

Submission to the UN Committee on Economic, Social and Cultural Rights

73rd Pre-Sessional Working Group

A Just Energy Transition for the Realisation of Economic, Social, Cultural, and Environmental Rights

7 August 2023

The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) and Asociación Interamericana para la Defensa del Ambiente (AIDA) welcomes the opportunity to contribute with this information to the Committee on Economic, Social and Cultural Rights during its 73rd Pre-Sessional Working Group (16 to 23 October 2023) for the drafting of the List of Issues Prior to Reporting (LOIPR) concerning the review of the State of Colombia.

This submission aims to clarify Colombia's human rights obligations under the International Covenant on Economic, Social, and Cultural Rights (ICESCR) in relation to a just transition to sustainability. It will provide information on the current state of the decarbonisation process in the country and the efforts advanced to undertake a swift and just process to transition to green energy. Finally, the document incorporates a set of conclusions and suggestions on the questions that the Committee could envisage in the LOIPR to contribute to advancing a rights-based transition to zero-carbon societies in Colombia.

1. Introduction: ESC Rights Obligations in the Context of a Just Transition

The ICESCR enshrines fundamental rights and principles, including extraterritorial obligations, that should guide States in the design and implementation of policies and interventions to combat the climate emergency. In the statement on climate change, released by the Committee on Economic, Social and Cultural Rights following the publication of the special report of the Intergovernmental Panel on Climate Change on the impacts of global warming of 1.5°C above pre-industrial levels the Committee has highlighted the States' duty to prevent foreseeable human rights harms caused by the climate emergency.¹ A failure by State Parties to comply with these duties or to mobilise the maximum available resources to prevent climate related human rights harms, could constitute a breach to the international human rights regime.²

Furthermore, the Committee recognised that a “fundamental shift in the global energy order is urgently required from hydrocarbon to renewable energy sources, in order to avoid

¹ UN Committee on Economic, Social and Cultural Rights (CESCR), Climate Change and the International Covenant on Economic, Social, and Cultural Rights, Statement of the Committee on Economic, Social and Cultural Rights, 2018, paras. 5 and 6. Last accessed 28 July 2022. Available at: <https://www.ohchr.org/en/statements/2018/10/committee-releases-statement-climate-change-and-covenant>

² Ibid.

dangerous anthropogenic interference with the climate system and the significant human rights violations that such interference would cause.”³ In this line, all human rights mechanisms have an essential role to play in protecting human rights by ensuring that States undertake measures to the maximum of their available resources to mitigate climate change, including by accelerating the shift to renewable sources of energy, such as wind or solar.⁴ For instance, measures such as taxes on carbon, on personal and corporate wealth, and on extractive industries can be designed to price adverse environmental impacts and mobilise resources to finance mitigation and adaptation efforts, such as investments on green energy systems that aim to benefit the most marginalised.⁵

Under the ICESCR, not only State actors, but also businesses are expected to respect Covenant rights regardless of the existence of adequate domestic regulation or whether this is fully enforced in practice.⁶ In this regard, the UN Working Group on the issue of human rights and transnational business and other enterprises clarified how the UN Guiding Principles on Business and Human Rights are applicable in the context of climate change.⁷ It recognised that the obligations of States under this framework comprise the duty to regulate business activities to ensure they are compliant with a transition to a zero-carbon economy that is just and rights-based.⁸ This entails adopting climate and human rights due diligence policies in all corporate decision-making processes, procedures, and governance structures to address, and in any case, repair any business-related human rights abuses.⁹

Businesses should also “ensure their value chains and practices are in line with the goal of achieving a just transition to a zero-carbon economy”.¹⁰ These obligations require businesses to uphold the rights enshrined in the Covenant at all stages of the life cycle of renewable energies from the exploration and extraction of minerals on which low-carbon technology development depends, to the construction and operation of energy infrastructure projects and the provisioning of good quality sustainable energy services for all.

In this line, the Committee has also raised human rights concerns in relation to mitigation projects, such as the construction of large-scale renewable energy infrastructure, that might

³ Ibid. para. 8.

⁴ Ibid.

⁵ United Nations Office of the High Commissioner on Human Rights (OHCHR), Frequently Asked Questions on Human Rights and Climate Change, Fact Sheet No. 38, 2021, pag.32.

⁶ CESCR, General comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, E/C.12/GC/24, 2017. Last accessed 28 July 2023, Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2F2002%2F11&Lang=en

⁷ Working Group on the issue of human rights and transnational corporations and other business enterprises, Information Note on Climate Change and the Guiding Principles on Business and Human Rights, 2023, last accessed 28 July 2023. Available at: <https://www.ohchr.org/en/special-procedures/wg-business/climate-change-and-ungps>

⁸ Ibid. para.8 (g).

⁹ Ibid. paras.17 (a) and (c).

¹⁰ Ibid. para. 19 (d).

encroach upon the economic, social, cultural or environmental rights of local populations. This has been mostly acknowledged in relation to the misuse and mismanagement of land for climate action, and the failure to respect the right of indigenous people to free, prior, and informed consent.¹¹

Ensuring the rapid decarbonisation of energy systems to avoid the worst effects of the climate emergency should also not constrain efforts to provide access to good quality energy services and combat energy poverty. For instance, the Committee has stated that an essential normative component of the right to adequate housing is that everyone should have sustainable access to energy for cooking, heating, and lighting.¹² Without access to sustainable, available, accessible, and adequate energy services a number of rights contained in the Covenant are impossible to fulfil, including the rights to food, water, sanitation, education, and health.¹³

In addition, the ICESCR enshrines two obligations that are critical to guide a just transition to zero-carbon societies and which provide the basis for the implementation of all the obligations contained in the Covenant: the principles of non-discrimination (art.2) and gender equality (art. 3), and the duty of international assistance and cooperation.

On the obligation of non-discrimination and gender equality, States and other non-State actors are required to, on the one hand, address the disproportionate and differentiated impacts of climate change on groups and people suffering from pre-existing conditions of marginalisation, and on the other hand, to ensure climate policy provides better access to rights and contributes to reducing pre-existing inequalities.¹⁴ Accordingly, an intersectional approach centred on the needs of women and girls in all their diversity is critical to ensure that the shift to renewable energy combats negative gender stereotypes and advances gender equality. Care should be taken to ensure that gender equality is included in all planning and implementation of climate action. Furthermore, the rights of indigenous peoples, persons with disabilities, minorities, migrants, and future generations and others in disadvantaged conditions must be effectively protected.

Concerning the duty of States to promote international assistance and cooperation, especially economically and technical, for the realisation of ESC rights, States are required to

¹¹ CESCR, General comment No. 26 on land and economic, social and cultural rights, E/C.12/GC/26, (2022), para. 2 (e), last accessed 28 July 2023, available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=E%2FC.12%2FGC%2F26&Lang=en ; Also see: CESCR, Concluding observations on the seventh periodic report of Finland, E/C.12/FIN/CO/7, (2021), para.50; CESCR, Concluding observations on the combined fifth and sixth periodic reports of Mexico, E/C.12/MEX/CO/5-6, 2018, para.12; CESCR, Concluding observations on the sixth periodic report of Colombia, E/C.12/COL/CO/, 2017, para. 16.

¹² CESCR, General comment No. 4: The right to adequate housing (art. 11 (1) of the Covenant), 1991, para.7 (b).

¹³ Wewerinke-Singh, M. A human rights approach to energy: Realizing the rights of billions within ecological limits. *RECIEL*.2022; 31(1):16-26. <https://doi.org/10.1111/reel.12412>

¹⁴ International Covenant on Economic, Social and Cultural Rights (ICESCR), Articles 2 and 3.

foster international solidarity and coordinated global responses to face the climate emergency.¹⁵ As the global warming phenomena are caused and a consequence of cross-border activities, States must ensure they share resources, knowledge, and technology to ensure coordinated and effective climate action. As part of the international community, States should collaborate in relevant regional and international multilateral fora and uphold commitments that can prevent the impacts of the climate emergency and deliver on a rights-based just transition.

2. The Economic, Social, Cultural and Environmental Implications of Energy Transition in Colombia

In Colombia, the national demand for energy corresponds 76.5% to fossil fuels and 23.5% to renewable energy sources by 2019.¹⁶ In recent years the electric system, however, has significantly increased the number of low-carbon energy sources in its energy matrix. Approximately, 12.1% of the sources of electricity in Colombia come from hydroelectric energy.¹⁷ There is also a great potential to rapidly develop infrastructure on renewable energies where communities traditionally have suffered from the impacts of extractive industries, and which for decades have produced high levels of inequality, violence, and multidimensional forms of poverty, including different forms of energy poverty and lack of access to adequate and sustainable energy services. For instance, the region of “La Guajira”, one of the most critical national fossil-fuel extractive sites, jointly with the Department of César, originates about 90% of all Colombian coal exports.¹⁸ However, the region is also known for its significant wind power resources representing 18 GW of the national wind power potential.¹⁹ There is a great untapped opportunity to use renewable energies to transform one of the most marginalised regions in the country into an area with new green employment opportunities and better living standards for the overall realisation of economic, social, cultural, and environmental rights.

One of the critical challenges to advance an ambitious energy transition in Colombia is its economic dependence not only on national fossil fuel use but on its exports. Currently, oil, gas, and coal export revenues represent a large percentage of the country’s economic wealth. In 2022, oil, and coal accounted for 55% of good exports, 17 percentage points higher

¹⁵ ICESCR, art. 2.1.

¹⁶Ministerio de Minas y Energías del Gobierno de Colombia, *Diálogo Social para Definir una Hoja de Ruta para una Transición Energética Justa en Colombia*, 2022, p. 10. Last accessed 31 July 2023. Available at: <https://bit.ly/HojaRutaTransicionEnergeticaJustaCO>

¹⁷ Ibid.

¹⁸Strambo, Claudia and Atteridge, Aaron, *How can Colombia plan for a future without coal*, Stockholm Environmental Institute, 2018, p. 2. Last accessed 31 July 2023. Available at: <https://www.sei.org/wp-content/uploads/2018/08/how-colombia-can-plan-for-a-future-without-coal.pdf>

¹⁹ Ibid.

than in 2006.²⁰ The implications of the State's dependency on fossil fuels for public revenue constrain its capacity to sustainably invest in the realisation of the rights contained in the Covenant.

In addition, Colombia is amongst the countries with more human rights abuses related to the development and operation of renewable energy technologies and projects in Latin America. A recent report based on 501 cases of corporate--related human rights abuses in the renewable energy sector found that 13% of all cases were committed in Colombia.²¹ These cases related to land rights, attacks against human rights environmental defenders, and violations of the rights of indigenous peoples.²² The oversight of large-scale renewable energy projects by relevant State authorities and the implementation of human rights due diligence policies by corporations is one of the most pressing issues to address to advance a just energy transition in the country.

Despite efforts to combat gender inequality, Colombia does not have disaggregated data available on women participating in the renewable energy workforce. Still, recent studies suggest that most green energy employees are men. For instance, in the "La Loma" solar energy park out of 762 employees, only 15% are women. In San Fernando, another large-scale solar park, only 38% of the workforce are female.²³ This provides clear evidence of the negative gender stereotypes that are still pervasive in the transition to green energy.

Concerning human rights defenders, in 2022 a report indicated that violence directed at human rights defenders in Colombia, alone accounted for 44% of all the defenders killed worldwide.²⁴ Defenders working on land, indigenous peoples, and environmental rights were the most targeted accounting for almost half of the total defenders killed in the country (47%).²⁵ Many of them were working to protect their communities, land, and natural resources from energy-related extractive projects. Tackling the structural causes and cycles of violence affecting environmental human rights defenders is paramount to ensure the

²⁰ International Monetary Fund (IMF), Export Diversification in Colombia: A Way Forward and Implications for the Energy Transition, 2023, last accessed 1 August 2023. Available at: <https://www.elibrary.imf.org/view/journals/002/2023/121/article-A003-en.xml#:~:text=Colombian%20commodity%20exports%20have%20been,points%20higher%20than%20in%202006>.

²¹ Business and Human Rights Resource Centre, (IN) Justicia Energética en América Latina, 2021, p. 5, last accessed 1 August 2023. Available at: https://media.business-humanrights.org/media/documents/reporte_RE_espanol04.08_BgB3kz3.pdf

²² Ibid.

²³ Vega Araújo, José and Muñoz Cabré, Miquel, Solar and Wind Power in Colombia: 2022 Policy Overview, Stockholm Environment Institute in collaboration with the Natural Resource Governance Institute, last accessed 1 August 2023. Available at: <https://www.sei.org/wp-content/uploads/2023/03/solar-wind-colombia-sei2023.015.pdf>

²⁴ Font Line Defenders, Global Analysis 2022, last accessed 1 August 2023. Available at: <https://www.frontlinedefenders.org/en/resource-publication/global-analysis-2022>

²⁵ Ibid.

transition to renewables does not exacerbate, but rather provides opportunities for the protection of rights.

In relation to the provision of good quality and sustainable energy services, Colombia's official data show that 96% of the population have access to electricity, leaving about 1.2 million citizens without recourse to this service.²⁶ Despite the level of coverage reported, inequality in energy consumption is stark and the quality of electricity services are intermittent in several regions.²⁷ On average, the highest-income people consume almost three times more electricity than the lowest-income people.²⁸ Thus, a high percentage of poor household's incomes are dedicated to paying energy bills in the Colombian Caribbean (i.e. the Departments of Atlántico, Bolívar, Cesar, Córdoba, La Guajira, Magdalena, and Sucre), where the population have access to few technological appliances to meet conditions necessary to realise the rights to education, health, food, water, and sanitation, among others.²⁹ Energy poverty continues to be a cause and consequence of marginalisation in Colombia.

3. Efforts to Advance a Just Energy Transition in Colombia

To address these challenges, the Government of Colombia is taking a wide range of policies to deliver a just and sustainable energy transition, which most notably include the following actions³⁰:

- Major investments in renewable energy technologies and the decarbonisation of energy systems based on principles of democracy, participation, gender equality and the realisation of rights. This includes fostering the proliferation of decentralised energy communities as means to create participatory and self-sufficient energy services in both, rural and urban areas.
- Economic diversification to reduce high dependency on fossil fuels revenues, including the progressive substitution of fossil fuel subsidies and the implementation of a progressive fiscal reform. The latter will aim to tax the environmental impacts of the fossil fuel and extractive industries and ensure the collection of public revenue

²⁶ Cabello Eras, Juan José; Mendoza Fandiño, Jorge Mario, et. al, The inequality of electricity consumption in Colombia: Projections and Implications, Energy, Volume 249, 2022,123711, ISSN 0360-5442, <https://doi.org/10.1016/j.energy.2022.123711>

²⁷ Ibid.

²⁸ Ibid.

²⁹ Bayona-Velásquez, Etna, Pirela-Ríos, Ana, et. al., Measurement of Energy Poverty in the Colombian Caribbean Region: Comparative Analysis, 2022, last accessed 1 August 2023. Available at: <https://assets.researchsquare.com/files/rs-1340558/v1/be125903-0801-4a3a-b082-2e9aa6cde67d.pdf?c=1645112582>

³⁰ Ministerio de Minas y Energía de Colombia, Metodología para definir una hoja de ruta de la transición energética justa en Colombia,2023, last accessed 2 August 2023. Available at: <https://www.minenergia.gov.co/documents/10143/MetodologiaHojaRuta-TEJ-2023.pdf>

from polluting activities as a mean to finance a just transition towards renewable energy,

- Fostering the resilience of the energy systems by investing in diverse renewable energy sources adapted to the changing climate,
- Promoting regional cooperation to ensure socially and environmentally responsible use of critical minerals necessary for the development of low-carbon technologies, and
- Increased and meaningful representation of women, afro-descendant, indigenous peoples, and other historically marginalised groups in decision-making processes, including by ensuring gender parity in the workforce of the Ministry of Energy.

In November 2022 the Colombian government launched an unprecedented nationwide participatory effort to define a critical roadmap that will identify the next steps, timeline, opportunities, potential obstacles, and a clear Action Plan to advance a just energy transition.³¹ To inform this process, the Government of Colombia has held numerous national dialogues with different sectors of society, including indigenous peoples, women, human rights defenders, experts, and activists working across all strategic areas of the energy transition.³² The government is expected to publish this ambitious roadmap for a just energy transition in early 2024.

On tax issues, Colombia lead the first “Latin American and Caribbean Summit for global, inclusive, sustainable, and equitable taxation”, which took place on 27-28 July 2023 in Cartagena de Indias. One key outcome of the summit was the set-up of a platform to cooperate in tax policies in the region, so the region as a bloc can have a stronger voice in international tax negotiations. The new body will promote dialogue and the exchange of information, with the aim of achieving progressive and fairer taxation, combating tax evasion, and mobilising the necessary resources to guarantee quality, universal and sustainable public services and a green transition to low carbon societies. The top priorities to discuss in the next 12 months will be the progressivity of tax systems, green taxes, and international corporate taxation.

In terms of governance, Colombia was designated to hold the pro-tempore presidency of the new platform for the next 12 months, while the Economic Commission for Latin America and the Caribbean (ECLAC) will assume its Technical Secretariat. This opens a valuable

³¹ Ibid.

³² Ministerio de Minería y Energía de Colombia, Líderes y Expertos se reunieron en el primer diálogo nacional para la transición energética justa, 2022, last accessed 2 August 2023. Available at:

<https://www.minenergia.gov.co/es/sala-de-prensa/noticias-index/l%C3%ADderes-y-expertos-se-reunieron-en-el-primer-di%C3%A1logo-nacional-para-la-transici%C3%B3n-energ%C3%A9tica-justa-liderado-por-minenerg%C3%ADa/>

opportunity to shape tax policy in Colombia and the Latin American region in line with human rights norms and ambitious climate goals to ensure a just transition.

4. Conclusions and Recommendations

Considering the relevance that a just energy transition represents for the respect, protection, and fulfilment of several rights enshrined in the Covenant, we strongly encourage the Committee to engage with Colombia on the measures undertaken and the plans envisioned to combat climate change and advance an energy transition during its reporting procedure. Obtaining further information on these issues would foster transparency, help inform the ongoing participation of civil society in the definition of energy policies, and assist in shaping Colombia's energy framework so it is aligned with Covenant rights.

Accordingly, the submitting organisations suggest incorporating the following questions in the List of Issues Prior to Reporting of Colombia:

- Please provide information on the main objectives, methodology, and plans to develop a just energy transition program aligned with the rights enshrined in the Covenant.
- Please provide information on the efforts advanced to regulate transnational businesses and other enterprises to comply with the obligations contained in the ICESCR to avoid business-related social and environmental impacts across their value chains, and for enterprises to adopt human rights due diligence policies.
- Colombia is leading significant efforts towards progressive tax policies. Please provide details on the measures implemented to ensure that the maximum available resources are mobilised at the national and regional level to sustainably realise the rights contained in the Covenant and invest in a just energy transition.
- Please provide information on the action undertaken by Colombia to prevent human rights abuses committed in the responses to advert the climate emergency, including the abuses inflicted on local populations and human rights defenders resisting the development of energy transition projects.
- Considering that access to sustainable, adequate, accessible and available energy services is a precondition for the realisation of a number of rights enshrined in the Covenant, including the rights to food, education, health, water and sanitation, please provide information on how Colombia is combating energy poverty affecting low-income households and public services in the most marginalised regions.

Additional Resources:

- [States Human Rights Obligations in the Context of Climate Change](#), 2022.
- [Setting a Roadmap for a Green Feminist Transformation](#), 2022.
- [Loss and Damage: The Missing Piece, International Tax Cooperation for New Climate Finance](#), 2022.
- [Renewable Energy and Gender Justice](#), 2021.

- [The Maastricht Principles on the Human Rights of Future Generations](#), 2023.

Contact: Alejandra Lozano, Programme Officer on Climate and Environmental Justice at the Global Initiative for Economic, Social and Cultural Rights (GI-ESCR). Email: Alejandra@gi-escr.org