Consejo Comunitario Eladio Ariza

Asociación de Cabildos Indígenas del Bajo Caquetá (ACIBAC)

Alternative Report on Colombia

for the consideration of the

Committee on the Elimination of Racial Discrimination

during its 100th session (25 November – 13 December 2019)

31 October 2019

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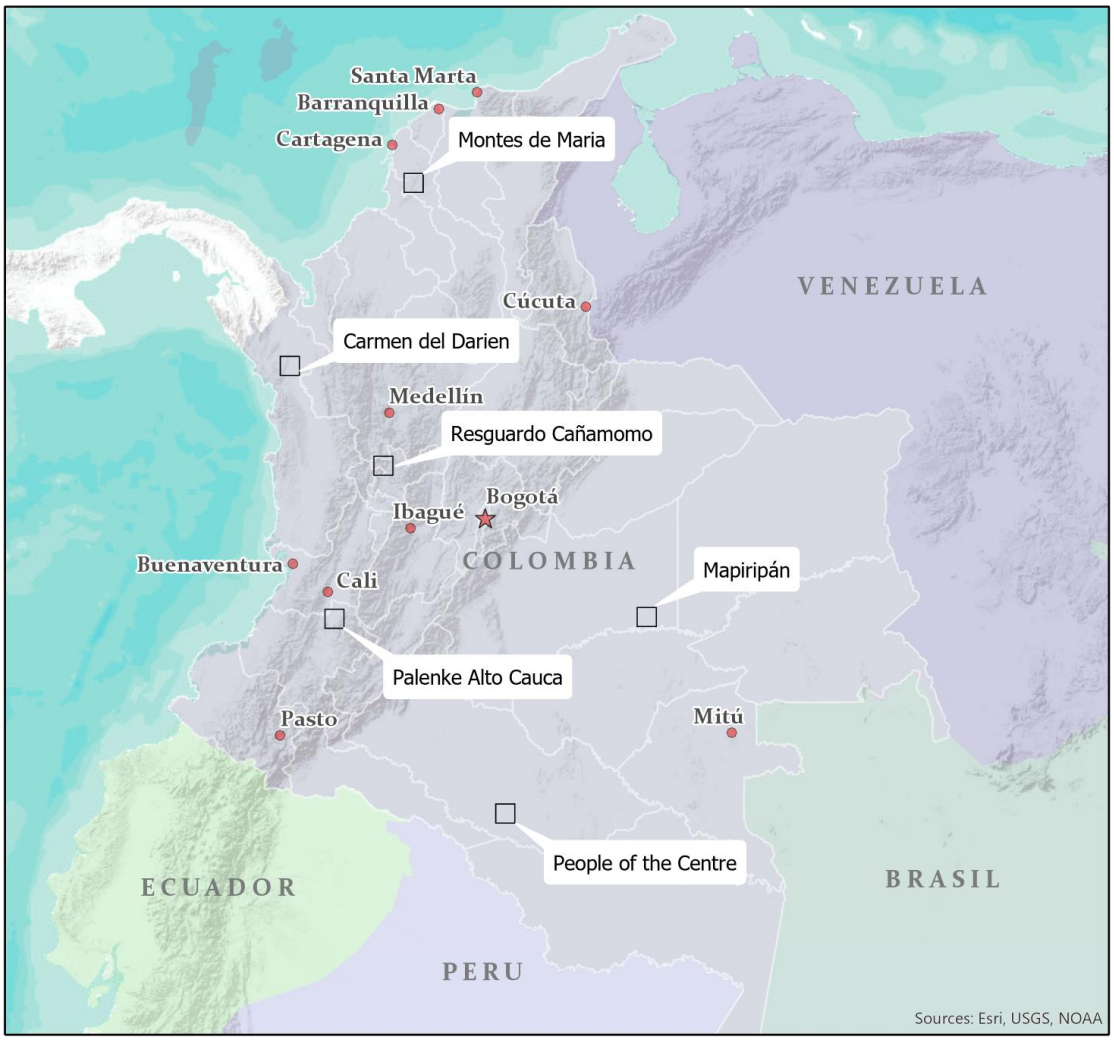
Table of Abbreviations

ANM	National Mining Agency (*Agencia Nacional Minera*)
ANT	National Lands Agency (*Agencia Nacional de Tierras*)
INCODER	Predecessor to the National Lands Agency (*Instituto Colombiano de Desarrollo Rural*)
ONIC	National Indigenous Organisation of Colombia (*Organización Nacional Indígena de Colombia*)
RCMLP	Resguardo Cañamomo Lomaprieta, located in Caldas, Colombia
STI-CNTI	Indigenous Technical Secretariat of the National Commission of Indigenous Territories (*Secretaria Técnica Indígena de la Comisión Nacional de Territorios Indígenas*)
UNP	National Protection Unit (*Unidad Nacional de Protección*)
URT	Land Restitution Unit (*Unidad de Restitución de Tierras*)

Map of key locations / communities discussed



I. Introduction

1. This report is submitted by 8 local, national and international organisations and local indigenous or Afro-descendant authorities (the **submitting organisations**), to provide additional and alternative information to the Committee on the Elimination of Racial Discrimination (the **Committee**) in its upcoming examination of the State Report of Colombia in respect of its obligations under the International Convention on the Elimination of All Forms of Racial Discrimination (**ICERD**).

2. This alternative report follows the structure and numbering of the State Report submitted by Colombia for examination. However, it does not provide information in respect of all the sections in the original report, but only those which are most pertinent to the information held by the submitting organisations.

3. The first annex to this report sets out a brief summary of each of the submitting organisations. In addition, there are 6 annexes describing the situations of local authorities and local organisations contributing to this report in order to provide some specific examples of the issues described in this report. The final annex lists various acts of violence and other attacks experienced by local authorities and local organisations between 2014 and the present.

II. General framework of protection and promotion of the right to non-discrimination, equality and effective remedy

A. Demographic composition of the population – communities and ethnic minorities

4. The State report (submitted in late 2018) contains demographic information from the 2005 census, but notes that the 2018 National Population Census and Housing Census was underway. The submitting organisations note that some material on demographics from the 2018 census has recently been released, including on indigenous peoples (there is not yet summary information on Afro-descendant groups). Among other points to note, the 2018 census reveals an increase in the estimated population of indigenous peoples in the country of 36.8%, bringing indigenous peoples to a total of 4.4% of the total population (up from 3.4% in 2005). The National administrative department of statistics suggests that the increase is not merely due to natural population increase, but also reflects an increased inclusion of indigenous peoples in the 2018 census.[1]

5. The submitting organisations welcome the improvements in covering indigenous peoples in the census, but remain concerned that national data on indigenous peoples remains dispersed and uncoordinated within the administration. Since 2018, the Indigenous Technical Secretariat of the

[1] https://www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/presentacion-grupos-etnicos-2019.pdf

National Commission of Indigenous Territories (**STI-CNTI**) has been working with the national government to create an indigenous GIS system. According to the STI-CNTI, during that process it has become apparent that data and information is not unified, methods of collection of data are different among different entities (affecting comparability between different areas and administrative departments), and access to the GIS system (housed within IGAC, the Agustín Codazzi Geographical Institute) has not been consistently functional.

B. Self-identification, differential ethnic approach and participation in the National Household and Population Census 2018

6. No information to add.

C. Legal and policy framework for recognition and protection to make effective the dispositions of paragraphs 1 and 2 of article 2 of ICERD.

Ratification of treaties (recommendation para 41, 42 CERD/C/COL/CO/15-16)

7. The Colombian State has responded to the recommendations by the Committee with respect to further ratifications by stating that each treaty is considered carefully and only ratified where the State considers there is a real possibility of compliance. Not only does the systematic non-compliance with existing ratified treaties – as outlined in this report – undermine this statement, it is simply not credible in relation to certain of the recommendations made – for example, the recommendation to make its declaration under Article 14 ICERD allowing individual or group communications to be made to the Committee. The failure to take this measure, which would simply allow those affected by non-compliance under ICERD an additional avenue for recourse and does not involve the State taking on additional normative obligations, is not one that is explained in the State report. The inference that should be drawn is that there is continued unwillingness to increase international scrutiny of Colombia's record on ethnic rights.

Normative development

8. The Colombian State report contains an impressive list of legislation that is ostensibly aimed at protecting the rights of ethnic communities in Colombia. However, the report does not provide any detail on the content of these laws to allow the Committee to consider whether their provisions are consistent with human rights obligations – and it is commonly the case that such legislation falls short (see paras 58ff below for some examples). Moreover, the report fails to note the ever-present gap between legislation and implementation which plagues the effective protection of human rights and hinders the enjoyment of ethnic rights and racial equality in Colombia (discussed in paras 27, 32-33, 38-42, 46-57 below).

9. In many cases, delays experienced in implementation can be linked back to weaknesses in the legislation itself. It is commonly the case that legislation aiming to protect indigenous and Afro-Colombian rights creates long bureaucratic processes, while also leaving significant discretion to the administration as to methods and timing of implementation, and to determine the criteria for decision-making. It is common to provide insufficient resources for the processes created. This leaves administrative processes open to political influence and leads to blockages by forces

of structural racial discrimination within the administration. For example, decree 2333 of 2014 – one of those mentioned in the State Party's report, and which is intended to provide urgent interim protection to indigenous peoples' territories - states in its article 15 that the mechanism should be implemented only gradually in accordance with budget availability – a provision which undermines its implementation in practice. In fact, no budget whatsoever was provided to implement the decree until 2017, three years after its promulgation. Moreover, one of the principles of the legislation referred to in article 2 is that "the property of third parties will be respected in accordance with the Constitution and the Law". In the context of frequent experiences of encroachment on indigenous territories over time, often with some form of legal backing, this principle creates serious ambiguity about whether pre-existing indigenous rights can be protected under this law when there is a conflict of title or other unresolved tenure dispute. (Further discussion of issues around implementation of this decree are discussed in paras 33-35 below.) These types of issues – provisions that undermine the objectives of the law, and deliberately use ambiguous wording that allow regressive interpretation by the administration – are frequently found in laws protecting the rights of indigenous and Afro-Colombian groups.[2]

10. It is also unfortunately the case that in the last year in particular, there have been concerted steps towards regressive law reform that would undermine existing protections. For example, faced with the implementation of a 2016 Constitutional Court decision ordering the territorial delimitation of indigenous Resguardo Cañamomo Lomaprieta (**RCMLP**) in Caldas (see further annex 5) in accordance with a specified procedure, a bill was introduced to Congress seeking to mandate a "Special Bicentennial Commission" to undertake a study in Riosucio (the municipality in which RCMLP is located). This study was to "define" the colonial Resguardos in the area and "advance their restructuring" – despite the fact that titling of RCMLP is already proceeding under a Court-ordered process. "Restructuring" is a term that arises in Law 160 of 1994 as the (only) basis on which indigenous Resguardos may seek their titling; in practice, it has frequently involved reductions, sometimes significant, of the areas of traditional territories to be demarcated and titled by relevant state bodies). The controversial bill is currently under consideration by a Congressional Committee.

11. Similarly, in more recent weeks, several members of the Centro Democrático – currently the ruling party in Colombia – have called for the introduction of a law which would enable decisions of the Constitutional Court to be overturned by referendum. Although this has not, at this stage, been endorsed by the party leadership, it has been advanced by an extremely influential Senator, ex-President Alvaro Uribe, and demonstrates a serious attempt to undermine the Constitutional protection of rights. Such a proposition would likely have disastrous effects for the protection of indigenous and Afro-Colombian peoples' rights – as numerical minorities, court decisions that protected their rights would be extremely vulnerable under such a procedure – and indeed, it seems very likely that the primary objective of such legislation is precisely to bring an end to constitutional protection of minority rights.

[2] Another example is that of the current proposal for the decree to implement titling of colonial Resguardos, which is discussed further in paras 42-43 below.

12. The Committee should also consider normative developments within the reporting period that have negatively affected the respect for the rights of indigenous and Afro-descendant peoples. In this respect, we note the adoption of the Ley Zidres (Law 1776 of 2016), which considers untitled indigenous territories as "unoccupied lands" which can be leased to private actors for economic development projects, and imposes a model of rural development focussed on agro-industries. The implementing decree for this law – Decree 1273 of 2016 – precludes Zidres areas from including lands that are the subject of a request for titling and constitution of an indigenous Resguardo. However, this exclusion only applies where these requests have already been the subject of a socio-economic study; lands that are subject to requests that remain at an earlier stage in the procedure may be included in a Zidres area. Given the known delays in the titling processes – described further below – this is a significant loophole in protection.

13. There are also current proposals for the reform of Law 160 of 1994. There are several provisions of this law – including those related to the process of titling Resguardos – which arguably merit reform and closer alignment with international law principles (see further discussion below). However, instead of proposing amendments of this nature, the proposed reforms focus on increased powers of the State to imposed large-scale extractive projects and to expropriate or regularise titles without due compensation, posing a significant risk to collective territories (both titled and untitled). Decree 1858 of 2015 – which was not the subject of consultations with indigenous peoples – sets out a process for titling peasant communities occupying lands categorised as "unoccupied" (baldíos) – but without adequate safeguards to ensure that a property registration is not opened on apparently "vacant" lands that in fact form part of an untitled collective territory.

14. Further discussion of legislative weaknesses in various areas connected to indigenous and Afro-descendant peoples in Colombia can be found throughout this report.

III. Implementation of articles 1-7 of the Convention and recommendations of the Committee

A. Measures that condemn discrimination, racial segregation and hate speech: Implementation of articles 1, 3 and 4 of ICERD

Definition and offence of racial discrimination

15. In paragraph 9 of its previous Concluding Observations to Colombia, the Committee repeated its previous recommendation to Colombia to introduce a general prohibition on direct and indirect discrimination in public life, under its civil and administrative laws. The State has not acted on this recommendation. Moreover, as indicated further below, the implementation of the existing criminal provisions on racial discrimination remains weak, with limited investigations having been completed (or indeed commenced) after complaints have been made (see further below).

16. The State has cited Law 1482 of 2011 – which creates a criminal offence of discrimination. However, the State's own report shows the poor state of implementation of this law: at

paragraph 34 of its report, it notes that of 368 reports of racism, discrimination or harassment with the Attorney-General, only 9 have passed to the stage of preliminary investigation, 3 are under investigation, 5 are at trial and 1 has been convicted (and there is no indication of the outcome or status of the other 350 reports which are apparently not under investigation).[3] This is all the more concerning given that in paragraph 40 of the State's report, it indicates that the Observatory against Discrimination and Racism – a specialist body focussed on racism - has referred 42 cases to the Attorney General's office for investigation between 2014 and 2018. The inference is that even where cases have been referred by the Observatory, the Attorney-General's office has still not opened investigations – since there are substantially more referrals than investigations. The pattern of non-implementation reflects ingrained institutional resistance to – frequently accompanied by under-resourcing of – the recognition and advancement of the rights of ethnic groups, and illustrates the extent of massive structural discrimination which remains entrenched in the Colombian administration.

Racist discourse or behaviour from officials or state employees

17. There are unfortunately multiple instances in which State actors demonstrate discriminatory behaviour in their interactions with indigenous and Afro-descendant groups. Two recent examples are:
    - On 16 March 2019, ESMAD, the mobile anti-disturbance squad, violently attacked campsites of peaceful indigenous and Afro-descendant protesters in Cauca, releasing tear gas and burning tents and possessions, and injuring 14 people.[4] The broader protests attracted racist statements from some State officials and the media.[5] Ten indigenous Nasa peoples were killed during the protests, although the causes remain disputed.[6] This comes in the wake of previous police violence against indigenous peoples in this area.[7]
    - Again in March 2019, a Colombian minister accused the same indigenous peoples protesting in Cauca of "kidnapping" a soldier – a highly emotive accusation in Colombia - after they temporarily detained him after he entered into their protest area armed, but in casual clothing. It was likely a deliberate infiltration, although this was denied by authorities. The soldier was shortly after released unharmed. The Ministry called off talks as a result. [8]

B. Measures to protect against racial discrimination and to guarantee rights: Implementation of article 2 of ICERD

[3] It is also unclear whether the 368 complaints referred to relate exclusively to racism, or to other forms of discrimination.
[4] https://peoplesdispatch.org/2019/03/19/colombian-police-destroy-protest-camp-in-cauca/; https://www.frontlinedefenders.org/en/statement-report/police-repression-indigenous-and-peasant-%E2%80%98mingas%E2%80%99-infringes-right-freedom.
[5] https://www.forestpeoples.org/en/lands-forests-territories/news-article/2019/afro-colombian-protesters-cauca-denounce-racist
[6] https://www.eltiempo.com/colombia/cali/hipotesis-de-muerte-de-ocho-indigenas-en-explosion-en-dagua-340732; https://www.las2orillas.co/los-muertos-de-la-minga-indigena/
[7] See e.g. https://nasaacin.org/policia-nacional-asesina-a-liberdador-de-madre-tierra-en-corinto-cauca/
[8] https://www.semana.com/nacion/articulo/tras-secuestro-de-un-uniformado-gobierno-suspende-dialogos-con-indigenas-en-el-cauca/606990

Disproportionate violence against human rights defenders or leaders from indigenous and Afro-descendant groups

18. There has been a worrying increase in violence towards social leaders and human rights defenders that has been particularly visible over the last two years, since the peace agreement was signed, including through physical attacks, killings (or attempts), threats, unwarranted and improper judicial actions, smear campaigns on social media, or other forms of attack or intimidation. Somos Defensores records that in 2018, 155 human rights defenders were killed – its highest ever recorded level – and more than 805 human rights defenders suffered aggression of some form.[9] By June of this year, the Washington Office on Latin America had documented more than 70 killings of leaders or members of vulnerable ethnic communities in Colombia.[10]

19. Indigenous and Afro-Colombian leaders and human rights defenders have been disproportionately targeted by these attacks and multiple forms of intimidation. The exact figures for killings are difficult to estimate with certainty. Figures from October 2019 collated by NGO INDEPAZ indicate that 157 indigenous leaders have been killed in Colombia since the Peace Agreements were signed in November 2016, of which 83 – more than half – have been killed since President Duque took power in August 2018.[11] The National Indigenous Organisation of Colombia (**ONIC**), in October 2019, put the figure even higher, at 120 indigenous leaders killed in the last year,[12] which has led the Organisation to assert that genocide is being committed.[13] This compares with estimates ranging from 289 to 702 social leaders (of all ethnicities) killed since 2016.[14] During a presentation in August 2018, the Special High Level Dialogue with Ethnic Peoples ("Instancia Especial de Alto Nivel con Pueblos Étnicos") stated that between 1 January 2016 and 26 July 2018, 330 killings of social leaders were recorded, of which 40% were indigenous or Afro-descendant peoples.

20. While there may be some doubt as to the exact numbers, these figures nonetheless indicate two points: first, given that indigenous peoples make up a mere 4.4% of the population, it is clear that on any figures they are significantly overrepresented in killings. Moreover, there are very real indications that intimidation and violence against leaders is escalating rapidly. An annex mentioning a few examples the killings and attacks suffered by submitting organisations, the communities they work with or by other organisations and social leaders in the same regions where they are located, between the period 2015 to present, is attached as annex 8.

21. Violence has also increased in the lead up to, and directly targeted candidates for, regional and municipal elections that took place in October 2019. In September 2019, the Defensoría del Pueblo (Ombudsman) published an assessment that 36% of municipalities had risks to elections

[9] Programa Somos Defensores (2018) *La Naranja mecánica: Informe Anual 2018*. Page 47. http://ail.ens.org.co/wp-content/uploads/sites/3/2019/04/informe-somos-defensores-La-Naranja-mecanica-2019.pdf
[10] https://www.wola.org/2019/06/peace-implementation-needed-address-colombias-security-crisis/
[11] https://www.rcnradio.com/colombia/en-el-gobierno-de-ivan-duque-han-asesinado-83-indigenas-indepaz
[12] https://www.onic.org.co/noticias/70-destacadas/3466-genocidio-indigena-no-para-asesinan-al-lider-indigena-embera-constantino-ramirez-en-quindio
[13] https://memoria.onic.org.co/index.php/entramado-i
[14] https://www.wola.org/2019/07/social-leaders-at-risk-colombians-will-mobilize-for-peace-protection/

because of the presence of armed actors.[15] There have already been instances of candidates being killed, notably the murder of Karina Garcia, mayoral candidate in Cauca, and 5 others including indigenous leader Lavedis Ramos, in early September. In the aftermath of her death, the Procurador announced publicly that 45 candidates across the country were in particular need of protection.[16] Notably, of the departments identified as highest risk - Cauca, Chocó, Nariño, Norte de Santander, Arauca, Bolívar and Antioquia – several (Cauca, Chocó, Nariño, Bolívar) are departments with high populations of indigenous and/or Afro-descendant communities.

22. Beyond the elections, threats to indigenous, Afro-descendant and other social leaders are very frequently associated with community defence of territories and their opposition to harmful business, infrastructure, agro-industrial or extractive projects. In this way, the vulnerability of indigenous and Afro-descendant leaders is also closely linked to the ineffective and ambivalent policy of the State towards protection of collective territories, described further below. Delays in administrative and judicial decision-making exacerbate these tensions and increase conflict and violence, as it feeds uncertainty, and frequently defensive actions, by other local actors (as illustrated by the example of the Sikuani in Mapiripan, referred to in annex 6). The link between indigenous claims for land rights and violence against indigenous leaders is widely recognised: figures from the Human Rights and Displacement Consultancy (La Consultoría para los Derechos Humanos y el Desplazamiento – CODHES) show an increase in acts of aggression against persons linked with the process of restitution of lands and territorial rights and land restitution processes in 2017, the year in which many of these processes entered advanced stages, specifically in the judicial stage, which has been identified as the moment of highest risk for claimants.[17]

23. The link between violence and seeking protection of territorial rights is also illustrated for example in Caldas, where it was reported in September of this year that there were 39 threats to leaders in Riosucio, the town adjoining Resguardo Cañamomo Lomaprieta (which is seeking to enforce a judicial decision claiming its rights), and which until recently was presided over by an indigenous mayor. Threats in this area were higher than any other area in Caldas.[18] Of 110 threats against leaders recorded in the department, 33 – almost a third – are against ethnic leaders. It is critical that the State immediately take stronger steps to promote and respect the effective protection and titling of collective territories of indigenous peoples and Afro-descendant populations, including restitution of land to victims of displacement during the armed conflict. In addition, it is indispensable that the State adopt punitive measures against those who have benefited unjustly from displacement and forced abandonment, the acquisition of lands by fraud and/or illegal land grabs, especially in the ancestral territories of indigenous

[15] http://www.defensoria.gov.co/es/nube/comunicados/8279/El-36-de-los-municipios-del-pa%C3%ADs-est%C3%A1-en-riesgo-electoral-por-presencia-de-grupos-armados-ilegales-elecciones-Defensor%C3%ADa-Alerta-temprena-carlos-negret-riesgo-electoral-democracia-octubre.htm

[16] https://www.semana.com/nacion/articulo/45-candidatos-y-lideres-sociales-que-estan-en-riesgo-requieren-atencion-prioritaria/630813

[17] CODHES (2018). *La Vida por la Tierra: (Des)protección en contextos de restitución de tierras y derechos territoriales.* Document 36. https://codhes.files.wordpress.com/2018/05/la-vida-por-la-tierra-final-ok-fb-mm.pdf

[18] https://www.lapatria.com/sucesos/su-riesgo-se-catalogo-como-extraordinario-25-lideres-amenazados-en-caldas-444129

and Afro-descendant peoples. This is necessary not only to protect collective rights to lands and territories per se, but also to reduce the incentives to intimidation and violence of indigenous and Afro-descendant communities. Unfortunately in the current environment these often have the (intended) effect of chilling, hindering or stopping resistance and the assertion of rights by indigenous and Afro-descendant peoples.

24. One additional critical action that the State should undertake is to take forward, as a matter of priority, prosecutions against the intellectual authors of killings and other acts of violence (and not merely against those who are contracted to commit the crimes). Whilst the levels of impunity even in relation to material authors of crimes remains concerningly high, there is almost universal impunity for those who instigate and pay for acts of violence against indigenous and Afro-descendant leaders. For example, although the killer of Fernando Salazar Calvo of the Resguardo Cañamomo Lomaprieta in 2015 has been prosecuted and convicted, no action has been taken to prosecute the intellectual author of this crime, more than 4 years after his death. In the case of the grenade attack against Afro-descendant leaders in the north of Cauca on 5 May this year, although alleged material perpetrators were captured, no progress has been made in the investigations against the masterminds behind the attack. In fact, emblematic murders of indigenous leaders that took place twenty or thirty years ago remain unpunished. This is the case of the Arhuaco leaders Luis Napoleón Torres, Hugues Chaparro and Ángel María Torres, who were tortured and murdered in 1990, allegedly by members of the army. [19] Likewise, for the disappearance and murder of Embera leader Kimy Pernía perpetrated in June 2001, there are no convictions against the intellectual authors 18 years after the events.[20] This approach means there is no incentive whatsoever for those instigating such violent attacks to cease resorting to these means. It is critical that not only the hired guns, but also those who hire them, are brought to justice.

25. In this context, the measures provided by the National Protection Unit (**UNP**) to safeguard the lives of at-risk leaders remain culturally inappropriate and weak. There have been numerous reports[21] of the UNP being infiltrated by outlawed groups, and some of the cars allocated to at-risk leaders have reportedly been used by these infiltrators to engage in illicit activities while purportedly fulfilling their official mandate of protecting leaders. The government of the day hires its own procurement agents or contractors in charge of the car fleets for at-risk leaders. Since President Duque came to power and installed his agents, at-risk leaders have been provided with sub-par vehicles for their level of risk. Cars have been issued which can only go at 80 kilometres an hour (despite the very real possibility of being in a situation where drivers may have to flee a situation of risk), or that are not apt for rural roads. Another issue is the conditions of labour for bodyguards protecting at-risk leaders, and the delay in bureaucratic procedures enabling them to travel with at-risk leaders at short notice. When the assigned bodyguards have days of rest, new bodyguards are assigned to the at-risk leader, leaving that leader exposed and feeling insecure in the face of a new bodyguard who is unknown, and could potentially present more of a danger than provide security. In short, more needs to be done to align the provision

[19] https://elpilon.com.co/27-anos-despues-masacre-lideres-arhuacos-sigue-la-impunidad/
[20] https://www.justiciaypazcolombia.com/kimy-pernia/
[21] For example, https://www.rcnradio.com/judicial/desarticulan-red-que-transportaba-droga-en-vehiculos-oficiales.

and administration of security measures now managed by the UNP with indigenous and Afro-descendant governance and institutions, and particularly their un-armed Indigenous and Afro-Descendant guards. In addition, more official recognition needs to be given to the Guardia Cimarrona, the Black autonomous, unarmed guard, so that it has the same level of state recognition as the Indigenous Guard. Currently, the Guardia Cimarrona is recognized through the ethnic chapter of the peace accords. However, this is not as strong as the constitutional recognition enjoyed by the Indigenous Guard[22], a discrimination that should be addressed by the State. It is important that the strengthening of the Guards is accompanied by the strengthening of the ethnic minorities' own justice systems.

Regulation of Law 70 of 1993

26. The State report also makes note of progress in the regulation of Law 70 of 1993. However, as noted in the following section, there continue to be acute problems with implementation of this law, and its application, where it does occur, is failing to correspond to Colombia's human rights obligations in certain respects. This is explained further in paras 46-53 of this report.

Ethnic Safeguard Plans

27. The State report comments on progress made in relation to safeguarding plans for indigenous and Afro-descendant groups at particular risk, which the State was ordered to implement under Auto 004 of 2009 (in relation to indigenous groups) and Auto 005 of 2009 (in relation to Afro-descendant groups, and not mentioned in the report). Although the State report claims progress is being made, it is astounding that 10 years after the Auto was issued, the State has achieved so little in respect of an order that required urgent protection for indigenous peoples at risk of extermination. Of 39 indigenous safeguard plans that were ordered, it appears from the report that no more than 5 are progressing and none is yet completed; this demonstrates a continued lack of prioritisation and investment by the State in these reports. The case of the Awa people is one of the five safeguard plans in which the State reports progress (paragraphs 68 and 69). However, these advances are clearly insufficient to meet the objective of these plans, namely, to safeguard peoples from physical and cultural extermination, given that, in addition to the frequent threats, between 2018 and July 2019 28 members of this ethnic group have been murdered,[23] and between 2016 and June 2019 29 Awa authorities were killed. [24] These figures show that the State has not taken sufficient measures to prevent the extermination of the Awa people. The progress under Auto 005 is equally poor.

Protection of indigenous peoples in voluntary isolation or initial contact

28. As set out in Annex 3 which sets out experiences of several indigenous peoples in Caqueta and Amazonas, there is currently an indigenous group in voluntary isolation in Caqueta which is at

[22] See articles 7, 246, and 330 of Colombia's Constitution.
[23] https://sostenibilidad.semana.com/medio-ambiente/articulo/indigenas-de-la-comunidad-awa-estan-siendo-asesinados/45097; https://www.eltiempo.com/colombia/otras-ciudades/preocupacion-en-narino-por-asesinato-de-indigenas-awa-301062; https://www.onic.org.co/comunicados-onic/2694-onic-condena-masacre-contra-pueblo-indigena-awa-en-narino-organizado-en-camawari
[24] https://www.elespectador.com/colombia2020/territorio/lideres-indigenas-awa-la-sentencia-de-muerte-que-se-debe-impedir-articulo-865435

significant risk because of the rapidly encroaching agricultural / deforestation frontier. Their lands were included in the request for titling of the Resguardo Indígena Puerto Sábalo-Los Monos made by the neighbouring indigenous residents who hold historical and collective attachment to this area, but the extended Resguardo area that was eventually titled did not include the area in which the indigenous group in voluntary isolation live. As a result their lands remain without protection and both they and their sites of cultural importance remain at serious risk.

29. ACIBAC is investigating the possibility of seeking protection for these lands under Decreto 2333 of 2014, but is concerned that the current significant delays in protection which have characterised the implementation of this Decree so far (see further below), coupled with increasing expansion of the illegal logging and agricultural frontier will mean that these lands will be encroached upon before any protection is in place, with potentially devastating consequences for the indigenous group in voluntary isolation, and in violation of the territorial rights of the Nɨpodɨmakɨ people. According to the Territorial Rights Observatory of the STI-CNTI, despite the adoption of decree 1232 of 2018 for the protection of indigenous peoples in voluntary isolation, there is continued evidence of the advance of extractive interests in nearby territories or borders where these communities live.

Ensuring prior consultation and consent for ethnic groups

30. Although it is positive that there is some acknowledgement of the obligation of prior consultation in Colombia, both through law and through the development of substantial jurisprudence in the Colombian Constitutional Court, there remain significant issues with its implementation. Some of the key issues that arise include:
    - The requirements for consulta previa as set out in existing laws and guidelines fall short of the principles within international law. Most notably, the Government does not recognise in practice the obligation to obtain consent from indigenous peoples or Afro-descendant groups, even in circumstances where a proposal is large-scale and may affect their survival as a people.
    - The prior consultation procedure is hindered by requirements such as the requirement for the State to certify the presence of affected rights holders in the project's area of influence, which in practice is often flawed and makes affected populations invisible and unprotected by law, especially those without title to their ancestral territories.
    - Consultations often do not take place at the earliest stage of a proposal, as required, and sometimes happen only post-facto. They do not take place prior to the issue of administrative acts e.g. that grant concessions, only afterwards, violating provisions of ILO Convention 169 which Colombia has ratified and enshrined in law.
    - The scope of activities for which consultations are considered to be required is less than what it should be. For example, the position of the National Mining Agency is that consultation is required only for a mining exploitation permit, not for an exploration permit (a position which was successfully challenged in the Constitutional Court in decision T530/2016, but which has not been systematically implemented). A second example relates to forest and conservation policies (including those related to biodiversity and climate change), particularly in the Amazonian region. Although these areas of the country have a

significant indigenous population, and much of the land is titled within indigenous resguardos, it is regularly the case that the Government develops and announces policy initiatives affecting this region without adequate participation of indigenous peoples whose territories will be affected. This is described further in annex 3.

- The severe and implacable issues with lack of titling – and provisional protection – of many indigenous and Afro-descendant collective territories across the country, as well as the lack of inter-institutional coordination on collective territories under claim or with the potential to be claimed, means that the need for consultation is frequently missed by government departments and companies, who simply consult the cadastral register to determine whether consultation is required.
- "Official" consultations have regularly been undertaken in zones with high levels of violence and intimidation against community members (including in some cases where State officials have not been able to travel for security reasons). There are serious questions about whether consultations in these circumstances can be considered free, and whether any outcome can be considered legitimate.[25]
- Various intermediaries have started negotiating contracts with indigenous peoples for "payment for environmental services". However, often these contracts are for long periods (50 or 100 years), and are entered into by indigenous groups without fully understanding their consequences and impacts (which often limit their own self-government long into the future), and with most of the benefits being captured by the intermediaries because of an incomplete understanding of the transactions.
- State agents have questioned the validity of indigenous legislation creating protocols for free, prior and informed consent, specifically in the case of the Resguardo Cañamomo Lomaprieta. This was evident in a document of the Ministry of the Interior that expressed the intention to request the Resguardo to annul its internal free, prior and informed consent protocol for "lack of competence". A letter was never sent to the indigenous Cabildo, although a copy of the decision was leaked to the indigenous authorities. This discriminatory attitude goes against not only ICERD, but it shows lack of political will to uphold the Colombian Constitution's provisions for indigenous law-making through the recognition of the Special Indigenous Jurisdiction; and it ignores the Constitutional Court's T-530/16 Decision which recognized the Resguardo's own free, prior and informed consent law as the procedure that should be adhered to in any prior consultation processes affecting the Resguardo's territory and people.[26]
- Currently, the national government is adopting measures within the framework of the National Development Plan aimed at modifying the process of prior consultation by reducing the rights of indigenous communities and, at the same time, maintaining the interest in issuing a regressive and favourable consultation rule for extractive and agro-industrial activities.
- The State takes the approach that consultation and consent does not amount to a veto right for mega projects. This causes discrimination against indigenous peoples, on whose lands

[25] V Weitzner (2019) "Between panic and hope: Indigenous peoples, gold, violence(s) and FPIC in Colombia, through the lens of time" *Journal of legal pluralism and unofficial law*, vol 51, pp 3-28. https://www.tandfonline.com/doi/abs/10.1080/07329113.2019.1573489

[26] This is stated in the ninth order emitted by the Constitutional Court in its Decision T-530/16.

such projects are likely to be targeted, and who are repeatedly labelled by the State as obstacles to development, contrary to the recommendations of the Committee to Colombia in 2015 (paragraphs 9, 10, 21 and 22c).

C. Guarantee to all of equality before the law, without distinction on the grounds of race, colour, national origin or ethnicity: Implementation of article 5

31. In this section we respond in detail to the issues set out under heading 3, "Territorial rights and land restitution", in the State's report.

Poor implementation under laws protecting territorial rights of ethnic groups

32. Although on paper Colombia appears to have significant legislative protection for the territorial rights of indigenous peoples and Afro-descendant groups, there are significant gaps between the provisions on paper and the practice on the ground. This and the following sections look at various laws in which either the legal framework and/or its implementation fall short.

33. The State report cites Decree 2333 of 2014 as an example of territorial protection. This decree is intended to provide interim protection to indigenous peoples' lands and territories which remain untitled, while titling processes are underway. Such interim protection is critical given the long delays regularly suffered by indigenous peoples in having their lands titled (see further below).

34. Decree 2333 of 2014 creates a measure for the protection of provisional territories. That is to say, the objective is that while the long process of titling or extension of resguardos is taking place, the ancestral territories that are intended to be titled can be protected in some way. This avoids licences being granted, the lands being categorised as "vacant" or empty - and therefore adjudicated in favour of third parties. The purpose of this rule then requires that protection be given quickly to prevent future impacts or the generation of new conflicts over these lands. However, the delay in the 2333 proceedings removes the character of a precautionary measure, which by definition is urgent and must therefore be expeditious. In practice, what happens is that this process begins and only once it ends does the titling process continue, lengthening the already delayed process of legal recognition of indigenous territories.

35. According to enquiries made by the Indigenous Secretariat of the National Commission of Indigenous Territories (STI-CNTI), between 2014 and the present, 5 years after the decree came into force and despite its focus on providing urgent interim protection to indigenous peoples' territories, not a single protective measure had been issued, despite more than 121 requests having been received. According to the STI-CNTI, there are a number of reasons for this, including that: the ANT had by 2018 assessed only 35 of the cases as "viable"; it has introduced a number of additional procedural steps that were not required by the decree (and which have had the effect of delaying or stymieing the process); it includes additional factors in deciding priority of cases – such as considerations vis-à-vis third parties – that are not specified in the decree; and the State has not assigned sufficient financial and human resources (no budget at all

was allocated to its implementation until 2017). These and other procedural weaknesses have made it impossible to advance any cases.[27]

36. Furthermore, the Territorial Rights Observatory of STI-CNTI has noted that 17% of the requests for protection – as at May 2018 – were made by the National Mining Agency (ANM). These requests have been made primarily in Putumayo (47%), where there is significant exploitation of hydrocarbons, including in indigenous resguardos; Cauca (12%), Nariño (12%), Risaralda (12%) and others in Guainía, Tolima and Sucre. The basis of these requests seems to be to permit the ANM to advance in the identification of indigenous mining zones. As such, the ANM is improperly using the process of protection under Decree 2333 of 2014 to advance the possible expansion of delimitation to potential mining areas. The interest behind these requests seems to be to consolidate and widen extractives policy, rather than to guarantee the territorial rights of indigenous peoples, since these requests are not necessarily made with the agreement of the affected peoples. The ANM requests the application of Decree 2333 because, once a file is opened a topographic survey is undertaken, which would permit the ANM to identify possible indigenous mining areas and potentially expedite the process of delimitation – even if in practice protection resolutions have not been expedited. In this way, protection mechanisms designed to offer legal security to indigenous territories are being used to advance extractives policy.

37. Decree 2333 of 2014 is only one of many pieces of legislation intended to protect the rights of ethnic minorities that remains substantially non-implemented. Further examples include the extremely weak lack of implementation of Law 70 of 1993 in areas outside of the Pacific Basin and stagnation in titling of Afro-Colombian lands (see section below);[28] the extensive delays in titling of Resguardos under Decree 2164 of 1995;[29] and the ongoing issues of non-implementation of Constitutional Court rulings in respect of ethnic territories (see further below).

Problems in titling of indigenous resguardos

38. In relation to the titling of indigenous resguardos, information provided by the STI-CNTI indicates that as at 31 December 2018, there were 932 requests for delimitation and titling of indigenous territories. Of these, the majority have been seeking titling for between 10 and 20 years, [30] unjustifiably lengthening procedures that should not last more than one year, in accordance with the internal planning scheme of the ANT. [31] The scale in number and time of these requests compares with State report, which asserts that only 32 agreements to establish or expand

[27] Information communicated to the Submitting Parties by the Indigenous Secretariat of the National Commission of Indigenous Lands.
[28] Johana Herrera Arango (2017). La tenencia de tierras colectivas en Colombia : Datos y tendencias. CIFOR infobrief, https://www.cifor.org/library/6704/. Page 5.
[29] Johana Herrera Arango (2017). La tenencia de tierras colectivas en Colombia : Datos y tendencias. CIFOR infobrief, https://www.cifor.org/library/6704/. Page 2.
[30] https://www.onic.org.co/comunicados-onic/2491-pronunciamiento-de-la-instancia-especial-de-alto-nivel-con-pueblos-etnicos
[31] Una vez programada y realizada la visita técnica, la ANT tiene 30 días para rendición del Estudio, 30 días más tiene el Ministerio del Interior para dar su concepto y otros 30 días para que el Consejo Directivo de la ANT expida la resolución.

resguardos have been signed in 5 years[32] – clearly an inadequate response faced with the enormous number of pending requests from indigenous peoples. The STI-CNTI has calculated that, at the current rate of resolution of requests and in view of the limited budget allocated, it would take another 147 years for the current requests to be dealt with.[33]

39. One reason for the significant slowdown and delays in titling appears to be that there are significant natural and other resources in claimed territories, and as such their titling could hinder planned or proposed megaprojects. Added to this is the lack of political will indicated by public statements made by several members of the Centro Democrático political party - currently in government - in which they state that indigenous peoples have too many lands that are not productive and should therefore no longer be titled.[34]

40. An extreme example of delays in titling is the case of the Resguardo Embera de Dochama in Córdoba. According to government files, the indigenous peoples of this territory first requested titling of their territory in 1978, and have had a formal process underway under the existing titling laws for more than 20 years.[35] The territory has still not been titled. Furthermore, there are recent serious attempts to forcibly displace both indigenous and local communities from the area through serious violence, which shows the ongoing instability caused by the uncertain situation.

41. These processes are affected by the ANT's adoption of subjective (and restrictive) interpretations of the requirements for titling of indigenous territories, caused in part by ambiguity and/or lack of detail contained in the procedure. For example, Decree 2164 of 1995 (and Law 160 of 1994, which authorises it), refer to several stages in the process of titling of indigenous Resguardos, including "constitution", "restructuring", "extension" and "regularisation of titles" (saneamiento).[36] However, none of these stages is clearly defined in the decree. This leaves the ANT to largely define what these processes involve, with significant risk (and reality) that they depart from both the objectives of the Act and international law obligations Colombia. For example, as described in Annex 3, in the recent titling of the Resguardo Puerto Sábalo-Los Monos in Caquetá, part of the claimed polygon was excluded from the extension of the Resguardo as finally titled, despite the fact that it constituted part of the traditional territory of the indigenous peoples in question. No reason was given by the State for this, and the Resguardo is now forced to apply for a further extension of the Resguardo to secure the excluded area – with all the delays that will likely entail – to incorporate this part of

[32] State Report paragraph 140.
[33] http://cntindigena.org/segunda-sesion-de-la-comision-nacional-de-territorios-indigenas-cnti-2019/
[34] https://www.rcnradio.com/politica/pelea-en-el-senado-por-las-protestas-indigenas-en-el-cauca; https://www.elespectador.com/colombia2020/opinion/la-minga-de-los-latifundistas-intocables-columna-858794?fbclid=IwAR0desq5ntK17D9wMbrMb9-dBJsmnVHqKNJgaIh7VMEDtbov0Aw08L_SLnM; https://www.elespectador.com/opinion/ni-desposeidos-ni-expertos-en-pirotecnia-columna-847726
[35] https://www.semana.com/nacion/articulo/indigenas-embera-katio-piden-seguridad-por-persecucion-paramilitar-en-cordoba/627048; http://comitedesolidaridad.com/es/content/nueva-crisis-humanitaria-de-comunidades-ind%C3%ADgenas-y-campesinas-en-san-jos%C3%A9-de-ur%C3%A9
[36] This last process generally refers to the compulsory purchase of any formal titles within the territory designated for the Resguardo, and compensation to any informal landholders (in principle it could also refer to compensation of the Resguardo for lost lands).

their territory (which is critical, not least because it contains culturally important sites and shelters indigenous peoples in voluntary isolation). Similarly, in practice, "restructuring" seems to have been taken to involve the reduction of ancestral territories to take into account private property that has encroached upon it.

42. Similar issues have arisen in respect of Resguardos of colonial or Republican origin – i.e. those which were the subject of previous land grants in the colonial or early Republican era, but whose titles are not (and were usually never) recorded in public land registers. The titling of these Resguardos is also regulated by Law 160 of 1994, but has for many years not been implemented because of the lack of an implementing decree. Once again, the stages for titling of a constitutional Resguardo involve constitution, restructuring and regularisation of titles, with all the same ambiguities as for titling of other Resguardos. In the case of Resguardos of colonial or Republican origin, however, there is a prior stage called "clarification". This stage involves clarifying the "legal validity" (vigencia legal) of pre-existing colonial and republican titles that have not been registered. However, the provision remains extremely ambiguous, as the grounds on which a colonial title might be considered are not specified. Once again, there is a risk that assessment of this validity may relate to whether subsequent, inconsistent private property titles have encroached on a Resguardo's pre-existing title – in violation of international obligations to recognise indigenous territories (and ignoring that the Resguardo's pre-existing collective title is, equally, a pre-existing private right which has been impaired by subsequent encroachment). Similarly, restructuring in the context of colonial Resguardos has generally been understood to involve the reduction of territorial size vis-à-vis the original colonial grant, to remove areas now in the hands of private property holders. However, these assessments are not made according to the balancing process required by international law in the case of conflicts of title between indigenous peoples and other (good faith) property holders (as described in the section on restitution below). There are valid questions about whether Law 160 of 1994 – especially if and when it is interpreted in a restrictive manner – complies with Colombia's obligations under international law to title indigenous territories. There are currently 85 applications for the titling of resguardos of colonial origin before the ANT, but none has been resolved.

43. In recent months, the Government has been consulting with the Permanent Table for Consultation with Indigenous Organizations and Peoples (Mesa Permanente de concertación con los pueblos y organizaciones indígenas), in coordination with the National Commission on Indigenous Territories, over a new draft decree to implement the titling procedure for Resguardos of colonial and republican origin. Unfortunately, the current draft largely reiterates the same loopholes as the existing Law 160 of 1994. It does not provide a clear definition of the circumstances in which a pre-existing land grant to indigenous peoples should be considered "invalid" – making it impossible to assess whether this provision will be applied in a manner which is consistent with international law. The criteria to be used by the ANT in determining how to resolve potential conflicts of title are not spelled out, again making it impossible to assess whether these are being applied in accordance with international law. Although time limits are proposed for action by the ANT, these remain without enforceability – which, in a context in which administrative delay represents a serious problem, shows an unwillingness to tackle this issue, despite clear evidence that existing processes are not working. The State should consider,

for example, adopting deeming provisions (whereby if action is not taken by a certain time, a request is deemed to be accepted), or otherwise provisions penalising the ANT and/or enabling a Court to intervene directly (including to register titles) where there is no action within a specified time.

44. Another issue that has arisen in respect of titling of indigenous territories is the manner in which guidelines and directives on the application of laws by the ANT that affect indigenous peoples' claims have been adopted without any consultation – this was the case for example in respect of Directive No 1 of August 2017, which instructed employees of the ANT to cease all purchases of farms where there was a suspicion that the land in question was private property under occupation by those who were not legally entitled to it.[37] In practice, this has meant that land titling processes may be halted where indigenous peoples are in occupation of their ancestral or traditional territories, where those claims overlap with private property rights granted subsequently, whether lawfully or unlawfully.

45. Beyond these issues are wider institutional issues, such as the loss of files and the lack of proactive follow up by the ANT. One of the main causes that slowed down multiple agrarian processes was the loss of files held by INCODER, an entity that was liquidated in December 2015, and that was in charge of many of the processes that after the liquidation were assigned to the ANT. In multiple cases, procedures that have been commenced languish without communication from the ANT, with actions only being taken when communities follow up. Frequently such follow up is met with the response that the ANT has lost the file. However, instead of the ANT taking responsibility for re-establishing (or locating) the file in these cases, it often requires claimants to reinstate the file. Failure to do so will simply cause further delay, and so claimants see themselves in effect forced to do so.

Inadequate legal framework for protecting Afro-Colombians under Law 70 of 1993

46. In its report at paragraph 50ff, the State notes its progress on the "regulation" of Law 70 of 1993. However, these comments refer to formalistic progress; the report neglects to mention the significantly more problematic situation of implementation, which renders this progress largely meaningless.

47. The process of titling Afro-descendant lands in Colombia has largely stagnated in the last 15 years, and has been particularly problematic in the Inter-Andean and Caribbean zones (the two main areas outside of the Pacific Basin where black communities live) – with the result that very few (and very small) Afro-Colombian collective territories have been recognised and titled outside of the Pacific Basin area. [38] The reasons for this are various. They in part relate to historical vagaries (the fact that Afro-descendant groups in the Pacific were the most strongly

[37] https://enlineapopayan.com/no-vamos-a-comprar-un-solo-metro-de-tierra-de-fincas-invadidas-u-hostigadas-miguel-samper/

[38] According to a 2017 paper analysing data from INCODER between 2006 and 2015, over 95% of recognised territories of black communities were in the Pacific Basin; a mere 0.6% were in the Caribbean, and fewer than 5% in the Andean region. C. G. Lovera et al (2017). *Derechos territoriales de las Comunidades Negras: Sistema de Información sobre la vulnerabilidad de los territorios sin titulación colectiva.* OTEC, RRI, Universidad Javeriana and PCN.

organised in influencing the legislation) which translated to unequal regional focus in the legislation.[39] Although Law 70 (and its implementing decree, decree 1745 of 1995) permit the recognition of black communities' collective lands on "barren, rural and riparian" lands outside the Pacific Basin that have been "occupied" by black communities and where they engage in "traditional practices of production", their applicability to regions outside the Pacific Basin has been restricted by government authorities.[40]

48. One key way in which this has occurred is through the adoption of extremely restrictive interpretations of the legislation, in order to limit its application as much as possible, particularly in the more densely populated parts of the country. For example, in Caribbean departments, the administration previously took the position that reserved lands ("baldios reservados") could not be adjudicated in favour of black communities. However, baldios reservados frequently included beach and riparian areas that traditionally formed part of black communities' communal areas in the Caribbean (not least because they had more limited access to agricultural areas). This position was challenged before the Constitutional Court in Judgment T-680/2012, and was overturned, with the Court ordering the collective titling of the reserved "baldíos".

49. A second interpretation which has been widely adopted outside the Pacific Basin is that the lands to which black communities are entitled as a collective property excludes ab initio any areas in which there are existing private property titles. This interpretation has recently been explicitly adopted by the ANT in Bolivar in respect of the request for titling by the B20 community council of the Island of Barú.[41] However, this is inconsistent with international law principles, which indicates that indigenous peoples and analogous Afro-descendant groups are entitled to the collective territories which they have traditionally occupied and inhabited – a pre-existing property right which must be acknowledged even where third party occupiers have subsequently obtained legal rights to the same area. Where such a conflict of title exists, the State is obliged to balance the interests of the two titles in all the circumstances – with a preference for restitution to the ethnic group, unless for justifiable reasons this is not possible – and determine which title will prevail, while providing compensation to the party whose title is revoked. Instead, the process adopted by the Colombian government automatically deprives

[39] See article 1 of the Law, which provides: "The object of the present Law is to recognize the right of the Black Communities that have been living on barren lands in rural areas along the rivers of the Pacific Basin, in accordance with their traditional production practices, to their collective property as specified and instructed in the articles that follow. Similarly, the purpose of the Law is to establish mechanisms for protecting the cultural identity and rights of the Black Communities of Colombia as an ethnic group and to foster their economic and social development, in order to guarantee that these communities have real equal opportunities before the rest of the Colombian society. In Accordance with what has been stipulated in paragraph 1 Article 55 of the Political Constitution, this Law will also apply in the barren, rural, and riparian zones that have been occupied by Black Communities that have traditional practices of production in other areas of the country and abide by the requirements established in this Law."

[40] See further UNDP et al (2014). *Territorios ancestrales de las comunidades negras de la región caribe: elementos para el reconocimiento de derechos territoriales en las sabanas y los playones comunales de Valledupar*.

[41] This decision was made in 2 April 2019 (by Auto 383 of 2019), following a request for titling made by the community council in 2017. Having originally accepted the request (by an administrative act (auto) of 13 December 2018), in April 2019 the ANT revoked the acceptance on the basis that there were no "baldios" (empty lands) on the island. The decision is now being challenged by the community council through a constitutional writ of protection (tutela) procedure.

Afro-descendant groups of the chance to reclaim lands of which they have been dispossessed. This restrictive interpretation of the norm is recent, since it was not applied in the collective titling of the Pacific basins, specifically in that of the Rio Naya Community Council.

50. Not only is this approach not consistent with international law, it also neither conforms with national agrarian legislation nor accords with the reality on the ground experienced by many Afro-Colombian communities. Significant numbers of communities were dispossessed of lands during the armed conflict – frequently through intimidation and violence – in order later to establish private property titles on these lands. Moreover, the process for claims of Afro-descendant lands – which, as described below, has been plagued with delays – does not include any interim protective measures which prevent third parties from obtaining titles to lands under claim. In these circumstances, a claim could in principle be stifled by the subsequent adjudication of a private property title in the area claimed. Given the advance of agricultural and other development projects in various areas of the Caribbean or the Inter-Andean valleys, this is not an insignificant concern.

51. Requests for titling from black communities have continued to stagnate across the country in the last five years. Information obtained from the ANT earlier this year indicated that in 3 departments of the Caribbean – La Guajira, Magdalena and Cesar, only 7 collective titles have been granted (mostly in La Guajira); a further 53 requests are pending, of which 22 were made more than 5 years ago (and some more than 10), unjustified delays in a process that, by law, should take no more than a year. A report published in 2017 analysed existing territorial requests by community councils, and found that 34 of 188 had been pending for more than 10 years.[42] This is consistent with the experience of the community councils of Eladio Ariza and Santo Madera in the department of Bolivar (described further in annex 4). In respect of Santo Madero, a formal request was lodged with (then) INCODER in 2010, and the required inspection visit was carried out by INCODER (only) in 2013. Since that time, INCODER (now the ANT) has taken no further steps to advance the claim. In the meantime, various encroachments on the claimed territories have occurred (including those which may have legal sanction), which create significant risks that the community may not receive the full extent of its territory given the weak approach to restitution in practice (see further below). The community of Eladio Ariza equally filed its request in 2010; equally did not obtain an inspection visit until 2013; and equally there have been no further actions taken by INCODER/the ANT since that time.

52. These experiences are not limited to the Caribbean. In northern Cauca (described in annex 2), not a single collective title has been recognised and titled in any of the 45 community councils in northern Cauca. Territories have only received (a more limited) protection – which has not extended to delimitation and titling – through the use of Court mechanisms (specifically tutelas, a writ of constitutional protection, faced with threats to territorial rights), or have been purchased and given to communities by the State after protests, but these fall far short of the territorial protection to which black communities in these areas should be entitled.

[42] A further 83 had no information as to the date commenced, so the number of 10 years may well be higher. See C. G. Lovera et al (2017). *Derechos territoriales de las Comunidades Negras: Sistema de Información sobre la vulnerabilidad de los territorios sin titulación colectiva.* OTEC, RRI, Universidad Javeriana and PCN. Page 32.

53. Despite the clear evidence of weak implementation of Law 70 of 1993 – and therefore the ineffectiveness of this legislation in protecting the collective territorial rights of Afro-descendant communities - the government has not taken any serious steps to address it. The State report comments on the "regulation" of the Law, but fails to demonstrate any understanding of or response to the much more significant problem of implementation.

Procedures for land restitution under Decrees 4633 and 4635 of 2011

54. In addition to requests for titling directly under Law 70 of 1993, black communities who have been displaced during and because of the armed conflict (since 1991), can also request restitution of territories and other reparations under Decree Law 4635 of 2011, the parallel legislation to Law 1448 of 2011 dealing specifically with reparations to Afro-Colombian communities. Indigenous communities may make requests under Decree 4633 of 2011, which includes similar provisions for indigenous communities. However, the effectiveness of these norms has been limited once again by restrictive interpretations (often under political pressure) of the mandate of the Land Restitution Unit (**URT**), the entity in charge of these processes in their administrative stage.

55. One example relates to the relationship between collective territories and mining permits issued by the ANM. In two early decisions of judges acting under decrees 4633 and 4635 of 2011 handed down in 2014, the Court ordered the suspension of mining titles on the lands of two groups – an indigenous group in Chocó, and an Afro-descendant group in Cauca - on the basis that they had been granted during the armed conflict when the communities were displaced, which had prevented their participation in free, prior and informed consultations as required. Subsequent to these decisions, in a move that was broadly understood to be aimed at restricting further decisions that could affect mining titles, in 2015 the URT issued a circular creating an oversight body within the URT that would provide guidance to the Ethnic Issues section in relation to any claim in which mining titles were involved.[43] There have been ongoing tensions between the land restitution process envisaged under Law 1448 and its associated decrees, and economic development plans of the Government (and private actors).[44] According to STI-CNTI, the areas where there are most applications for protection of indigenous territories coincide with those where the most megaproject licenses have been requested, and where the most homicides of indigenous leaders have occurred.

56. Beyond these issues of interpretation, procedures under these decree-laws have equally been subject to significant delays (see for example the instances described in Annex 4 in relation to claims made by Afro-Colombian communities in Montes de Maria, as well as the situation of the Sikuani indigenous people in Meta, described in annex 6). A recently published monitoring

[43] https://verdadabierta.com/las-contradicciones-de-santos-con-la-restitucion/

[44] For further discussion of some of these complexities, see C Ramirez (2018). *Balance of the Application of the Land Restitution Law in Collective Territories: the Pacific Region in Colombia*. Cienc. politi., Volumen 13, Número 26, p. 183-222. https://revistas.unal.edu.co/index.php/cienciapol/article/view/72309/69913; Comisión de Seguimiento y Monitoreo a la Implementación del Decreto Ley 4633 de 2011 (2019). *Séptimo informe de seguimiento y monitoreo a la implementación del decreto ley 4633 de 2011 para pueblos y comunidades indígenas víctimas del conflicto armado.*

report on Decree 4333 of 2011 noted that the average time for the *judicial stage* of the land restitution process was 25 months (to which is added prior time for the administrative stage).[45] One reason for this is significant under-resourcing by the Government: according to a monitoring report commissioned to assess the implementation of Law 1448, the funds necessary to implement the law in the period 2018 to 2021 was some four times the government's estimation (and allocation).[46] A similar monitoring report on the implementation of Decree 4633, published in 2019, noted the apparent reduction of 25% in funds dedicated to indigenous peoples under this decree.[47] The delays are particularly concerning given the time limit proposed under the initial law (of 10 years, i.e. until 2021), by which time claims must be finalised. Positively, President Duque has recently announced he will seek an extension of a further 10 years to this law to allow its implementation, although various members of parliament have indicated that they will oppose this.[48] However, given that fewer than 15% of the registered victims under Law 1448 of 2011 have currently been compensated – and only 16 judgments for restitution of territories to communities (14 for indigenous communities and 2 for black communities) have been handed down to date, and a further 46 are still in the administrative stage[49] - it is clear that it is not only additional time that will be needed – budgets and processes will also need to be adjusted.

57. A final key issue that arises with the restitution process particularly for indigenous and Afro-descendant communities claiming restitution of collective lands lies in the broader issue of non-implementation of Court decisions in favour of ethnic groups. The claims process under Decrees 4635 and 4633 involves, as its final step, a Court decision which orders the titling of a collective territory in accordance with the resolution itself. However, this decision does not itself grant a title, and neither the Court, nor the URT, can provide that title directly. Rather the titling process is handled by the ANT. However, as mentioned in the next section, there are serious and extremely concerning delays on the part of the ANT in relation to implementing Court decisions that require titling of ethnic groups' collective territories, which is affecting the efficacity of processes under these decrees. In 2017, a media report noted that, despite 6 judgments having been handed down in favour of restitution between 2014 and 2017, no restitution had yet taken place.[50] This issue continued to be a major concern in 2019, leading to the Monitoring

[45] Comisión de Seguimiento y Monitoreo a la Implementación del Decreto Ley 4633 de 2011 (2019). *Séptimo informe de seguimiento y monitoreo a la implementación del decreto ley 4633 de 2011 para pueblos y comunidades indígenas víctimas del conflicto armado.* Page 76.
[46] Follow-up and Monitoring Commission for the Implementation of Law 1448 of 2011 "Victims and Land Restitution Law", Quinto Informe de Seguimiento al Congreso de la República2017-2018, Page 27. https://www.contraloria.gov.co/documents/20181/996701/2018-09-20+Informe+ejecutivo+ley+victimas.pdf/60601b79-583f-4b35-a978-57023aa8eb46?version=1.0
[47] Comisión de Seguimiento y Monitoreo a la Implementación del Decreto Ley 4633 de 2011 (2019). *Séptimo informe de seguimiento y monitoreo a la implementación del decreto ley 4633 de 2011 para pueblos y comunidades indígenas víctimas del conflicto armado.* Page 12.
[48] https://www.rcnradio.com/colombia/duque-prorrogo-la-ley-de-victimas; https://www.elespectador.com/noticias/politica/duque-anuncia-proyecto-para-prorrogar-ley-de-victimas-durante-10-anos-mas-articulo-885618
[49] Comisión de Seguimiento y Monitoreo a la Implementación del Decreto Ley 4633 de 2011 (2019). *Séptimo informe de seguimiento y monitoreo a la implementación del decreto ley 4633 de 2011 para pueblos y comunidades indígenas víctimas del conflicto armado.* Pages 74 and 76.
[50] https://verdadabierta.com/en-rojo-saldo-del-gobierno-nacional-por-reparacion-de-indigenas-y-afros/

Committee analysing the implementation of Decreto Law 4633, in its 2019 report, to call on "the different State entities in the national and territorial sphere to comply decidedly with the orders issues in the judgments for restitution in the framework of Law 4633 of 2011".[51]

Lack of clear norms and non-compliant procedures for restitution of lands from which IP or Afro groups have been dispossessed

58. One of the significant continuing normative gaps relates to the codification of the process of resolving conflicts of titles (and determining which title takes precedence), where ancestral indigenous or Afro-descendant collective territories overlap with formal titles registered to third parties. As described above, there is a lack of clarity in existing titling laws about this process and how to deal with them, which has led to ambiguity and uncertainty, and has permitted extremely restrictive interpretations. In the case of Afro-descendant communities, this is reflected in the position that collective titles cannot, under Law 70 of 1993, be granted on lands which are not "baldios" (unowned lands) – i.e. that all private property is *a priori* excluded from consideration. In the case of indigenous communities, it is reflected in the position that "restructuring" under Law 160 of 1994 primarily involves excluding from indigenous territories those lands which are held under private property.

59. The situation is different for both Afro-descendant and indigenous communities who seek restitution of lands under Decree-Laws 4635 and 4633 of 2011 respectively, as this process specifically anticipates return of lands from which communities have been forcibly displaced during the armed conflict (although it also has certain restrictions on when such restitution can take place). However, even allowing for this possibility, these two decree-laws do not apply to the full gamut of situations in which indigenous and Afro-descendant communities would be entitled to restitution, or to have restitution considered, as a matter of international law.

60. The submitting parties suggest that the obligations of Colombia, including under international law obligations (as spelt out inter alia in the jurisprudence of the Inter-American Court of Human Rights include the following:
    - Recognise and protect the ancestral territories of indigenous peoples (this and the following points also apply to Afro-descendant groups who live in a collective manner and whose dependence on land and distinct culture makes them analogous to indigenous peoples).
    - Where indigenous peoples have been displaced from their lands – including by encroachment of private property through procedures that may have been in accordance with formal laws – they are entitled to restitution of those lands, for as long as they continue to feel a cultural and spiritual connection to those lands.
    - In the case of bad faith third party titleholders or occupiers of indigenous lands, it will almost always be appropriate for restitution to be given. Where third parties hold titles to

[51] Unofficial translation from Spanish original: "las diferentes entidades del orden nacional y territorial a cumplir decididamente las órdenes emitidas en las sentencias de restitución en el marco del Decreto Ley 4633 de 2011". Page 13, Comisión de Seguimiento y Monitoreo a la Implementación del Decreto Ley 4633 de 2011 (2019). *Séptimo informe de seguimiento y monitoreo a la implementación del decreto ley 4633 de 2011 para pueblos y comunidades indígenas víctimas del conflicto armado.*

indigenous lands in good faith, the State has an obligation to assess the situation and determine which title should prevail.

- The key criteria for the assessment to be undertaken are:
    - Priority should generally be given to the restitution of lands to indigenous peoples, because of the cultural and spiritual connection which they have with these lands and territories, and the fact that their deprivation of this property has particularly serious impacts.
    - However, in (relatively exceptional) circumstances where there are serious, justifiable reasons for which restitution should not occur, the State may determine that lands should remain with the subsequent landholder. The criteria for this determination should be objective and explicitly set out in advance, and the decision should be capable of legal challenge.
    - Where the State determines not to return lands to the indigenous people, they should be offered compensation, preferably in the form of other lands of equal size and quality;
    - Where the State restitutes lands to the indigenous people, a good faith third party is entitled to compensation for loss of their property rights.

61. However, as noted above, the current procedures for considering restitution under the titling laws for indigenous and Afro-descendant communities are not clear, and indeed it is unclear whether this possibility exists at all. The vagueness of legal provisions on titling – for example, under Decree 2164 of 1995, while the ANT must undertake various studies which cover various elements, and undertake a field visit, there are no criteria imposed in the decree as to how it must then determine the basis for constituting, restructuring or extending a Resguardo under article 13 – allows for decisions to be taken that do not comply with international law, that do not give due account to indigenous peoples' right to restitution, and indeed for decisions to be subject to political influence and pressure (which can, of course, also be accompanied by threats of violence in the Colombian context).

62. In short, although there are provisions which in principle permit restitution of lands to take place under existing laws – at least in relation to indigenous peoples – the wide discretion which these laws grant to the ANT to determine when that should take place creates a significant normative gap, leaving open the risk of non-compliance with international law and improper influence on decision-making. The submitting parties suggest the State should develop specific, clear and binding procedures, consistent with its international obligations, to ensure that the right to restitution is applied to indigenous and Afro-descendant communities when appropriate.

Non-compliance with the peace agreement / lack of resources

63. One final area of concern which the submitting parties which to highlight is the current state of non-compliance with the Peace Agreement, including the ethnic chapter.

64. There are already significant worrying signs that the State is not taking the necessary steps, and certainly not allocating the necessary funds, to implement the terms of the Peace Agreement.

One area in which this non-compliance can be seen is in relation to the first (and one of the most critical) points of the Agreement – integral rural reform.

65. It is notable that – despite the severe delays already being experienced in titling of indigenous and Afro-descendant territories as described above – the Government has this year reduced the budget of the ANT by almost 19%. Among the functions of the ANT under the Peace Agreement is to house the Lands Fund ("*Fondo de tierras*"), which is the primary mechanism for enabling land distribution under the agreements. The funds for this within the ANT have been reduced year on year for the last three years. Similarly, funds for the Territorial Renewal Agency, and for investment in rural development in areas affected by the conflict, have been reduced. In announcing its budget, the Government stated that cuts were necessary because of limited resources; yet this ignores the fact that the Government reduced revenues for 2019 through offering tax benefits to specific sectors and activities at the end of 2018.[52]

66. These concerns have been backed by the Head of Mission of the UN in Colombia, who in April 2019 called for the Peace Agreement to be implemented in its entirety, and for adequate resources to be allocated to it.[53]

67. This is likely to have impacts not only for the peace agreement as a whole, but will likely have impacts for the parallel processes of titling and restitution of indigenous and Afro-descendant lands that are already underway, since many of the municipalities prioritised in the PDETS (territorial development plans for areas particularly affected by the conflict) coincide with the regions where there is a greater presence of ethnic groups.

68. Equally, there are indications that the ethnic chapter of the Peace Agreement is not being complied with. According to ONIC, the Chapter on Integral Rural Reform is not being applied consistently with the ethnic chapter, with implications for the equal access of ethnic groups to funds from the Lands Fund. Other difficulties have arisen from the presence of Transitory Normalisation Zones ("*Zonas Veredales Transitorias de Normalización*") on the legally-recognised lands of indigenous and Afro-descendant communities, including local conflict and militarisation of the area.[54] Failure of promised government commitments to support reintegration of ex-combatants has resulted in them joining outlawed groups in these areas, which has implications for the security of indigenous and Afro-descendant peoples living there. Another serious concern is the "fast track" process for passing laws, which allows government to enact legislation in half the usual time, but which would seem to be seriously impairing the right to consultation and free, prior and informed consent of indigenous and Afro-descendant communities in respect of laws that affect them.[55]

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[52] http://blogs.eltiempo.com/no-hay-derecho/2019/10/11/una-paz-austera/?fbclid=IwAR0lh-jScXsiyC_xM7FZw34iCyWaz4ps8XKAPyZ5T6Vf4IjphBnKOfsX2wI

[53] https://www.telesurtv.net/news/onu-colombia-acuerdo-paz-gobierno-farc-consejo-seguridad-20190412-0028.html

[54] *Primero informe de cumplimiento del capítulo étnico en el marco de la implementación del acuerdo final de paz entre el Gobierno de Colombia y las FARC-EP* (2019). https://www.onic.org.co/comunicados-onic/3073-primer-informe-de-cumplimiento-del-capitulo-etnico-en-el-marco-de-la-implementacion-del-acuerdo-de-paz-en-colombia

[55] https://pacifista.tv/notas/afros-e-indigenas-se-quedaron-fuera-de-la-implementacion/

69. The lack of implementation underlies other very real effects which seriously affect the enjoyment of human rights in Colombia: the lack of basic amenities that were promised to rural areas; the take up of arms again by former militants; and the continued forced displacements of the population which, although they have diminished, are still occurring at an alarming rate.[56]

D. Jurisdiction, protection and effective remedy: implementation of article 6

Systematic non-implementation of Court decisions which uphold the rights of indigenous and Afro-descendant peoples

70. One of the most significant issues with respect to the right to effective remedy is not, in fact, access to mechanisms of justice – although this remains a problem – but is a more insidious concern with the effectiveness of the justice system in providing an adequate remedy. This arises because there is a longstanding and serious issue in Colombia with the delays, and sometimes extreme delays, in implementation of Court decisions that have found in favour of indigenous and Afro-descendant peoples. One example already referred to in this report (and mentioned by the Committee in its previous recommendations) relates to the preparation of ethnic safeguarding plans for indigenous and Afro-descendant groups at risk of extermination. As noted above, more than 10 years after these orders were issued, and despite the urgency of the issues referred to in them, implementation remains extremely weak.

71. Precise figures on implementation cannot be provided given the lack of clarity in information provided by the ANT, as noted by the monitoring report published in 2019 by State inspection bodies, although it was identified that the ANT was linked to 58 judicial orders for titling, in relation to judgments for restitution of territories in the context of the armed conflict alone.[57] However, examples of non-compliance (or extreme delays in compliance) abound.

72. Multiple issues have arisen in relation to (urgent) precautionary measures ordered by the Courts in the context of restitution processes. For example in Bajo Atrato (Chocó) despite the restitution judges ordering various State actors to implement precautionary measures for five indigenous and black communities between 2016 and 2017, it was reported in 2018 that no action had been taken. [58] A similar situation arose in Montes de Maria (as described in Annex 4): despite the restitution judge issuing precautionary measures in favour of the Eladio Ariza Community Council, with a two-month deadline for compliance in 2017, two years later the precautionary measures have still not been implemented.

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[56] https://www.nytimes.com/2019/05/17/world/americas/colombia-farc-peace-deal.html; Comisión de Seguimiento y Monitoreo a la Implementación del Decreto Ley 4633 de 2011 (2019). *Séptimo informe de seguimiento y monitoreo a la implementación del decreto ley 4633 de 2011 para pueblos y comunidades indígenas víctimas del conflicto armado.* (see particularly chapter 2).

[57] Comisión de Seguimiento y Monitoreo a la Implementación del Decreto Ley 4633 de 2011 (2019). *Séptimo informe de seguimiento y monitoreo a la implementación del decreto ley 4633 de 2011 para pueblos y comunidades indígenas víctimas del conflicto armado.* Page 77.

[58] https://www.eltiempo.com/datos/seguimiento-a-la-proteccion-de-los-procesos-etnicos-de-restitucion-de-tierras-en-el-choco-202102

73. However, beyond issues of compliance with immediate or urgent protective Court orders, there is a wider, systematic issue with implementation of Court decisions that require the demarcation and/or titling of the collective lands of indigenous and Afro-descendant groups. One illustration of this is set out in Annex 5, describing the experience of the Resguardo Cañamomo Lomaprieta. As explained in the annex, almost three years after a Constitutional Court decision ordering the ANT to title the Resguardo's lands – and despite a requirement that it be done in no more than 18 months – very little progress has been made, and the Resguardo is having to push back against attempts by the ANT to adopt extremely restrictive interpretations of the decision. A further example is the case of the Jiguamiandó Community Council territory in Chocó, described in Annex 7. Despite Court orders in 2010 to restore the 51,836 hectares of collective territory to the community council, in 2019, less than 50% of the territory is in its possession, and the community remains under continued threat from settlers or illegal occupiers who face eviction from their illegal occupation of the lands.

74. The submitting parties are aware of at least six cases where restitution judges have ordered land restitution for indigenous peoples – out of a total of only 14 cases so far – where the land titling ordered has not yet occurred. These include the cases of Arquía (judgment of 19 April 2018); Cuti (judgment of 28 June 2018); the Menkue Misaya la Pista (judgment of 30 August 2016); Iroka (27 April 2017); Ette Ennaka (November 2017); and the Embera Katio (Dochama) (23 September 2014). The submitting parties were unable to complete an exhaustive investigation, and there may be others.

E. Educational, cultural and information measures to combat prejudices that lead to racial discrimination: implementation of article 7

75. No information to add.

Annex 1 – Submitting Organisations

The **Association of Indigenous Councils of Bajo Caquetá** (ACIBAC) is a self-governance organization representing indigenous peoples in the lower Caquetá area.

The **Community Council of the Black Communities of Eladio Ariza de San Cristobal** is an ethnic territorial authority in the municipality of San Jacinto, in the department of Bolivar in the Colombian Caribbean. It was established on the 2 November 2008 for the defence of its rights. It is a victim of the armed conflict, of dispossession of lands and racial discrimination on the part of the Colombian State and companies, which is evidenced on a daily basis, especially in relation to the process for titling our ancestral territories (requested since 2010), the process for restitution of our territorial rights for which the claim was presented to the Judge in 2017, and the collective reparation for victims of armed conflict initiated in 2015. None of these processes has been completed.

The **Regional Indigenous Council of Medio Amazonas** (CRIMA) comprises five indigenous reserves along the mid and lower stretches of the Caquetá River: Villazul, Aduche, Mesai, Yaguara II, Monochoa y Puerto Sábalo-Los Monos.

Corporación de Desarrollo Solidario (CDS) is a non-governmental organization that since 1992 has been accompanying, supporting and advising communities, organizations and networks of peasants and Afro-descendant communities in the region of Montes de María and some municipalities of the Canal del Dique region in northern Colombia.

Forest Peoples Programme is an international non-governmental organisation based in the UK and the Netherlands, which supports indigenous and other forest peoples to secure their human rights, and particularly their land rights.

The **Palenke Alto Cauca** is a regional self-governing body composed of representatives of the Black Communities of northern Cauca and southern Valle del Cauca, and linked to the national organization Proceso de Comunidades Negras (PCN).

The **Resguardo Indígena Cañamomo Lomaprieta** is one of the 6 Embera Chamí indigenous resguardos in the department of Caldas. Considered one of the oldest in Colombia, it was created on March 10, 1540, and its boundaries have been defined since 1627. It comprises 32 communities within its territory.

The **Indigenous Technical Secretariat of the National Commission on Indigenous Territories** brings together the five indigenous organizations at the national level (the Tayrona Indigenous Confederation, the National Indigenous Organization of Colombia, the National Organization of Indigenous Peoples of the Colombian Amazon, the Indigenous Authorities of Colombia, the Traditional Indigenous Authorities of Colombia - Council of Elders) to represent the interests of indigenous peoples before the National Commission of Indigenous Territories. The CNTI is a forum for dialogue and consultation with the National Government, created by Decree No. 1397 of 1996, to deal with issues relating to the guarantee and effective enjoyment of the territorial rights of indigenous peoples in Colombia.

Annex 2 – Palenke Alto Cauca

The Palenke Alto Cauca is a regional self-governance body made up of representatives of the black communities of northern Cauca and south of Cauca Valley, and linked to the national organization Proceso de Comunidades Negras (PCN). The Palenke's area of concern extends to the support and accompaniment of 45 Community Councils (consejos comunitarios) located in 11 municipalities in the northern part of Cauca – notably, Santander de Quilichao, Suarez, Buenos Aires, Puerto Tejada, Caloto, Guachené, Villarrica, Corinto, Miranda, Padilla and Cali. The population within the areas covered by the Palenke is approximately 64,100.

In principle, Afro-Colombian communities that maintain traditional practices of production –- are entitled to legal protection of collective territorial rights over areas occupied by them. Such collective land rights may be held through consejos comunitarios, the legally recognised institutional form by which Afro-Colombian collectives can obtain juridical form as a collective. In practice, however, as has been almost universally the case outside the Pacific basin area (see further paras 46-53 of this report), there has been limited recognition of collective lands within the Palenke.

In principle, Law 70 of 1993 creates territorial rights for Afro-Colombian collectives in areas outside the Pacific Basin. In practice, however, in the absence of specific provisions related to areas outside the Basin, structural discrimination has meant in practice territorial claims are not considered valid. There are currently 31 requests for collective titling of community councils in municipalities within Cauca outside of the Pacific Basin. Of those, only six titles have been recognised – only one of which is in north Cauca – in processes that took approximately five years, even though the law established that the process should not take more than a year. As a result, in order to defend collective territories, the Palenke has had to resort to seeking recourse from the Courts, including applying for constitutional writs of protection (tutela). These cases have led to some measures of protection for ancestral lands of Afro-Colombian communities community, including the suspension of overlapping mining titles issued to third parties until consultation leading to consent takes place (as in the case of the Consejo Comunitario of La Toma (T1045A/2010));[59] as well as the order of precautionary measures under the Decree Law 4635 of 2011 in the cases of a) the Consejo Comunitario of Pilamo (T255/16)[60] (seeking collective protective measures and recognition of the territories of this community council, that has been plagued by environmentally and socially catastrophic mining by criminal armed actors); and b) the Consejo Comunitario of Playa Renacientes in Cali, that has been forcefully relocated to make way for large scale development despite its historic importance as one of the first ports to be established as a gateway for the slave trade in this area). However, it has not solved the wider problem that there is no effective mechanism within north Cauca that enables Afro-Colombian communities to claim their territories, and have those territories recognised and titled. Although some lands have been purchased for Afro-Colombian groups within northern Cauca (36 farms in northern Cauca) – usually following protests – in only one case has a collective territory (in Caloto) been provided as part of any formal process of recognition of rights. There is still no systematic protection or recognition of these rights. Moreover, seeking remedies via court processes creates additional delays and puts in place significant barriers to access for black communities.

[59] http://www.corteconstitucional.gov.co/relatoria/2010/t-1045a-10.htm
[60] http://www.corteconstitucional.gov.co/relatoria/2016/T-255-16.htm

Partly as a result of the continued lack of titling, the traditional lands used and occupied by the Palenke have been, and continue to be, encroached upon by other actors. The Palenke has been affected in particular by illegal miners,[61] medium- and large-scale sugar cane plantations and, in the higher lands, plantations of illegal drugs, namely coca and marijuana. These activities have decimated food sovereignty in the 11 municipalities where the Palenke extends its actions, and only two municipalities – namely Guachené and the lowlands of Buenos Aires—can dedicate lands to traditional agricultural production, forcing black communities to buy their foods elsewhere. In addition, beyond the direct encroachment on their lands, the traditional livelihoods of those in the Palenke have also been seriously affected by pollution caused by these activities, as well as their (over)extraction of water resources, which has had consequences on those lands which are still in the possession of Palenke community members.

Because of the limited recognition given to the territorial claims of the Palenke and the community councils within it, it is frequently the case that no attempt is made to consult with or seek any consent from Palenke communities before activities are commenced upon their lands. This was the case of the community council of La Toma, where a mining concession was issued to a third party and the community was going to be forcefully relocated. The case made it up to the Constitutional Court whose Decision T-1045A of 2010 suspends all mining activities until consultation with a view to consent is undertaken. Yet the government has not enforced this order, especially in the case of criminal armed actors who have invaded the area to undertake mining in the Ovejas River. This led to the historic women's march to Bogota in November 2014[62] and subsequent occupation of the Ministry of the Interior, followed by two weeks of negotiations with the government over the operations of mining titles. These negotiations failed to address the underlying issue with mining, and particularly the women's demands that all mining titles be annulled (*derogado*) rather than simply suspended, as they had not been consulted when concessions were issued. Indeed, following an access to information request submitted to the National Mines Agency (ANM) by the Palenke's lawyers in 2019, information has come to light that mining concessions continue to be issued by the state to third parties without any processes of consultation leading to consent, violating the orders of the Constitutional Court's T1045/10 decision. The Palenke has successfully insisted on FPIC in certain cases, such as with the Salvajinas dam, but it remains the exception rather than the rule. In the case of Salvajinas a consultation process was put in place for an environmental management plan only for the operations of the dam, and this almost 30 years after it had been constructed. In other words, this was not a consultation or consent process that was prior, but rather only after project completion.[63]

Because of the dire situation of non-respect of rights in this area, the Palenke and its allies (including the PCN) have frequently been involved in protests (such as the 2014 women's march to Bogota or the 2019 Minga) and/or dialogue processes with the government around the various human rights

[61] Criminal mining using bulldozers has been contained to a large extent by the actions of the autonomous, unarmed *Guardia Cimarrona* that often link up with the autonomous Indigenous Guard of communities in the area, and not because of state interventions to curb this activity.
[62] https://www.telesurtv.net/news/Marcha-de-los-turbantes-contra-la-mineria-en-Colombia-20141128-0029.html
[63] Machado, M., D. López Matta, M. M. Campo, A. Escobar and V. Weitzner. 2017. Weaving hope in ancestral black territories in Colombia: the reach and limitations of free, prior, and informed consultation and consent. *Third World Quarterly* 38(5) May: 1075-1091.

issues that are ubiquitous and remain unaddressed in the area. Very often, these dialogues result in agreements being reached between Afro-Colombian groups and the government, in which the government promises to take action. Earlier this year, the Palenke and its allies calculated that 350 such agreements that have been entered into with government bodies since 1986 remain substantially unfulfilled – emblematic of the systematic non-compliance by the administration with its commitments towards ethnic groups on human rights issues. One such agreement was a promise made in 2013, following peaceful protests on the Pan-American Highway and occupation of the offices of the National Lands Agency, to buy COP 50,000 million of land for black communities in northern Cauca; today, six year later, less than half of that sum has been used. This led to further protests on the Pan-American Highway in 2016, which in turn led to further agreements which have again not been fulfilled. Lack of budget is often cited by the administration as a reason for non-compliance - but this merely demonstrates the repeated underinvestment in and deprioritisation of resolutions to pressing and serious human rights problems faced by Afro-descendant communities.

As with indigenous groups in the country and in the exercise of their self-determination, different Afro-Colombian groups including the Palenke have organised for their (peaceful) self-defence through the organisation of the *Guardia Cimarrona* (Afro-Colombian Guard). The (unarmed) Guardia Cimarrona provides security for the territory, collects information about movements and risks, and accompanying community leaders at risk and the legal team. Both the Guardia Indígena and the Guardia Cimarrona often face issues in their interactions with State actors who do not recognise their status. However, the Guardia Cimarrona faces an additional hurdle in the discharge of its functions, because until its recent recognition in the Peace Accords, it had no formal legal recognition (and still has no direct recognition within the national legal system outside the ethnic chapter of the Peace Accord).[64] As a result, the legitimacy of its actions are often challenged by other actors.

This area of northern Cauca has been and remains an area of significant conflict, which is exacerbated by its location as a strategic corridor for trade of illicit commodities (drugs and arms). This has been further complicated by the peace process – 50% of demobilised fighters are concentrated in Cauca, which has led to further conflicts and criminality as other armed actors scramble for control of areas previously controlled by the FARC. As a result of all these factors, the exercise of authority by the Palenke leaders and indeed community members carries serious risks. There have been a very significant number of murders and threats against Palenke leaders over the last five years, some of which are mentioned in annex 8. The Palenke fears that violence is escalating, particularly in light of the local elections. On 2 September, a mayoral candidate from Suarez was murdered along with five other people (and since that time, another mayoral candidate has been declared a target);[65] earlier in 2019, on 4 May, a grenade was thrown into a community meeting attended by various leaders from black community organisations. By luck, there were no deaths – although two bodyguards were injured - but this incident is demonstrative of the violent

[64] In contrast, the Guardia Indígena have certain recognition already with national laws based on the law of origin, the exercise of their own law, and the Constitution articles 7, 330 and 246.

[65] https://www.qhubocali.com/asi-paso/asi-era-la-candidata-a-la-alcaldia-de-suarez-cauca-asesinada-con-otras-5-personas/ (Spanish); https://www.france24.com/en/20190903-colombian-mayoral-candidate-killed-government-blames-rebels (English).

repression of organised activities by black communities.[66] These leaders have received new threats since the attack, demanding that they leave the territory and making explicit threats of "extermination".[67] Similarly, members of the Guardia Cimarrona, which make up part of the territorial defence strategy of the communities, have been threatened. All these elements together evidence hate speech and discrimination against the ethnic organisations of northern Cauca.

In addition, since the signature of the Peace Agreement and the demobilisation of FARC actors, new criminal actors have moved into the area. These new armed actors are unknown to local communities, unlike the FARC, whose long-term presence meant that communities could generally identify who they were. Uncertainty about the identity of armed actors in the area has significantly increased the security risks communities face. New and insidious tactics for threatening community leaders have also emerged – pamphlets now do not only identify the names of community leaders who are targets for assassination, but also indicate the number plates of their protection vehicles (provided by the National Protection Unit).

[66] https://www.forestpeoples.org/en/node/50398

[67] https://www.semana.com/nacion/articulo/volvieron-a-amenazar-a-los-lideres-afro-del-norte-del-cauca/612699

Annex 3 – ACIBAC - Asociación de Cabildos Indígenas del Bajo Caquetá - and CRIMA – Consejo Regional Indígena del Medio Amazonas representing the People of the Centre

ACIBAC and CRIMA are two indigenous organisations representing *la Gente del Centro* (People of the Centre) - four indigenous peoples, the Uitoto, Nonuya, Muinane and Andoque, living in the departments of Caquetá and Amazonas. The ancestral and traditional territories of the People of the Centre are located in remote forested areas in the south east of the department of Caquetá and the northern portions of Amazonas department. Today, these areas have a low population density of indigenous communities, because of the decimation of the indigenous population at the start of the last century, caused by the brutal global trade in rubber.[68] Since the mid twentieth century these peoples have struggled to rebuild their culture, ceremonial complex and economies following the rubber holocaust and the harmful influences of a penal colony and missionaries since the 1930s.[69]

At present (and after prolonged advocacy from the People of the Centre), the State has recognised various indigenous resguardos in this area, including Puerto Sábalo-Los Monos, Monochoa, Aduche and Villa Azul; as well as parts of the Predio Putumayo Resguardo designated as special management zones. While these Reguardos cover a significant portion of the traditional lands of the communities, invariably they do not correspond with the full extent of traditional territories of the indigenous peoples in question north of the River Caquetá.

For example, despite land title extensions for the Resguardo Puerto Sábalo-Los Monos and Resguardo Monochoa in 2017, these extensions did not cover all of the untitled community territory as requested. There are continued delays on the part of the government with respect to titling the totality of indigenous territories in the region. Although the government has been prepared to grant extensions of resguardos in some cases, there are many other cases where extension requests have been languishing in bureaucratic processes for many years, including a request by Aduche Resguardo. In at least one case, this (combined with the lack of effective interim protection mentioned above) is creating very specific risks for an isolated/uncontacted indigenous group living in areas without title and under claim by the N+pod+mak+ (Uitoto) people.

The remoteness of the territory, the designation of much of the land and forest in the Middle Caquetá region as Resguardos, plus prolonged and concerted actions by the People of the Centre via their representative organisations CRIMA and ACIBAC to challenge land invasions has limited land conversion in these areas for the purposes of economic development. There are nonetheless certain economic activities – including commercial fishing – that are well established in the area, in particular below Araracuara rapids.

[68] https://lab.org.uk/the-putumayo-atrocities/

[69] R Pineda Camacho (2000). *Holocausto en el Amazonas. Una Historia Social de la Casa Arana*; R Pineda Camacho (1989) “Hacia una nueva sociedad amazónica: la cultura ancestral ante las transformaciones socio-políticas y culturales en la amazonia colombiana” in M Useche (ed), *Amazonia. Identidad y desarrollo*, pp. 107-118.

The very remoteness of these areas has also led to other risks and challenges for indigenous peoples. Specifically, the area has long been a stronghold of guerrilla groups and other armed actors. Many of these armed actors are involved in illegal resource use and exploitation, including illegal logging, the cultivation and trafficking of illicit crops and narcotics, and illegal gold mining using river dredges. Community leaders and ordinary community members who have challenged or denounced harms caused by illegal resource use and the presence of illegal armed groups have faced death threats and intimidation. Armed conflict and ongoing insecurity linked to the presence of criminal and armed groups has caused significant numbers of indigenous families to flee the area and move to urban areas because of safety concerns. Presently, for example, there are an estimated 900 Uitoto people resident in Bogotá, many of them victims of the armed conflict and internal displacement.

Although many FARC guerrillas have been demobilised since the Peace Accords, dissident FARC members, as well as other armed actors, are still active in the area. This has led to ongoing and increasing insecurity and displacement of indigenous populations after the signing of the Agreement, as armed groups are disputing control previously exercised by the FARC, and the state has failed to consolidate its governance in these territories. As such, security concerns remain pressing.

The precarious security situation – and its effects on indigenous residents – is so severe that the Uitoto people were included as one of the indigenous groups at risk of extinction under the well-known Auto 004 of 2009, issued by the Constitutional Court of Colombia, which required inter alia that the Government develop safeguarding plans ("*planes de salvaguardia*") in relation to multiple indigenous peoples that had been seriously affected by displacement caused by the armed conflict. However, ten years after the order was issued, compliance with it remains minimal and slow. It remains the case to this day that indigenous peoples within the Middle River Caquetá region run serious security risks merely by carrying out their activities on their territories; are subject to bribery and extortion; are limited in their freedom of movement; have no access to basic social services for health and education; and are provided with limited or no systematic protection by government. Unsurprisingly, the tide of displacement has not stemmed substantially, and has certainly not reversed, in the last decade. One recent example is from late September 2019, when 91 people were obliged to leave Agua Negra (municipality of Solano), in Caquetá, after threats and intimidation from armed actors.[70]

The lack of State presence and protection not only allows armed actors to affect indigenous communities and their territories – it has also facilitated expansion of economic activities towards indigenous lands (both within titled Resguardos territories, and also in additional territories claimed by indigenous peoples but which have not been demarcated and titled). Encroachers, often linked to armed groups, engage in illegal logging and deforest the land for plantations (including illegal drug plantations) or cattle pastures, or are involved in land speculation. Such land speculation is facilitated by insecurity over indigenous peoples' tenure as well as by corruption in those entities in charge of titling and legalisation of land market operations. Accelerated deforestation is causing environmental damage and creating security threats for indigenous communities, including indigenous peoples in voluntary isolation (PIA). Currently, the illegal expansion of the agricultural frontier means that livestock is found approximately 10-15 km in a straight line from Cumaré hill,

[70] https://pacifista.tv/notas/asesinato-lider-social-caqueta-conflicto-indigenas-huitoto/

located in the Luisa River in the Yarí region, an area occupied by one PIA. This area formed part of a request for the extension of the Resguardo Puerto Sábalo-Los Monos, but was excluded from the final polygon. No reason was given for this exclusion.

Beyond the encroachers themselves, current government proposals to resume large-scale aerial fumigation of drug crops risks creating significant negative environmental and health effects on both the territories and the indigenous peoples themselves.

At the other end of the spectrum, because of the ecological and environmental value of the forest areas within indigenous territories in this region, conservation actors are also heavily engaged in the zone and pose another significant threat to the full enjoyment of rights by indigenous peoples. Many conservation activities may not conflict with indigenous peoples' rights and may even be accepted or welcomed by indigenous actors after consultation, but in practice, conservation activities are carried out in a top-down fashion by the government or external conservation actors, without adequate prior consultation and without the free, prior and informed consent of indigenous peoples in the Middle Caquetá region, and with little or no regard for their rights. This lack of participation generates confusion and mistrust amongst local indigenous communities.

There are many examples of this. In some areas, national parks have been established that overlap indigenous Resguardos or traditional territories – without free, prior and informed consent being sought - which impose certain conditions and requirements on the use and occupation of these areas. For example, in 2012-14 the Chiribiquete National Park was enlarged with international funds from the Global Environmental Facility (GEF) and World Bank under the Heart of the Amazon Project, without effective compliance with the World Bank's Policy on Indigenous Peoples (OP4.10). This park and its extended boundary overlap the traditional lands of neighbouring communities of the People of the Centre. Consultation was in some cases retroactive and Indigenous Peoples Plans, including components related to indigenous land titling and the extension of resguardos that were agreed with affected communities, have not been implemented in a timely manner. [71]

Two other large conservation initiatives also demonstrate an inadequate incorporation of the right of indigenous communities to be consulted and to give consent in relation to measures that may affect them. The first is an NGO proposal for a transboundary biological corridor between the Andes, the Amazon and the Atlantic (the Triple A Biological Corridor), that would cover significant parts of the reservations and traditional lands (not yet titled) in the Middle Caquetá region. Although this initiative was discussed with (and may be supported by) some national indigenous associations, indigenous peoples in the region and traditional owners of the territories that may be included within it – such as the People of the Centre – have not been adequately informed or consulted about the proposal. They are concerned by, the potential implications for their own rights and use, management and control of their lands and territories. While these indigenous communities may not necessarily oppose these initiatives where they are fully explained (and adapted if necessary), their lack of information about the proposal, and lack of any involvement in the design and conceptualisation, reflects a serious failure of effective participation.

[71] http://www.forestpeoples.org/en/topics/agribusiness/news/2016/04/secure-territorial-rights-indigenous-peoples-and-traditional-knowle

A second large conservation initiative – in this case, developed by the Colombian state with support from the Norwegian, British and German governments and aimed at preventing and mitigating climate change – is the "Vision Amazonia 2020" programme. Among the stated objectives of this programme was the empowerment of indigenous peoples, yet it did not adequately involve or consult with those indigenous peoples on whose territories actions were proposed (and whom it would potentially affect). As a result, in 2018, members of the Comunidad Indígena Andoque de Aduche initiated a writ of protection (tutela) in the Constitutional Court, alleging the project's failure to comply with the fundamental right to free, prior and informed consent. In decision T-063/19,[72] the Constitutional Court upheld the tutela, finding that the actions proposed under the project would have direct effects on the claimant community, and ordering that consultation be undertaken.

Large conservation initiatives of this scale require coordination of many different institutions, resources and activities, but they also create risks of developing homogenous policies across a wide scale that ignore local indigenous cultures and perspectives, and which could undermine the rights and the self-determination of indigenous peoples in affected areas. It is important therefore that from the earliest stages, biodiversity, forestry and climate change policies developed by the State and/or other actors involve indigenous peoples and the traditional authorities at the territorial level in their design and conceptualisation, from the earliest stages of these proposals being considered.

A deep concern of the People of Center are the manifestly discriminatory omissions demonstrated by the State's slowness to adopt adequate measures to prevent the physical, cultural, spiritual disappearance of the indigenous peoples of the middle Caqueta in the Colombian Amazon. It is imperative that the State takes and implements public policy measures and, where necessary, legislation provided with adequate public resources - to recognise and support indigenous peoples' own institutions to administer, govern and control their territories through their own governments. Such measures are necessary and must be taken urgently to guarantee the full enjoyment of their rights to self-determination as autonomous peoples in their territories.

[72] http://www.corteconstitucional.gov.co/relatoria/2019/t-063-19.htm

Annex 4 – CDS (Montes de Maria, Bolivar)

Corporación de Desarrollo Solidario (CDS – Solidarity Development Corporation) is a non-governmental organisation which accompanies local communities in Montes de Maria y Canal del Dique, a region of mountains and plains straddling the departments of Sucre and Bolivar, on Colombia's Caribbean coast. The departments of Sucre and Bolivar both have significant Afro-Colombian populations – according to the 2005 Census, 27.6% of the population of Bolivar identifies as Afro-Colombian (approximately 500,000 people);[73] in Sucre, 16% of the population identified as Afro-Colombian.[74] In the area of Montes de Maria, CDS works with two black community councils - Eladio Ariza (San Jacinto) and Santo Madera (Marialabaja) – which are seeking restitution and securisation of their lands.[75] Bolivar and Sucre are two of the multiple departments in which, despite there being a sizeable Afro-Colombian population, the mechanisms for collective restitution of lands by Afro-Colombians remain ineffective. It suffers also from the general neglect of rural development and local community priorities across the Caribbean region in favour of large business owners, part of a structural neglect of local populations that is particularly acute in the regions with high Afro-Colombian and indigenous populations.

The area of Montes de Maria suffered from significant violence, intimidation and forced displacement by armed actors during the height of Colombia's armed conflict in this region, most notably between 1997 and 2006.[76] This area witnessed significant physical violence – in 2000 alone, there were 17 massacres in the Montes de Maria area, killing 176 people. [77]

The intensification of violence in the context of the armed conflict in the Colombian Caribbean had a strong impact on the organisation of communities of African descent, and especially on the nascent community councils of the Colombian Caribbean and their demands for collective territory. It was only after the adoption of Law 70 in 1993 that the process of forming community councils began, and therefore in the second half of the 1990s when attacks against social organisations -including those of black communities - intensified, many of these organisational processes were cut short, including especially the possibility of claiming collective title within the framework of Law 70.

[73] Departamento administrativo nacional de estadísticas (DANE), *Análisis regional de los principales indicadores sociodemográficos de la Comunidad Afro-Colombiana e indígena a partir de la información del Censo General 2005*, page 64 (available at: https://www.dane.gov.co/files/censo2005/etnia/sys/Afro_indicadores_sociodemograficos_censo2005.pdf?phpMyAdmin=a9ticq8rv198vhk5e8cck52r11). This information should be treated with caution given its age and bearing in mind that during the year of the census, there were significant issues of forced displacement of populations throughout Colombia. DANE has recently conducted the 2018 national household survey which provides more up to date population information, but information on Afro-Colombian demographics had not yet been released at the time of finalising this report.

[74] UNDP, *Los Afro-Colombianos frente a los objectivos de desarrollo del Milenio,* Page 32 (https://www.undp.org/content/dam/colombia/docs/ODM/undp-co-odmafrocolombianos-2012.pdf).

[75] CDS also works with numerous non-Afro communities that are seeking restitution of lands from which they were displaced during the civil conflict.

[76] https://verdadabierta.com/especiales-v/2018/acuatenientes/cucal.html

[77] https://verdadabierta.com/especiales-v/2018/acuatenientes/cucal.html

During this period, community members were on multiple occasions forcibly displaced from their parcels of lands or territories, causing small farmers to be crippled with debts as they were unable to return to work their agricultural lands – some of which had been titled by the government, and some of which had been under ancestral occupation. In this context of serious physical insecurity and economic distress, many titleholders, when approached by willing buyers, sold their lands – despite legal restrictions preventing the sale of such lands at the time. In the case of the two Afro-Colombian communities, their territories represent lands which they occupied collectively following their liberation from slavery. Neither community council held a collective title prior to the upsurge in the armed conflict, although some individual community members held individual titles. All were forcibly displaced by the armed conflict; those with titles were generally obliged to sell them at very low cost.

After the worst of the violence diminished as paramilitary forces were demobilised from 2006, communities across Montes de Maria sought to return home. In both Eladio Ariza and Santo Madero, the period of violence led to significant encroachments on their territories, which have continued since that time (for example at present, 479 of the close to 2000 hectares claimed by Eladio Ariza are under oil palm cultivation by third parties).[78] Nonetheless, in July 2010, both communities lodged requests for titling of their territories with (then) INCODER (now the National Lands Agency). Acceptance of these requests alone took more than a year in both cases, even though the law states that no titling process should take more than a year. There were serious irregularities in the process from the outset: Eladio Ariza was initially informed in 2011 that it would not be granted more than 600 hectares, and that no inspection visit would take place because of a lack of resources[79]. The community insisted on the field visit, which took place only in 2013; Santo Madero's field visit took place in the same year. However, since that time, no further steps have been taken to advance the claims. When INCODER was dissolved and the National Lands Agency (ANT) was created in its place in 2015, Eladio Ariza approached the ANT to ask about the status of its case. It was told that the file was missing. No further steps have been taken by the ANT since that time, either in the case of Eladio Ariza or of Santo Madero. In the meantime, the territories of both communities have no interim protection, and encroachments on these lands have continued while the claim remains in adjudication.

In addition to the procedures enshrined in Law 70, the community councils Eladio Ariza and Santo Madero have attempted to secure their right to territory through the process of restitution of territorial rights. Faced with the severe delays in the land titling process, in 2015 both communities initiated parallel procedures under Decreto-Ley 4635 of 2011, which authorises claims for restitution of black communities' lands from which communities were dispossessed in the context of the armed conflict.

An initial request made by Eladio Ariza to the Court was thrown out by the judge because of a lack of specific information on the requests of the community and the exact size and location of the territory claimed, after the Land Restitution Unit did not complete this information after a request from the judge. Subsequently, the community commenced a further procedure, the first stage of

[78] https://verdadabierta.com/comunidades-de-los-montes-de-maria-luchan-por-su-derecho-al-agua/
[79] https://verdadabierta.com/en-montes-de-maria-comunidad-afro-le-aposto-a-restitucion-etnica/

which concluded that the lands claimed should be included in the register of lands presumed to have been subject to dispossession. The second, judicial, stage of this procedure was commenced on 14 November 2017, but it still has not reached a decision on the substance. In the meantime, the judge has granted precautionary measures in favour of the Eladio Eriza community council. However, delays on the part of the National Lands Agency, which did not comply with deadlines ordered by the Court, have caused a significant delay in both the implementation of these precautionary measures, and the completion of the evidentiary stage. The judge has not been diligent in holding the ANT to account for these lapses. At this point, more than three years after the commencement of the process, the precautionary measures have not been implemented and the evidentiary phase, required to advance to the merits decision, has not yet concluded. In fact, delays of this nature seem to have been particularly common among demands by ethnic groups for territory in Bolivar.

In the meantime, in the aftermath of the violence of the first decade of the new millennium, a very significant area of Montes de Maria – properties purchased in questionable circumstances during the height of the conflict – has now been sown with oil palm and teak, being grown at large scale. More recently, pineapple cultivation has also entered the zone. This agribusiness area has been expanding in recent years, and has caused significant problems for neighbouring communities including the two Afro-descendant community councils. The most significant problem is around water. Water sources previously used by communities are now allocated for use by these agro-industries, which has lowered the water rates and has meant water in the area has become highly polluted by chemicals from fertilizers and pesticides. In addition, local climate effects caused by increased deforestation for these plantations, has made water scarcer in the region. Local wells have dried up, leaving local communities left with only contaminated water for daily use and sometimes drinking water. Despite complaints to municipal and departmental authorities, the water-related infrastructure for communities in the Montes de Maria area (including sewage)[80] remains in a dire state. The result has been regular illnesses – skin conditions, diarrhoea, etc – among the population. It has also had serious and significant effects on fishing, previously a widespread local livelihood activity, due to the closure of community paths to access water sources and the deaths of fish that have occurred in the areas of influence of agro-industry.

In response to these issues, in 2008 the two Afro-Colombian community councils have united with other communities in the area to form the "*Mesa Permanente por el Derecho al Aqua*" (Permanent Table for the right to water), with a view to advocating with local responsible actors to secure clean water for communities in the area. There is significant concern that further expansion of monocrop plantations will contaminate the few remaining water sources, and the Mesa Permanente seeks to protect the remaining water sources. However, the creation of the Mesa Permanente has drawn the ire of some actors and has created new security risks for local residents and members of the Permanent Table. In September 2019, five leaders of the table were sued for criminal damage to property, after the closure of the floodgates of the irrigation system, which was done to ensure that that the little water available in times of drought was not used for agro-industry, but rather was available for human consumption.

[80] https://semanarural.com/web/articulo/el-derecho-al-agua-en-montes-de-maria-un-reto-puesto-sobre-la-mesa/716

The continued lack of land tenure security and restitution, the overwhelming problems with water, and the continued and growing security risks caused by rearming of illegal armed groups, are seriously impeding the return of community members from the community councils who were displaced by the violence, and the guarantee of their fundamental rights. More than ten years after demobilisation of paramilitaries occurred, some 70% of community members for Eladio Ariza remain displaced from their territory.[81]

[81] https://verdadabierta.com/en-montes-de-maria-comunidad-afro-le-aposto-a-restitucion-etnica/

Annex 5 – Resguardo Cañamomo Lomaprieta

Resguardo Cañamomo Lomaprieta, located in the department of Caldas, is an indigenous Resguardo first established in the colonial period following the arrival of Spaniards in 1540 to mine gold, with the first official record reaffirming its boundaries dating to 1627 when Oidor Lesmes Espinosa came to the area to settle a boundary dispute. According to its most recent census, the Resguardo has approximately 24,500 members. In addition to indigenous Embera Chamí community members, the Resguardo also includes Afro-descendant community members, many of whom self-identify as Afro-indigenous, who have been living in the Resguardo territories since colonial times, having been brought as slaves to engage in gold mining. As such, although formally an indigenous Resguardo, the Resguardo is in fact multi-ethnic in character. The Resguardo is governed by an elected Cabildo (governing body); the current Governor is an Afro-Indigenous woman.

The members of the Resguardo have traditionally undertaken various economic activities, including agriculture, forestry and traditional gold mining. These activities are continued in the Resguardo today, although there are significant population pressures because of the size of the population in proportion to the Regsuardo's small land base. Although the lands originally granted to the Resguardo in colonial times were much larger, a map created by IGAC in 1994 showed the remaining territory of the Resguardo to be limited to only 4,827 hectares. As such the population density in the Resguardo is very high.

Although it is administratively recognised as a Resguardo by the Colombian State (and as such its Cabildo receives certain funding as an administrative body), the Resguardo has long suffered challenges because its lands are not officially delimited or formally registered as its collective territory – despite them having been mapped by administrative bodies on several occasions, most recently by IGAC in 1994. This situation has led to significant problems for the Resguardo, including encroachment of settlers from nearby areas, the granting of mining permits within the Resguardo without any consultation, and difficulties for the Cabildo in asserting its jurisdictional competence and authority within its territory. The Resguardo has sought the delimitation of its territory for many years – more than two decades – but without success. In part, this is because the procedure for titling Resguardos of colonial (ca. 1520s-1810) or republican (ca. 1810-present) origin remains unclear and, arguably, inconsistent with international human rights norms, as described further below and in the main report at paras 40-41.

Faced with multiple mining exploration licences granted within its territories without its rights being respected, the Resguardo submitted a writ of constitutional protection (tutela) in 2015 to seek protection of its constitutional rights. After appeals from the first and second instances rejected the tutela, Colombia's Constitutional Court issued Sentencia T-530 of 2016,[82] which granted (a) the suspension of mining permits granted without any consultation with the Resguardo; (b) acknowledgement of the legitimacy of traditional gold mining activities carried out by members of the Resguardo and under its jurisdiction, as well as the powers of the Resguardo to close mines that do not comply with Resguardo laws (resoluciones internas); (c) an order that the Colombian government delimit and title the Resguardo's territories, using as a basis the polygon established by

[82] http://www.corteconstitucional.gov.co/relatoria/2016/t-530-16.htm

the Agustín Codazzi Geographical Institute (IGAC) in 1994, within a period of 12 months, extendable by 6 months. The Court ordered the establishment of a multidisciplinary Committee of Experts to make recommendations to the National Lands Agency (ANT) for carrying out the delimitation. As at October 2019, almost three years after the decision, delimitation and titling still has not taken place and there has been limited progress towards that end, as described below.

Since the public release of the Constitutional Court decision in early 2017, the Resguardo has been engaging consistently with the relevant authorities to ensure its implementation. Unfortunately, it has been met with numerous delays and roadblocks. The Committee of Experts was not established until late in 2017, with fieldwork commencing in early 2018, with the result that the time for their review was limited (and was translated into unreasonably short deadlines for the Resguardo to provide input to and comments on the Committee's work). Moreover, in the view of the Resguardo, the Committee's final report was in certain respects not sufficiently informed by the key principles of international human rights law upheld in the judgment, particularly in respect of the process by which delimitation should occur. Nonetheless, as the Committee made multiple recommendations which could lead to the titling of the Resguardo, the Cabildo has focussed on engaging with the ANT to ensure that delimitation and titling occurs.

On 20 May 2019, the ANT issued an implementation plan for proceeding with the delimitation and titling. In the view of the Resguardo, the proposed implementation plan departs significantly from both the procedure and substance of the recommendations made by the Committee.

In the meantime, various political initiatives have been undertaken in the last 12 months which seek overtly to undermine the implementation of Sentencia T-530 of 2016, and prevent the effective delimitation of the Resguardo's territories. A key area of concern is the urban encroachment of the city of Riosucio on Indigenous lands, and the outcome that titling will have on non-Indigenous residents of this area; as well as privately held lands within the more rural collective territory of the Resguardo. Earlier this year, former President Uribe, executive of the governing party (Centro Democrático), during a meeting of his political party in Manizales (the capital of Caldas some 90 kms away from the Resguardo), made a telephone call to the Director of the ANT requesting that she meet with a delegation of landowners with interests in Riosucio. The purpose of the meeting was to examine issues related to distribution of lands, because of concerns among these landowners about indigenous demands for collective territories. This conversation between former President Uribe and the Director of the ANT was filmed and subsequently widely disseminated on social media.[83] And indeed, as per the telephone request, the Director held a meeting with the landowners shortly after this call.

Several months later, the governing party introduced a draft bill[84] to the House of Representatives which proposed setting up a "Special Bicentennial Commission" to study, evaluate and propose recommendations in respect of the "differences" between citizens of Riosucio in Caldas. The draft bill includes "defining" the colonial Resguardos and "advancing their restructuring" (a term which under Colombian law has generally been associated with reductions in territory for indigenous

[83] https://lasillavacia.com/silla-paisa/llamadita-uribe-funcionaria-ya-funciono-70802; A televised media report of the visit, commenting specifically on Uribe's call to the director of the ANT, can be viewed at: https://www.youtube.com/watch?v=XVQ0E8tIwsc (both in Spanish only).
[84] https://www.redjurista.com/Compilaciones2018/gacetasCongreso/proyecto_ley_C0354_2019.aspx

peoples). This proposal – which is still going through Congressional procedures - omits fundamental steps in its procedure, such as prior consultation with indigenous peoples (which is carried out through a body legally created by the State in Decree No. 1397 of 1996) and inserts matters that contradict its legal purpose. It appears very much to be a deliberate attempt to undermine the implementation of Sentencia T-530 of 2016.

Among other issues, Judgment T-530 of 2016, the report of independent experts and the National Land Agency itself all recognise the existence of legal gaps with respect to how to adequately address the territorial issues of resguardos of colonial origin. What remains of particular concern is the difficulty in reaching agreement with the National Land Agency on procedures relating to land restitution in Colombia in the case of the Resguardo. Within the 4,837 hectares of territory claimed by the Resguardo, there are 678 rural lots registered to private owners (despite overlap with the Resguardo's pre-existing colonial title). In some cases these lands are owned by members of the Resguardo who are keen to cede them to collective ownership; in other cases they are owned by settlers who have acquired them through various legal or extra-legal procedures during the last century. As the criteria for considering how to resolve this conflict of titles are not codified under Colombian law, the National Land Agency has sought to impose its own procedures that clearly restrict the principles and rights protected by the Court in favour of the Resguardo.

As a result, there is significant concern that in considering these conflicts (and the restitution of lands to the Resguardo), the administration will not apply the international human rights law principles in respect of restitution of indigenous territories set out in international instruments and developed in the jurisprudence of the Inter-American Court of Human Rights – which would require, in brief, that priority should be given to the Resguardo where possible, and where restitution cannot be given for justifiable reasons, compensation should be given, preferably in the form of alternative lands of equal size and quality. There have been indications from the administration suggesting that it will prioritise individual private property titles over the claim for collective titling of indigenous lands, and there is a lack of clarity over the criteria for any possible restitution of those lands for the Resguardo as well as for any compensation that would be payable to the Resguardo where restitution were impossible.[85] This lack of legal certainty on the principles to be applied leaves open the possibility that the administration will not act in accordance with international law, and reduces the transparency of the actions taken by the ANT. In response, the Resguardo has submitted to the State a proposal for an inter-legal procedure that combines existing norms with the application of its own legal system to comply with the orders of the Court of delimitation and territorial titling in favour of the indigenous population.

The legal uncertainty over the territories of the Resguardo caused by the delays in complying with the Court's judgment entails serious difficulties in the enjoyment of the collective right of ownership of the members of the Resguardo and undermines the authority of the Cabildo (limiting its self-determination) at the same time as it exacerbates internal and external conflict, creating serious threats and risks of attack on the organisational process and members of the Resguardo. This uncertainty, together with the political initiatives of individuals with interests in Resguardo lands mentioned above, have exacerbated discrimination against members of the Resguardo in the region

[85] Proposal for the Clarification Plan shared by the ANT (20 May 2019), together with its answers to questions posed by the Resguardo about the same (23 July 2019).

through the proliferation of hate speech against indigenous people. Between 2015 and 2019, no fewer than three Resguardo members have been killed in attacks linked to their role as leaders. Many more have been seriously threatened; this year one of the Resguardo leaders was forced to leave the territory temporarily with his family because of increasing threats to his life.

Anexo 6 - Indigenous Resguardo Caño Ovejas in Mapiripán, Meta

Mapiripán is a municipality in the southern plains of the country, just on the border with the Amazon rainforest, which in recent decades has been the territory of expansion of the agricultural frontier. This expansion has come as a result of peasant settlers, cattle ranchers, drug traffickers, armed groups, and oil palm agro-industry.

Faced with colonisation and the consequent loss of their lands, in the 1970s, the Sikuani indigenous people met with local ranchers and other neighbours and agreed on the division of land. This agreement, however, is not respected today in part because of the continued settlement - which increased in the late 1980s with illicit crops - which ignores these agreements. In 1979, the Sikuani asked INCORA for the titling of 62,000 hectares, but only 1,720 hectares were awarded, less than 3% of the territory requested, which today constitutes the Cañ̃o Ovejas Resguardo. Understandably, the lack of legal titling has encouraged further encroachment.

In June 2014, the Sikuani filed a request with the URT for restitution of lands from which they were dispossessed in during the armed conflict, asking for 62,000 hectares – the same area that they had originally requested in 1979. While their claim was still in the administrative stage, the Sikuani agreed to reduce the extension of the land requested for restitution from 62,000 ha to 42,000 ha, on the basis that part of the expansion zone overlapped with a settlement of 60 peasant families (vereda La Libertad), and that the dispute over that part of the territory would lengthen the process substantially. Thus, they preferred that the territory be reduced but that the process advance quickly.

Their claim was admitted by the Second Land Restitution Court of Villavicencio in October of the same year; however, more than five years later the sentence has not been issued. This unjustified delay – particularly given the history of the case – has generated discontent and mistrust of the process (and the URT) by the applicants.

In addition, in the five years since the lawsuit was admitted, hostility, mistrust and misinformation has grown between the Sikuani and peasant groups that are potentially affected by the claim. Peasant groups feel they do not have a voice in the process, and that the URT privileges indigenous peoples. On the other hand, the indigenous community says the process has incentivised settlers to deforest further areas of land in an attempt to receive additional compensation when the claim is eventually resolved. All this speculation takes place within the framework of a historically conflictual relationship between indigenous people and settlers in the region, which has been marked by racism. Each cow allegedly stolen by indigenous people, each tree cut down by peasants, each entry of one into what the other considers its territory, exacerbates conflicts against a backdrop characterised by the prolonged tension and uncertainty generated by the restitution process. The State has not offered any peaceful mechanism for dialogue or resolution of these conflicts: within Mapiripán there has been no inter-ethnic dialogue forum created, nor are there effective mechanisms to resolve the smaller conflicts (cattle theft, deforestation) that contribute to these tensions.

There is a perception among local authorities and peasants that the Sikuani are requesting a lot of (too much) land, and that the lands requested were not really theirs. However, when looking at the

Sikuani population, the land request is not disproportionate. At present, 102 families live in what is equivalent to less than one Family Agricultural Unit (UAF), which in this region is equivalent to 1840 hectares. That is to say that a peasant family in Mapiripán, in order to have an income equivalent to a legal minimum wage in force, must have 1840 hectares, considering the productivity of these lands. With a simple calculation, it is clear that the 42,000 hectares requested in restitution for the resguardo are not enough for the 102 Sikuani families, not even if they will exploit the land under the model of the peasant economy. This is all the more insufficient if one considers that the Sikuani people are semi-nomadic. It is clear then that it is not disproportionate to the land of the indigenous people.

There is also a perception in this area that the URT pays insufficient attention to affected peasant communities, and these communities state they have received limited information on the progress of the case. Mapiripán is a municipality where settlers are in the majority, and this is leading to a broad rejection of the legitimacy of Law 1448 of 2011 (and Decree Law 4633 of 2011). There is a feeling that the restitution process is generating more conflicts that will inevitably be resolved through the use of violence: "With settlers, things are resolved with bullets and machetes," said one of them.

However, in practice not all conflicts have been dealt with through violent mechanisms. Some settlers say that dialogue with the indigenous authorities has worked. In any case, the history of the use of violence to resolve conflicts generates fear among indigenous people, specifically among their leaders - two of them threatened - who worry about the possibility of increased threats and violent attacks against them once the sentence is passed. This possibility becomes more plausible as time goes by without a sentence, as tensions increase more and more, and therefore the risk of violent attacks against indigenous leaders increases.

Annex 7: Non-implementation of Court decisions: the ethnic communities in the Bajo Atrato

In 2010, the Constitutional Court of Colombia ordered the State to take action to re-establish the collective territorial rights of the Jiguamiandó Community Council. The Community Council had territorial rights over 51,836 hectares, but significant amounts of this land had been illegally or arbitrarily appropriated by palm growers and/or ranchers between 2000 and 2010, in the context of the armed conflict.

Although the order dates from 2010, in 2018, it has still not been complied with. As at 2018, the Community Council holds material possession of only 21,000 hectares of its territory, less than 50% of the total.

During the course of the process seeking implementation of the judgment, the leaders of the Community Council have been under continued and repeated threat. There are multiple factors behind this: illegal armed groups continue to operate in the area; local settlers are involved in cultivation of drug crops, which are protected by armed groups; businessmen who acquired land irregularly are seeking to avoid its restitution. Simply being a member of the community council board in this context makes leaders a target and puts their security at risk. An ad-hoc inspector from the Ministry of the Interior is advancing the restoration of the remaining territorial rights; as a result of his role, he has also received death threats, which the Community Council acknowledges is likely linked to the latent prospect of eviction of powerful interests.

The Indigenous Resguardo Uradá Jiguamiando, located in the same region, has faced similar issues. The Resguardo benefits from various favourable decisions, including precautionary measures issued by the Inter-American Commission on Human Rights, a favourable decision by the Constitutional Court protecting their right to prior consultation (and other rights) in 2009 (T-769/2009)[86] and further precautionary measures issued in November 2007 by the land restitution court in Quibdo. Yet traditional authorities say none of these decisions have been complied with, and they remain in a situation of confinement, because of security risks or fear of mines.[87] Their territorial claims and the rejection of cultivation of illicit crops has put them in conflict with (and at risk from) various illegal armed groups; other armed groups single them out as “guerrillas”, which increases their security risks.

[86] http://www.corteconstitucional.gov.co/relatoria/2009/t-769-09.htm
[87] https://reliefweb.int/report/colombia/colombia-confinamiento-en-jiguamiand-carmen-del-dari-n-choc-flash-update-no-1

Annex 8 – Examples of threats, attacks and other reprisal measures experienced by communities described in this report

Date	Name and Role	Issue and outcome
7 April 2015	Fernando Salazar Calvo, Spokesperson of Mining Association of Resguardo Cañamomo Lomaprieta	Shot and killed by assassins outside his house; the physical assassin has been caught and prosecuted, but the intellectual author of the crime remains at large.
12 August 2017	Alcibiadez de Jesus Largo Hernandez Member of the Indigenous Guard, Resguardo Cañamomo Lomaprieta	Assassinated by gun shot to the head at his residence.
2 November 2017	Elvia Azucena Vargas, Resguardo Cañamomo Lomaprieta	Shot and killed by unknown person
25 November 2017	Mario Jacanamijoy Departmental Health Advisor at the Indigenous Peoples' Roundtable of Caquetá	Killed.
19 August 2018	Amanda Lucumi Tenorio, wife of Cesar Harvey Perlaza, leader of the Palenke Alta Cauca	Shot while walking down the street in the company of her husband
12 May 2019	Doris Jacanamijoy, Boarding School Principal and Leader of OPIAC	Attempted killing.
27 March 2019	Ebel Yonda Ramos, land claimant, ex Governor of the Resguardo Nasa / Cabildo La Gaitanta and husband of the current Governor.	Killed.
23 June 2019	Uriel Piranga Valencia, ex Cacique of the Resguardo Coreguaje Maticurú in the municipality of Milan	Killed.
September 2019	Five leaders of the Permanent Table on Water Rights (Bolivar-Sucre)	Prosecutions commenced against five leaders following a decision to close the dam gates (affecting commercial users), faced with an imminent lack of water for community use.
23 September 2019	Víctor Manuel Chaní Aguilar Governor of Resguardo Aguas Negras	Killed. In the following weeks, there was a mass displacement of community members because of fear generated by the killing.