



INDIGENOUS NAVIGATOR

FROM THE PERSPECTIVE
OF THE SDGS

SUSTAINABLE DEVELOPMENT GOALS AND
INDIGENOUS PEOPLES' RIGHTS IN COLOMBIA



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INTRODUCTION

In its 2013 report on the human rights situation in Colombia, the Inter-American Commission on Human Rights (IACHR) covered the critical humanitarian situation being experienced by a large proportion of the country's indigenous peoples. The IACHR took the opportunity to make a large number of recommendations to the Colombian state with regard to adopting immediate measures to prevent, contain, investigate and sanction the massive violations of international humanitarian law (IHL) and of these peoples' individual and collective rights, including the aggression and harassment of traditional authorities and indigenous leaders, for whom the risk was a real and immediate one (IACHR, 2013).¹

Unfortunately, six years have passed since this and other reports were submitted by different national and international bodies including the UN Special Rapporteur on the Rights of Indigenous Peoples and the UN Human Rights Council and instead of mitigation, the country is witnessing an escalation in massacres, murders, forced displacements and all kinds of violations against indigenous peoples. This situation which – far from producing decisive intervention from the state with a view to their protection – is even aggravated by the involvement of state officials in these violations through action or omission.

► **Information from the National Indigenous Organisation of Colombia (ONIC) notes that, since President Iván Duque took office, there have been 125 indigenous people murdered, and this intensified recently with the attempted cover up of the murder of indigenous community member Flower Yain Trompeta Pavi in Corinto municipality, in the department of Cauca on 28 October [2019] by the Alta Montaña No. 8 Army Battalion; this is in addition to the massacre that took place on 29 October on the Tacueyó Territory, Cauca, in which the members of the Ne'jwe'sx Cristina Bautista Authority were killed along with four Indigenous Guards.²**

(CCJ. 2019)

In situations such as this there is a clear need for systematic monitoring that will not only enable these issues to be included on the agendas of the international community and the state but also for mechanisms and measures to be established that will prevent them from occurring, determine responsibility and establish the sanctions to be applied to mass violations of the individual and collective rights of indigenous peoples.

As a result of the UN Declaration on the Rights of Indigenous Peoples and of work agendas on issues such as human rights and sustainable development, the Permanent Forum on Indigenous Issues has already recommended that the rights and priorities of these peoples should be included in the development projections from 2015 onwards and, more specifically, that monitoring indicators and instruments should be produced and included in relation to indigenous peoples, both in terms of progress towards the Sustainable Development Goals (SDGs) and in the development agenda.³

1. IACHR – 2013 Report. Truth, Justice and Reparation: Fourth Report on Human Rights Situation in Colombia. At: <http://www.oas.org/en/iachr/reports/pdfs/Colombia-Truth-Justice-Reparation.pdf>

2. Colombian Commission of Jurists – CCJ. 2019. La Comisión Colombiana de Juristas rechaza la violencia contra los pueblos indígenas y se suma a los llamados urgentes para detenerla. At: https://www.coljuristas.org/nuestro_quehacer/item.php?id=263

3. United Nations, Economic and Social Council, Permanent Forum on Indigenous Issues, 14th session, New York, 20 April to 1 May 2015. Item 3 of the provisional agenda. Follow-up to the recommendations of the Permanent Forum, Compilation of Information from Member States addressing the recommendations of the Permanent Forum on Indigenous Affairs. E/C.19/2015/5



The Indigenous Navigator is one such tool which, drawing on the voices of indigenous peoples, is seeking to facilitate the direct and systematic monitoring and evaluation of the enforcement and guarantee of indigenous rights from an indigenous perspective, as well as linking and measuring progress through the SDGs. It is hoped that this will help provide the communities with bigger and better tools within the current international and national legal framework and also make indigenous data and information available to them. Doing so will enable them to claim their rights and position their interests and demands on the humanitarian and development agendas.

The Indigenous Navigator's national and community questionnaire, conducted with the Embera and Nasa peoples during 2018, shows that guaranteeing fundamental individual and collective rights to life, personal integrity and collective territory⁴ remains a priority for many of Colombia's indigenous peoples. It is also clear that, given the country's particular situation, progress in the SDGs is inexorably linked to - and would be unthinkable without - a guarantee that those fundamental rights, as enshrined both in international human rights instruments and Article 1 of the UN Declaration on the Rights of Indigenous Peoples, will be immediately implemented.

These prior considerations form an essential reference point for the information that has been collected and systematised for Colombia through the Indigenous Navigator, and they also underpin what is summarised in this document.

The first section gives some general background to the country's indigenous population, noting that there is strong diversity within the state and that those groups who are ethnically distinct from the national majority also include Afro-Colombians, Palenqueros, Raizales and Romanies. The following offers an assessment of the extent to which guarantees of indigenous rights and their legal framework are enforced and then goes on to link this into a general overview of progress in the SDGs for Colombia's indigenous peoples.

4. In Colombia, ownership of the ethnic collective territories is a fundamental right: "The right to collective ownership of the indigenous territories is of essential importance to the cultures and spiritual values of the native peoples. The special relationship between the indigenous communities and the territories they occupy is noteworthy not only because these territories form their main means of subsistence but also because they are an integral part of these peoples' cosmovision and religiosity. Given the constitutional protection of the principle of ethnic and cultural diversity, the ethnic groups' fundamental right to collective property implicitly contains a right to the formation of safeguards entrusted to the indigenous communities". See: Constitutional Court, Judgment T-188/93. At <http://www.corteconstitucional.gov.co/relatoria/1993/T-188-93.htm>



COUNTRY CONTEXT

From a geographical point of view, Colombia is strategically located on the north-east of South America, in the Tropics. With coasts on two oceans, the Atlantic and the Pacific, its territory of 1,141,748 km² includes Caribbean islands, a large Andean zone, and significant areas in the Orinoco and Amazon regions. Its soils and climates are diverse, as are its natural ecosystems, biological resources and sub-soil assets.

In terms of its politico-administrative configuration, Colombia is divided into 32 departments and five districts, in turn comprising 1,123 municipalities. These units overlap with the collective territories owned by ethnic peoples and communities, some of which are asking to be given the status of “territorial entities” (entidades territoriales), a unit similar to that of a municipality for administrative and jurisdictional purposes.⁵

5. The status of indigenous territorial entity is set out in the Political Constitution, Decree 632 of 2018 and other legislation. It is largely for administrative purposes although it has to be formally approved by government.



Structural factors in the country's politico-administrative organisation include a strong centralism with regard to public policies, the development model and the distribution of assets, infrastructure and services, to the detriment of the rural sectors. The state thus intervenes from the centres of power in the fortunes of organisations, economies, cultures, environments and ways of life, having a decisive impact on the way in which territories are organised and in terms of designing the connections between the urban and semi-urban centre and the peripheral environments of the ethnic peoples and communities.

The Colombian rural development model

It is clear that the global paradigm of neoliberalism continues to be imposed within Colombia, riding roughshod over the priorities, ways of life and self-organisation of Colombia's rural communities, including its indigenous peoples and ethnic communities. This model is being imposed from the centre and is being spread through institutions that are extending the divide between the state development planners and the projects, knowledge and ways of life of these social groups.

Proposals have emerged, however, focused on a truly sustainable territorial development, originating both in the rural communities and in the different social and independent academic sectors but which, for varying reasons, have not been included in the country's institutional approach to rural development nor the nation's development plans.

This has firstly been because of the constant imposition of alien, largely extractivist development models and strategies, which have turned a blind eye to the coexistence of both legal and illegal forms of extraction, such as drug trafficking. Monolithic regulatory bodies, a weak and centralist institutional architecture, and the chaos generated by armed conflict and drug trafficking have all enabled the political, economic and financial elites to maintain the neoliberal model and its feudal features. Alongside this, there has been an acceleration in the dismantling of ethnic and rural forms of production against a backdrop of corporate extractivism. This has gone hand-in-hand with a concentration and expansion of idle private property over collective or family peasant ownership, thus leading to the dispossession of rural-based communities. These communities have thus lost, abandoned or been confined to their lands while being forced to renounce their means and forms of productive organisation.

► [...] The Commission for Monitoring Public Policy on Forced Displacements estimated that, as of 2010, at least 6,638,195 hectares had been forcibly taken or abandoned by the population displaced at that time. With multiple restrictions on accessing the Single Victims Registry by people currently forcibly displaced, there are now 7,478,723 unique forcibly displaced persons.⁶

(CCJ. 2019)

6. Colombian Commission of Jurists (2019). Radiografía de la restitución de tierras en Colombia. Report presented to the Inter-American Commission on Human Rights for failure to provide reparation to victims stripped of their land in Colombia. 9 May 2019. Available at https://www.coljuristas.org/documentos/tmp/Radiografia_de_la_restitucion_de_tierras_en_Colombia_2019.pdf

7. Truth Commission. (2019). La tierra en Colombia no se usa para producir, se usa para especular. Available at <https://comisiondelaverdad.co/actualidad/noticias/alejandro-reyes-dario-fajardo-tierra-en-colombia-se-usa-para-especular>

In this context, some business sectors and private owners of large areas of idle land are not only speculatively profiting from these lands but also opposing and hindering their return and collective ethnic titling because this form of ownership does not form part of the land market and provides these peoples with the autonomy to organise and exploit these territories.

This weakening of traditional forms of ownership, use and occupation of the territories has been accompanied by a dismantling of real spaces and legal guarantees for participation and self-government such as Prior Consultation and Free, Prior, and Informed Consent (FPIC). This has also made the life or development plans of the indigenous peoples and Afro-Caribbean communities themselves unviable, as they are being crowded out by general policies that prioritise speculative ownership or macro projects. Such developments consider collective initiatives, indigenous economies, fair trade, organic production and generally anything based on criteria of food sovereignty and security to be irrelevant.

In an anachronistic political, legal and economic framework that prioritises unsustainable models, it has thus been very difficult to consolidate or expand any of the urgent strategies and actions needed to initiate a real process of transition towards rural development that would encompass indigenous and peasant models, and which could enable protection of the natural resource base while also maintaining the efficacy and environmental provisioning of their own production systems.

The dominant development model in Colombia represents a structural obstacle to indigenous peoples' progress in the SDGs. Goals such as ending poverty, zero hunger, sustainable communities or life on land are compromised because they require an openness to a form of rural development that would de-escalate an economic and energy model based on extractivism and speculation on unproductive lands, and which would consult the interests, needs and development vision of the ethnic and peasant peoples and communities.

Unfortunately, however, successive governments have continued to pursue a hegemonic model, even ignoring binding international commitments with regard to human rights and the environment. This can be seen, for example, in the armed violence and regressive legal framework that have been imposed in relation to rural development. Laws such as the controversial Zidres Law, which seeks to bring large rural areas into line with

► the globalisation of the economy, on the basis of high competitiveness, equity, reciprocity and national convenience

along with public policies that encourage mining or fracking, and the failure to implement the chapter on Comprehensive Rural Reform in the 2016 Peace Agreement between the Colombian state and the FARC all demonstrate that the rural development model being imposed, and which directly or indirectly affects the indigenous peoples' territorial, economic, environmental and social spaces, is opposed to making genuine progress towards the Sustainable Development Goals in terms of guaranteeing these peoples' collective rights.

8. See: Evaluación Internacional del Papel del Conocimiento, la Ciencia y la Tecnología en el Desarrollo Agrícola (IAASTD), presented at the final intergovernmental plenary session held in Johannesburg (South Africa) in April 2008. Available at http://www.unep.org/dewa/agassessment/docs/SR_Exec_Sum_280508_Spanish.pdf

Columbia territory of **1,141,748 km²** includes **Caribbean islands**, a large **Andean zone**, and significant areas in the **Orinoco** and **Amazon regions**.



Indigenous peoples and ethnic communities

Alongside the country's physical geographical diversity lies a very great cultural plurality. Although they are numerical minorities, there are peoples and communities in Colombia that self-identify as indigenous: Rom; Raizales from the San Andrés Archipelago, Providencia and Santa Catalina; Palenqueros from San Basilio; and blacks and Afro-Colombians, most of them living in the country's rural areas, areas in which peasant farmers and settlers are also living.

Demographic information is unfortunately unreliable and, rather than provide updated figures and greater reliability, the 2018 national census was an insult - particularly to the black communities - given that the new information claimed that their population had reduced by around two million, something that has been described as a "statistical genocide". The national government attributed this to "errors" in the census variables and techniques.⁹

9. El Tiempo daily newspaper. (2019). Resultados del censo evidencian un "genocidio estadístico": organizaciones afro. Available at <https://www.elespectador.com/economia/resultados-del-censo-evidencian-un-genocidio-estadistico-organizaciones-afro-articulo-890381>

Population in Colombia and ethnic peoples and communities

Population group	No. persons	Percentage
Black, Afro-Colombian, Raizal and Palenquera ¹⁰	1,972,251	4,09%
Rom	2,649	0,01%
Indigenous	1,905,617	3,95%
Total population	48,258,494	100,00%

Source: Dane, 2019¹¹

In addition to the problem of "statistical genocide", one indication of indigenous peoples' particular vulnerability in relation to the rest of the population is their social and demographic structure because, very often, the survival and integrity of the group depends on a fine balance between these two factors.

The deterministic conception of demography that is applied to indigenous peoples is thus reflected from the outset in another model that tacitly denies their differences and conceals the immense risks that many groups experience as a result not only of their low population density but also of the breakdown in alliances and interethnic linkages that result from their displacement, containment, cultural changes and migration to urban centres, environmental degradation, or their location on the national borders, among other things.

Given these difficulties and the lack of indigenous involvement in designing these statistical mechanisms and instruments, a national census of the population¹² was conducted between 2018 and 2019 that introduced a number of different variables but which still continued to focus on counting individuals to the detriment of gaining an understanding of collective groups. This is a circumstance of particular concern in Colombia given the number of different peoples and their different stages of transformation, ranging from intensive integration and acculturation to peoples living in initial contact or isolation.

10. Figure rejected by black communities.

11. DANE, National Census 2018. At: <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/censo-nacional-de-poblacion-y-vivenda-2018/cuantos-somos>

12. DANE, National census of the population 2018. At <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/grupos-etnicos/informacion-tecnica>

Conquest of identities

In the 2005 national census, the Colombian state recorded the existence of 93 indigenous peoples, while in the 2018 census it recorded 115. This significant discrepancy can be explained by the fact that

- ▶ **the 22 additional peoples are newly-recognised ethnic groups or indigenous peoples in border areas.**

(Dane, 2019)¹³

These peoples are ethnically and culturally distinct human groups the majority of whom have retained their own languages. In fact, a total of 68 indigenous languages have been recorded in the country to date, many of them grouped into 13 linguistic families, and seven of them entirely independent. The name of the language and of the ethnic group are often the same although it should also be noted that some groups, in exercise of their autonomy and self-determination, have changed the "official" name imposed on them at some point in history and replaced it with their own collective mark of identity (e.g. Paez→Nasa; U'wa→Tunebo; Chibcha→Muexca; Guajiro→Wayuú, etc.)

Identity, and its official recognition by the state, is clearly not a minor issue for the indigenous peoples or ethnic minorities since their legal status as collective rights holders is dependent upon this.¹⁴ Until the 1991 Political Constitution, indigenous peoples' and black communities' processes of self-recognition were of little relevance in Colombia but a substantial change has taken place in the status and scope of collective rights since then. Alongside this, movements have emerged claiming identities closely bound up with demands for the recognition and re-establishment of territorial and jurisdictional rights, autonomy and self-government.

Paradoxically, this same situation has resulted in tensions between the state and ethnic groups insofar as the official recognition of a people or community transcends a culturalist rhetoric and creates an obligation on the state to guarantee their collective rights. This results in responsibilities for the state and also possibly affects private interests. This has been evident in the complex processes in which different communities have become bogged down when trying to obtain official recognition of their self-affirmation as indigenous peoples or as traditional black communities. As already noted, this has been a major issue, to such an extent that the country ended up in a debate over the erasure of some 2 million Afro-Colombians from the official 2018 census:

- ▶ **These figures do not represent us and nor do we accept them. They are the result of an institutional structure that ignores the constant warnings being made by the ethnic, Afro-descendant and indigenous organisations,' denounced CNOA, warning that the statistics were 'endangering the lives and survival of the [Afro] population' given that they made it impossible to draw up 'public policy proposals and budgets that guarantee these communities' development and protection'.**

(El Tiempo, 2019)¹⁵

13. DANE, Press release, 16 September 2019. At <https://www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/comunicado-grupos-etnicos-2019.pdf>

14. See ONIC, <http://www.onic.org.co/noticias/2-sin-categoria/1038-pueblos-indigenas>

15. Diario El Tiempo. (2019). El 'error' del Dane que borró del mapa a 1,3 millones de afros. Available at <https://www.eltiempo.com/colombia/otras-ciudades/el-error-del-dane-que-borro-del-mapa-a-1-3-millones-de-afros-436936>

LEGAL AND POLITICAL FRAMEWORK



...taking the **international treaties on civil, political, economic, social and cultural rights** to which it has acceded as a basis, along with **ILO Convention 169** on indigenous and tribal peoples, the **new Constitution** endeavoured to **capture a new series of rights** that represented a break with the monolithic conception of the state.

Collective rights in Colombia

The essence of the concept of minority revolves not only around the numerical insignificance of a human group with common (ethnic, religious or linguistic) features within a state but also around the fact that the group finds itself in "a non-dominant position" in relation to other nationals (Capotorti en Serrano, 2012).¹⁶

Since colonial times, and since the very time of Colombia's formation as a Republic, minorities have been in an asymmetric position in relation to the law and their effective recognition as human groups distinct from other nationals. It is also clear, however, that the 1991 Constitution set new parameters by which minorities became a part of the constitutional order, based on the country's self-definition as a state governed by the rule of law and its incorporation of international human rights law into its main tenets, thus turning a monocultural state into a multicultural and pluriethnic one (Sánchez, 2002).¹⁷

In fact, taking the international treaties on civil, political, economic, social and cultural rights to which it has acceded as a basis, along with ILO Convention 169 on indigenous and tribal peoples, the new Constitution endeavoured to capture a new series of rights that represented a break with the monolithic conception of the state. Yet, from a legal point of view, the new Constitution introduced something far more substantial and complex than mere recognition of cultural diversity: an openness to the universe of collective rights in contrast to the pre-eminence of individual rights. The new constitutional framework therefore gave rise to a reconceptualisation of crucial elements of the legal system such as justice and property, among others, by giving indigenous justice and collective ownership of the goods and territories of indigenous peoples and black communities constitutional status. These are rights which have undoubtedly given rise to a new legal system that can no longer avoid the principle of diversity and recognition of the collective rights of ethnic and linguistic minorities.

On this constitutional basis, Parliament has enacted numerous laws establishing special rights, mechanisms and procedures for minorities, even though there is a significant difference in number between those referring to indigenous peoples and those developed in relation to other minorities, including black communities. This legislation fully or partly regulates the exercise of individual and collective rights, including territorial, autonomous, environmental, economic, social and cultural guarantees among others, and also sets the boundaries of action for state bodies.

16. Serrano, César. (2012). Conceptos generales y tendencias constitucionales en América Latina. Módulo I Introducción, documento del Curso Derechos de las Minorías. Máster en Derechos Humanos, Estado de Derecho y Democracia en Iberoamérica. Programa Regional de Apoyo a las Defensorías del Pueblo en Iberoamérica, Alcalá University.

17. Sánchez, Esther. Los Derechos Indígenas en Las Constituciones de Colombia y Ecuador. 2002

Constitutional jurisprudence

Since the 1991 Constitution, the Colombian Constitutional Court has intervened multiple times with regard to ethnic minorities. The Court's significant output can be explained partly by the fact that, even today, great efforts are needed to change the state's legal, political and institutional structures from their monolithic approach and to incorporate rights holders and collective rights, as well as to adapt the institutions so that they view issues concerning indigenous peoples and other ethnic groups from a different perspective.

Since its origins in the 1991 Constitution, the Constitutional Court has therefore had to interpret, redirect, contextualise and direct policies and even order actions to effectively protect minority rights. This Court has not only issued its interpretation of constitutional rules and generated case law in this regard but has also consolidated and given rise to new laws and guarantees for ethnic minorities, while further setting out limits to the exercise of some rights. The Colombian Constitutional Court's interventions, through rulings on constitutionality, protection and follow-up orders, has significantly contributed to building doctrine around minority rights.

► **Based on principles of human dignity and pluralism, the Constitution recognises a special protective status with specific rights and prerogatives to the ethnic communities so that they can form a part of the Nation on the basis of their own habits and customs. In addition, cultural diversity relates to life representations and conceptions of the world that are very often not in line with the dominant customs or majority archetype in the political, social, economic, productive organisation or even religion, race, language, etc. This reinforces the need for state protection of multiculturalism and minorities.**

(CC, Judgment T-129/11)

There has undoubtedly been significant progress in constitutional and case law in Colombia with regard to indigenous peoples' and ethnic communities' collective rights generally. A differential and comprehensive approach to these rights, attuned with their world visions and contemporary concerns regarding the environment, has even given rise in recent case law to the Constitutional Court going yet further and incorporating the concept of bio-cultural rights.



► So-called biocultural rights, in their simplest definition, refer to the rights that ethnic communities have to manage and independently act as guardians of their territories – in accordance with their own laws and customs – and the natural resources that make up their environment, in which they develop their culture, their traditions and their way of life based on their special relationship with the environment and biodiversity. These rights are in fact the result of recognition of the deep and intrinsic connections that exist between nature, its resources and the culture of the ethnic and indigenous communities living therein, which are interdependent among themselves and which cannot be seen in isolation.

(CC. Judgment T-622 of 2016)¹⁸

These emerging concepts have given rise to the recognition of rights to natural assets such as the Atrato River and the Cauca River,¹⁹ and to the linking up of communities for their management and protection. However, as already noted, collective and biocultural rights diverge substantially from the neoliberal development model and national and global hegemonic interests, thus exposing the impossibility of guaranteeing rights when they are subordinate to political, corporate and financial power.

18. Available at http://www.corteconstitucional.gov.co/relatoria/2016/t-622-16.htm#_ftnref98

19. Semana – Medio Ambiente. 2019/06/20. Histórico: declaran al río Cauca como sujeto de derechos. El Tribunal Superior de Medellín reconoció al Río Cauca, su cuenca y sus afluentes como sujeto de derechos a la protección, conservación, mantenimiento y restauración a cargo de EPM y del Estado. Available at <https://sostenibilidad.semana.com/medio-ambiente/articulo/historico-declaran-al-rio-cauca-como-sujeto-de-derechos/44662>

SDGS AND INDIGENOUS PEOPLES IN COLOMBIA

The Sustainable Development Goals (SDGs) arose from the UN Conference on Sustainable Development (Rio de Janeiro, 2012) with the aim of providing continuity to the Millennium Development Goals, themselves the result of the UN Millennium Declaration of 2000 in which...

► [...] nations [committed] to a new global partnership to reduce extreme poverty, and set out a series of eight time-bound targets - with a deadline of 2015 - that have become known as the Millennium Development Goals.

(MDGs)²⁰

Although they have acknowledged the value of many of the goals' more general proposals, several indigenous peoples have stated that they felt alienated from the origin and inspiration of these goals from the very start. In fact, when the new SDGs were launched, indigenous organisations - including those in Colombia - proposed a reinterpretation and change of perspective that would rebrand them to more faithfully include indigenous aspirations and needs, and to also include the June 2018 Ibero-American Action Plan for the Implementation of the Rights of Indigenous Peoples

Several indigenous peoples have stated that they **felt alienated from the origin** and inspiration of these goals from the very start.

20. See: https://www.undp.org/content/undp/en/home/sdgvoverview/mdg_goals.html

The SDGs from an indigenous perspective in Colombia



In an effort to rethink the SDGs, and bring them closer to a differential approach that represents their current interests, the Colombian indigenous peoples updated their observations in the 2nd Report on the status of implementation of the SDGs in Latin America and the Caribbean,²¹ emphasising their commitment to building a lasting peace. The main recommendations contained therein were as follows:

- 1** The peace process opened the door to Indigenous Peoples' participation towards the end of the negotiations [Ethnic Chapter of the Peace Agreement]. The SDG process must learn this lesson and create mechanisms for Indigenous Peoples' participation in the early stages of implementation.
- 2** The High-Level Interinstitutional Commission for the Enlisting and Effective Implementation of the 2030 Agenda and its SDGs, which coordinates SDG implementation nationally, has been unable to substantially incorporate the aspirations of Indigenous Peoples into its work. A specific chapter is needed on indigenous peoples' relationship to the SDGs, along with the inclusion of ethnic indicators for each SDG.
- 3** Create a mechanism for Indigenous Peoples and civil society to participate in the SDG Commission in order to ensure their active role.
- 4** The Territorial Development Plans enable sub-national implementation of the SDGs but there is no evidence that these Plans have included the indigenous reality. The Territorial Development Plans need to incorporate a mechanism for Indigenous Peoples to participate in SDG implementation and ethnic indicators.
- 5** The Strategy for Implementing the SDGs in Colombia (CONPES Document 3918) and the Territorial Development Plans are highly urban-focused. These strategic documents need to include rural areas, and note in particular that Indigenous Peoples have the right to self-government on their territories or reserves.

Taking into account the perspective of and caveats raised by the indigenous peoples in relation to reconceptualising and making progress in the SDGs, the following sets out some of the Indigenous Navigator's national indicators while also incorporating the perspective of the SDGs, i.e. regrouping the Navigator's standards thematically in the light of the peoples' proposals.

21. See: https://www.undp.org/content/undp/en/home/sdgooverview/mdg_goals.html

ESTIMATE OF SDG FULFILMENT THROUGH THE INDIGENOUS NAVIGATOR

1. HEALTHY TERRITORY, NATURE AND ENVIRONMENT



National legislation recognises indigenous peoples' and ethnic communities' right to their territories and resources. In fact, Article 329 of the Political Constitution states that indigenous reserves are collectively owned and have special attributes:

► [...] the communal lands of ethnic groups, the reserves, the archaeological heritage of the Nation and other assets as determined by law are inalienable, imprescriptible and exempt from seizure.

(ART.63)

Other important jurisprudential and legislative developments such as Decree Law 4633 of 2011, which "establishes specific measures for assistance, care, comprehensive reparation and restitution of territorial rights for indigenous communities and groups" also recognises indigenous collective ownership of their ancestral territories, including land not yet established as reserves by the state, on the basis of Articles 13, 14 and 15 of ILO Convention 169 and Article 63 of the Political Constitution:

► Article 56. Collective protection measures. For the purposes of this Decree, collective protection measures means, among other things, measures to protect autonomy, territorial rights, indigenous territory, and the peoples and communities living thereon. It is understood that the protection measures herein envisaged shall cover the indigenous territories of ancestral occupation, formed in reserves, or in the process of being extended and/or regularised.

(Decree Law 4633 of 2011)²²

According to data reported by the National Land Agency, as of February 2018 the total area of indigenous reserves established in Colombia came to a total of 28,701,905.69 ha.²³ As of June 2017, official information reported that there were 1,220,177 indigenous peoples living in reserves, meaning that approximately 73.7% of the indigenous population had recognised rights to their collective territories.

It should be noted, however, that while there is formal recognition of collective ownership, neither the availability, enjoyment or governance of the collective territories are fully guaranteed due to multiple factors including the presence of armed actors, extractive companies, settlers, and so on, all of which has resulted in forced displacements, containment, a lack of access to sectors and the loss of resources essential for their survival.

22. Centro de Memoria Histórica. Available at: <http://www.centrodememoriahistorica.gov.co/descargas/registroEspecialArchivos/Decreto4633-2011-ley-de-victimas.pdf>

23. Portal de datos abiertos de la ANT. Available at: http://data-agenciadetierras.opendata.arcgis.com/datasets/1a9fde11fc8f48f28388f7da49167e23_0?geometry=-103.726%2C-7.517%2C-44.444%2C7.818&selectedAttribute=AREA_ACTO_ADMINISTRATIVO

Forced displacement

Under collective territorial rights, the issue of internal forced displacement deserves a paragraph on its own given that it has created a high-impact humanitarian crisis that affects indigenous and Afro-descendant peoples and communities disproportionately.

In 2015, in its National Report on Forced Displacement in Colombia, “A nation displaced”, the National Historical Memory Centre estimated that 10% of indigenous peoples had been displaced from their territories:

► [...] the high expulsion figures reveal a disproportionate and aggravated effect on this population.

(CNMH, 2015)²⁴

For their part, the official figures gathered up to 2017 by the Victims Unit indicate that at least 198,457 indigenous people had been expelled from their territories, many of them still living in the cities to this day.²⁵

This displacement takes many different forms and involves many different places: individual, family or mass displacement, within the same indigenous territory, to other reserves, municipal capitals, large cities or even across borders, particularly towards Ecuador and Venezuela. Some emblematic cases have involved large numbers of Embera, Guayabero (Jiw), Kankuamo and other peoples.

Actual availability of territories and resources

In terms of the actual availability of territorial spaces for each people to live in, it should be noted that while some have sufficient land for their survival and physical and cultural reproduction – as is the case of the large reserves in the Colombian Amazonian region – the situation is not the same in the interior of the country where the size of the reserves is very far from meeting the minimum necessary to guarantee the physical and cultural survival of communities, many of them with increasing populations that are being pushed towards unproductive areas.

Another factor that has contributed, not to the spatial availability but to the governance of the collective territories, is the superimposition of most of the country’s protected environmental areas (natural parks, forest reserves, etc.) on top of indigenous territories. processes for declaring protected areas have only become subject to prior consultation since 2008. This has created a situation that has resulted in controversy because of the tension created between indigenous authorities and state institutions as regards their management.

24. Centro Nacional de Memoria Histórica. (2015). Una nación desplazada. Available at <http://www.centrodememoriahistorica.gov.co/descargas/informes2015/nacion-desplazada/una-nacion-desplazada.pdf>

25. See: Sistema de Información de la Unidad de Atención a Víctimas. Available at <https://cifras.unidadvictimas.gov.co/Home/Dinamico>



Consultation and consent in extractive projects

Colombian legislation recognises indigenous peoples’ and ethnic communities’ right to participate in decisions that may affect them through their representative institutions, in particular through prior consultation, incorporated into the legal system and the body of Colombian constitutional rules with the adoption of ILO Convention 169, transposed through Law 21 of 1991.

The content of this right has, however, taken shape gradually over time, either by means of international law and its bodies – particularly the IACHR and the Inter-American Court for member states - or through case law passed by the high courts, particularly the Constitutional Court as supreme body of constitutional jurisdiction in Colombia.

This Court’s interventions with regard to prior consultation have contributed to progress in basic legislation and international case law and have meant that the exercise of this right is not solely considered through legislative reform, through the administrative action of the current government or interventions or omissions on the part of companies and institutions.

One such development, for example, is the reaffirmation of a number of standards that have contributed to settling controversies around issues such as the extent to which ethnic groups have to be affected before their right to be consulted is triggered. It should also be noted, nonetheless, that contributions to the binding force of Free, Prior and Informed Consent have not been consistently developed but have instead increased its ambiguous and ineffectual nature when protecting those fundamental collective rights that are particularly violated by the effect of extractive projects or large-scale infrastructure works.

Just one example of this is the lack of guardianship which the Constitutional Court itself is arguing as a way of extending the margin for negotiation and the demands for participation of the Wayú people in a prior consultation related to the diversion of the Bruno River at the initiative of Carbones de Cerrejón Limited. At the same time, however, there is a tacit denial of their right to give or refuse consent insofar as the implementation of

► [...] prevention, mitigation, control, compensation measures and measures to correct the social and environmental impacts of the project.

has been ordered in advance.

2. LIVING WELL



Official data from the 2014 National Agricultural and Livestock Census indicates that 45.6% of people living in remote rural areas were living below the poverty line as determined by the adjusted Multidimensional Poverty Index; however, the same indicator notes that the MPI for the indigenous remote rural population is 69.3%, considerably higher than for the rest of the rural population, a group which in itself is already suffering a high level of poverty.²⁶

While the Colombian state has neither implemented nor systematically financed any social protection programmes specifically for indigenous peoples, actions have been taken as a result of agreements signed with indigenous organisations and some resources have been prioritised for and redirected to social protection programmes.

Another path by which central governments have been forced to identify special social protection plans is in response to court orders. Such is the case, for example, of the Safeguard Plans ordered by the Constitutional Court through Decision 004 of 2009 and Order 382 of 2010,²⁷ or at the demand of the state Council in 2016 to avert the humanitarian crisis among indigenous children in the department of Chocó, among others.²⁸

It is important to clarify that although this kind of programme has not been implemented nationally, some departments and municipalities have implemented special actions in the context of their own development plans. It should also be noted that the indigenous reserves receive some resources from the General Participations System that enables them to finance social projects.

45,6%

people living in remote rural areas **were living below the poverty line** as determined by the adjusted Multidimensional Poverty Index.

69,3%

the **same indicator notes that the MPI** for the indigenous remote rural population is **considerably higher** than for the rest of the rural population, a group which in itself is already suffering a high level of poverty.

26. See: Ministry of Health, Perfil de Salud de la Población Indígena, y medición de desigualdades en salud. Colombia 2016, Available at <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/VS/ED/PSP/Perfil-salud-pueblos-indigenas-colombia-2016.pdf>

27. See: <http://www.acnur.org/fileadmin/Documentos/BDL/2011/7645.pdf>

28. See: Consejo de Estado, Radicación número: 27001-23-31-000-2016-00097-01(AC), Available at [http://www.consejodeestado.gov.co/documentos/boletines/PDF/27001-23-31-000-2016-00097-01\(AC\).pdf](http://www.consejodeestado.gov.co/documentos/boletines/PDF/27001-23-31-000-2016-00097-01(AC).pdf)

3. FOOD SOVEREIGNTY AND AUTONOMY AND INDIGENOUS ECONOMY



From indigenous peoples' holistic perspective, food, their own indigenous economies and the availability of natural resources are three inseparable factors for achieving goals 2, 8 and 23, although territorial security should also be considered in this regard.

There is constant dumping of toxic substances and waste on indigenous territories in some areas of the country, particularly where there is gold extraction, illegal crops and state eradication programmes involving aerial spraying of glyphosate across wide areas of farmland without any consultation.

Although no national data or statistics are available, environmental assessments and statements made by indigenous organisations and communities highlight serious impacts in three areas in particular: human health, indigenous economies and farming production, plus contamination of water sources. Some of these actions have been subject to constitutional protection, at the request of the communities affected:

- Fumigation of illegal crops via aerial spraying with glyphosate. See Constitutional Court, Judgment T-080/17.²⁹
- Huitoto people hemmed in by mercury.³⁰

29. Available at <http://www.corteconstitucional.gov.co/relatoria/2017/t-080-17.htm>
 30. See: Revista Semana, Available at <http://especiales.semana.com/mercurio-contaminacion/index.html>

4. CULTURALLY-APPROPRIATE INFRASTRUCTURE



No information is available with regard to progress in goals 9 and 11, which the indigenous peoples have regrouped and renamed from a perspective of the culturally-appropriate development of community infrastructure. The infrastructure promoted by the state has largely focused on unsustainable spaces for education and health, which will deteriorate very quickly, and their development has been delegated particularly to the local authorities i.e. the municipalities.

As regards progress in housing, water and sanitation for indigenous peoples, there are no specific differentiated proposals nationally in this regard although indigenous peoples are eligible for the 100% free housing programmes, funded by the Ministry of Housing and governed by Decree 1921 of 2012.³¹

Indigenous peoples are eligible for the 100% free housing programmes, funded by the Ministry of Housing and governed by Decree 1921 of 2012.

31. See: Ministry of Housing, Available at <http://www.minvivienda.gov.co/Decretos%20Vivienda/1921%20-%202012.pdf>

5. INDIGENOUS INTERCULTURAL HEALTH

3

GOOD HEALTH AND WELL-BEING



Although the National Constitution and international treaties adopted by Colombia establish indigenous peoples' right to their own indigenous health systems, the national health system is governed by market principles using a model of "regulated competition". The state thus retains responsibility for its regulation and also guarantees the system's financing so that it offers a margin of profitability to the companies promoting and providing health ("health promoting entities" or EPS) – most of them private – who are responsible for providing services that are in turn outsourced to public and private health institutions.

The current legislation on indigenous health falls within this context, and regulatory texts therefore largely consist of setting out means of coordination between the health system structures operating nationally under the parameters of Law 100 of 1993, and the indigenous health entities and resources which, for the purposes of dialogue, have been termed the Indigenous System of Intercultural Health (SISPI).

Two of the laws currently governing the indigenous health system are Decree 1953 of 2014³² and Decree 1848 of 2017,³³ which establish a special authorisation system for indigenous EPS.

Both laws are transitory in that they offer dialogue, agreements, consultations and legislative procedures through the Congress of the Republic by which to issue final legislation and they are subordinate

► [...] to the logic of the General Health and Social Security System and to the creation of institutions such as the indigenous EPS and the indigenous IPS [causing] indigenous governance to be limited to marginal aspects given the complexity of these institutions, which are currently facing a serious crisis of sustainability, legitimacy and efficacy, relegating their own, collective and territorial health models to a subordinate position.

[...] In this context,

► the SISPI has become a controversial issue in which the government is always ready to formally recognise indigenous health systems while at the same time imposing rules of play and a model that actually threaten to weaken the indigenous organisations.³⁴

32. Available at <https://www.minjusticia.gov.co/Portals/0/DECRETO%201953%20DEL%2007%20DE%20OCTUBRE%20DE%202014.pdf>

33. Available at <http://es.presidencia.gov.co/normativa/normativa/DECRETO%201848%20DEL%2008%20DE%20NOVIEMBRE%20DE%202017.pdf>

34. See: Jaime Hernán Urrego, Salud indígena, entre la desigualdad, el reconocimiento y el mercado, 2016, Available at <http://agenciadenoticias.unal.edu.co/detalle/articulo/salud-indigena-entre-la-desigualdad-el-reconocimiento-y-el-mercado.html>

Some figures on indigenous health

Neonatal mortality rate among the indigenous population

According to the most recent public data from the Ministry of Health, the indigenous neonatal **mortality rate in 2013 was 11,42 per 1,000 live births, 59% higher than among the non-indigenous population.**³⁵ According to the news and some sparse information from the indigenous organisations, it can be assumed that the lack of change in this figure is due to violence, displacement and poverty issues that remain unresolved both inside and outside of the territories.

Mortality rate among indigenous children under five

According to Ministry of Health figures, **between 2009 and 2013 “[...] a total of 3,043 deaths were recorded among the [indigenous] under fives with an average annual figure of 609 and a standard deviation of 34 deaths.** The mortality rate also fell [over this period], from 44.73 to 41.99 deaths per 1,000 live births, or a decline of 6.12%. During 2013, 2.11 times more indigenous children under five died in Colombia than non-indigenous children.”³⁶

Maternal mortality rate among indigenous women

According to a study by the Pan American Health Organization, “[...] **in 2013, the maternal mortality rate among indigenous women was five times higher** than the national average: while mortality was 55.2 per 100,000 live births in the country, **for indigenous women it was 355 per 100,000 live births.**”³⁷

Another specific investigation into mortality among indigenous women indicates that: “In Colombia, there were **1,546 cases of deaths among women of reproductive age over the 2011-2013 period** [...] The MMR was highest among early adolescent women and those between **40 and 45 years.** The main causes of mortality were post-partum haemorrhaging, eclampsia and puerperal sepsis”.³⁸

35. See: Ministry of Health, Perfil de Salud de la Población Indígena, y medición de desigualdades en salud. Colombia 2016, Available at <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/VS/ED/PSP/Perfil-salud-pueblos-indigenas-colombia-2016.pdf>

36. See: Ministry of Health, Perfil de Salud de la Población Indígena, y medición de desigualdades en salud. Colombia 2016, Available at <https://www.minsalud.gov.co/sites/rid/Lists/BibliotecaDigital/RIDE/VS/ED/PSP/Perfil-salud-pueblos-indigenas-colombia-2016.pdf>

37. See: Alarmantes índices de mortalidad materna en población indígena y zonas dispersas, 2018, Available at <https://www.opinionysalud.com/alarmanentes-indices-mortalidad-materna-poblacion-indigena-zonas-dispersas/>

38. See: Laura Bello, Caracterización de la Mortalidad Materna en Comunidades Indígenas Colombianas, 2016, Available at http://bdigital.unal.edu.co/55700/1/52818209_2016.pdf

6. INDIGENOUS INTERCULTURAL EDUCATION



The recognition of multiculturalism is a state principle and should form the foundation of all ethnic educational processes. In this regard, Article 10 of the Political Constitution establishes that:

► **The languages and dialects of the ethnic groups are also official within their territories. The education provided in the communities through their own linguistic traditions shall be bilingual.**

In addition, Law 115 of 1994, Regulatory Decree 804 of 1995 and some international conventions and treaties signed by Colombia include a mandate to guarantee indigenous peoples an education that is relevant to their societies and cultures. It has not, however, yet been possible to reach an agreement between the indigenous peoples and the national government aimed at issuing a law that guarantees the establishment of their own education systems, adapted to the interests and particular needs of these peoples.

► **Together with the national government, through the Commission for Work and Consultation on Indigenous Peoples' Education (CINTCEPI), the indigenous peoples are currently making progress towards a law that will implement an Indigenous Education System (SEIP).³⁹**

While the 2016-2025 Education Plan thus envisages implementing a regulatory framework and public policies that will give concrete shape to the principles and commitments of education with a differentiated approach, this task still represents a major challenge for the national government and indigenous peoples.⁴⁰

Indigenous educational institutions

If an agreement can be reached between indigenous peoples and the Colombian state with regard to the regulatory framework governing the Indigenous Education System (SEIP), the possibility of indigenous peoples establishing their own educational bodies will temporarily be governed by Decree 2500 of 2010,

► **By which the contracting of the administration of educational care by certified territorial entities, with the town halls, indigenous traditional authorities and indigenous organisations within the context of the process to build and implement an indigenous education system (SEIP) is temporarily regulated.⁴¹**

39. See: ACIN, 2018, Available at <https://nasaacin.org/tag/sistema-educativo-indigena-propio/>
 40. See: Ten-Year Education Plan, Available at <http://www.plandecenal.edu.co/cms/index.php/glosario-pnde/educacion-enfoque-diferenciado#faqnoanchor>
 41. Decree 2500 of 2010, Available at https://www.mineducacion.gov.co/1759/articles-239752_archivo_pdf_decreto2500.pdf



Meanwhile, in a few cases only, indigenous peoples are running their own educational institutions, for example, the Intercultural Bilingual Education Programme (PEBI) that is being coordinated by the Indigenous Regional Council of Cauca (CRIC).⁴²

These indigenous programmes are being run in only a fraction of the country's indigenous communities and territories and cover only primary and secondary levels, with the exception of the Intercultural Indigenous Autonomous University (UAIIN) that was also created at the initiative of the Indigenous Regional Council of Cauca.⁴³

There are also no particular universally-accessible strategies, content or materials for the non-indigenous population within national education programmes more generally. Some institutions and teachers are, however, endeavouring to include a perspective of respect, non-discrimination and interculturality into their education.

Indigenous bilingual teachers

In just a few territories, at the initiative of the indigenous peoples, the regional ministries of education, the national Ministry of Education and other institutions, NGOs and cooperation organisations, a process of training indigenous bilingual teachers has been taking place. The great linguistic diversity, geographic isolation and the fact that some specific ethnolinguistic peoples are numerically small and at risk of extinction all nevertheless hinders the design of systematic training programmes.

42. See: CRIC, 2016, Available at <http://www.cric-colombia.org/portal/el-programa-de-educacion-bilingue-intercultural-pebi-cric-nuevamente-de-reune-en-minga-de-pensamiento-en-san-andres-de-pisimbala-territorio-inza-cauca/>
 43. See: <https://www.cric-colombia.org/portal/universidad-autonoma-indigena-intercultural-uaiin/>

7. INDIGENOUS WOMEN



Like many other regional and local organisations, the National Indigenous Organisation of Colombia (ONIC) has for several years now been advocating for indigenous women's issues. At their own initiative, they have set up special working groups or commissions on women within their organisations; they have conducted situational assessments; implemented projects; proposed political lobbying and, more generally, opened up participation in decision-making spaces to women, trying to mainstream a differentiated gender approach into their different areas of work and agendas. A gender and generational focus has also been taken up by the Standing Committee for Consultation with Indigenous Peoples, in the following terms:

- ▶ **NATIONAL INDIGENOUS COUNCIL: encourages processes of political and legal enforceability of ESCR for women, raising awareness of situations of discrimination and sensitising public opinion by organising national and regional platforms.⁴⁴**

This approach is nonetheless only included rhetorically or occasionally in government actions and public policies, without any decisive intervention nor any special protection for indigenous women who are threatened by a backdrop of widespread violence.⁴⁵

The **National Indigenous Organisation of Colombia (ONIC)** has for several years now been advocating for indigenous women's issues.

44. CRIC. Sf. Available at: <https://www.cric-colombia.org/portal/proyecto-politico/programa-familia/programa-mujer/>

45. Daily newspaper El Espectador. 2019. Mujeres indígenas: víctimas de violencia sexual por todos los actores armados. Available at <https://www.elespectador.com/colombia2020/justicia/verdad/mujeres-indigenas-victimas-de-violencia-sexual-por-todos-los-actores-armados-video-868533>

8. IP PARTICIPATION IN THE NATIONAL AGENDA



National participation mechanisms

There are three high-level bodies for dialogue between the national government and the representative indigenous organisations, created by decree following a long struggle on the part of the indigenous movement to achieve dialogue on an equal footing with the state institutions. The laws creating these bodies are:

Decree **1396 of 1996**, establishing the **National Human Rights Commission**, with its own functions and with a clearly established structure.

Decree **1397 of 1996**, creating the **National Territories Commission (CNT)** and the **Standing Committee for National Consultation with Indigenous Peoples and Organisations**, each with its own functions but a similar structure.

Although these bodies have played an important role in dialogue and consultation around many different issues related to legislative consultations, public policies, development plans and even indigenous and ethnic participation in the Final Peace Agreement, they are reliant on the goodwill of the government in power which, moreover, does not currently offer them guarantees or strong support.

Direct participation in the state's legislative bodies

The Constitution (Article 171) stipulates that indigenous peoples shall have a special constituency that guarantees their participation in the Congress of the Republic by means of two representatives in the Senate and one in the House of Representatives.

Since 2018, Congress has been formed of 108 representatives in the Senate and 172 in the House, making a total of 280. Indigenous peoples thus have a 1.1% representation rate, clearly demonstrating a lack of serious participation and strength. This situation forces them to work in alliance with sectors or parties that have greater representation, and prevents them from making any major achievements in day-to-day legislation.

Freedom of expression and media

While there are basic regulations authorising the way in which indigenous radio stations, which fall under the category of public interest radio broadcasting, are run, these do not envisage specific procedures for their authorisation or operation, although they do set criteria for linguistic openness in broadcasting.

Article 60. Service aims. [...] In the indigenous territories or towns, a public interest Radio Broadcasting Service as Local Broadcasters will be granted to the different indigenous communities with duly recognised legal status. For the purposes of coverage area, the delimitation of the local departmental division or indigenous territorial entity shall be considered." [Res. 00415/2010]

The possibility of developing community-level channels of communication has clearly resulted in a democratisation of information and has also served to strengthen traditions, organisations and intercultural harmony. Indigenous radio stations in Cauca department are thus demonstrating the benefits of having radio stations that share content, technical progress and learning more generally. The following achievements are worthy of note:

Recovery of trust between indigenous and non-indigenous peoples sharing ancestral territories.

Contribution to political participation on the part of youth, women and the elderly, strengthening democracy around decision-making.

Youth, men and women becoming more proud of and visible as indigenous, mestizo (urban and rural) and Afro-descendant.

Contribution to the balance between humankind and nature, and the recovery and defence of the territories, reaffirming territorial autonomy, their identities and cultures.

Contribution to the training of new young leaders.

Improvements in coordination, cooperation and production of social and communication initiatives between indigenous and social organisations in Cauca, Colombia and the world.

Alliances with non-indigenous media to promote a fair and non-stereotypical image.

Awareness raising of the non-indigenous population with regard to equal rights for indigenous peoples as citizens and to the need to abolish racism.

Empowerment of the media according to their own criteria.

Strengthening of the communication dynamic in each of the zones.

Unfortunately there are few indigenous or black territories and organisations in the country able to handle the process for negotiating, installing and operating a radio station or other channels of communication and so they are instead generally subjected to the same mass information networks that portray multiculturalism solely as a folkloric feature or a tourist attraction and indigenous peoples as lagging behind in development terms, if not actually an obstacle to achieving it.

With regard to the new information technologies and Internet access, there are no specific figures for ethnic communities but given that most of the indigenous and Afro-Colombian population live in remote rural areas far from areas of development, many lack any signal at all, even mobile. It is worth noting, however, that there have also been cases in which some indigenous peoples have rejected connectivity for cultural reasons.

9. INSTITUTIONAL STRUCTURES, JUSTICE AND PEACE



Self-determination

If the extension and consolidation of peace and justice for indigenous peoples is to be possible then this will require a guarantee of self-determination, a right that - while not set out in Colombia's Political Constitution - is recognised through Articles 246 and 330 which establish that

► **In accordance with the Constitution and laws, the indigenous territories shall be governed by councils established and regulated according to the habits and customs of their communities [...].**

Even more explicitly, this right has entered the body of constitutional law by way of international instruments, particularly ILO Convention 169 (Law 21 of 1991 in the internal legal order), being subsequently ruled on by the Constitutional Court's jurisprudence as follows:

► **The right to self-determination comprises at least three aspects of protection linked to the ethnic communities' different factors of interaction [...]. This first prerogative – participation – can in turn be seen in at least two forms: (i) in the right to prior consultation on all decisions directly affecting them; and (ii) in a general right to participate in other decisions that indirectly affect them. [...] The second area of protection of self-determination comprises ethnic communities' right to participate in political decision-making. This area of protection is based, among other provisions, on paragraph b) of Article 6 of Convention 169 [...] In addition, this area of protection comprises the possibility of participating through elected representatives according to the traditions and practices of each community, and of exercising political rights in accordance with the rules of their own law and cultural traditions, as constitutional case law has recognised. Finally, the third area of protection refers to the right to self-government of the ethnic communities. This prerogative is based, for example, on paragraph c) of Article 6 of Convention 169, by which the states must: 'establish means for the full development of these peoples' own institutions and initiatives, and in appropriate cases provide the resources necessary for this purpose.' Nationally, this area of protection has been set out concretely, for example, in Article 246 above, which enables indigenous authorities to exercise a jurisdictional role within their territorial sphere; in Article 286, by which the indigenous territories are territorial entities; and in Article 330 which states that the indigenous territories must be governed by councils formed according to the habits and customs of the respective community.⁴⁶**

(Constitutional Court, 2011)

Self-government, an intrinsic aspect of self-determination, continues to be structured as a collective right in some legislative developments that recognise indigenous peoples' right to self-government. Among others Presidential Decree 1953 of 2014 is noteworthy: creating a special regime to establish Indigenous Territories for the administration of indigenous peoples' own systems. Article 10 of this legislation establishes as one of its interpretive principles:

► **Autonomy and free self-determination: This is the exercise of the original law, greater law or own law of Indigenous Peoples which, on the basis of their world visions, enables them to determine their own government institutions and authorities, exercise jurisdictional, cultural, political and administrative functions within their geographical sphere, full exercise of the right to ownership of their territories and to fulfil their life plans, within the context of the Political Constitution and the law.⁴⁷**

Although these constitutional, legislative and jurisprudential statements give significant breadth to the exercise of autonomy, self-government and self-determination, other laws of equal or lesser status are opposed to fully guar-

46. See: Constitutional Court, Judgment C-882/11, Available at <http://www.corteconstitucional.gov.co/relatoria/2011/C-882-11.htm>
 47. Decree 1953 of 2014, Available at <https://www.minjusticia.gov.co/Portals/0/DECRETO%201953%20DEL%2007%20DE%20OCTUBRE%20DE%202014.pdf>

anteeing these rights, and the threats, deaths and containment to which they are subjected also form insurmountable obstacles. In other words, although some laws establish guarantees, these are in fact wiped out by multiple forms of violence on their territories that prevent substantial progress from being made in Goal 16.

Institutions and cultural integrity

Indigenous institutional strengthening is closely related to ethnic and cultural integrity and diversity, as recognised in the Colombian Political Constitution (Art. 7) and underpinned by the duty to protect cultural wealth (Art. 8), the official nature of the languages and dialects of the ethnic groups within their territories (Art. 10), and the right of ethnic groups to training that respects and develops their cultural identity (Art. 68). Nonetheless, these norms – also developed in constitutional case law - are rarely observed by the state because there are no comprehensive public policies focused on implementing strategies for the protection of the material, symbolic and institutional manifestations of these cultures.

There have been numerous cases in which the cultural heritage of Colombia's indigenous peoples has been affected, as a consequence particularly of two phenomena: internal armed conflict and natural resource exploitation. Both of these phenomena have a huge impact on the traditional territories. In both cases, the effects on both material and immaterial heritage are many and of differing kinds, although particularly worthy of note are the direct effects on sacred sites fundamental to the cosmogony of the communities, their rituals, and thus the reproduction of their societies and cultures.

Intervention, harm, control and the forced abandonment of sacred sites due to the presence and actions of illegal armed actors in the context of the armed conflict,⁴⁸ as well as exploration and exploitation activities in mining, hydrocarbons and the development of infrastructure have to a greater or lesser extent seriously damaged the culture of these peoples, obviously without their consent.⁴⁹

Beyond the territories, other aspects that are decisive in the preservation of culture have been ignored by the state. Educational processes thus do not take into account their duty to provide education in indigenous languages, far less the fact that information, documentation and official communications need to be translated into local languages. In even more mundane contexts such as administrative processes, the planning of state interventions and even the civil registry, the specific features, habits and customs of each people are a complete mystery to the staff. This is harmful to the integrity of their cultures, particularly those that are the most traditional and most distant from the centres of power.

48. See http://actualidadetnica.com/index.php?option=com_content&view=article&id=7816:militares-violan-sitios-sagrados-en-la-sierra&catid=78:medio-ambiente&Itemid=119
 49. See Constitutional Court, Judgment T-298 of 08 May 2017, Available at http://legal.legis.com.co/document?obra=jurcol&document=jurcol_bdea19edb8af480daf5614996ceaacb7

There have been numerous cases in which the cultural heritage of Colombia's indigenous peoples has been affected, as a consequence particularly of two phenomena: internal armed conflict and natural resource exploitation.

CONCLUSIONS: THE SDGS AND HUMAN RIGHTS WITHOUT DISCRIMINATION

Given that most international human rights law (IHRL) instruments emphasise that their guarantees must be observed without distinction, and also given that the Sustainable Development Goals are a result of, and invariably associated with, these rights, it can be stated that nearly all of Colombia's indigenous population and ethnic communities have been and continue to be discriminated against and their rights violated. Despite a number of their fundamental collective and individual rights being guaranteed, they have been affected by the state's action or omission.

This can be seen specifically in the following quote from the UN Human Rights Committee in which

- [...] the term "discrimination" as used in the Covenant should be understood to imply any distinction, exclusion, restriction or preference which is based on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, and which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise by all persons, on an equal footing, of all rights and freedoms.⁵⁰

(HR Committee 1989)

Based on the extensive documentation available, it can be seen that actions are systematically taking place that violate rights forming a fundamental part of the IHRL and IHL. Given these peoples' status as indigenous, the protection of which is not guaranteed by the state, when these are violations of the fundamental rights to life and integrity then they form an amplified violation of the ban on all forms of discrimination. Some of the violations in this regard include: threats to life, containment, forced displacement, murder, attempted murder, death due to land mines, and so on.

There has been a new wave of indigenous threats and murders targeted at those in positions of authority, social leaders and human rights defenders specifically since the signing of the 2016 Peace Agreement. According to figures from the National Indigenous Organisation of Colombia (ONIC),

50. Human Rights Committee, General Comment N° 18, General comments adopted by the Human Rights Committee, Non-discrimination, 37th period of sessions, U.N. Doc. HRI/GEN/1/Rev.7 at 168 (1989), Para. 7.

- [Over the last year, the Indigenous Peoples of Colombia have been subjected to serious violations of their human and peoples' rights. Ninety-seven (97) indigenous people have been murdered in the last year, and 159 since the signing of the Peace Agreement. However, and particularly following the communal work parties held in March and April [2019] in different parts of the country, there has been an alarming increase in attacks, threats and murders. [...] We have issued warnings and press releases denouncing these acts but have received no response whatsoever from the state institutions.⁵¹

(ONIC, August 2019)

Unacceptable delays have been experienced in achieving either a guarantee of collective rights or progress towards meeting the SDGs in Colombia in recent years, and this has been against a backdrop of worsening assaults, violence and discrimination. Colombia is clearly a state that has turned its back on the day-to-day needs of indigenous peoples and ethnic communities and, instead of progress, this is resulting in setbacks that are hindering fulfilment of the Sustainable Development Goals.

51. National Indigenous Organisation of Colombia – ONIC (2019). Available at <https://www.onic.org.co/comunicados-onic/3111-onic-alerta-y-denuncia-grave-situacion-de-derechos-humanos-que-atravesan-los-pueblos-indigenas-del-norte-del-cauca>



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