FPIC procedures and lack of an enforcing authority allow different interpretations, cause problems in practice, and render local conflicts.

Worldwide, states’ compliance with FPIC has been disappointing and has become an instrument to legitimize extractive projects in indigenous territories. In recent years, the world has witnessed a growing volume of outcries by indigenous peoples denouncing the lack of compliance with the ILO Convention 169 and the UNDRIP, especially with obtaining their FPIC before enacting projects on their territories. In particular, indigenous peoples are defending their ancestral territories and speaking out about abuses by extractive industries encroaching on indigenous territories rich in untapped natural resources (FAO, 2015). Violations of the FPIC right have not been an exception in Colombia. Between 2015 and 2021, indigenous and Afro-Colombian communities submitted 518 demands for the protection of FPIC in defense of their fundamental right of participation and self-determination (Constitutional Court, 2022). Denying the right to withhold consent is one of Colombia’s primary triggers for the struggles for territorial autonomy (Dejusticia, 2019). FPIC is more than an instrument to give or withhold its consent to a specific project; it is a process to reach a compensation agreement to address the project’s adverse impact. Like in other contexts, the lack of clarity surrounding indigenous consent is today one of the main obstacles to a standard

interpretation (Papillon & Rodon, 2019). In Colombia, development projects that qualify as “a subject of national interest” prevail over the collective indigenous right of withholding consent. Therefore, Colombia, like most countries in Latin America, interprets FPIC as not requiring communities’ consent for development projects to proceed, which can be seen as a neo-colonial interpretation of the participatory mechanism (Robles & Marin, 2022). Thus, community consent is not a mandatory outcome of the consultation procedures but an agreement on the compensation to address the project’s adverse impacts. These compensations, primarily financial or through other economic benefits, result in the commodification of consent and the implementation of dynamics external to the indigenous peoples’ culture (Grueso, 2008; Papillon & Rodon, 2017).

5.2. Prior consultation, a fundamental right of Colombia’s indigenous peoples

Since its ratification in 1991, prior consultation has generated political and legal debates, which has recently caused the most significant divergence between Colombia’s ethnic groups and the National Government. The need for a better legal framework has led to multiple pronouncements of the High Courts on the matter, highlighting its importance in protecting the ethnic and cultural integrity of the Colombian nation as an instrument guaranteeing the fundamental right to participate in decisions affecting indigenous peoples. Thus, in agreement with Article 6 of ILO 169⁹, the Colombian Constitutional Court recognizes FPIC as a fundamental right, which becomes a mandatory procedure that the government must guarantee every time an intended administrative or legislative decision could affect the Indigenous and Afro-Colombian communities (Constitutional Court, Decision T-382 of 2006):

1. Administrative measures: environmental licenses to exploit natural resources within indigenous territory.
2. Legislative measures: regulations that involve or affect indigenous people.

⁹ Article 6 (ILO 169): In applying the provisions of this Convention, governments shall:(a) consult the peoples concerned through appropriate procedures and particularly through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly; (b) establish means by which these peoples can freely participate, to at least the same extent as other sectors of the population, at all levels of decision-making in elective institutions and administrative and other bodies responsible for policies and programs which concern them; and (c) establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.

Likewise, prior consultation has to do with the territorial guarantees of ethnic peoples, as established in Article 7 of ILO Convention 169, which states that:

"The peoples concerned shall have the right to decide their own priorities for the process of development as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or otherwise use, and to exercise control, to the extent possible, over their own economic, social and cultural development. In addition, they shall participate in the formulation, implementation, and evaluation of plans and programs for national and regional development which may affect them directly." (ILO, 1989).

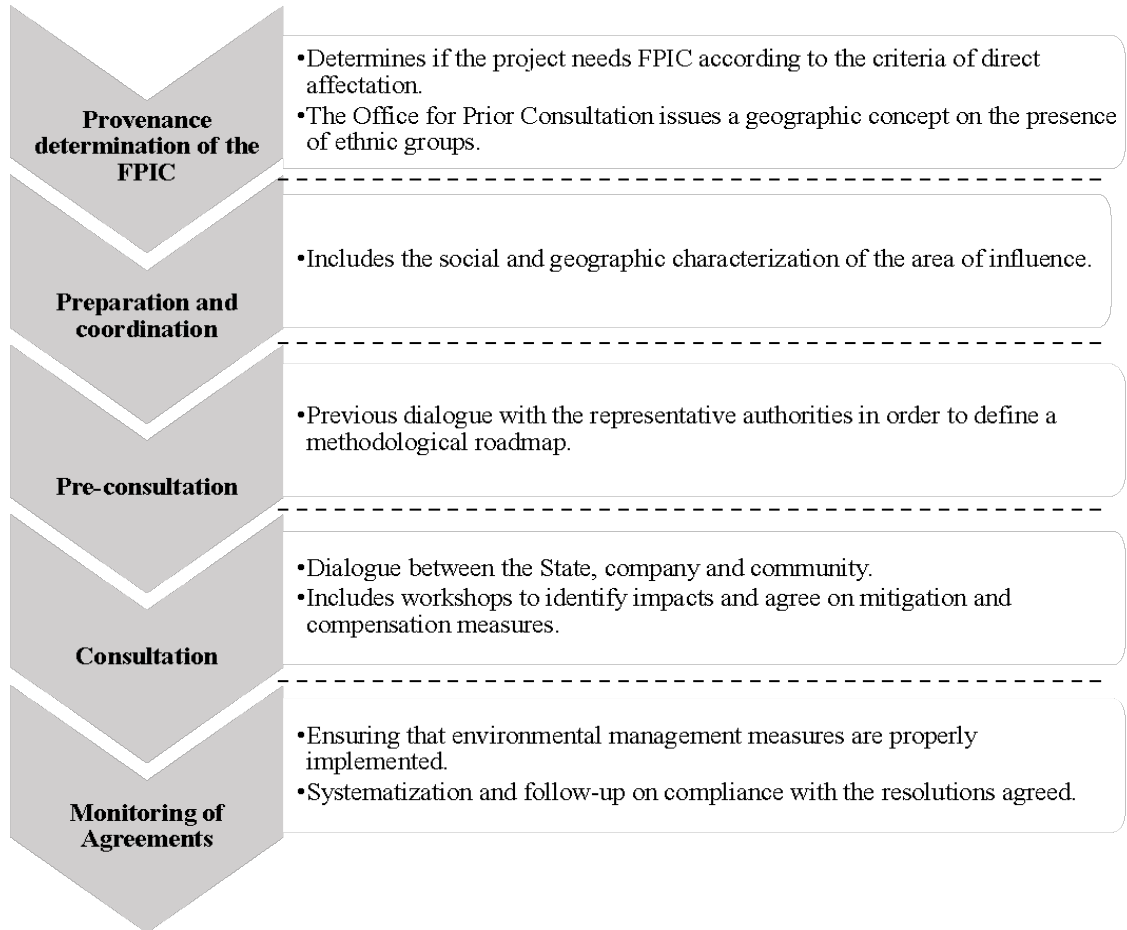
Within the Colombian legal system and as a complement to ILO169, the Constitutional norms protect the communities and their territorial rights, among which is the right to participate in decision-making that may affect them and their territories. The Article 330 of the Constitution establishes the duty of the State to carry out prior consultation when it states that "the exploitation of natural resources in indigenous territories shall be carried out without detriment to the cultural, social, and economic integrity of the indigenous communities" (Colombian Constitution, 1991). In addition, decision T-382 of 2006 of the Constitutional Court also specifies the objectives of prior consultation concerning exploiting natural resources in indigenous territories. In particular, regarding environmental licensing processes, the Court states that "the purpose of prior consultation is to analyze the economic, environmental, social, and cultural impact that may be caused to an indigenous community by the exploitation of natural resources within its territory and the measures proposed to protect its integrity." For this reason, the prior consultation for exploiting natural resources in indigenous land demands environmental impact studies, including the social, cultural, and ecological aspects, and defining the corresponding measures for prevention, correction, compensation, and mitigation of impacts and adverse effects of a project or activity. Therefore, in Colombia, political discussions on prior consent revolve around participation and intercultural dialogue, but not on the autonomy of communities to refuse the development of extractive projects in their territories (Rodríguez, 2008).

5.2.1. Phases of prior consultation in Colombia

An FPIC process will vary according to the specific local context in which a project will be developed (FAO, 2015). Thus, applying FPIC in practice can follow different rules and interpretations for each country. For example, in Colombia, Presidential Directive 01 of 2010 framed FPIC within a phased process to guide its practical implementation. In addition, the prior consultation phases have been modified through Presidential Directives 10 from 2013 and 08 from

2020. The implementation of is phased process facilitates the application of prior consultation for project developers. The same directive indicates that particularly through the Office of Prior Consultation (*Dirección de Consulta Previa*), the implementation of each step of the consultation process must be guaranteed. Graphic 17 describes the 5-step process established in Colombia to implement FPIC.

Figure 18 Overview of FPIC stages in the Colombian legislation



Source: Adapted from Presidential Directive 08 of 2020 (Presidency of Colombia, 2023)

Stage one of the application of FPIC defines the incidence area of the project, followed by a verification of the ethnic communities within the scope of incidence, leading to a certification from the Ministry of the Interior indicating the need to start a prior consultation process. In the presence of ethnic communities vulnerable to the project development, the company is required to begin the consultation process. Stage two allows the project developer time for preparation to initiate the prior consultation; this involves a characterization of the territory and the communities and

identifying the community leaders and spokespersons. According to the interviews, in most cases, for this initial phase, the energy companies hired a consultancy firm (*firma asesora*) that leads the initial conversations with the communities and assesses potential opposition to the projects.

During Stage three, pre-consultation, the company, and the community, with the monitoring of the government authority - The office for Prior consultation, establish a roadmap for the consultation process. There is no specific guidance for the items and activities of the roadmap. As explained by a community advisor, “negotiating the terms of the roadmap depends on the skill and experience of the community or their advisor. The community should set the terms for the consultation, not the companies” (Interview O, January 2023). The roadmap includes the number, frequency, and place of the meetings, the people involved at every stage of the consultations, and a budget that the company must guarantee.

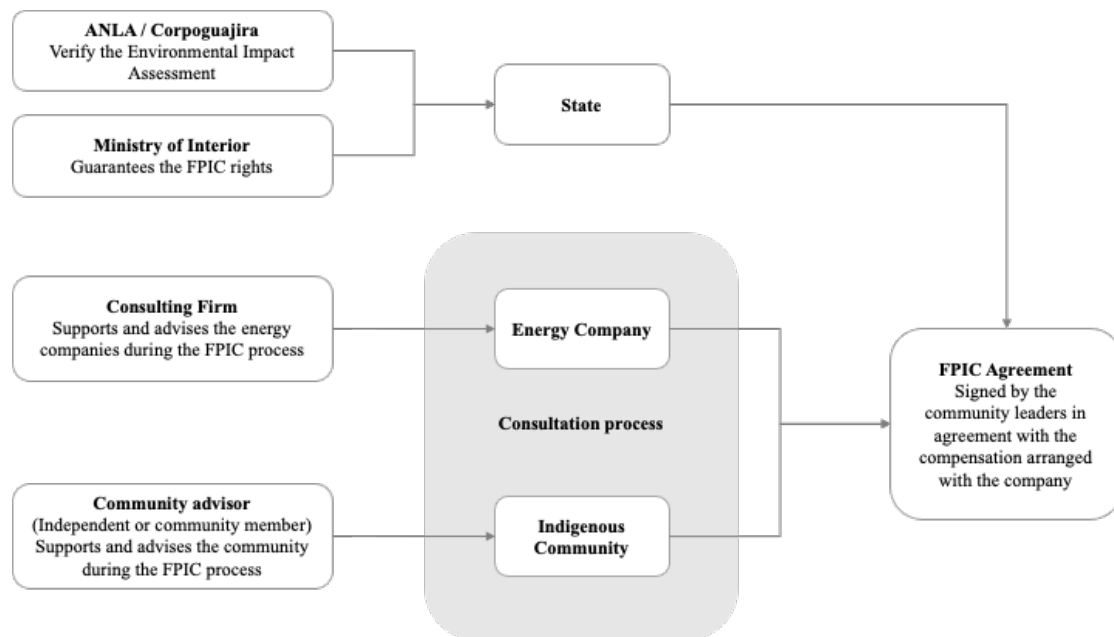
The consultation process, Stage four, starts with the formal dialogues between the parties; it involves introducing the FPIC rights by the Office for Prior consultation and presenting the project, the area of incidence, and the potential impacts. Following the initial information, it is required to develop workshops between the company, the community, and sometimes external consultants to assess the environmental, social, and cultural impacts of the project. The final stage of this process is to negotiate compensation and mitigation measures. After a final agreement in terms of compensation, the company gathers the signatures of the community leaders to process its environmental license. Although no specific number of meetings is required, consultation dialogues can extend for years. Most of the communities visited during the fieldwork indicated that the average time of the consultation process has been two years long, and some have not reached an agreement.

Finally, the certification of the consultation process (*Actas de consulta*) is registered under the National Environmental Authority (ANLA), and this institution guarantees a follow-up on the agreements. Furthermore, the ANLA ensures that social and environmental harms are mitigated and compensated accordingly to the parameters established under the consent certificate. Under disagreements with the consultation agreement or of the law, the ANLA has the right to revoke the environmental license.

5.2.2. Mapping of actors of the prior consultation in Colombia

The consultation procedure is a bilateral agreement between the company and the local community with the verification and approval of the State. However, multiple actors play different roles in ensuring an agreement is reached following the FPIC guidance and the regulations in place. The graphic below shows the relation of the different actors mentioned in this section and their relation to the consultation process carried out by the energy companies in La Guajira.

Figure 19 Map of actors of the consultation procedure



Source: Made by the author using information from the Ministry of Interior and the interviews.

First, the State provides the steps of the consultation process previously described and guarantees that the ongoing consultation is in order with the regulations in place. In the territories, the State is responsible for verifying the accuracy of the Environmental Impact Assessment (EIA) and providing support and monitoring of the consultation process through two entities, one environmental and the other for the protection of communities.

- **National Environmental Authority (ANLA) and Regional Environmental Corporation, Corpoguajira:** The environmental authority participates both at the national and local levels. Depending on the size of the project, officials from ANLA or Corpoguajira verified the EIA submitted by the energy companies. This verification includes but is not limited to, site visits and the evaluation of the compensation agreements with the

communities and the ecological restoration plans for any losses in biodiversity or environmental harms. These entities must ensure that the EIA covers both the positive and negative potential of the proposed activities. After all the verification protocols, the ANLA can grant the environmental license to the company to proceed with the project's construction. As guarantors of the environmental permit, they are responsible for monitoring compliance with the agreements. Therefore, in the event of non-compliance, the parties must present their complaints to these entities.

- **Ministry of Interior:** The Ministry of the Interior is responsible for formulating and executing public policy on human rights and coordinating security and citizen participation plans. Therefore, one of its activities is to ensure the implementation and enforcement of the FPIC rights of the indigenous communities, guaranteeing procedural justice in the ongoing consultations. Regarding FPIC, the Ministry must ensure that the communities have the necessary knowledge of their consultation rights and that the consultation processes are carried out in compliance with the law without human rights violations. The Ministry performs this function by accompanying the consultation meetings via public officials in the territory and attending claims or complaints from the communities.

Then, the consultation is led by the company, responsible for defining the scope of the project, including the incidence area and the communities that will be affected by the project, thus the communities with which the consultation should be carried out. Before the consultation stage, companies must characterize the territory, identify the different social and economic aspects of the populations to be consulted, and define a protocol for approaching the communities. To carry out this process, energy companies seek the support of national consulting firms to guarantee an adequate consultation process guided by the consultation process. Given that most wind energy companies are international, the role of consulting firms has become frequent in the energy transition in La Guajira.

- **Consulting firm:** The consulting firm is a for-profit organization with expertise in the EIA process. It provides its services to support energy companies in fulfilling all the requirements to obtain the environmental license, including the consultation procedures. In the territories, members of these consulting firms assess the local communities, identify the authorities in each community, and establish the first contact to present the project. Given the growing demand for this service and the challenges of the consultations, these

firms are increasingly hiring Wayúu people with knowledge of the language and the culture.

Finally, according to Article 30 of ILO convention 169, governments shall adopt the necessary measures to inform the communities of their FPIC rights and duties. In this regard, in addition to the Ministry of the Interior's role, the Colombian government states that the companies shall ensure indigenous peoples are informed about their rights. Thus, the rights awareness lies on a complemented responsibility between the company and the State. In its application, during the consultation process, the companies provide a budget to the communities to hire an advisor to ensure the protection of their right by helping the communities to identify and assess the impacts and support them through the compensation negotiation. In this sense, advisors are key for ensuring distributive justice since the right identification of impacts leads to a more balanced negotiation of fair compensations.

- **Community advisor:** The advisor is critical in supporting the communities in navigating the consultation procedure. The community has the right to request or not an advisor; if they decide to work with an advisor, the company must guarantee its remuneration. The advisor is a third-party individual or organization with expertise in FPIC and the EIA that helps the community understand the project, assess the impacts, and negotiate the compensations. Although some local organizations provide this service, a growing number of Wayúu with professional degrees serve as community advisors bringing knowledge of the language and culture and previous experience in participatory processes with the public and private sectors.

5.3. FPIC and the energy transition

Colombia stands out for recognizing the indigenous rights to consultation and participation in decision-making affecting their lands, territories, and natural resources in its constitution as a symbol of the plurinational state. In addition, recognizing sovereignty rights through the *resguardos* (reserves) highlights the importance of indigenous autonomy, self-government, and rights to the land and its resources (Wiessner, 2008). However, acknowledging indigenous self-government within a territorial boundary has European roots that challenge sovereignty as a legitimate within indigenous knowledge and relation with the territory (Alfred, 2005). Likewise, the implementation of prior consultation privileges Western knowledge and law, limiting the recognition of indigenous people. Although ILO Convention 169 stresses the importance of holding

consultations within indigenous terms and ways of dialogue, in practice, it can fragment indigenous knowledge and cosmivision during implementation in state legal frameworks (Machado et al., 2017; Kelly et al., 2021). In Colombia, the state regulations and legislation that define how the prior consultation has to be implemented do not establish guarantees to allow indigenous communities to set their rules but rather prioritize a process that helps companies to carry out the consultation (González Posso & Barney, 2019). As a Wayúu community leader mentioned,

“There is a process to be followed, yes. But, still, the negotiation conditions have been set by them [the companies], inviting the leaders to meet in places outside their territory, bypassing the ancestral authorities, putting time limits on the dialogues, imposing rules, and using money.” (Interview T - Community, February 2023).

The 57 wind projects and the transmission line to be developed in La Guajira will have an environmental, social, and economic impact on 288 Wayúu communities in the Alta and Media Guajira reservation, mainly in villages located in the municipalities of Uribia and Maicao. Therefore, the energy developers must carry out prior consultations with the communities whose territories are under the incidence area of the wind farms. Although the state guarantees the right to prior consultation, the Wayúu people cannot withhold consent for developing those projects. Article 3 of Law 2099 of 2021 declared renewable energy projects as a matter of public utility and social interest, stating that:

“the promotion, encouragement, and incentive to the development of the activities of production, use, storage, administration, operation and maintenance of non-conventional sources of energy, mainly those of renewable character, as well as the efficient use of energy, are declared as a matter of public utility and social interest, general and of national convenience, fundamental to ensure the diversification of the complete and timely energy supply, the competitiveness of the Colombian economy, the protection of the environment, the efficient use of energy and the preservation and conservation of renewable natural resources.”

Thus, the qualification of renewable energy projects as a matter of social interest prioritizes their development in all matters relating to land use, environmental planning, and economic development. Thus the “common” benefit of the energy transition is imposed over the communal territorial rights of the Wayúu people. Under this scenario, communities have no alternative but to negotiate compensation that mitigates the impacts and use of indigenous land, as indicated by a community advisor that has supported several communities in the consultation process:

“What communities fear the most is the government taking over their land [...]. There is a lack of trust in the government and fear about the proportionality test. Communities prefer to negotiate with the companies because they know they can benefit better through an agreement. [...] In the end, the consultation process is about getting the best economic benefit for the community.” (Interview O - NGO, January 2023)

According to Presidential Directive 08 of 2020, the State can apply the proportionality test when there is no resolution on the consultation process over renewable energy projects. The proportionality test aims to determine the appropriate management measures to prevent, correct, or mitigate direct impacts over the incidence area. This step will be added to the consultation process, phase four, in the following events:

1. Due to a lack of agreement in the pre-consultation or consultation.
2. Due to the non-attendance of the representative authorities once the established procedures have been exhausted.
3. Due to the lack of a solution to the conflict of representativeness in the ethnic community.

Thus, under no compensation agreement, the proportionality test will provide both parties, the community, and the company, with a guide on the impact mitigation measures to be followed. However, the application of this new instance of the consultation process has yet to be explored. A legal expert consulted during this research indicates that “[the proportionality test] has never been applied in Colombia, raising questions to all the parties involved in the consultation. It is a measure to provide guarantees to local communities; however, it will rely on the objectivity and reasonableness of the process.” (Interview S, February 2023). Therefore, under the ambiguity of applying the test and fearing being displaced from their territories, the Wayúu communities have taken a negotiating stance.

Given the *resguardo* rights and collective ownership of land, the companies do not have the option for leasing or purchasing indigenous land, rendering the creation of economic compensation mechanisms in the form of paying dividends to indigenous communities (Schwartz, 2021). Unfortunately, the law does not provide a clear framework to define the compensation mechanisms, and compensation schemes are bilaterally negotiated during the FPIC process. For project developers, agreement on compensation remains the major bottleneck to the consultation procedure (Vega-Araujo & Heffron, 2022). According to the interviews, depending on the kind of impact, there are two common compensation types:

- Compensation for social, economic, and cultural affectations: The community defines the alterations of the project in their social, economic, and cultural practices, estimating a monetary value for those potential harms. The compensation is given once in time and in-kind through the funding of a community project. Commonly, communities choose from a portfolio of projects previously submitted by the company, the community projects of their interest, and sometimes with the support of an external advisor. Some community project examples are water pumps and filters, desalination plants, handicraft production, agricultural projects, and tourism endeavors.
- Compensation for ecological losses: This type of compensation is given when there are losses in terms of flora and fauna in the ecosystem. Companies are required to offset the ecological losses in an equivalent ecosystem following the recommendations of the environmental planning authority (Ministry of Environment and Sustainable Development, 2023). These compensations require a baseline study to assess the ecological impacts and define a compensation plan according to the value of the ecosystem services and landscape context.

Through the interviews and discussions with community leaders, the center of their concerns is on the consultation process and how to guarantee meaningful benefits for the communities rather than complete opposition to the projects. In the words of the Wayúu leader of the *Maku* community, in the absence of the right to withhold consent, the communities strive to ensure negotiations that bring equitable and sustainable benefits:

“We know those [wind power] projects will happen no matter what we do. So where do indigenous rights stand in the face of corporate economic power? If we have spent years fighting El Cerrejon, and they continue to pollute our territory, what awaits us with clean energy? [...] So, we fight for the best outcome; we have to guarantee fair benefits for our people, opportunities for our youth, and a better future.” (Interview T, Community, February 2023).

A long history of struggle and resistance against coal mining is in the collective memory of the Wayúu people and a driver of how communities perceive the arrival of wind companies. Although most of the larger mining projects were granted previous to the ratification of the ILO Convention 169, in recent years, the High Courts have requested El Cerrejón to conciliate with the Wayúu communities’ mitigation measures for the social and environmental harms imposed on indigenous territory (Rubio Medina, 2020). Still, for most of the communities in La Guajira, the application of

the right to consultation, the legal requirements, and the phases of the process are being experienced for the first time with the wind power companies.

6. A wind energy revolution in La Guajira

The wind energy projects being developed in La Guajira could radically change Colombia's electricity production landscape in the coming decades. However, this transformation relies on large-scale improvements of the renewable' legal framework, the implementation and negotiation of consent with the Wayúu communities, and the development of new transmission infrastructure to evacuate the wind energy generated. This section looks at the timeline of wind energy development in La Guajira, providing an overview of the activities undertaken by the energy companies and the outlook for future projects. In particular, this section analyses the projects in operation and under construction to provide an overview of their business models and engagement with the Wayúu communities. Through the site visits and the conversations with the local communities within the influence area of these projects was possible to identify their concerns during and after the consultation's agreements.

Although the government's ambition through the regulation incentives and the energy auctions estimated that nine wind farms would be in operation by the end of 2022 (UPME, 2019), today (2023), only two projects are in operation, and two are under construction. The energy companies identify those delays in deploying the wind farms already granted in Colombia mainly due to the timeframe of the consultation process with local communities and the deferral of transmission lines to connect the new projects (Grupo Energía Bogotá, 2023). Therefore, the consultation procedure with the Wayúu people is transversal to the wind energy development timeline.

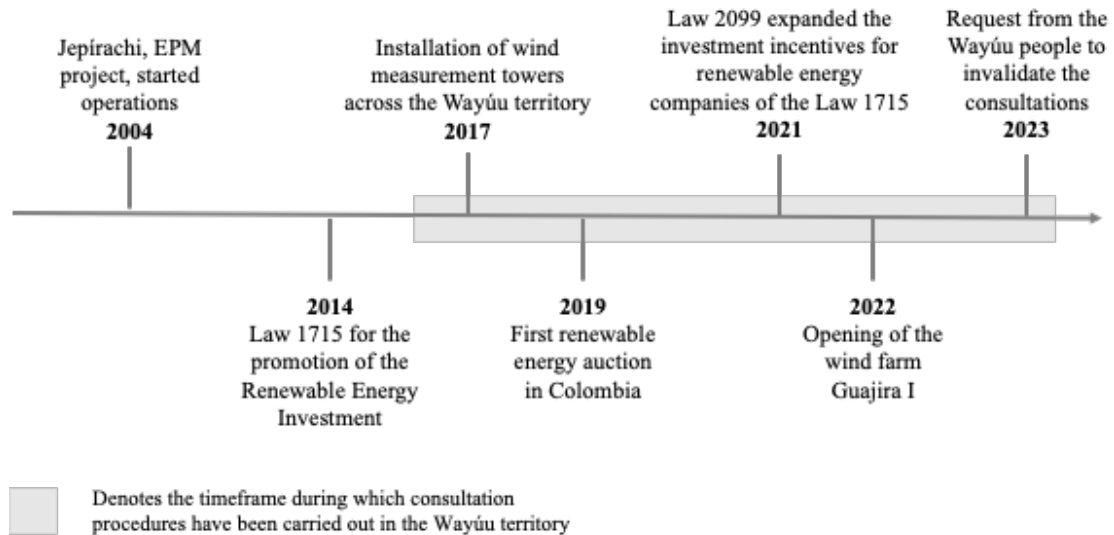
6.1. The epicenter of Colombia's energy transition

This section presents the general timeline (See Graphic 19) of some crucial moments of the energy transition in La Guajira to provide an overview of the events before introducing the specific cases of the projects in operation and under construction.

Colombia took its first steps towards the energy transition in 2003 with the wind farm project *Jepirachi* of Empresas Públicas de Medellín (EPM) in La Guajira. In the following years, the country continued to develop policies and regulations to promote clean energy, among which Law 1715 of 2014 stands out, as analyzed in chapter 2. These first steps have led to the renewable energy policy consolidation and strengthened Colombia's international leadership on energy transition, which the International Energy Agency (IEA) and the World Economic Forum widely recognized. In addition, the private sector acknowledged the basis of Law 1715 but demanded improvements

to attract more substantial investment. Thus, the National Development Plan 2018-2022 improved the tax incentives of this law, leading to the first auctions of renewable energy.

Figure 20 Wind energy development timeline



Source: Made by the author.

Therefore, in 2019, wind and solar projects were awarded in an auction for the first time. Although the government’s information on the prior consultations in La Guajira is limited, studies from the Institute for Development and Peace Studies – INDEPAZ found that 57 wind energy projects are already doing consultation procedures with more than 100 Wayúu communities. In addition to these consultations, there are also consultations carried out by the transmission lines’ developers, which sometimes intersect with the communities already doing the Free Prior and Informed Consent (FPIC) process with wind companies. According to INDEPAZ (2019), between 2017 and 2019, more than 30 wind measuring towers rose on Wayúu land. In the interviews with the local authorities, they pointed out that the scale of the energy transition and the number of consultations happening every day in La Guajira contrast with the limited institutional capacity of the municipalities.

“[...] in La Guajira, there are between 2 to 4 meetings between the companies and the communities daily, sometimes even more. And add to that the distances, the complexity of transportation, and the small availability of officials, and it is out of our hands to cover the entire territory.” (Interview P - Government, January 2023).

Despite limitations and uncertainties, the wind potential, and the investment incentives, have made La Guajira the epicenter of Colombia's energy transition. Former minister of Mines and Energy, Diego Mesa (2021), stated that "as many as 2,500 wind turbines on the Guajira Peninsula could generate 17 percent of Colombia's electricity by 2031." Thus, the Wayúu territory is the ground zero for transforming Colombia's energy mix. However, Wayúu leaders have raised concerns about this ambitious renewable energy initiative in their ancestral lands; they have been kept mainly in the dark about the scope of wind energy development. "When they [the companies] installed the measuring towers, we did not know much about what those were for or what was coming next; then they started talking about the land they needed for the project" (Interview J, Community, January 2023). Although the FPIC procedure is a mandatory step for the companies, and the consultations are being carried out through the Wayúu territory, those consultations aim mainly to agree on compensation with the communities.

Given that Colombia's legislation prevents indigenous and local communities from withholding their consent over a project of national interest, the consultation commonly occurs after a project's planning phase (Grueso, 2008). Thus, through the conversations with Wayúu leaders, they have centered their concerns on how much their people will be compensated for the disturbance of the lands they have inhabited for centuries, thus focusing on issues of distributive justice. As the community leader from *Maku* mentioned:

"Nobody took us into account. The government already had a plan... that they never discussed with us. The government sold the land to the companies; they already gave over our territory, and now what is next for us? The only thing is to negotiate the best benefits for our people" (Interview R - Community, January 2023).

The consultation process with the wind energy companies for the majority of the Wayúu communities is their first experience with FPIC (Interview A, Academia, December 2022). Although regulatory improvements, application guidelines for all parties, and the work of local authorities and non-profit organizations to educate the communities on their FPIC rights, in the field, the FPIC procedure presents challenges and raises multiple justice concerns. Human rights organizations and activist leaders have criticized the consultations for approving the projects for being rushed and not providing the information communities need to make decisions (González & Barney, 2019). The level of concern about how informed consent has been reached with the Wayúu communities has been raised in the last years with the intensification of violent conflicts between clans and families. "The arrival of companies offering gifts and money in exchange for signatures that prove that people had been consulted ends up creating confrontations between members of

different clans” (Interview D, Non-profit organization, December 2022). Together, the way consultations are being conducted and the fracturing of an already vulnerable group put the existence of the Wayúu people at stake. Wayúu leaders have taken different measures to claim their participation and sovereignty rights, from legal actions to social demonstrations; however, these have been individual community-led activities (Interview D, Non-profit organization). On December 17, 2022, in Riohacha, 150 Wayúu leaders gathered to present a collective position regarding the impacts of the energy transition in their territory. After this meeting, the Wayúu submitted a joint request to the government to invalidate and repeat the previous consultation processes conducted in Wayúu territory regarding the energy transition. The proposal was formally presented to the Minister of Mines and Energy, Irene Velez, during an in-person meeting on December 28 in El Cabo de la Vela. Till today, the Wayúu people continue waiting for a response from the government while consultations continue all around their territory.

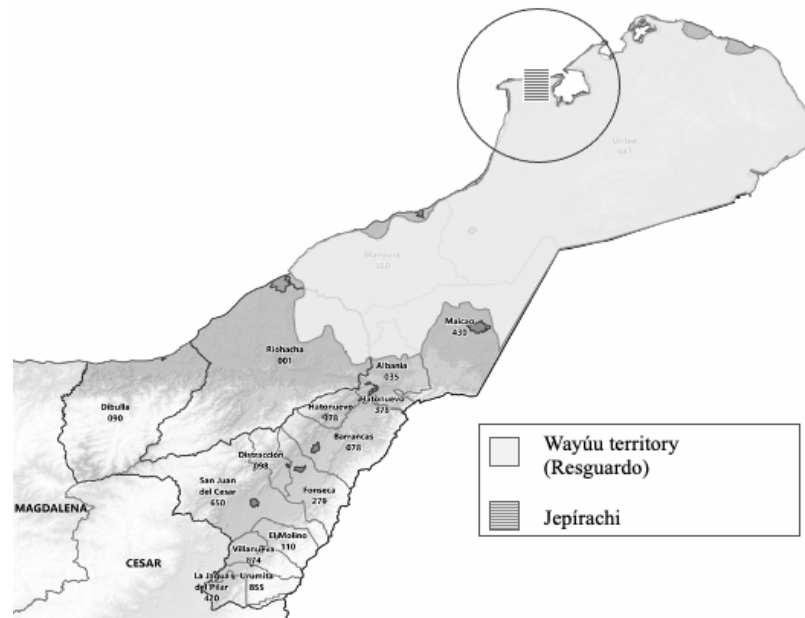
As mentioned, 57 wind energy projects are expected to operate in La Guajira. Reaching net zero by 2050 requires that Colombia increase the pace of renewable energy deployment while upgrading the grid to dispatch all the electricity from new sources. By February 2023, only two wind energy projects were in operation, while two were under construction. In addition, moving forward with the construction of the projects that are going under consultation with the Wayúu communities depends on the development of the transmission lines. This section details the projects in operation and under construction. Looking into these wind energy projects provides a better understanding of the business model, the compensation agreements, and the justice concerns about how the consent with the communities was reached.

6.2. Wind energy projects already in operation

6.2.1. Jepírachi – The pilot project

Jepírachi, property of Empresas Públicas de Medellín (EPM), was built between 2002 and 2003 and began commercial operation in April 2004, in Media Luna, close to El Cabo de la Vela (Graphic 20), in the municipality of Uribia, with an investment of US\$27.8 million (EPM, 2010a). Jepírachi has 15 Nordex N60 wind turbines, each with a capacity of 1.3 MW, for a total wind energy capacity of 19.5 MW. The wind turbines are distributed in 2 rows, with a spacing between rows of 1,000 meters. The height of each tower is 60 meters.

Figure 21 Location of the wind project *Jepirachi*



Source: Made by the author using editable public maps.

This project was the only wind energy undertaking until 2018, when the energy transition became the government's priority, and Colombia started promoting the first energy auction targeting international renewable energy developers. Therefore, *Jepirachi* was a referent for creating the legal framework for renewables and the first experience of consultation procedures for the communities in La Guajira. Thus, today, the experiences of EPM are an obligatory reference for its lessons in technology, wind studies, environmental impacts, its relationship with the communities, and its business model and forms of compensation. EPM is the largest industrial conglomerate after Ecopetrol, the national oil company of Colombia. Although a national company, it operates across South and Central America countries. In the early 2000s, the company started a business line dedicated to renewable energy, looking to explore the potential of new technologies in the region. The work of EPM in La Guajira is the most significant precedent for the further development of wind farming. Although the size of *Jepirachi* is small compared to the projects that came afterward, it is still the reference for both communities and government institutions when referring to wind energy.

Jepirachi wind farm required three years of prior consultation with the Wayúu community, following the guidelines of Law 21 of 1991 and Decree 1320 of 1998 regarding the conditions for

exploiting natural resources in indigenous territories. According to the developer, the project's location did not require the displacement of communities, which facilitated the final agreement (EPM, 2010a). At the end of this process, the Wayúu communities affected by the project authorized land use in Media Luna, in El Cabo de la Vela. At the moment of the consultation, two Wayúu communities exercise authority over the project's area of influence, *Kasiwoluin* and *Aerutkajui*. To construct the project on indigenous land, EPM used the legal figure of land servitude for energy transit, an obligation to use a property from another owner in return for compensation. Through this figure, the company received authorization from the communities to use 165 hectares of indigenous land for 24 years to install and operate 15 wind turbines and a power substation. In the contract agreed with the communities, the compensation for the land was valued at 25 million Colombian pesos (approximately US\$ 8,900 in 2003), provided to the community through the funding of a community project of their choice, in addition to building infrastructure close to the ocean to stop the sea level rise. Furthermore, given that the main economic activity in both communities was fishery, each community received motorboats as in-kind compensation for the land use.

Figure 22 Photo of Jepirachi from the community of Kasiwoluin (Jan 2023)



Also, EPM was required to compensate the community for their territory's environmental and social impacts. Through the consultation, each community identified social initiatives and investment requirements necessary to improve their quality of life to be considered compensation

for the consequences in the territory. However, the contract does not mention the amount or conditions of these compensations. The compensations for the social and environmental impacts are at the company's discretion, becoming part of the social responsibility of the company (EPM, 2010b). EPM's Corporate Responsibility Policy has four strategies: institutional and community strengthening, linkage to development projects, social contracting, and permanent communications (EPM, 2010b). Therefore, the social and environmental compensations for the communities of *Kasiwoluin* and *Aerutkajui* were translated into the following initiatives:

- Construction of a desalination plant and pipeline networks for drinking water consumption,
- Construction of water reservoirs,
- Expansion of the local school,
- Provision of a health center,
- The enclosure of a cemetery,
- Refurbishment of a local port,
- Improvement of housing and water storage tanks.

The project's social plan involved a total investment of US\$816,504 (EPM, 2010). Regarding employment creation, the company reported 147 jobs for local people during the construction phase. However, during the operation phase, EPM generated 68 direct, indirect, and occasional jobs for the inhabitants of the Wayúu communities (EPM, 2010b). However, the agreement signed by the indigenous leaders after the consultation does not mention the participation of the communities and owners of the land in the company's revenue for generating and selling electricity. Therefore, the compensation offered to the communities is evidence of their vulnerability, given the unfulfilled basic needs and the lack of estatal social investment in the region, questioning the power dynamics in the consultation process.

Given the public nature of EPM, the company has been able to offer compensations that solve community needs that otherwise had to be provided by the national and local governments (Rojas, 2012). EPM has worked closely with the local authorities to define the compensatory activities that best suit the long-neglected land of La Guajira. Thus, Jepírachi has been recognized for its social investment and for improving the lives of the Wayúu communities in the influence area. However, the results of consultation with the local communities raised fairness concerns among the Wayúu people. After more than a decade of operation, leaders from the communities have expressed that

not all promises have been fulfilled, and they realize the consequences of the project are more extensive than expected (González & Barney, 2019), putting in question issues of procedural and distributive justice. The discontent of the Wayúu people with the project has led to the communities interrupting the operations or even destroying equipment. According to human rights evaluators, Jepírchi has disrupted ancestral territories and triggered controversy over transparency in the consultation processes (UNDP, 2019; Dejusticia, 2017). In response to the community opposition and claims, the national government launched a security plan for the wind energy projects, including a permanent military presence in the territory. Thus, “the government approach, instead of providing guarantees for the indigenous communities and assessing the causes of their concerns, has prioritized protecting the interest of the energy investors” (Interview D - NGO, December 2022). This government’s answer to the indigenous opposition and claims is not a surprise for the communities, as the Wayúu demonstrations against *El Cerrejón* and its environmental harms had faced military repression in the past (Rubio Medina, 2020).

After visiting the communities in the area of incidence of the project, this research identified multiple points of energy injustice for the communities today, almost 20 years after the wind farm installation. According to the leaders, the information they received from the company and the authorities during the three years of the consultation were insufficient to negotiate the compensation, raising concerns regarding procedural and distributive justice. The leader from *Kasiwoluin* affirms that “the company did not provide precise data on the investment, nor on the expected income. [...] We cannot identify how much has been invested in our projects; there has been no transparency, no guarantee that the compensation is fair” (Interview M - Community, January 2023). Today, some social projects developed by EPM have been discontinued or have financial issues operating. One of the examples is the desalinization plant; according to the compensation plan, the company was responsible for its construction, and the local government of Uribia was in charge of the maintenance, but since installation, the plant has had multiple operation problems, limiting the use for the communities. Although the communities have benefited from the social investments of EPM, the communities living under those wind turbines’ impact realize that the harms are more significant than the potential for social development. In particular, the communities that negotiated the consent for the project had faced conflicts with other Wayúu communities that claim ancestral belonging to those territories but were not included in the area of influence of the project, generating recognition concerns on what defines the area of impact of the project, as described in the following quote:

“It is important to consider the area of influence of the projects, not only in terms of environmental impacts but also in terms of cultural affectations, which means that, in the evaluation process, the harms generated by the project in terms of the cultural integrity of our communities must be appreciated, which entails the need to understand the Wayúu social construction. [...] The consultation created conflicts among our people because some [people] benefit and others do not.” (Interview M - Community, January 2023).

The consultation for this project, parallel to the consultation procedures being held across the Wayúu territory, was discussed only with the communities within the incidence area of the project without the participation of any authority of the *Resguardo* or any guarantees over the collective property and the sovereignty rights of the Wayúu people. Thus, the companies that come to Wayúu territory use a negotiation strategy considered inadequate by the Wayúu leaders (González & Barney, 2019). EPM negotiated directly with the clans or communities previously identified in the area, generating division among families, and leading some Wayúu leaders to consider strengthening their unity as one indigenous group (Figueroa, 2008). This point raised questions regarding the recognition and protection of the indigenous reserves’ rights and the state’s role in providing the guarantees for negotiations being held bi-laterally between the developer and the community.

Other considerations raised during the interviews were about the future of the projects. The contract is due in 2027, and EPM has already indicated the project’s culmination. The community *Kasiwoluin*, the closest to the wind turbines, worries about removing the infrastructure and the future of the projects funded by EPM. The community is already requesting a consultation procedure to evaluate the final stage of the project, as stated by their traditional leader:

“In the consultations, the final stage of the project was never mentioned. We are asking for a new consultation to understand what is going to happen in our territory. People are worried that they will lose their jobs because we are going to go back to the way things were before. Who is going to operate the [desalination] plant? Who is going to continue the community projects?” (Interview M - Community, January 2023).

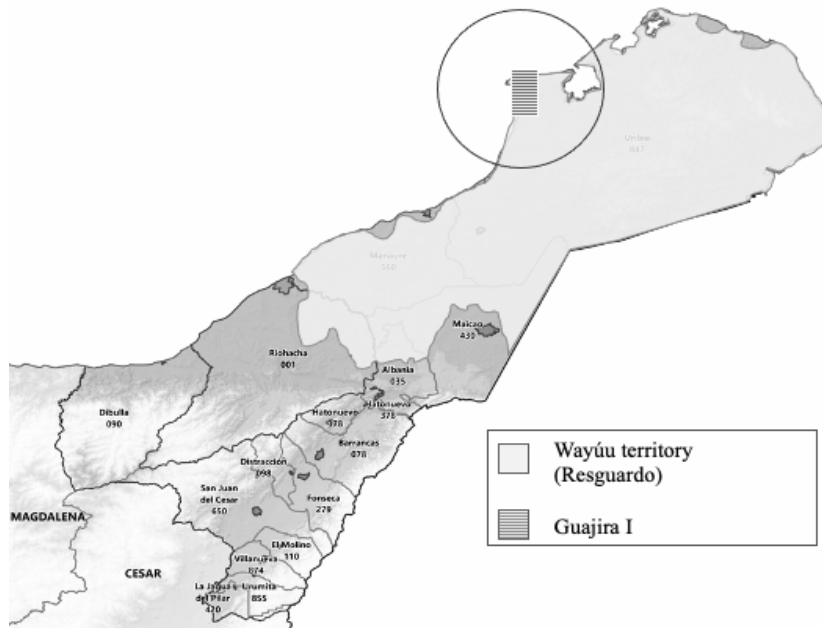
With the Jepírachi experience as an asset, EPM is planning three new wind farms in the municipality of Uribia, which could have about 363 wind turbines with a total capacity of approximately 1,000 MW. According to the company’s executives in press statements, the lessons learned from Jepírachi have already been evaluated by EPM to define the new projects and its operation model in La Guajira (EPM, 2021). EPM’s presence in renewable energies is crucial because it shows the great possibilities of public investment in the clean energy sector. Still, moving

forward requires acknowledging the Wayúu people’s concerns regarding procedural, distributional, and recognition-based justice through the consultation process and project operation.

6.2.2. Jouktai or Guajira I

The wind farm Jouktai was proposed in 2005 by the local company Acquire to promote an alternative model of community partnership. Acquire, together with eight shareholders: the municipality of Uribe, Manaure, the indigenous reservation of Alta y Media Guajira, and five private investors. Together, private investors, the public sector through 2 municipalities, and the community represented by the authorities of the indigenous reserve constituted the company Wayúu S.A E.S.P. This innovative shareholder composition aimed to develop the first public-private partnership for wind energy development in Colombia with a project of 16 wind turbines of 100 meters with 32MW of generation capacity in El Cabo de la Vela (Graphic 22). However, the project’s technical specification and its shareholders’ composition changed through the preliminary phase.

Figure 23 Location of the wind project Guajira I



Source: Made by the author using editable public maps.

In December 2005, Wayúu E.S.P signed a co-development contract of the project Jouktai with Isagén¹⁰, a public utility company 99.64% owned by the Canadian investment fund Brookfield Asset Management Inc. The project required an area of 369 hectares within the Wayúu indigenous territory. The consultation procedure was held with the communities of *Taruasaru*, *Mushalerrain*, and *Lanshalia* between 2005 and 2009. Given the participation of leaders from the National Indigenous Organization of Colombia – ONIC and the mayors' offices of Manaure and Uribia, the project did not have opposition from the community during the consultation phase (Interview V - Academia, February 2023). As a result, the communities signed the consultation protocol and the compensation agreement, and Wayúu E.S.P received the environmental license in 2009 (resolution 03357 of 2009). However, in December 2017, Corpoguajira, the local environmental authority, approved transferring the environmental license of the wind project Jouktai to Isagén. The transfer to a new company, which made Isagén the unique responsible for the agreements negotiated during the consultation, raised significant concern among the indigenous communities, which claimed that they never were consulted about the ownership shift (González & Barney, 2019). The community's claims to the national authorities regarding due process and the protection of the consultation agreements led to a modification of the environmental license in 2018. Thus, Corpoguajira divided the environmental approval into two individual operation permits, providing Wayúu E.S.P and Isagén with authorization to install 6 and 10 wind turbines individually. Given this distribution, both companies must fulfill the compensation agreements with the communities. According to Corpoguajira (2018), Wayúu E.S.P. and Isagén S.A. shall comply with the following compensations to the communities of direct influence:

- A compensation for using the land equal to 2,5 million Colombian pesos (approximately US\$850 in 2018) per MW installed, paid annually during the project's duration.
- Compensation for the social impacts translated into voluntary social investments that the companies must deliver to the communities that own the territory, equivalent to 0.5% of the annual energy sales revenue, according to the energy price established by the Energy and Gas Regulation Commission (CREG). The compensation will be registered in a trust fund till the communities agree on a social project that will be funded through this budget.

¹⁰ Isagén is a renowned case of a state-owned public company privatization. However, due to the contestation around the selling process, the buyer, the Canadian fund Brookfield Asset Management, took nine years to complete the acquisition (2008-2017).

Since 2017, the Wayúu communities that signed the consultation agreements have highlighted not to have complete information about the new business model, the internal distribution regulations adopted by Wayúu E.S.P, or the amount of compensation, payments, or projects that will be available for the community (González & Barney, 2019), violating their participation and decision-making rights. There was procedural injustice, given the lack of transparency to the communities that initiated negotiations with the Wayúu E.S.P., believing in the benefits of a project partially led by the indigenous authorities. Although at that time, the license already recognized Isagén within the inter-institutional agreement signed with Wayúu E.S.P., the scope of the relation of Isagén with the projects was not made clear to the community as mentioned by the community leader of Lanshalia, “Many things started changing, such as the people coming to the territory, but we were never warned of the modifications to the contracts, nor how this affected the protocol we signed. Nevertheless, what will happen now with what we already approved now that the project is the property of a company we did not negotiate with?” (Interview K - Community, January 2023). The questions raised by the community are still to be answered. Isagén initiated the construction of their side of the contract, ten wind turbines, renaming the project “Guajira I.”

Figure 24 Photo of the field visit to Guajira I (Jan 2023)



On the other hand, Wayúu E.S.P has not yet presented the construction plans. According to the interview with Indepaz, “Guajira I is the result of a strategy to reach an agreement with the communities easily. The purpose of this division was none other than to guarantee the legal development of two projects by two independent companies” (Interview D - NGO, December 2022). Isagén launched the wind project, Guajira I, in January 2022 with ten towers of 2MW capacity each.

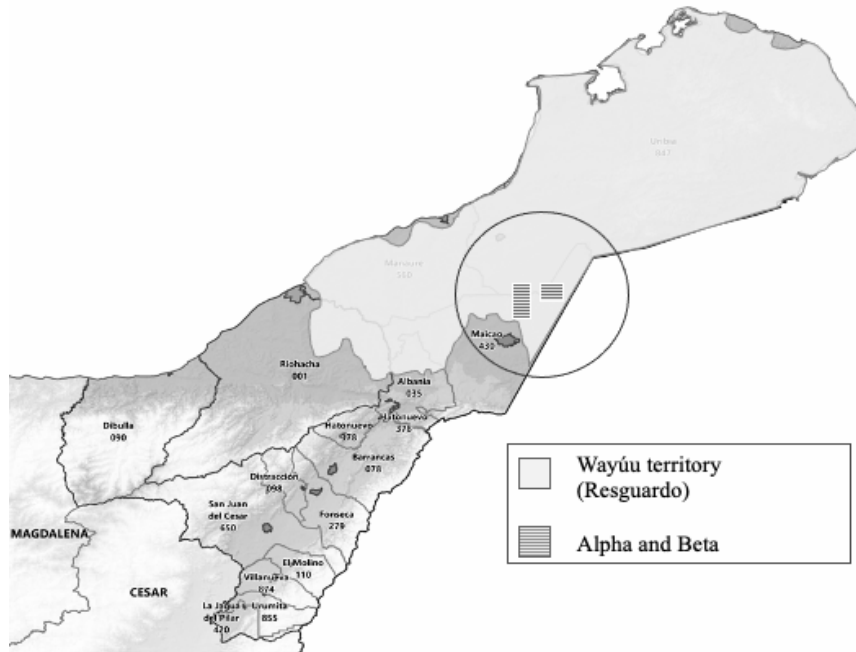
Guajira I is the first of six wind projects Isagén is developing in La Guajira. The company is projecting to install 130 wind turbines, with a total generation potential of 376 MW, between 2022 and 2031. The five remaining projects are still undertaking consultation procedures with the communities. Following the experience with Jouktai or Guajira I, the business model that Isagén is building is based on the participation of the communities located in the incidence area in terms of a percentage of the sales made by the installed capacity (Isagén, 2017). However, the rate of revenues allocated to benefit the communities is ambiguous. According to the model implemented in Guajira I, the funds will be available to the community to finance the development of productive projects previously defined by the community and approved by the company. Like the EPM model, the investment in those social projects is discretionary to the company, leaving the communities at the goodwill of a social responsibility mindset that has already raised questions regarding the fair distribution of benefits between the companies and the indigenous people.

6.3. Wind energy projects under construction

6.3.1. Projects Alpha and Beta

In 2015 the company Vientos del Norte S.A., a subsidiary of Renovatio from Austria, initiated the procedures to build two wind projects in La Guajira, in the municipality of Maicao (Graphic 24). Alpha and Beta projects with a generation capacity of 500 MW have already completed the consultation procedure with the Wayúu communities of *Araparen*, *Toloirá*, *Jununtao*, and *Sachikimana*.

Figure 25 Location of the wind projects Alpha and Beta



Source: Made by the author using editable public maps.

Till 2018 the company carried out environmental evaluations and project feasibility studies, and since then, the company has started consultations with the local communities. Although having arrived at an initial agreement in 2021 and received the environmental license, these two projects still need to begin the construction phase, which was suspended under reclamations of indigenous rights recognition. These projects have faced in the last year considerable opposition from the indigenous communities claiming that the company has negotiated with a limited number of traditional authorities, leaving behind some communities that have an ancestral presence in the area of incidence of the project. This recognition-based justice issue has triggered confrontations between indigenous communities. In October 2021, the non-profit organization Nación Wayúu reported that members of the community Siwolu II and Siwollu III were forced to leave the territory given the internal conflicts that have created the consultation process held by Renovatio (Nación Wayúu, 2021). The testimonies of the communities indicated that the disputes between the families that participated in the consultation and those that opposed the project in their territory had created violent confrontations in the region, forcing 34 people to leave their homes after receiving death threats. The conflicts among members of the Wayúu communities are not a unique problem of this project; similar reports have been raised across the communities in consultation with energy companies in La Guajira, as described by a scholar from Uniguajira:

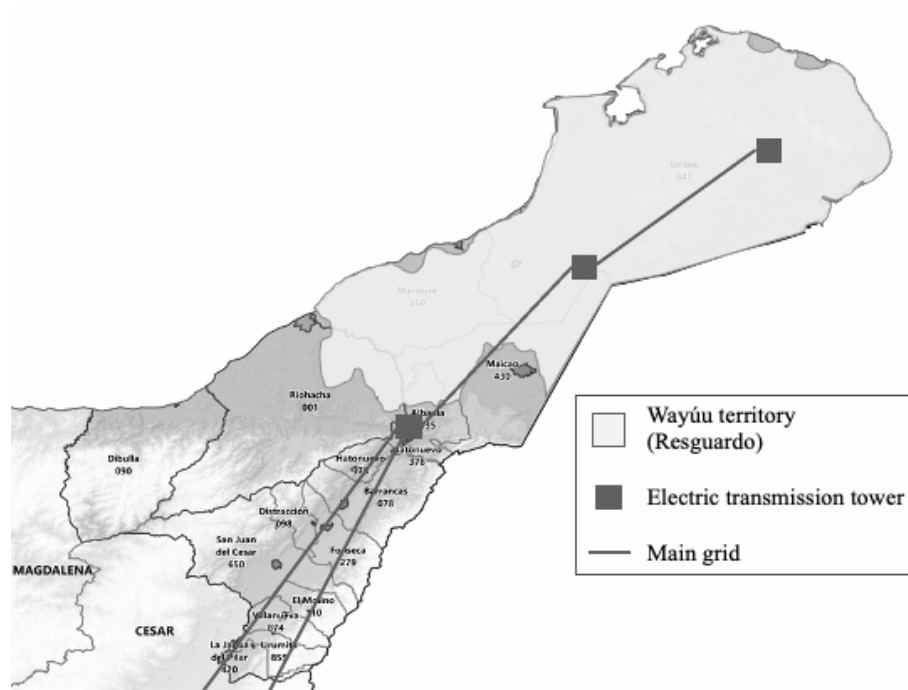
“If the government does not take forceful measures regarding how the companies interact with the communities, this is a time bomb. In the territory, brothers kill each other, and members of the same family become enemies because of the compensation, the money. The companies have given money to some leaders to facilitate the consultations. They take the money and spend it all, but when the community finds out, the problems start. Then their brother or another community member reclaims their share of the compensation, and when they get nothing, there is a violent conflict. This is the reality in several communities; people are killing each other. That is to say; this is becoming a time bomb.” (Interview V - Academia, February 2023).

Although in December of 2021, the building components for those two projects arrived at the port, the project’s construction has not yet been initiated. Given the indigenous demands and the human rights organizations’ reports, the Ministry of Interior has placed the projects on hold and demanded a complete revision of the consultation process.

6.3.2. The Colectora project

For the wind energy projects to be operational, Colombia must guarantee the extension of the transmission line across La Guajira to evacuate the electricity those projects will produce. Although several initiatives have to connect the wind farms to the grid, the larger transmission project is Colectora. The Colectora project consists of a 500 kV substation in the municipality of Uribia connected to two parallel 500 kV transmission lines from there to the Cuestecitas substation in the municipality of Albania in La Guajira and which in turn is connected through a transmission line to La Loma substation in La Loma, in the department of Cesar; the outline of the transmission line is in the graphic below. The project developer is Grupo Energía Bogotá (GEB), which obtained the project through a public tender in 2017 (UPME, 2017). This transmission line is vital for the energy supply, as it will connect the nine projects awarded in the auctions in 2019 to the national energy grid (Vega-Araújo & Heffron, 2022). The project covers territories in 10 of the 15 municipalities of La Guajira by building around 1,016 transmission towers (GEB, 2020). Therefore, to proceed with the project, the company must consult with 224 indigenous communities, the largest FPIC ever carried out in Colombia.

Figure 26 Location of the transmission project *Colectora*



Source: Made by the author using editable public maps.

The project was expected to start construction in February 2021 and to operate by the end of 2022 (Moreno, 2018). However, given the delays associated with the COVID-19 pandemic and the consultation process, the project has not yet started the construction phase. In particular, to proceed with the consultation processes, the company had acknowledged a barrier to identifying the legitimate authorities of each community to initiate negotiations (Vega-Araújo & Heffron, 2022). The Ministry of the Interior, through the Decree 1088 of 1993, created the legal figure of traditional authority to name a legal representative of the community against administrative instances, including FPIC. Therefore, the companies must consult the names of the traditional authorities identified by the Ministry and follow the consultation procedure. However, in the territories, each Wayúu community has an ancestral authority in charge of the decision-making regarding their territory. Thus, these two authority figures conflict since the traditional authority is perceived as an imposition by the government and not entirely accepted by the indigenous communities (Guerra, 2002), creating an issue of recognition-based justice. A Wayúu community advisor who has participated in several consultation procedures expands on these conflictive authority figures:

“The traditional authority figure has been very successful in other territories in Colombia, but not for the Wayúu. We are ancestral and respond to the authority that has inherited the territory through the *Eirruku*, from our mother, not by collective decision. However,

because of political pressures, assemblies are held here, and someone is appointed as the traditional authority to participate in political decisions. In the resguardo today, more than 7,000 traditional authorities are registered in the Ministry of the Interior. However, these are not the authorities we recognize; they cannot decide about the territory, even less about the community's future." (Interview O - NGO, January 2023).

This issue of legitimate representation and participation was constantly mentioned throughout the interviews. The imposition of a legal figure, the traditional authority, illustrates the Colombian government's misleading interpretation of the Wayúu social institutions and authorities. It also violates the indigenous right to retain their customs, self-determination, and autonomy concerning their relationship with the territory, which is essential for a free consultation (ILO, 1989). Furthermore, there is ambiguity in the FPIC application about who is responsible for identifying the indigenous authority. As a result, the national authorities and energy developers throw each other the responsibility for determining the correct territory's indigenous authority (Vega-Araújo & Heffron, 2022). For the Ministry of Interior, their list of traditional authorities is a guideline, and companies must characterize their area of influence before starting the consultation procedure. Still, in the field, the situation is more complicated, "many traditional authorities, well those who claim to be authorities, convince the companies to negotiate with them, they are not thinking about the community but about the money, and that is how conflicts begin" (Interview S - Industry, February 2023).

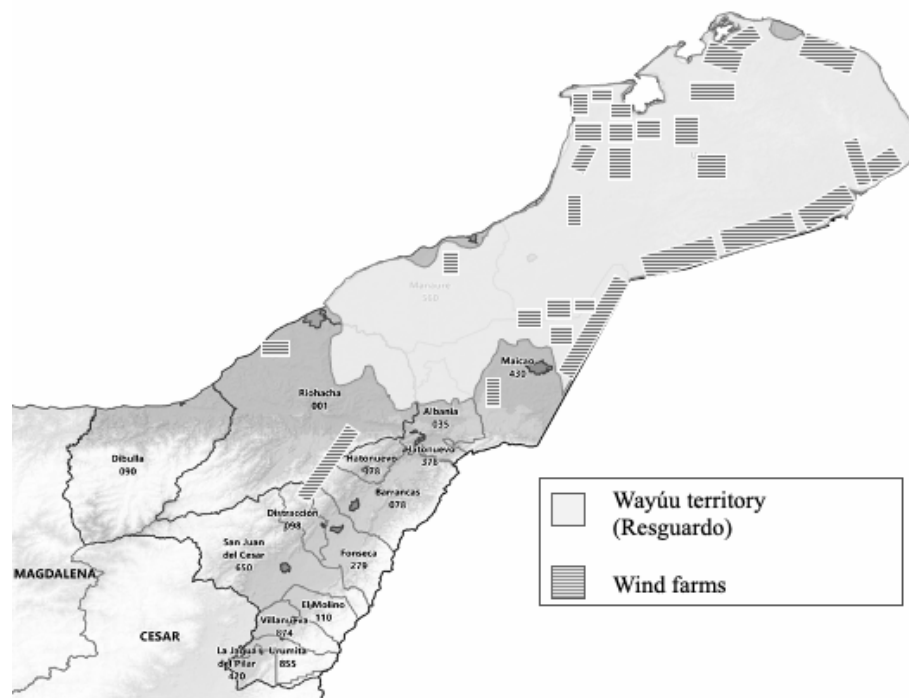
6.4. Wind energy projects under consultation

In the records of the Ministry of Mines and Energy, ANLA, and Corpoguajira, there are documents of 16 multinational companies and three local companies that are processing environmental licenses for 57 wind farms (see Appendix A), with the possibility of starting up in the next decade, in the municipalities of Uribia and Maicao, in Alta and Media, Guajira. Although the energy transition plan is estimated to have nine projects in the execution phase by 2023, the reality is far from this goal, with only 25 operational turbines from *Jepirachi* and Guajira I. Thus, reaching the goal of 2,000 wind turbines installed by 2030 requires an average of 280 turbines to be installed each year.

Graphic 26 shows an estimated version of how the map of la Guajira will look with the 57 wind energy projects installed. According to INDEPAZ (2019), only three projects are located outside the indigenous reservation. Still, the Wayúu people are spread all around the territory, which means

that all the projects are pursuing their consent to move ahead with the construction phase. The image provides a visual notion of the scope of the energy transition within indigenous land. In addition, the lagging infrastructure of La Guajira will require the energy companies to develop roads and access ways that will alter the landscape and the life dynamics of the Wayúu people. As there is no clear roadmap on how that infrastructure will be developed, thus it is complicated to be included in the map. However, for the Wayúu, it is evident that the number of wind projects operating in indigenous territories will “increase the *arrijunas* (non-native people) present in La Guajira, and with it the arrival of a western mindset that will change our culture” (Interview O - NGO, January 2023).

Figure 27 Location of the wind energy projects

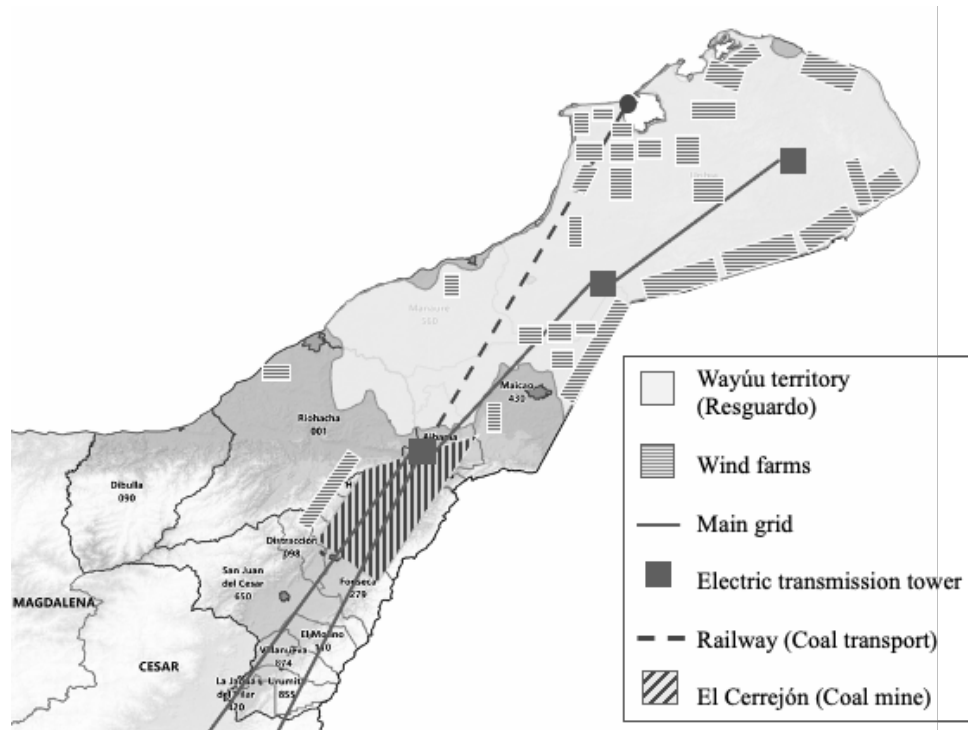


Source: Made by the author using editable public maps.

This new map of La Guajira, covered by the 57 wind farms, adds the transmission networks required to evacuate the electricity generated by the wind farms. The low level of electrification of La Guajira is consistent with the need to extend the grid across the territory to connect the new power generators. The Colectora project corresponds to the leading transmission network, from which new connections will be developed as the energy projects advance to the construction phase. The transmission network, just as the *Cerrejón* railway did in the past, will create a division in the Wayúu territory. It is estimated that the extension of the transmission network will impact more

than 40% of the Wayúu territory (Gonzalez & Barney, 2019). The map below presents the intersection between the clean energy infrastructure and the legacy of the coal mining operation. This map shows how the arrival of wind projects will disrupt the Wayúu people, shaping their territory just as the coal economy has determined their ways of living for decades.

Figure 28 *The intersection between coal mining and wind energy*



Source: Made by the author using editable public maps

Most wind projects are in phase I (preliminary), carrying out consultations, pre-investment, and environmental impact studies. Each company estimates starting with one or two wind farms. According to the information available at the Ministry of the Interior, by 2019, 26 wind farm projects have started prior consultations. However, it is estimated that the 57 wind farms will have at least held the first meetings with the communities in their impact area by 2023 (Interview V - Academia, February 2023). However, Wayúu leaders have expressed that not all projects have followed the correct consultation protocols (González & Barney, 2019). In addition, the justice issues raised in the projects in operation and under construction suggest evaluating how the consultation processes are being held through La Guajira. The next chapter analyzes the information collected from the field regarding the multiple concerns about the consultation procedure in the Wayúu territory through the lens of energy justice.

7. (In)justice in the wind energy boom in La Guajira

Based on the case study, the analysis of results presented in this chapter combines the literature review described in the theoretical framework and the primary data collected through qualitative research methods (semi-structured interviews, observations, and field visits). The following sections explore and expand on the issues of energy justice (procedural, distributional, and recognition justice) identified using the analytical framework presented in Chapter 4.

app

7.1. Procedural justice

One of the essential aspects of procedural justice concerns the fundamental right of indigenous peoples to participate in decisions regarding their territories which involve carrying out Free, Prior, and Informed Consent (FPIC). FPIC establishes that the State has to consult indigenous and tribal people on any legislative or administrative decision that can directly affect their livelihood. As described in Chapter 5, applying FPIC is mandatory for wind energy companies looking to operate on indigenous land in La Guajira.

FPIC is based on the principle of good faith (ILO169, Art. 6). Therefore, the process must be carried out following due process, transparency, and culturally appropriate to reach an agreement with the indigenous communities. The findings of this study show procedural justice issues around due process and information transparency in the implementation of the consultation process in Wayúu territory. The absence of due process is evident through unbalanced bilateral negotiations between companies and communities that arise from a lack of involvement of indigenous communities in the development process in their territories and due to the Wayúu people's vulnerable socio-economic conditions. Issues of transparency appear through lack of access to information about the company and its business model and undue pressure suffered by the communities from both the company and government officials.

The literature indicates that procedural justice is essential for the acceptability of renewable energy projects, particularly in indigenous territories (Avila-Calero, 2017; Zárate-Toledo et al., 2019). Still, procedural irregularities in the consultations indicate not only the gaps in applying the law but also the lack of guarantees for the communities to exercise their sovereignty and participation rights. Therefore, it reiterates that although FPIC has been internationally a significant achievement for the inclusion and protection of indigenous communities, it is still far from a perfect solution.

7.1.1. Due process

Due process should ensure that all stakeholders can meaningfully participate in the identification, planning, and decision-making of energy projects (Sovacool & Dworkin, 2014). In Indigenous territories, due process refers to the application of fair consultation processes with the communities. Therefore, the State must ensure that the communities have the necessary guarantees to exercise their rights and verify that the parties fully comply with the laws. The due process of prior consultation has been highly criticized in Colombia for lacking community guarantees (Grueso, 2008). Reports from Dejusticia (2021) and Oxfam (2015) concluded that despite a growing body of regulations and jurisprudence, Colombia faced problems implementing satisfactory protection of Indigenous rights. In La Guajira, the El Cerrejón open pit coal mine has faced criticism for its failure to consult local communities adequately. While El Cerrejón started operations years before the ratification of FPIC, communities from Baja Guajira who sold their land to the multinational claimed any prior information on the project was misleading (Rubio Medina, 2020). Then, in 2017, Colombia's highest court ordered the mining company to pause plans to expand the coal production area due to concerns over consultation rights violations. However, communities still claim reparations from the State's lack of rights guarantees. Despite this background, today, the Wayúu communities are confronted with inequitable consultation processes by wind energy projects that will be installed throughout the territory (González Posso & Barney, 2019).

Since La Guajira is primarily an indigenous territory, the State cannot grant concessions or privatize Wayúu's land, so the prospects of building projects in the region depend heavily on the social relations established between companies and Wayúu leaders (Schwartz, 2021). Therefore, it is up to the State to ensure that companies carry out consultation processes following due process. This study identified that due process is constrained by socio-economic factors in the Wayúu communities that limit their ability to participate in decision-making. At the same time, aspects of corruption and undue pressures on the communities restrict the establishment of adequate consultation processes. The long-standing absence of the State in La Guajira is evident in how companies lead the consultation processes and how communities are left alone to negotiate with national and multinational corporations. Given the level of vulnerability and marginalization of the Wayúu communities, they are exposed to the systematic violation of their participation and self-determination rights (Vega-Araújo & Heffron, 2022). Therefore, the lack of due process is embedded in the other forms of justice, creating distributive and recognition injustice issues.

7.1.1.1. Unbalance negotiations

Due process in the prior consultation requires conditions of equity between the parties must be guaranteed (Zárate-Toledo et al., 2019). However, In La Guajira, the high poverty rates and vulnerability of the Wayúu people tip the balance of power towards wind companies. Furthermore, the scarce state presence in the Wayúu territories has generated that historically, the indigenous people have unsatisfied basic needs, and they see in the projects the only possibility to solve them through compensation processes for the impacts generated (Vega-Araujo & Heffron, 2022). This situation can cause the consultation processes to be manipulated and end up serving political interests that in no way benefit the community (Rodríguez & Domínguez, 2015). “Amid this reality, several companies have arrived to promise what the State should guarantee, such as water, jobs, and electricity. This unequal relationship leaves the communities fighting for the basics and losing control of their territory to obtain what they urgently need for their subsistence” (Interview D - NGO, December 2022). Therefore, to ensure a fair consultation process, the government must first level the playing field by protecting the fundamental rights of the Wayuu people before wind projects go forward. Otherwise, “the communities will fall prey to the pressures of the wind energy industry” (Interview D - NGO, December 2022).

Figure 29 Photo of rural dispersed communities in La Alta Guajira (Jan 2023)



Additionally, the vulnerability conditions of Wayúu communities are not the same throughout the territory. For example, communities in Alta Guajira are more exposed to high levels of malnutrition and infant mortality due to the lack of water sources in the region (Dejusticia, 2022) (See Graphic 28). This means communities with more opportunities, such as higher levels of education, Spanish language skills, and knowledge of legal instruments, are in a more equitable position to negotiate with companies. In this regard, some interviews claim that the outcome in terms of compensation relates directly to the community's social development levels. For example, one of the academics interviewed explains that “the companies take advantage of the Wayúu's condition of poverty to negotiate terms that end up being more unfavorable for the most vulnerable communities. [...] it is not the same to negotiate with communities that are dying of hunger, as it is to negotiate with indigenous leaders who have academic training” (Interview A - Academia, December 2022).

Therefore, the mediating role of the State is indispensable to guarantee that all communities have guarantees of their rights and that the consultation process is carried out fairly and following all legal terms. However, regional government institutions must have a clear role in mediation. Those institutions are generally considered to have no role at all. Governments have a fundamental role as intermediaries in enhancing participation and protecting communities' rights (Lacey-Barnacle, 2020). However, in La Guajira, government efforts to allow natural resource exploitation at the expense of weak control over corporate accountability have contributed to the significant decline in trust in the State (Rubio Medina, 2020). Government institutions are seen to favor companies' interests rather than guarantee procedural justice (See section 1.2.2.). The new government's energy transition plan refers to the indigenous people as “strategic partners,” inviting them to build the transition from the bottom up, with the rights of the communities at the core (MME, 2022). However, it is unclear how the procedural problems of the consultation and the concerns that continue to grow in the Wayúu communities will be addressed.

To ensure that the consultation process is equitable, indigenous people can request support from an external advisor as a community right during FPIC processes. However, there are conflicting views on the role of community advisors. Since the company pays the advisors, there may be a conflict of interest, which undermines the collective benefit to the communities (Vega-Araujo & Heffron, 2022). Some of the Wayúu interviewed expressed distrust towards external advisors or experts that the company brings in. Given that the government does not guarantee the communities their right to external advice, it has recently become evident that community members are forming their own advisory groups. One example is the case of the *Tekia* community, which has created an advisory

group with members of their community composed of a social worker, a university professor, and an agronomist.

This figure not only generates more trust but has also improved the conditions under which compensation is negotiated, as expressed by a community member “now we have an advisory group made up of people from here, who have experience in various issues and who have helped the community to understand better the impacts [...] to know the legal terms to present legal claims before the authorities” (Interview Q - Community, January 2023).

Finally, the vulnerability of the communities is a factor that affects their ability to demand their rights from the government, thus relying on humanitarian organizations to make visible the conflict around wind energy development (Mielgo, 2018). Not only do communities need more knowledge of legal tools, but the process of filing a claim involves costs, such as transportation to urban areas, which is difficult for communities to cover. Added to this is the lack of trust in state institutions, which leads communities to demand their rights through demonstrations, which can result in violent confrontations; in the words of one of the academics interviewed, “Violence is a symptom of a dysfunctional system [...], people in La Guajira have no patience for or trust in due process” (Interview A - Academia, December 2022). Therefore, due process transcends consultation and must be guaranteed when projects operate in indigenous territories. Procedural justice implies that the communities can freely participate in decision-making with full guarantees of their rights.

Although communities see the arrival of energy projects as a solution for their most pressing needs, for them, the wind energy transition is an imposition over their territory. In their words, “it cannot be said that the consultation is prior when everything is already defined about the projects. [...] In La Guajira, the transition was never socialized with us; simply, one day, the wind energy companies began to come to our territories and made us negotiate our land” (Interview E - Community, December 2023). FPIC states that indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development (Art. 23). However, as described by a community leader, for the Wayúu, “development” has already been defined elsewhere, “our land and resources are negotiated in an office in Bogota, by companies and politicians, never considering our views” (Interview T - Community, February 2023).

7.1.1.2. Coercion and bribery

FPIC states that consultation must be free from coercion, bias, conditions, bribery, or rewards. Therefore, communities must be free to exercise their right to participation without factors that bias their decision-making capacity. Currently, the due process of prior consultations is questioned by community claims of being coerced by undue pressures (González Posso & Barney, 2019), which leads to issues of procedural injustice. Through interviews with communities and human rights organizations, this study establishes that undue pressure comes from the company and local authorities. The pressure to reach agreements quickly responds to the urgency and priority that the past government gave to the energy transition through Law 2099 of 2021, which establishes that renewable energies are a matter of public utility and social interest and, as such, it is a priority in land use planning, environmental planning, and other activities. Therefore, the energy transition has received financial and political support from the government to prioritize the completion of the consultations and start the construction phase of the projects (Mielgo, 2018).

The urgency given to the energy transition represents challenges for both developers and communities (Mielgo, 2018). On the one hand, energy companies are subject to energy sales contracts that must be fulfilled within the stipulated timeframe to avoid penalties. On the other hand, the communities, as landowners, are forced to reach agreements to prevent the State from disposing of the use of the land since they do not have the right to withhold consent. This condition has led to serious questions about how the consultation process is being carried out throughout La Guajira and how the communities are being pressured through lies and methods of economic coercion. In this scenario, the regulations are seen as facilitating energy investments toward meeting urban demands while disregarding the protection of ancestral lands, communities' autonomy, and participation guarantees.

On the one hand, the communities indicate that the energy companies come to the territories to carry out a process as quickly as possible, taking advantage of the communities' lack of information and vulnerability. "It is not possible to conceive a prior consultation as well done, when companies gather the community to collect signatures and fingerprints and explaining the project over the top, without telling us in depth which are the impacts" (Interview G - Community, January 2023). Additionally, through consulting firms, the companies also exercise pressure on the communities since the economic interests of these enterprises are to reach an agreement in the shortest possible time. Therefore, there are reports of how representatives of these consulting firms offer rewards to community members to speed up the process, as described by one of the NGOs interviewed.

“Often, the consulting firms bribe the *palabrerros* (orators), who are moral authorities and highly respected in the community, to convince the communities to reach an agreement. [...] they [the consulting firms] take advantage of community members involved in politics, people of questionable morals, whom to receive economic benefits play against the interests of the community” (Interview D - NGO, December 2022).

Thus, the individual compensations generate conflicts among community members, increasing insecurity in the territory. In the words of one of the Wayúu leaders, “similar to the coal mining boom, as the economy improved, violence became more rampant. [...] everyone wants to benefit, it is a question of greed, the companies corrupt people with money and the communities are left with conflict” (Interview B - Community, December 2022). Although human rights organizations have denounced these facts, there has been no official pronouncement from the authorities (Nación Wayúu, 2022).

Additionally, delays in the construction and beginning of operations of the wind farms have increased pressure from local authorities on the communities to sign the consultation agreements. According to one of the academics interviewed, the companies have created a narrative of “victimhood” through press releases accusing the communities of delaying the consultations, which has generated a state’s response in the form of undue pressure, threatening to exercise the proportionality test if an agreement is not reached (Interview V - Academia, February 2023). Given that wind energy is a project of national interest, the proportionality test establishes that if an agreement is not reached, the State is responsible for assessing the impacts and assigning compensation to the communities (MME, 2022). Therefore, the communities are pressured to accept the agreements, seeing their right to free decision-making over their territory violated, as one community member suggests; “in the meetings, they [the government officials] always repeat that if the consultation agreement is not approved, the project will still go ahead, but now with the conditions of the government. So [...] the communities prefer to negotiate with the companies” (Interview J - Community, January 2023).

7.1.2. Transparency

Procedural justice guarantees the participation of all parties in energy decision-making; however, for this participation to be effective, communities must be sufficiently informed in a truthful and transparent manner. Lack of transparency in consultation processes is often related to corruption, poor decision-making, lack of accountability of the parties, and dysfunctional governance

(Rodríguez, 2017). Furthermore, the lack of transparency leads to irreparable consequences for indigenous communities, vulnerable to potentially losing aspects of their identity, culture, and subsistence. To this point, transparency thus relates to values of truth and respect; therefore, to be effective, it implies recognizing all parties in the consultation process (Grueso, 2008).

The need for more transparency in the consultation processes in La Guajira is evident at two points explored in this section, the lack of information available to the communities for decision-making and the lack of impartiality of the State in its role of guaranteeing an adequate consultation process. First, the right of communities to make informed decisions is one of the pillars of FPIC; therefore, due process must guarantee access to information at all stages to ensure procedural justice. Information transparency should not only be a performative exercise but should support participants in making informed decisions, promoting equity outcomes (Grueso, 2008). Additionally, the lack of impartiality of the government in the consultation processes generates ambiguity for the communities, therefore, a lack of transparency in the guarantees of indigenous rights. The bias of governmental institutions responds to the close relationship between political and economic power that establishes development narratives to validate the implementation of extractive projects in the territories of local communities (Svampa, 2019), present today in the undertaking of clean energy projects. Thus, the notions of non-transparency in the transition to a low-carbon economy pose critical precedents for opposition and territorial fragmentation due to the dynamics of exclusion of local communities from fair consultation agreements (Avila-Calero, 2017).

7.1.2.1. Lack of timely and sufficient information

ILO convention 169 states that indigenous communities have the right to be informed about the projects in a complete, timely, and culturally appropriate format. Therefore, guaranteeing the effective participation of the communities implies transparency of information. Access to information and transparency concerning the energy transition in La Guajira is evaluated in two stages. First, the State must guarantee that the communities have sufficient knowledge of their rights to prior consultation. Second, the companies must guarantee the right to information during all consultation phases and jointly prepare the impact studies with the communities. However, there are many concerns regarding communities' access to information and how to ensure that this is not a constraint to exercising their participation rights. The energy justice literature identifies transparency and accountability as the pillars of ensuring the effective participation of parties in

decision-making processes (Sovacool, 2021; Tarekegne & Sidortsov, 2021). Likewise, access to information is essential to increase the acceptance of renewable energy projects, as it guarantees the effective involvement of communities (Avila-Calero, 2018). Therefore, ensuring timely and sufficient information leads to procedural justice.

In the interviews, it was recurrent that communities were unaware of their FPIC rights. Given that for many communities, the consultations of the wind projects are their first experience with FPIC, there is concern from grassroots organizations about the level of knowledge that the indigenous leaders have to exercise their rights of participation and autonomy, as one of the interviewees explains “FPIC is explained to the communities during the pre-consultation, but this process is done in a day where the communities receive a lot of complex information [...], and this is considered sufficient by the government, but in reality it is useless” (Interview H - NGO, January 2023). In this sense, Art. 30 of ILO Convention 169 states that governments shall adopt the necessary measures to inform the communities of their rights and duties. This means the right to awareness lies in the host State. Therefore, the Colombian government must guarantee the right to awareness of the communities, advising the Wayúu people on their economic, social, environmental, and cultural rights. However, the current methodology of presenting the FPIC rights through a meeting to explain the laws and decrees that the consultation involves is not enough to guarantee that the communities have the necessary knowledge to exercise their rights. Moreover, “the flaws identified in the consultation processes from most projects arise from the communities’ lack of awareness of their rights” (Interview D - NGO, December 2022). Therefore, given the scale of the energy transition in La Guajira, a more active role of the government in the consultation processes is required to ensure the participation rights of the Wayúu people.

With an asymmetry of information on FPIC, the communities move to bilateral consultation processes with the companies. In the consultation stage, the companies are responsible for ensuring that the communities have sufficient information to make decisions. In terms of adequate information, during the initial consultation phase, the companies are responsible for presenting the wind energy project and providing the communities with all the technical information required by law (ANLA, 2019). The presentation of the project has to offer the communities a clear picture of the number of turbines, their size, and the construction of any additional infrastructure to support their operation. Although the requirement is fulfilled through formal presentations, it is still being determined how it is guaranteed that the communities have enough information to move forward in the consultation to assess the impacts of the projects. A representant of one of the consulting

firms that support the energy companies with the consultation process indicates that the presentation provides all the information required, “we facilitate a formal presentation session of the project, in some cases with the assistance of the technical team, after the community has understood the perimeter of land required by the project, we can start with the impact assessment” (Interview U - Industry, February 2023). However, one of the community advisors that have participated in several consultation processes explains that the technical aspects of the project are not only described in general terms but also usually are presented to the communities through a one-day session, “for our leaders, it is sometimes the first time they see a computer, let alone know what they mean by wind technology [...] leaving them [community leaders] with so many open questions about the dimension of the project” (Interview I - Community, January 2023). In addition, some of the interviewees suggest that there is a misleading conception regarding the actual size of the projects. Although during the consultation, companies do presentations providing the technical specification in terms of the scale of the project, for the Wayúu communities, the reference is EPM’s wind park Jepírachi. The wind towers of Jepírachi are 60 meters tall, compared to the average size of the new developments that aim at larger infrastructure, with 100 meters and above turbines. The community leader from *Lanshalia* described her surprise when the construction of Guajira I started, “when the trucks began to arrive... the size of the blades was so big that they had to build up roads to reach the installation site, we had never seen anything like it, we never even imagined it” (Interview K - Community, January 2023).

In addition to the technical aspects, in terms of information, the communities indicate that they do not have clarity about the business model of the energy companies (González Posso & Barney, 2019). This translates into a disagreement with the compensations they are being offered since the communities do not have access to the financial information of the projects. Although the communities request this information from the companies during the consultation processes, the availability of this information is limited due to confidentiality conditions (GEB, 2020). Furthermore, a Wayúu leader assures that the companies restrict the negotiations to the value of land use, leaving out the profits that will be generated by the projects, which restrains the communities in their ability to negotiate compensations that reflect a fair benefit, which relates procedural justice to distributive justice:

“Transparency is to tell the communities that they [the companies] need our land because they are going to usufruct our wind god -Jouktai- and will going to keep every *peso* that this is going to be produced, in exchange for compensation to the community [...], but the

compensation has nothing to do with the real value of the profit that they are going to get there” (Interview R - Community, January 2023).

Thus, for the Wayúu, there has been no accurate, clear, and concrete communication about the business and the economic scope of the projects to be implemented in their territories (Rodríguez & Domínguez, 2015). Upon reviewing the minutes of the consultations available, this study found no evidence that information regarding the business model is provided to the communities at any stage of the consultation procedure. According to one of the academics interviewed, the lack of clarity about the operation of the projects goes against the government’s promises of a just transition for the communities:

“There is much talk about just transition, about communities being partners in this. How are they partners if they do not know how the projects work? [...] the indigenous authorities do not know that these companies want to produce electricity for the accumulation of private capital without the participation of the communities. There may be some exceptions, but the information has no clarity.” (Interview V - Academia, February 2023).

This concern has led communities that have already signed the agreements to demand a revision of the compensations agreed to redistribute the economic benefits of the projects and the communities in consultation to request the government information on the scope and objectives of wind energy (González Posso & Barney, 2019). Faced with this issue, community advisors play an essential role in balancing the power regarding information asymmetry and allowing a proper representation of interests, mainly procedural and distributive justice. The community advisors thus provide expertise in looking at the projects’ technical and financial aspects, leading to a more balanced negotiation of fair compensations.

Finally, transparency also refers to communities accessing information in their local language and using traditional means of communication, according to FPIC. To comply with this instruction and provide procedural guidelines, companies hire local consulting firms, which in turn hire people from the community to serve as mediators and translators. However, translation has limitations; as expressed by the ANLA representative, “translation could be biased by interpretation, sometimes the words do not even exist, and the translator needs to describe or use references” (Interview P - Government, January 2023). Thus, it is not enough to provide translation but to guarantee that all the parties in a negotiation are provided with the same information. In practice, the language barrier left more vulnerable communities with lower Spanish levels, which are often the same communities with less access to opportunities (Valbuena, 2011). Thus, language creates a layer of vulnerability

where communities must rely exclusively on information the company provides through their consultants. Another difficulty that adds to the concerns on culturally appropriate ways of communication is the virtual consultations, given the difficulty in obtaining electronic devices and lack of access to the internet, without forgetting that virtuality denaturalizes one of the elements of the consultation, which is the relationship with the territorial contexts and the knowledge of the actors involved.

7.1.2.2. Lack of impartiality

La Guajira is not only the department with the lowest social development indicators but also with the highest corruption rates. Between 2016 and 2020, there were 37 acts of corruption prosecuted and 64 complaints of corruption under investigation (Citizen Corruption Monitor, 2021). Furthermore, in the last ten years, La Guajira has had 12 governors, most of whom have been dismissed for being involved in corruption cases for diverting resources from social programs intended for the most vulnerable populations in the region (Dejusticia, 2022). With this background, it is not surprising then, that the Wayúu communities distrust government institutions in the protection of their rights, as explained by one of the community leaders “the people in La Guajira do not believe they can get justice from the government, because usually they cannot [...] the ones in power keep the door shut for indigenous demands” (Interview M - Community, January 2023).

Regarding the energy transition, indigenous leaders and human rights organizations have reported the government’s lack of diligence in addressing their petitions and claims regarding inconsistencies in the consultation processes (González Posso & Barney, 2019). The Wayúu communities have expressed that the authorities do not fulfill an impartial role; on the contrary, their current approach to concerns related to the implementation of wind projects reveals their inclination to favor the companies, leaving the communities’ rights of participation in decision-making unprotected, which reflects an issue of procedural injustice. As expressed by one of the NGOs interviewed said, “many officials are aware and complicit in the institutionalized bias that often places private interests of companies first and indigenous rights second in most things that matter in La Guajira.” (Interview H - NGO, January 2023).

Through the interviews, this study evidenced the lack of impartiality of the government and, therefore, the procedural injustices experienced by the Wayúu communities appear at two levels,

at the national and local levels. First, the communities emphasize that the government's actions have benefited the companies by speeding up the consultation process and moving forward with the energy transition plan. For example, after the Covid-19 pandemic was declared in March 2020, former president Duque signed an executive order to implement an express consultation process (Presidential Directive 08 of 2020) to the detriment of the communities' right to participate in the decision-making process freely. According to the presidential directive, if agreements were not reached between the communities and the companies in three meetings, mostly virtual during that time, the Ministry of Interior would have to evaluate the impacts of the projects and define the compensation within three months. For the indigenous rights organizations, this provision not only benefited the companies but also did not consider the challenges for the communities to fully participate in the virtual meetings, as described in the following quote:

“During the pandemic, many consultations were done remotely through virtual channels. Talking via computer, the companies showed PowerPoint presentations and held discussions with community leaders [...] but in a region without electricity, much less internet.... can you imagine how those consultations went?” (Interview O - NGO, January 2023).

However, with the communities' concern and distrust that local authorities would set compensation and the government's lack of responsiveness to their claims, some communities agreed to sign consultation agreements during the pandemic (INDEPAZ, 2022). Often in La Guajira, communities do not want the local government to get involved in negotiations for fear of corruption (Guerra, 2012). This makes it clear that the consultation processes carried out during this period did not comply with due process in order to expedite the energy transition, the flagship program of the previous government. As described by a Colombian academic, this type of imposition on the Wayúu people is part of the State's long-lasting negligence in the region; “we were not surprised by the government's lack of empathy [...] it is a further proof of the increasing disconnect between the administration, and the concerns of the people from La Guajira” (Interview V - Academia, February 2023).

At the local level, things are no different for the communities, as in recent years, there have been complaints about undue pressure from state officers to expedite consultation processes (Schwartz, 2021). According to the community interviewees, the government institutions that should ensure that the consultation process is carried out adequately and fairly with the communities is biased when the officials take the side of the companies, as described by one of the community's leaders.

“The people from the Ministry arrive at the consultation meetings in cars owned by the company; it is like they are part of the company. [...] instead of being an impartial authority, they [government officials] approve and support everything that the company comes to propose” (Interview R - Community, January 2023).

Given the lack of impartiality of the authorities, the communities see their rights unprotected in the face of compensation negotiations, “delegitimizing the promises that the communities are strategic allies of the energy transition” (Interview V - Academia, February 2023). Therefore, even though FPIC establishes a framework for verification of the agreements and a guarantee of monitoring by the State, in practice, the communities criticize that the actions of government institutions generate distrust in the process; as one of the community advisors describes, “when there is disagreement on the issue of compensation, they [government officials] tell us to sign and promise that the government will come and provide solutions to our needs, just as they do in political campaigns [...], but no one believes in those promises anymore; those are lies” (Interview I - Community, January 2023). Finally, the lack of transparency and the government’s lack of attention to the claims that the Wayúu people have been raising make evident the loss of confidence in the institutions to achieve procedural justice, indispensable for a just energy transition, as indicated by the community leader from *Maku*.

“We have filed complaints, we have asked the authorities to review the agreements, but they always say that since it has already been signed, nothing can be done [...] so the government is the guarantor of our rights, but to what extent?” (Interview R - Community, January 2023).

7.2. Distributional justice

Debates on energy justice in the transition to low-carbon economies have put at the center issues of distributional justice (Sovacool, 2021; Heffron, 2021). Distributional justice looks at the fair distribution of benefits and burdens in the energy supply value chain. Notably, the energy transition plan of Colombia demands that the opportunities arriving with this transformation are distributed equally (Mielgo, 2018). Therefore, allocating benefits and mitigating impacts are at the heart of the negotiations between companies and the Wayúu communities in applying FPIC. Furthermore, under the ILO Convention 169, communities shall participate in the benefits of a proposed project or activity wherever possible and shall receive fair compensation for the damage resulting from it (Art. 15).

In La Guajira's case, distributional justice issues are mainly driven by an over-focus on economic compensations and vague development promises for the local communities. The distribution of benefits also intersects with the fair compensation from the impacts identified during the Environmental Impact Assessment (EIA), as these compensations are commonly interpreted through monetary valuations. The long history of coal mining in the Wayúu territory and its limited benefits for the indigenous people generates skepticism about the potential good of the new green economy (Schwartz, 2021). In addition, this study identified disagreement in the perceptions between companies and communities regarding the environmental impacts on the territory. As wind energy implies a clean solution to climate change, the ecological and environmental effects tend to be minimized by narratives of green capitalism (Devine-Wright, 2005).

Therefore, this section analyses both the distribution of benefits and burdens of implementing wind energy projects in Wayúu territory. These issues are framed into the socio-economic background explained in the unbalanced negotiation processes. The historic deprivations the indigenous people face predetermine the power dynamics in reaching distributional agreements.

7.2.1. Allocation of benefits

A fair distribution of the benefits and opportunities of wind energy projects is essential to ensure a just energy transition. ILO 169 states that indigenous communities shall participate in the benefits of a proposed project in their territory. Given that indigenous people cannot withhold consent on developing energy projects in Colombia, the national legislation on FPIC defines that companies must establish compensation schemes to distribute benefits (See section 5.3). Thus, how benefits transfer to the local communities raises distributional justice concerns. This section discusses distributional justice in the form of compensatory measures and development promises that have led to division and disagreement. Furthermore, the interviews show that negotiating compensations relevant to the local context and economically reasonable has become the priority for the Wayúu communities.

In contrast to the communities' experience with the development of the coal industry in their territories, today, the international and national laws regarding indigenous rights provide communities with guarantees to demand from wind companies their right to be consulted and negotiate compensation. However, the compensation schemes currently in place follow the same principles that extractive companies such as El Cerrejón have implemented in recent years in

response to demands and pressure from human rights organizations to compensate for the social and environmental impacts caused to the Wayúu people. The compensation of communities through project financing has been questioned for providing communities with short-term welfare solutions not aligned with local needs (Vega-Araujo & Heffron, 2022). Therefore, ensuring distributional justice in terms of benefits implies that communities can provide the starting point for negotiation, which implies a meaningful engagement scenario where they can negotiate as equals and prioritize their ways of living, involving procedural and recognition justice.

7.2.1.1. Overfocus on economic compensation

The experience of the Wayúu people with *El Cerrejón* and the dynamics surrounding the wind energy business has shaped the communities' relationship with development projects in the territory. On the one hand, the communities see limited their capacity to oppose the projects: “we cannot prevent the projects from coming to the territory because the government has already negotiated that; the only thing we can do is to look for a fair compensation for our communities” (Interview G - Community, January 2023). On the other hand, indigenous leaders suggest that in-kind benefits or employment are not anymore, an acceptable compensation: “they have always treated us as a charity, so they [the companies] bring water and goats. But we are the owners of the territory, and we deserve more than that” (Interview J - Community, January 2023). This condition has made communities prioritize negotiating economic and tangible compensation in the consultation process, shifting their subsistence-based economy towards a profit-oriented one (Schwartz, 2021). Therefore, in the ongoing consultations, agreement on the monetary settlement has become the major bottleneck for both companies and communities (Vega-Araujo & Heffron, 2022).

Although compensation is negotiated bilaterally between the community and the company, the compensation schemes used are similar through the consultations carried out in the territory, as evidenced by the projects in operation and under construction analyzed in Chapter 6. The compensation model starts with the parties' agreement on an amount corresponding to the monetary valuation of land use and mitigation of impacts. Given the lack of information on the consultation agreements, it is impossible to establish the methodology defining the compensation amount. However, according to the models already used, the value is set considering the extension of the land to be occupied by the wind farm, the power generation capacity of the towers, and the duration of the project in years, including the construction period. Then the money will be transferred to a

fund managed by the company, which will only be available to finance community development projects. The portfolio of projects the company offers could include, for example, water filters and storage units, handicraft production, and agricultural units for self-consumption. Although the compensation scheme seems reasonable initially, it has generated much questioning in practice.

The projects available to the community depend on a portfolio of projects provided by the companies, generating a top-down dynamic where the communities' preferences are not considered. Therefore, the companies set the limits of the negotiation at the beginning, indicating to the communities what they are willing to offer as compensation. Although the communities can make a counterproposal, this would imply that they must make a viable business plan, for which not all communities have the skills, as explained by a representative of a grassroots organization in the region "The communities must guarantee that the projects are sustainable, this implies that they must make a business plan that works, but the communities do not have this expertise" (Interview D - NGO, December 2022). Additionally, as evidenced in the wind projects in operation, the communities do not know the financial information of the projects. The company makes investments in those community projects directly, so the communities can not verify if what was negotiated during the consultation was invested (Gonzalez Posso & Barney, 2019). Finally, the investments are at the companies' discretion, promoting a social responsibility mindset where communities are seen as beneficiaries and not as equal partners. Therefore, unbalanced negotiation and transparency issues are present, revealing procedural justice injustices.

Fossil fuel companies have already implemented this model of compensating productive projects. For example, in ruling 704 of 2016, the Court required *El Cerrejón* to compensate the communities for environmental impacts, which was done by financing productive livestock and agricultural projects for the communities (See Graphic 29), where different difficulties have arisen. As mentioned by a community advisor, who participated in negotiating these compensations with communities in Baja Guajira, "many communities proposed livestock projects, without taking into account the limited access to water; with the drought of 2021, many cattle died, leaving the communities without a useless project" (Interview H - NGO, January 2023). Therefore, there are questions about the long-term viability of this type of compensation, where the community is at the mercy of externalities that may affect their projects. As a solution to this, it has been proposed by the academy that there should be an accompaniment for the design and monitoring of community projects. However, it is still unclear which entity would be the right one for this function that generates confidence for both the communities and the companies.

Figure 30 Photo of an irrigation project in Maku (Jan 2023)



7.2.1.2. Misleading development promises

The energy transition that is taking place in La Guajira is the State's major bet to transform Colombia into a country with a clean energy matrix by 2030. Therefore, this transition brings development opportunities for the country by increasing foreign investment, generating employment, and reaching climate targets (Mielgo, 2018). First, however, it is essential to guarantee that the Wayúu communities, owners of the territory, equally benefit from those opportunities. The low social welfare indicators and high levels of poverty of the Wayúu population not only highlight the long-standing negligence of the State but also raise doubts about the development potential of energy projects in the Wayúu's territory, as the positive results of a coal-based economy have not represented significant benefits for the indigenous communities. On the contrary, today, they continue to coexist with the environmental and social damages that this extractivist model entails (Ulloa, 2020).

Still, despite the communities' skepticism, given their socio-economic condition, Wayúu leaders tend to see wind energy development as a solution to their historical deprivations. During the fieldwork, it became evident that more than opposition to the projects, the communities demanded

that clear benefits are established to improve the living conditions of the Wayúu people, which implies the need for distributive justice. On the contrary, the energy companies argue that the State's responsibility in guaranteeing the indigenous communities' fundamental rights cannot fall as the private sector's obligation. This argument supports the use of productive projects as compensation for the communities, as discussed in the previous segment, as explained by one of the industry's consulting firms:

“Some of the demands that we have received from the communities as part of the compensation are the development of education projects and subsidies for the elderly. However, these are responsibilities of the State that the private company is not obliged to fulfill, [...] the projects that we offer to the communities are of a productive nature, which they will manage, and will serve to generate income through the economic activities that they already know.” (Interview U - Industry, February 2023).

One of the Wayúu's development expectations of the energy transition in La Guajira is connecting communities to the electricity grid. Access to energy is one of the main priorities in rural and isolated communities, becoming one of the central concerns of distributional justice. However, the centralized utility-based energy system model does not authorize a third party to sell electricity; therefore, connecting the rural areas depends first on the State's investment in expanding the national grid. Thus, the national energy plan indicates that the energy generated through wind projects in La Guajira is sold to the integrated national system, from which it will be distributed to the national grid (UPME, 2019). Although access to energy continues to be one of the elements that the communities seek to negotiate in the consultations, “there has been no government action to guarantee energy access; rather, some companies are including solar panels within the compensation, which is a short-term solution” (Interview D - NGO, December 2022). Still, according to the community leader from *Lanshalia*, alternative solutions do not meet the community's expectations; “the most honest would be for us to benefit from the energy they [the company] will produce in our land; we want energy for our people, not for lighting a few houses.” (Interview K - Community, January 2023). Therefore, it is ironic that the region with the potential to produce clean energy to fulfill the country's total energy demand would not benefit from this resource, which the Wayúu people most need.

7.2.2. Distribution of burdens

As far as the distributive justice of the costs of energy project development is concerned, they translate into the impacts experienced by local communities, particularly those within the incidence

area of the projects. Although indigenous land is collective and, as such, impacts should be understood more globally, how impacts are assessed in response to environmental licensing requirements is a matter for the communities adjacent to the project site (Schwartz, 2021). Therefore, this section discusses the different concerns regarding the perspectives and experiences of wind energy development's environmental and social impacts. Furthermore, the interviews show a discrepancy between the corporate view and the community experience regarding the ecological impacts, increasing the concerns about the distributional injustice in La Guajira.

Like extractive projects impact local communities' social development and environmental well-being, extensive renewable energy infrastructure creates costs for the Wayúu people (Mielgo, 2018). Through the fieldwork, it became evident that the EIA methodologies tend to minimize the impacts to reduce the cost of compensation to the communities. However, from the community's point of view, the impacts are often reduced to a tangible perspective of the adverse effects, leaving aside the cultural and spiritual consequences experienced by the indigenous people. The impacts are then valued monetarily and paid to the community as reparations. However, this solution may be challenged by distributive justice concerns, as not all effects can have an economic valuation or foresee the long-term impacts on future Wayúu generations. Furthermore, the experiences of the Wayúu with coal extraction in their territory have shown that environmental and social impacts remain over time, are incremental, and delimit the community's ways of living (Ulloa, 2020). Therefore, today there are many questions on the effects that the energy transition will bring to the indigenous territory in the long term and if the compensations that are being negotiated are fair and sufficient.

7.2.2.1. Direct environmental impacts

This section looks at the environmental impacts commonly discussed through the consultation process based on the EIA regarding noise, effects on the landscape, and harms to flora and fauna. Although this section tries to bring together most of the impacts, this is not an exhaustive list as each consultation process is context specific to each community's land and socio-economic conditions.

Visual Impact

Wind towers directly impact the visual elements of a landscape. In this context, it is more complex as it includes impacts on tourism, a primary source of living for Wayúu communities in the north

of La Guajira. The size, color, and number of wind turbines vary across projects and generate drastic changes in the landscape. In addition, harnessing wind energy requires towering structures to achieve the optimal circumstances for the turbines to be effective (Interview F - Industry, December 2022). Thus, the wind structures are often visible over great distances. Although this impact is subjective, a negative linear relationship exists between wind farm size, turbine size, and community support (Lundheim et al., 2022). Therefore, wind turbines are considered visually harmful in any landscape (See Graphic 30). However, to minimize this impact, energy developers promote wind farms as potential tourist attractions, as a benefit for the local communities (Almeida, 2019). For example, in La Guajira, communities from la Alta Guajira point out that wind farms are marketed as a possible attraction for visitors that will generate income, employment, and regional development for the local communities (Interview D - NGO, December 2022). However, La Guajira is known for its ethnoecological tourism, and communities do not believe in the added value of the wind towers to increase the number of visitors to their territory. Instead, the Wayúu see the installation of wind turbines as harming the natural landscapes and their livelihoods based on seasonal tourism, as described by a community member from *Lanshalia*, who works transporting tourists through the territory, “people come to La Guajira to have an experience of connection with nature, to see these untouched landscapes, to appreciate the Wayúu culture, [...] these towers are an outrage” (Interview L - Community, January 2023). Likewise, the Wayúu leader from *Kasiwoluin* explains that since the arrival of EPM to El Cabo de la Vela, the routes of tourism had moved distant from the wind farm, “before the travel agencies brought tourists here, and we offered food services and sold our handicrafts, now we only receive EPM employees” (Interview M - Community, January 2023). Thus, the experience of the Wayúu communities who live closer to the wind projects is contrary to the expectations posed during the consultation phase and conflicts with the perception of the companies.

Figure 31 Photo of Jouktai/Guajira I from the community of Lanshalia (Jan 2023)



Noise impact

The most concerning impact of installing wind energy turbines is noise pollution. The local communities are vulnerable to noise and safety issues in places near wind turbines. Wind project developers are responsible for verifying through simulations and measurements that the noise level is below 60 decibels to prevent health and psychological effects (Sydney et al., 2019). Impact assessment of noise indicates that at distances greater than 350 meters from residences, the noise of wind turbines is around 40 decibels and does not represent a risk to the well-being of people (Almeida, 2019). Therefore, the distance between the wind towers and the residential area is essential in planning wind energy projects. In La Guajira, based on the experience with the pilot project, *Jepirachi*, people in the community have not reported having health problems due to the sound; still, there is no monitoring of those potential effects. According to the community leader closer to EPM's towers, "In the consultation processes, we have little discussed the effect of noise on people; they [the company] always say that the technology they use is known to have low impact." (Interview M - Community, January 2023). However, the wind farms to be installed in the following years will have more and higher towers. Envisioning the noise impact is difficult for the communities before the installation of the project, and thus they rely on the information provided by the company. The leader from *Lanshalia* expressed that it was after the installation of *Guajira I* that they realized the actual impacts of the sound from the turbines, "They [the

company] lied to us about the noise, that noise scares the animals, and we have had to look for other places for grazing” (Interview K - Community, January 2023). In addition, noise pollution at night can develop sleep disorders (Sydney et al., 2019), which, for the Wayúu people, directly impacts their spiritual traditions. In the Wayúu cosmovision, dreams are essential to their connection with their ancestors, so the impacts of their sleep now disrupt their ways of living their spiritual life, as expressed in this quote; “We only knew about it [impacts of noise] when we were experiencing it [...] Now this noise is scaring our dreams, our way of searching for answers” (Interview K - Community, January 2023).

Therefore, for the indigenous communities, who have never seen a wind farm before, it is not evident how to envision the potential impacts of noise pollution. Although during the field visits to the wind farms, the sound seems to be controlled, the sound emitted by the continuously turning blades is permanent. This issue indicates a lack of awareness in the local communities and concern about the companies’ transparency in disclosing potential impacts, which relates to procedural justice.

Impacts on fauna and flora

Wind power projects can harm birds through direct collisions with turbines. Light reflections from wind towers attack birds, causing them to fly through wind power farms and become vulnerable to collisions (Nazir et al., 2020). In addition, placing wind projects in the path of birds’ migratory routes makes this problem worse, especially for larger turbine blades that may reach up into their flight zone (Marques et al., 2020). Wind power facilities can also degrade or destroy habitats for other animals, causing a disturbance and displacement and disrupting critical ecological links. Other animals, like bats, can be affected by direct collision or electromagnetic waves (Nazir et al., 2020). In La Guajira, bats are essential to the local ecosystem. Bats pollinate the arid vegetation that is the food source for goats (Interview B - Community, December 2022). Although wind developers indicate in the environmental assessment that the selection of the location of wind projects seeks to interfere as little as possible with birds’ migration routes (Almeida, 2019), the wind project’s effect on other species has not been assessed with the same rigor. For example, potential harm to bats directly affects goats’ survival, the Wayuu people’s primary livelihood.

Regarding to flora, two environmental concerns were often mentioned during the interviews with the industry: tree felling and contamination from the construction materials. Although those impacts are considered in the EIA and included in the mitigation plans through reforestation

activities and waste management procedures (GEB, 2020), there is a cultural impact related to impacts on the environment that needs to be assessed and mitigated. Based on the Colombian technical and legal guidance for electrical installations (RETIE), companies must measure environmental impacts that might affect the social and economic well-being of the communities and implement restoration and compensation plans according to the level of impact. One of the consulting firms indicates that “during the characterization phase, we aim to understand the impact on the community, evaluating the land and identifying sites of cultural importance, like cemeteries and water wells” (Interview U - Industry, February 2023). Thus, when energy infrastructure directly affects a site of importance for the community, the companies offer to reallocate the area and economic compensation. However, these partial solutions do not fully integrate the indigenous perception of environmental damages. According to the Wayúu, “all harm to nature deteriorates our harmony with the Earth, with our territory; this is an impact we cannot measure” (Interview E - Community, December 2023).

The misrecognition of the impacts reflects how the scientific knowledge behind the impact assessment disregards the connection between humans and nature, essential in the Wayúu’s cosmovision. Thus, the justice issues in the distribution of costs intersect with recognition-based justice. Contrary to the mitigation plans proposed to cope with the environmental impacts, the social and cultural effects of the disruption of nature would not be amended through economic compensation. The Constitution of 1991 recognizes the ancestral knowledgeable environmental authorities that fulfill the function of protecting nature. However, in practice, indigenous people do not play a role in estimating impacts; on the contrary, the effects identified by the community are commonly minimized through the EIA, which environmental scientists lead.

7.2.2.2. Unclear livelihood restoration plans

Beyond the direct environmental impacts aforementioned, the project’s activities can lead to involuntary resettlement in terms of physical or economic displacement (IFC, 2012). This means communities within the influence area of an energy project may be subject to reallocation due to the proximity to the infrastructure or affected by the loss of income source or means of livelihood. The Colombian technical regulations of electrical installations oversee that the development of wind energy projects in La Guajira does imply a certain degree of economic displacement. It considers distributive justice by aiming to restore the livelihood and living standards of affected

people through strategies such as Livelihoods Restorations Plans established during the consultation with indigenous communities.

Within the land use conditions negotiated through the consultations, it is established that communities cannot build houses or other buildings and cannot carry out agricultural or commercial activities within the project's perimeter or under the power transmission lines. This condition limits the communities' free economic and social development near the infrastructure. In particular, the communities show great concern regarding identifying new sites for their subsistence farming practices. Furthermore, the arid conditions of La Guajira limit the possibilities for relocating traditional ways of livelihood. Additionally, relocating their crops or settlement areas may imply conflicts with other communities that also have ancestral rights over the territory; as described by a member from *Lanshalia*, "the *Alijunas* (non-Wayúu people) believe that everything can be economically compensated, but it is difficult when our traditions are not considered [...] we cannot farm in a place that ancestrally belongs to another community, this goes against our customs."

Therefore, the cost-benefit ratio of the energy companies' economic compensation tends to be insufficient and a short-term solution. Although the companies' compensation should be accompanied by a year of monitoring to guarantee the implementation of the restoration plan, it is unclear how the economic displacement of the Wayúu communities will be addressed beyond the short term. Literature on water justice in La Guajira indicates that changes in the livelihoods of local communities are not always evident and may take years, translating into new forms of inequality (Ulloa, 2020). Similarly, a Colombian scholar describes the long-term concerns regarding the Livelihoods Restorations Plans:

"With the coal mining, we have seen long-term damage to water bodies that cannot be compensated by economic means, communities have had to migrate to new territories to tall crops and feed their cattle [...] Communities are unprotected against the impacts that are not yet known, we do not know what is yet to come. We must think of an alternative to compensate for future losses and damages" (Interview V - Academia, February 2023).

Therefore, how the restoration of the livelihoods of the communities in La Guajira is being proposed does not recognize their uses and customs and may promote the structural vulnerability of the Wayúu people. This invites the companies to rethink, together with the communities, the mitigation methods used to face the impacts of the energy transition and to discuss distributive justice beyond economic compensation.

7.3. Recognition justice

Issues of recognition-based justice are present in the analysis above on procedural and distributional justice since the basis for due process, and fair allocation of benefits is the recognition, acknowledgment, and respect of all the parties, particularly marginalized communities (McCauley et al., 2013; Mejía-Montero et al., 2021). Therefore, recognition justice can be the cornerstone for further applying other forms of justice.

Two critical aspects of recognition justice based on processes of cultural domination (Fraser, 1999) are analyzed in this section regarding the protection and respect for indigenous rights; the non-recognition of their communal land sovereignty and the invalidation of their practices and institutions. This study identified that recognition-based justice in the form of misrecognition of the Wayúu forms of governance and ways of dialogue is a contested topic that has led to division and disagreement. In particular, issues of legitimate representation based on the lack of knowledge from both the company and the State about the socio-political structure of the Wayúu people had fostered conflicts among the members of the communities. Thus, how the consultation process is being held invalidates indigenous values, practices, and institutions.

Although FPIC provides a framework for intercultural dialogue, Western legal, economic, and epistemic structures shape how consultations are carried out (Santos, 2017), revealing the gap in recognizing indigenous knowledge and guaranteeing their rights.

7.3.1. Land rights recognition

Land rights recognition is essential to guarantee a just energy transition. However, the interconnection between renewable energy deployment and land grabs has increased resistance to this industry (Franco & Borrás, 2019). Since wind energy expansion depends on land control and exclusion (Huber & McCarthy, 2017), resistance to wind energy must be understood concerning the modes of exclusion imposed upon the land, which intersect with issues of justice. In indigenous land, exclusion transcends the material connecting with the indigenous vision and belonging to their territory (Gilio-Whitaker, 2019). Therefore, acknowledging and respecting indigenous territorial rights in implementing wind energy projects reflect on achieving recognition justice.

According to ILO 169, indigenous communities' territorial rights protect their unique relationship with the territory as the basis of social, economic, cultural, and spiritual life. These rights are

twofold: first, they protect the worldviews and visions of indigenous people over their territory, and second, they oblige the State and non-indigenous third parties to respect and guarantee the protection of indigenous land. As previously explained, in Colombia, indigenous territorial rights are materialized in the constitution of the *resguardos* (See Chapter 3) to ensure the rights to collective property, autonomy, self-government, territorial protection in the context of conflict, and their participation through prior consultation. However, the indigenous leaders claim that wind energy companies are gaining ownership over land; by rejecting indigenous forms of communal ownership and delegitimizing their territorial authority (Gonzalez Posso & Barney, 2019). This section explores the recognition of injustice in the negotiations over indigenous land, which is not only a contested issue but is a source of conflict among the communities, as explained in the following quote:

“Everyone talks about the transition, the wind farms, the development it represents for the country, but where are those [parks]? They are in our territory. So [...] these projects are changing our ways to relate with the territory, dividing communities over land negotiations, and creating a transactional culture that is against our sacred relationship with the territory” (Interview E - Community, December 2023).

7.3.1.1. Fracture of indigenous communal land

The Wayúu people have a history of fighting for their territorial rights. Their experiences of exclusion and displacement by extractivist projects have shaped their way of interacting with new development undertakings in their territory and increased the fear of removal from their ancestral home. Furthermore, the territory inherited through their maternal lineage is sacred, where they develop as an ethnic community; therefore, losing their land threatens their survival as indigenous people, as described in their own words:

“The territory for us is everything; the territory is our planet, our home. The territory gives us our livelihood. Here you live in peace; people have animals, crops, and water. [...] When the coal companies arrived, the land was taken away from us little by little, and we began to move to the cities. However, it is not the same developing as indigenous people in the city, and we are no longer Wayúu without territory. Because the territory is our essence, our essence is not in the cities” (Interview Q - Community, January 2023).

This indigenous vision and relation with their territory are invalidated when the Wayúu must articulate their knowledge using legal terms of ownership and giving economic value to their land, which might not represent their ways of living and being. While the indigenous vision of territory

recognizes land as sacred, indivisible, and collective, a Western view of the territory identifies it as a physical place over which property is exercised (Townsend & Townsend, 2021). So, the land negotiations by energy companies define the territory as divisible, of individual ownership, and space for economic exploitation and resource extraction (Torres Contreras, 2022). As in extractivist economies, the right over the territory arises from the conquest and private property, its use according to market needs, supply, demand, and exploitation capacity (Gudynas, 2016). Thus, competing land ownership claims often co-exist in indigenous territories. In La Guajira, indigenous communal land is constantly questioned by the consultation process that requires Wayúu communities to negotiate their property individually. Thus, issues of recognition justice are not only evident in the opposing visions of the territory but in how the land is being negotiated.

Currently, the Wayúu territory is being negotiated as private property, violating the collective property rights of the *resguardo* and the worldviews of communal land. According to the EIA, the companies must consult with the communities within their area of impact, which physically delimits the territory's inhabitants (UPME, 2019). However, in the Wayúu culture, there are ancestral relationships with the land that are not currently being considered, "there are Wayúu who do not live in the territory but who have rights inherited from their ancestors, and these people should also be included in the consultation" (Interview M - Community, January 2023). Likewise, the Wayúu social fabric is not limited to the community but extends throughout the territory, "although each community is independent, the Wayúu family bonds are dispersed throughout the territory, so consultations must also be at the level of the *resguardo*" (Interview I - Community, January 2023). Therefore, the bilateral negotiation between the company and the community is not only contrary to community land rights but also generates problems of recognition of indigenous sovereignty.

This form of individual negation has led to the fracturing of the territory, as communities are exercising individual ownership rights over communal land. Moreover, since economic negotiation for land use is done individually, communities receive compensation according to the negotiation capacity of each community, leading to conflicts over monetary valuation. Therefore, the indigenous territory in La Guajira is losing its value as the space for developing the Wayúu cultural, social, spiritual, and environmental life toward an economically exchangeable asset (Schwartz, 2021). Thus, as wind ownership is related to land rights, recognizing indigenous collective and inseparable relationship with the territory should look for a communal distribution of benefits, as

explained by a community consultant in the following quote, relation issues of recognition and distributional justice.

“To avoid conflict, it should be an agreement to divide the income from the use of the land among the communities equally; with the compensation, more people are coming in with claims on the territories to receive benefits from the negotiations, increasing the conflicts and violence in the territory.” (Interview O - NGO, January 2023).

Finally, indigenous peoples’ territory as an ancestral right is transgenerational and interchangeable (Grueso, 2008), which concerns generational justice. The decisions being taken today in the territory affect the next generations, “what is being negotiated today will change the Wayúu people’s ways of life, places of settlement, and mobility. It is difficult to predict what awaits the new generations in social and environmental terms, but above all, about land tenure” (Interview D - NGO, December 2022). Therefore, the lack of recognition of indigenous land rights threatens the future of the Wayúu people by imposing economic and political dynamics over their ancestral and spiritual relationship with the territory.

7.3.2. Recognition of indigenous identities and institutions

More than acceptance of cultural diversity, recognition justice underlines the need to go beyond acknowledging marginalized communities and also recognize their knowledge. Therefore, recognition justice interacts with epistemological justice. Epistemological justice points to the ways in which power relations shape who is believed and why (Flicker, 2007). This type of injustice is evident through procedural and distributional justice but is more prominent on issues of recognition justice. Indigenous people experience epistemological injustice when their worldviews and methods of knowledge are not recognized, or their ways of forming and sharing knowledge are not sufficiently trustworthy under the Western views creating epistemic harms that can contribute to epistemic oppression (Tsosie, 2012). Although FPIC had advanced indigenous rights by aiming to promote intercultural dialogue, its basis on Western law prevents indigenous people from fully articulating their ways of knowing and exercising their institutions and traditions (Townsend & Townsend, 2021). Therefore, the imposition of a dominant knowledge system within the consultation procedure incorporates a dimension of energy injustice.

The Western conceptualization of FPIC in Colombian legislation delimits and validates who and how indigenous people participate in the consultation procedure (Rodríguez, 2017). In the case of

La Guajira, the interviewees often mentioned a misrecognition of the State and the energy companies of cultural conditions and the political structure of Wayúu communities. Thus, this section explores the lack of acknowledgment of indigenous people's political institutions and trade and negotiation traditions. The competing knowledge in the wind energy negotiations illustrates the historical continuity of intolerance, discrimination, and cultural domination over indigenous knowledge.

7.3.2.1. Conflicts of legitimate representation

According to FPIC, indigenous peoples have the right to participate in decision-making in matters which would affect their rights through representatives chosen by themselves following their own procedures, as well as to maintain and develop their decision-making institutions (Art. 18). However, in Colombia this right is undermined by Decree 1088 of 1993 that created the figure of Traditional Authorities to consolidate a figure of legal representatives commonly used as a political actor and indigenous community representation against administrative instances, including FPIC. Although this law allows the communities to elect this legal authority through communal assembly, this democratic form does not respond to the political and cultural realities of all indigenous peoples of Colombia, creating a conflict with the traditional forms of exercising power and authority (Rodríguez, 2017). For example, in the Wayúu culture, each community has its Ancestral Authority in charge of decision-making, also called the Clan Authority (Cambar et al., 2014). In their words, “The Ancestral Authority is defined by the *Eirruku* (maternal lineage), passing on the rights over the territory and participation in decision making. [...] it is usually an elderly and wise person, who is responsible for maintaining the unity of the community and transmitting ancestral knowledge” (Interview B - Community, December 2022). Therefore, these two authorities are often in conflict since the Traditional Authority is perceived as an imposition from the government (Cambar et al., 2014). This is particularly relevant for the energy transition, as Decree 1320 of 1998 states that the Traditional Authority shall participate in the FPIC process, which contradicts ILO 169 about maintaining and developing indigenous decision-making institutions.

Since the Wayúu community has a territorial organization based on the *Eirruku* and clans and, in addition, with the persistence of nomadism and seasonal inhabitants, a complex task for companies is to identify their authorities and establish their hierarchies when seeking an agreement on the use of the territory. Therefore, as Traditional Authorities are certified by the Ministry of Interior, energy companies tend to look for these authorities when starting the consultation process. However, when

companies arrive in the territory identify that they might be legitimate for some communities while not for others. Under this challenge, companies are implementing a preliminary phase to the consultation, a characterization period usually led by the consulting firm, to learn about the territory and identify the proper authority, as suggested by one of the firms:

“The problem of the authorities is not evident when you do not know the territory. Initially, we are guided by the authority name registered in the Ministry’s list, but often when we start the consultations, we are blocked because the community says this person cannot hold the negotiations; then we are referred to the Ancestral Authority, and the process must be started again [...] through the characterization we are trying to previously identify the people of the community that has the legitimacy to carry out the consultation” (Interview U - Industry, February 2023).

This issue of legitimate representation creates a gap between what is stated by the law and what is legitimate for the Wayúu communities, which leads to recognition injustices. Energy companies have demanded that the government address this problem by developing a comprehensive socio-political review of the Wayúu people (GEB, 2020). This issue demonstrates the lack of knowledge of the State regarding the cultural-normative aspects of the Wayúu culture, which reflect the structural lack of ethnological study for the determination of cultural, social, and political organizational elements of the indigenous peoples of Colombia (Valbuena, 2011), showing the lack of recognition for the indigenous culture and traditions. Today, Ancestral Authorities along the Wayúu territory are claiming their legitimate rights, demanding the government invalidate the consultation agreements signed by Traditional Authorities, as this issue is leading to significant conflicts in the region. In response to those claims, the Ministry of the Interior recommends government visits when responding to requests from companies to identify communities to carry out consultations; its purpose is to define those with whom the process should be carried out, as their documents are often imprecise, due to the lack, in some situations, of updated information on the movements of the clans (UPME, 2019). However, this step could result in high-cost overruns for the companies, often leading to unilateral corporate negotiation with the communities and creating social conflicts in the territories (Gonzalez Posso & Barney, 2019).

The fieldwork of this research identified that the Traditional Authority is easily visible, as it is political and commonly involved in the representation of the communities on governmental programs. However, the problem arises when this authority, at that moment visible to the companies, turns out to be something other than the Ancestral Authority of that territory. As explained by the community leader from *Kasiwoluin*, “some families are authorized to inhabit these

territories, they have been here for years, but they are not authorized to make decisions of such high impact for the community and the territory. Some of those ancient inhabitants hold titles of Traditional Authority and then carry on negotiations with the companies, without the Clan leaders, to gain profits from these businesses. [...] then ancestral leaders start fights in which both the company and the communities would be affected” (Interview M - Community, January 2023). It is here where institutional absence plays a disruptive role for the communities, as it remains, then, in the hands of the company, the eventual validation of the community authorities with which the prior consultations will be carried out.

Therefore, companies are also critical stakeholders, and they should establish a solid intercultural relationship and comprehend the Wayúu normative system. However, community members are concerned about potential divisions due to disputes over who, whether the ancestral or traditional authorities, can negotiate with the companies and how companies benefit from it. For example, a community member said that “when the ancestral authorities reject the company’s offer, they [the company] turn to the traditional leaders, who will approve the construction of a wind project” (Interview L - Community, January 2023). Thus, failure to understand and engage with the social structure and vision of the community is a common issue in gaining the social license to operate (Vega-Araújo & Heffron, 2022). Companies that take advantage of the issues of legitimate representation impose the need to go ahead with the project against the recognition of indigenous institutions and self-determination rights, and with-it perpetuates conflicts and division on the territory.

7.3.2.2. Imposition of process, timeline, and decision-making structure

This study identified different recognition justice concerns present in the consultation procedure being carried out in La Guajira. Although FPIC promotes intercultural dialogue and establishes that the consultation should be held in a culturally appropriate manner, respecting the customs of the communities, in practice, third parties, the State, and the private sector tend to establish the rules of the consultation process (Townsend & Townsend, 2021). The interviews with community members indicated that the wind energy companies impose ways of carrying out the consultation, such as defining the place of the meetings, establishing the times, and defining the methods of dialogue. Therefore, the lack of recognition of the Wayúu ways of decision-making invalidates the use of their customs and imposes Western forms foreign to their own culture. Thus, recognition justice is present in procedural justice concerns since the cultural domination exercised by the

dominant society translates into non-recognition in the social, economic, and political realms (Fraser, 2000). For example, the community leader from *Maku* describes the understanding gap between companies and communities:

“The people from outside do not know the uses and customs of the Wayúu; they come here thinking that the consultation is to collect signatures, without need for dialogue, without respect for our ancestral leaders. [...] so in their approaches, it is evident that they [the company] see us as the not civilized, naive, non-equals” (Interview T - Community, January 2023).

One recognition concern is the location of the meetings between the company and the communities. Although the FPIC guide in Colombia establishes that communities must be consulted in their territories, in some cases, often, companies invite community leaders to hold meetings outside of the territory. The volume of consultations and the logistical limitations of the territory has generated alternative dynamics for the consultations, such as holding joint meetings inviting several communities within the area of influence of the same project (Interview A - Academia, December 2022). In these cases, the leaders must travel to a place outside the territory to be able to participate in the decision-making process. However, for the Wayúu culture, decisions must only be made within the territory in order to fully exercise their participation rights, as explained by one of the community members; “for the Wayúu, authority can only be exercised within the *Rancheria*, when meetings are held in the territory of other communities, we cannot participate or give our opinion freely” (Interview J - Community, January 2023). According to one of the NGOs interviewed, “the companies often use the tactic of holding meetings outside the territory to offer bribes to the indigenous leaders and doing so pressure the leaders to sign the agreements” (Interview H - NGO, January 2023). Therefore, imposing a consultation outside the territory not only does not recognize the territory as the means to exercise their participation rights but also increases the vulnerability of the Wayúu people and, thus, the imbalance of the company-community negotiation.

Additionally, the consultation process is carried out in meetings led by the company. The company establishes times and forms of dialogue that do not respect the non-linear structure of the Wayúu cosmivision (Interview A - Academia, December 2022). In the Wayúu culture, decisions about the territory are never made in a rushed manner and require iterative processes of dialogue following their traditional ways, as described in their own words:

“For the Wayúu, the dialogue is not planned or methodological as for the *Alijunas* (non-indigenous people), it is something that is part of our daily life, that takes place around a

bonfire or a *Yona* (traditional dance). Nor is it a linear process since it is an ongoing practice where dreams are important for reflection [...] the Wayúu can discuss the same topic for days. They sleep and seek advice in their dreams, and then, the next day, they return with new ideas and questions, so they continue to dialogue” (Interview I - Community, January 2023).

Therefore, the imposition of Western ways of dialogue denies the cultural and spiritual value of the Wayuu people’s ways of establishing knowledge and making decisions regarding their territory. Furthermore, recognition injustice here means that the legal provisions of the consultation process impose the company’s ways and knowledge over the community’s, delegitimizing the place, time, and form of indigenous dialogue.

8. Conclusions and recommendations

It is unquestionably necessary to diversify the energy sources in Colombia and the world to achieve the decarbonization of economies globally and to shift to economic models based on the generation and use of clean energy in compliance with the 2015 Paris Agreement. However, the energy transition has prioritized technical and financial aspects over social and environmental impacts in local communities and indigenous land, particularly in the Global South (Avilés, 2019).

In La Guajira, the Wayúu people are at the forefront of the transformation of Colombia's energy system. As Indigenous 'front line' communities in this energy development, their auto-determination and sovereignty rights, ratified by Colombia through the ILO Convention 169, are being infringed by the development of large-scale wind energy projects across their ancestral land. Thus, it is crucial to understand the concerns of the communities – academic research can form part of efforts to bring their voice closer to the national energy policy and planning. Building the just energy future promised by Colombia's climate objectives requires the meaningful engagement of the Wayúu people and culture, where participation moves beyond a consultative process to collaborative ways of defining and constructing development where indigenous communities have the agency to exercise their rights.

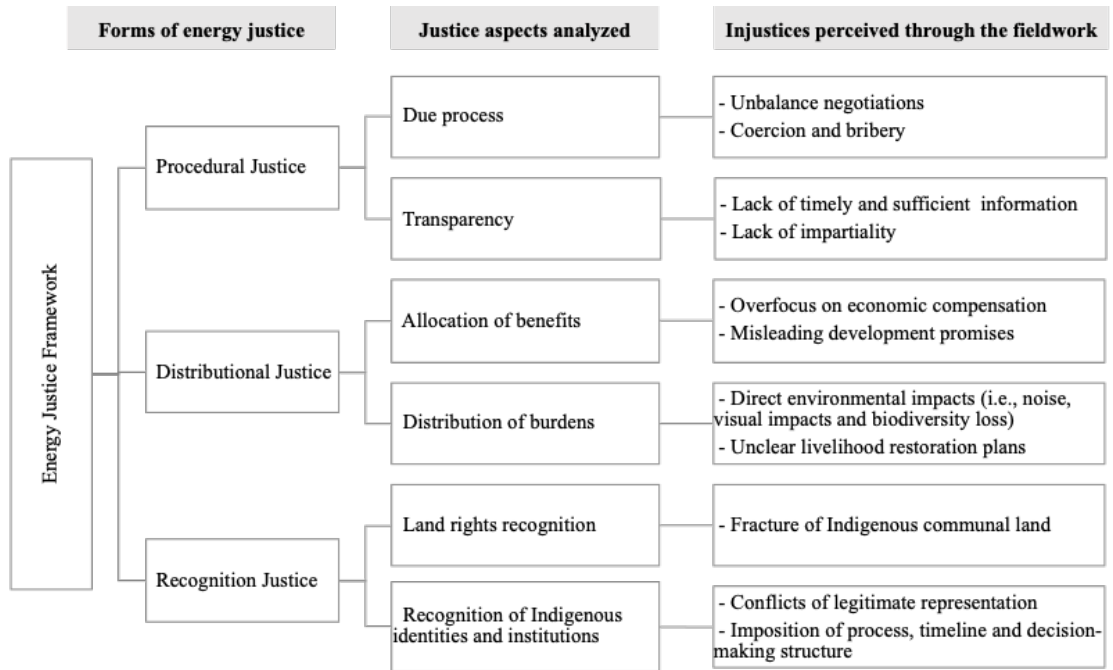
This research collected primary data from community members and other stakeholders involved in implementing the energy transition in Colombia to understand the injustices perceived in the consultation process applying energy justice theory. It demonstrates how energy justice can be used as an analytical framework to explore the fairness concerns affecting the indigenous community's engagement and acceptance of energy developments in their territories. Drawing from secondary sources and fieldwork data, this research applied an analytical framework to diagnose and examine in-depth the injustices perceived by Wayuu epistemologies in the consultation process held by wind energy companies and overseen by the Colombian authorities. In addition, by incorporating the literature on extractivism and looking at the experiences of the Wayúu people with coal mining in their territory, this research contributes to understanding energy legacies: how historical energy patterns can be reinforced or influence the present (Curley, 2018). In this regional context, it is essential to establish the legacy effects of the operations of conventional energy sources in the low-carbon sector. This chapter presents this research's conclusions and policy recommendations to improve the pathway toward a just energy future that does not leave anyone behind.

8.1. Conclusions

Building on the tenets of energy justice, this study analyzed the injustices identified in the consultation procedures by Wayúu communities in la Guajira (See Graphic 31). Some of the issues related to the existing energy justice research concerning indigenous people in Latin America, such as the lack of recognition of indigenous culture and ways of knowing and the fragmentation of their social fabric by biased and bi-lateral consultations procedures (Avila Calero, 2017; Kelly et al., 2021; Barragan-Contreras, 2022; Vega-Araújo & Heffron, 2022). However, other results reveal concerns that have received scarce attention, particularly the intersection with the structural inequality and marginalization of the indigenous people and the legacy of unbalanced relations with extractivist projects in their territories. The structural inequalities face by the Wayúu communities are present throughout the analysis of the evidence. Although reducing poverty in La Guajira entails neither a simple nor a unique solution, before discussing the participatory rights of indigenous people, it is required to consider the need for consistency in public policies, implementation plans, and coordination between national and local entities to tackle the basic needs of those communities. Furthermore, the long relationship of this territory with fossil fuels extraction builds a sentiment of skepticism among the Wayúu of the promises of development of the green energy transition. Thus, a just energy future cannot be envisioned without fulfilling their fundamental human and environmental rights.

Therefore, in La Guajira, the procedural, distributional, and recognition injustices identified in the consultation processes with the Wayúu people lean on their historic deprivation of fundamental rights and the social and environmental burden of expanding transnational coal mining in their territory. In addition, this research acknowledges that the legal uncertainty in the interpretation and application of FPIC is context specific to each country, leading to different concerns perceived in the consultation with indigenous communities. Besides the improvements in the legislation of FPIC, in Colombia, in its application, prior consultation becomes a merely procedural instance of legitimization of decisions already taken, prioritizing Western views and perspectives, and excluding the cosmovision and collective interests of the indigenous peoples. Without the meaningful recognition of Wayúu voice and knowledge, the energy future of La Guajira will perpetuate the Western narratives of development that have long-neglected indigenous people. Therefore, what is a stake in the consultation processes to build Colombia's wind energy plan is the survival of Wayúu culture.

Figure 32 Main concerns of energy justice



Combining the literature review on energy justice and the analysis of the data collected through interviews and field observations, this study creates a conversation between energy policy, corporate practices, and indigenous voices. Although this research proposes an analytical framework following the tenets of energy justice, the boundaries among tenets become narrow through the analysis, showing how the energy justice tenets are intertwined. Without intending to focus on any of the tenets, findings from this research suggest that the consultations carried out by wind companies in the Wayúu territory failed to integrate indigenous voices equitably, and the consultation process is embedded in Western law, which conflicts with indigenous cosmovision and ways of living, dialogue, and decision-making.

In terms of procedural justice, this research analyzes due process and transparency. The issues identified were unbalanced negotiations, coercion and bribery, lack of sufficient information, and deficiency of impartiality from Colombian authorities. These issues are rooted in the socio-economic conditions of the Wayúu people leading to a vulnerability of the communities when negotiating the consultation agreements. Also, these issues relate to the high levels of corruption in La Guajira and the communities' lack of trust in the government institutions to mediate the consultations (Rubio Medina, 2020). The procedural justice concerns suggest limited action of public institutions and a lack of guarantees of the FPIC procedure. The procedural uncertainties in

the FPIC process create the conditions for indigenous rights to be negotiated that, at the same time as suggested by the interviewees, are legitimized by government officials that place the interest of the companies over indigenous concerns. Thus, the procedural justice issues identified cast doubt on the commitment from the government to discuss justice in the energy transition; instead, they suggest the replication of clientelism and undue pressure dynamics legacy of the extractive coal mining in the region that have invalidated the activism and opposition of the Wayúu communities.

Regarding distributive justice, this research examines concerns about allocating benefits and burdens. The finding regarding the distribution of benefits highlights an overfocus on economic compensation and misleading development promises for the local communities. The benefits for the communities are interpreted in a corporate view by compensations and impact mitigations that commodify the harms to their culture, ways of life, and livelihoods. The compensation strategies in place by wind energy companies follow the same principles of social responsibility applied by coal mining, which have proven to be short-term welfare solutions not aligned with local needs (Rojas, 2012; Mielgo, 2018). These concerns suggest that indigenous communities are not treated as equals in the negotiations but as charity cases, as the compensatory mechanisms represent only a tiny percentage of their 25-to-30-year corporate profits. Internal conflicts are also being fostered among the Wayúu communities, alongside concerns about reaching compensation agreements of different economic value in communities with similar identified impacts. Thus, regarding the distribution of burdens, this study identified conflicting perceptions between the corporate view and the community experience regarding restoration plans for environmental impacts and livelihoods, suggesting an epistemic gap between Western and Indigenous ways of looking at the challenges of the energy transition. Although the corporate perception of wind energy is less intrusive than fossil fuels activities (Lundheim et al., 2022), the legacy of poor social development outcomes left by the coal-based economy and long-lasting effects on the Wayúu's ways of life raise skepticism about the compensations that are being negotiated. Therefore, the clean energy narratives that suggest indigenous communities will benefit the most from the projects in their territories are insufficiently and detrimental to indigenous people's sovereignty rights.

Recognition justice concerns are crucial to the consultation procedure as they relate to the other forms of justice. For example, the non-recognition of indigenous communal land sovereignty and the invalidation of their practices and institutions are rooted in the lack of knowledge about the socio-political structure of the Wayúu people from both the company and the State. Although FPIC provides a framework for intercultural dialogue, Western legal, economic, and epistemic structures

shape consultations (Santos, 2017), revealing the gap in recognizing indigenous knowledge and guaranteeing their rights. Regarding land rights recognition, the bilateral negotiation between companies and communities leads to the fracture of the collective property, autonomy, and self-government rights of the *resguardo*. Thus, large-scale wind energy projects raise concerns among local and indigenous peoples about land grabbing by energy companies (Franco & Borrás, 2019) and reflect on the recognition justice in conflict on indigenous land. Invalidating the cultural and spiritual connection of the Wayúu with their ancestral land, wind energy companies preserve an extractivist approach that defines the territory as divisible, of individual ownership and space for economic exploitation. Equally important, injustices in recognizing indigenous identities and customs were identified regarding the imposition of Western decision-making institutions and ways of dialogue in the consultation process. These issues of recognition-based justice deny the cultural and spiritual value of the Wayuu people's ways of establishing knowledge, and making decisions regarding their territory, thus maintaining cultural domination over indigenous peoples. Therefore, recognition justice demands solid intercultural relationships and comprehension of the Wayúu normative system.

Therefore, the results of this research propose that energy justice from the Global South needs to apply an intercultural and intersectional lens to understand the resistance of indigenous peoples against imposed development models, considering that colonial history continues to shape the relationship between the Nation States and the indigenous peoples. Discussing the rights to participation and sovereignty of indigenous peoples in isolation, without considering the historic and ongoing harms of extractivism and lack of guarantees to their human rights, fosters the unbalanced relationship between energy-related activities and indigenous communities. Therefore, restorative justice has to be placed at the center of the discussion of energy justice in the Global South. Without addressing the past harms and the ongoing inequalities and leveling the playing field for communities to participate in decision-making and exercise their right to FPIC, their indigenous rights will continue to be commodified and negotiated by economic interests. Thus, restorative justice reflects on the interrelation between the different forms of justice and the importance of further integrating it into the energy justice agenda (McCauley & Heffron, 2018; Baker, 2021). Achieving climate targets and developing the pathway to a just transition brings an opportunity to build policies from the bottom-up, integrating indigenous visions of what is just and unjust and moving beyond impact mitigation narratives where indigenous communities are only seen as beneficiaries of economic compensations.

The long history of resistance of the Wayúu against the negligence of the Colombian State and the rule of extractivism invites us to see peace as a new way to build the future, creating spaces for empathy, solidarity, cooperation, feeling for the other, the possibility of looking at each other from the different ways of understanding, reaching agreements and being able to walk together the path to save our home, our planet, from the climate crisis.

Figure 33 Photo of Jepírachi's wind turbines (Jan 2023)



8.2. Recommendations

This research upholds indigenous sovereignty by amplifying the Wayúu voices and concerns regarding the energy transition in the academic domain. Still the results from this research are context-specific and, therefore, difficult to generalize to other locations. This study identifies significant justice concerns perceived in applying the consultation procedure using the energy justice framework. Therefore, further research could replicate this methodology in other geographies. Also, this study will be valuable to national institutions responsible for energy planning, energy companies, and other stakeholders seeking to promote intercultural engagement, and meaningful participation, improve the application and outcomes of the FPIC right in indigenous territories, and thus build the imperative just energy transition. Therefore, the following policy recommendations aim to bring the Wayúu voices and claims close to the energy policy-making of Colombia (See Table 8).

Table 8 Policy recommendations summary

Participation	<ul style="list-style-type: none"> • Intercultural dialogue to characterize and document the cultural, social, and political particularities of the Wayúu territory. • Early participation of indigenous communities in the energy transition plan at the <i>Resguardo</i> level. • Development of a multisectoral task force to understand the cumulative consequences of the energy transition plan.
Transparency	<ul style="list-style-type: none"> • Availability and accessibility of all information that communities considered essential for decision making, including the business model. • Building capacity and funding for national and regional authorities responsible to oversee FPIC in the territory. • Provision of clear and accessible channels for the communities to raise concerns and submit claims regarding FPIC.
Recognition	<ul style="list-style-type: none"> • Co-develop a dialogue roadmap with the local and indigenous communities led by their cultural priorities. • Develop in collaboration with the communities a minimum standard of compensation to be provided by the projects. • Involvement of indigenous people in the administration and use of royalties from the energy generated in their territory.

Participation

Building on the fieldwork and the collaborative work with the Wayúu communities that allowed this research to understand and experience, in some measure, the stories, the realities, and the concerns regarding the energy future of La Guajira, the first recommendation for a just energy policy is to engage in meaningful participation. The former involves generating spaces of dialogue with the Wayúu people to characterize the territory and document the particularities and specificities of Wayúu cultural and socio-political structures before the consultation starts. It should not leave to the private companies to define places of cultural significance for the communities, nor the traditional authorities to establish the negotiations. The energy companies would benefit from further, more specific, and indigenous-led information regarding their territory and priorities. The community must direct the multicultural dialogue with the participation of the company and the government representatives to create an understanding from the inside out, which provides a richer knowledge of the region and the local people before the project's design.

The indigenous communities' participation in decisions involving the use and exploitation of their territories should not be limited to FPIC and the consultation in the communities after the planning and licensing of the projects. There is a need to involve local communities early in the project design and feasibility studies. Given the magnitude of the energy transition plan in La Guajira, early participation requires a conversation at the *Resguardo* level; this involves a collective discussion of the projects before the consultation with individual communities. Wind energy projects should not be understood in isolation but as a single undertaking with cumulative impacts. The limited scope of what is delimited as the area of incidence of the project limits the recognition of communal land rights. Thus, dialogues with the participation of indigenous authorities from multiple territories increase the collective understanding and contribute to the amplification of various voices and concerns from the region.

Likewise, improving the energy transition plan could benefit from participating in a multisectoral task force that looks at the potential harms and benefits from multiple perspectives. The involvement of the indigenous communities, academia, civil society, grassroots organizations, industry, and the government is essential to document, analyze, and untangle the consequences of energy development in indigenous territory. Viewing the cumulative impacts of the energy transition through an intersectional lens can lead to developing environmental and social impact strategies for the territory as one and not in isolation by each project. A broader collaboration

among sectors would provide an energy transition plan beyond the technical and economic perspectives and build a participatory approach where multiple voices inform the vision for energy development in La Guajira. More meaningful participation will also involve including voices commonly excluded, such as women, youth, and more isolated and vulnerable communities.

Transparency

In terms of transparency of the consultation process, the energy transition plan of Colombia would benefit from better tools to guarantee access to information of the local communities and the level of engagement of the authorities to supervise the FPIC procedure. According to the results of the data from the field, transparency is a key element of procedural justice. Access to information should be a priority in guaranteeing an equal FPIC procedure. Without fully disclosing the wind energy projects' business plan, the data to define compensations is limited for the communities to negotiate their consent. From the perceptions from the field, information regarding the operation details tends to be minimal and informal. The FPIC guide should include the information indigenous communities consider necessary to fulfill their right to informed consent. It is the authorities' responsibility to ensure the information available to the communities is accurate and identical among all the communities in consultation with the same company.

The role of the national and local institutions that oversee FPIC requires capacity building and funding. Institutions like ANLA and Corpoguajira required a deeper understanding and involvement in the FPIC procedures to accomplish the role of guarantor of indigenous rights. Given the information collected through the interviews, those institutions are surpassed by the number of simultaneous consultations over the territory. The capacity building may involve the participation and training of the indigenous community members and providing training materials and resources available and accessible to the communities.

Further, the complaints regarding the impartiality and corruption of local institutions need attention from the national level. Coordination between national and local authorities should be reviewed through the national energy plan. In particular, the role of the Ministry of Interior in the territory should provide space for dialogue and participation of the communities to raise concerns and submit claims regarding FPIC. The follow-up and compliance verification of the consultation agreements should not be limited to visits from the local authorities. Still, it should enforce a two-way communication where communities can access legal mechanisms to complain and request information.

Recognition

The way FPIC is being carried out in La Guajira conflict with indigenous cosmovision and forms of decision-making. Thus, before the FPIC process starts, guidance on how to fulfill the FPIC following the Wayúu culture is necessary. A just energy transition demands the Colombian state to develop a context-specific consultation roadmap with indigenous and local people to carry out the consultation procedures. The ways of decision-making differ among indigenous people in the country, making the FPIC national guide insufficient to fulfill the cultural particularities of each territory and ethnic group. Recognizing the sovereignty of the Wayúu people involves bridging the gap between FPIC legal procedures and traditional indigenous ways of dialogue. For instance, communities could provide a roadmap to implement the consultation. This roadmap should equip the Wayúu communities with the autonomy to define where and how the consultations will be done.

One of the major concerns of the current situation in La Guajira is the disputes and conflicts between families and communities given the economic compensations from the consultation agreements. The discontent and frustration from the communities intersect with the lack of transparency in the compensation agreements, resulting from the bilateral negotiations between a company and a community. Recognizing the collective relationship of the Wayúu people with their land and the level of vulnerability of the communities demands a state intervention to create a minimum standard of compensation to be provided by the projects. This standard can promote a precedent of encouraging a fairer distribution of that compensation, which should be designed together with the community. Furthermore, according to each community's local priorities and level of vulnerability, the compensation should provide a safety net that fulfills the communities request for the most pressing needs, such as access to water and electricity.

Finally, there is a need to increase the participation of the indigenous communities in the supervision and use of the royalties from the energy produced in their territories. Learnings from experience with coal mining suggest that Wayúu communities are unaware of the expenditures of the royalties that aim to finance social investments. Recognizing their autonomy to define their development priorities, a just energy production on this territory would integrate the voices of indigenous leaders that can direct the funding toward the needs that matter the most for the communities and serve a role of enforcement of the national commitments with their territory.

9. Appendices

Appendix A: Wind energy projects and developers

No	Wind farm name	Number of turbines	Developer	Country of origin	No	Wind farm name	Number of turbines	Developer	Country of origin
1	Werepet	16	Acquaire	Colombia	29	Enramada I	33	Enel Green Power	Italy
2	Alupa 1n	16			30	Enramada III	33		
3	Alupa 4n	16			31	Torre Kanas	33		
4	Alupa 5n	16			32	P6	50	Enviva Energy	Romania
5	Alupa 6n	16	Alupar	Brazil	33	P7 (torre M)	50	Marifer Renewables	
6	Alupa 7n	16			34	P8 (torre L)	50		
7	Antena Satsapa	16			35	El Ahumado	16	Guajira Eólica I	Spain
8	Antena Zukaramana	16			36	Parque Eólico Davidivi	50	Guajira Eólica II	Spain
9	Camelia	28			37	Eólico Parashi	50		
10	Camelia I	28	Empresa de Energía del Pacifico	Colombia	38	Parque Ruikain	50	Guajira Eólica La Vela	Spain
11	Camelia II	29			39	Parque Trupillo	50		
12	Acacia 2	28			40	Parque Guajira II	114		
13	La Manita	16	Colgeólica	Colombia	41	Parque y torre de medición Zona 1	33		
14	Parque eólico Kumarka	16	Desarrollos eólicos cuatro vías	Germany	42	Uyatpana	33	Isagén	Canada
15	P-Sarrut-I	16			43	La Loma	33		
16	P-Jokormahana	16	Desarrollos Eólicos de Uribia	Germany	44	Guajira III	33		
17	Youlepa	16			45	Irraipa	66		
18	Epm Eo400t	133			46	Carrizal	130		
19	Epm Eo300m	96	Empresas Públicas de Medellín	Colombia	47	Casa Eléctrica	120	Jeneiwaa Ka I	U.S.A
20	Epm Eo200i Ipapure	67			48	Parque Jotomana	58		
21	Kuisa	62			49	Apotoorro	66		
22	Windpechi	62			50	Apotoorro II	58		
23	Urrachi-Chemeski	50			51	Eólico Mustchi	64	Mustchi	Spain
24	Florgujira	33	Enel Green Power	Italy	52	Brittos	48	Sowitec Energía de Colombia	Germany
25	Castillète	33			53	Beta	150		
26	Warrutumana	33			54	Alpha	65	EDP Renováveis	Portugal
27	Watchuaji	50			55	Beta 3	32		
28	Patomana	62			56	Beta 4	32		
					57	Jouktaí	16	Waytu S. A.	Colombia

Source: Adapted from González and Barney (2019).

Appendix B. Research Project Information Sheet

DARTMOUTH COLLEGE

The role of justice in the transition to the low carbon economy in Colombia: Wind energy development in Wayúu territory

RESEARCH PROJECT INFORMATION SHEET

This research project is being conducted by Adriana Patricia Fajardo Mazorra from the Master of Arts in Liberal Studies (MALS) program at Dartmouth College, Hanover, NH. This is a study about the role of justice in mitigating the climate crisis through the transition to renewable energy in the Global South. In particular, about what ethical values, practices, and social relationships are involved in developing wind energy projects in indigenous territories in Colombia.

Your participation is voluntary. Participation involves:

- 60-minute interview. If necessary, the interview can be conducted in more than one sitting. You may choose not to answer any or all questions.

With your permission, notes will be taken during the interview; and the interview will be audio recorded. You may request that the recording be stopped at any time. The audiotapes will be transcribed only by the researcher and destroyed at the end of the project.

The information collected will be maintained confidentially and in a secure location. Names and other identifying information will not be used in any presentations or papers based on this research unless you give explicit permission.

Questions about this project may be directed to:

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Guiding questions: Semi-structured Interviews

General questions

1. Please tell me a little about yourself. What is your primary job/function?
2. What is your perspective on the energy transition of Colombia?
3. Why is La Guajira an essential location for developing wind energy projects?
4. What is your experience with energy development in the region?
5. What are the changes in the territory that you have evidence of since the implementation of the wind energy projects?
6. Could you describe the effects on the cultural and social relations of the Wayúu communities?
7. Do you see any relation between implementing mining and fossil fuel companies like El Cerrejon and wind energy projects?
8. After implementing the first wind project, do you think the community receives complete and satisfactory information from the companies?

Cultural significance

9. Could you describe the importance of nature and land for the Wayuu people?
10. Could you describe the significance of the territory where wind power projects are being developed?
11. How do you see the project's implementation affecting your life and livelihood?
12. Could you describe the social organization of the community? Are there any impacts of the projects on these relationships?

Cultural and social impacts

13. What are the impacts overseen by the energy companies in the territory?
14. What are the social and cultural impacts of implementing wind energy projects?
15. What strategies are the energy developers using to mitigate the effects in the territory?
16. Are the mitigation mechanisms of companies towards environmental and social impacts effective?
17. Do you see any relation with the business practices of fossil fuels companies (El Cerrejon) that have operated in the region?

Consultation (FPIC)

18. What is the process of indigenous consultation before the implementation of the projects?
19. Have you been part of the consultation process? Who takes part in these conversations from the community?
20. Is there any government organization participating in these meetings? Could you define their role?
21. Could you describe the consultation meetings and the outcomes of the negotiations?
22. Do you consider the negotiation with the local communities fair?
23. How does the law protect indigenous rights and consultation?
24. What are considerations toward indigenous rights included in the energy transition frameworks?

Recommendations – Just energy transition

25. What would be the best way to involve the community in decision-making?
26. How do you envision the energy transition to expand the benefits of the projects?
27. Which business practices do the energy companies need to improve in the territory?
28. What do you think is the role of the government in providing guarantees for the indigenous population?

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