



**International Convention on  
the Elimination of All Forms  
of Racial Discrimination**

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**Committee on the Elimination of Racial Discrimination**

**Information received from Colombia on follow-up  
to the concluding observations on its combined  
seventeenth to nineteenth periodic reports<sup>\*</sup>, <sup>\*\*</sup>**

[Date received: 11 December 2020]

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\* The present document is being issued without formal editing.

\*\* The annexes to the present report may be accessed from the web page of the Committee.



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## Introduction

1. The State of Colombia hereby submits to the Committee information on the implementation of the recommendations contained in paragraph 21 (“land rights and land restitution”) and paragraph 23 (“indigenous peoples facing extinction, living in isolation or at the initial-contact stage”) of the concluding observations on the combined seventeenth to nineteenth periodic reports of Colombia (document with symbol CERD/C/COL/CO/17-19, dated 22 January 2020). These observations are related to articles 2, 4, 5 and 6 of the Convention.

2. In responding to the request for information on the progress made in implementing the Committee’s recommendations, this report will focus first on land rights and land restitution, specifically addressing the following points:

Status of the regulations implementing Act No. 70 and progress made in ensuring the right to collective ownership for persons of African descent;

(a) Progress made in land restitution processes for indigenous peoples and persons of African descent;

(b) Progress made in connection with titling processes for indigenous territories and the expansion of reserves;

(d) Clarification regarding the Committee’s assertions that “the Land Restitution Unit has rejected 64 per cent of land restitution applications” and that there are “long delays on the part of the National Land Agency in implementing decisions of the Court that require the titling of collective territories”.

3. The second part of the report will focus on indigenous peoples facing extinction, living in isolation or at the initial-contact stage and will provide detailed information on the following points:

(a) Progress made in implementing the decisions of the Constitutional Court and the ethnic protection plans relating to peoples that have been identified as being at risk of physical or cultural extinction, in particular, the Awa and Uitoto people; and

(b) Measures taken to ensure the effective protection of indigenous peoples living in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people.

4. The information provided has been gathered by the Ministry of the Interior, the National Land Agency<sup>1</sup> and the Special Administrative Unit for Managing the Restitution of Expropriated Lands, acting in accordance with their respective remits.<sup>2</sup>

<sup>1</sup> The National Land Agency was established pursuant to Decree No. 2363 of 7 December 2015 and is mandated to implement the policy on the structure of rural land ownership developed by the Ministry of Agriculture and Rural Development. It is also responsible for managing access to land as a factor of production, promoting its use in compliance with the social function of ownership and administering and allocating State-owned rural land. With regard to land policy and the process of guaranteeing the land rights of the country’s ethnic communities, the Agency is taking steps to ensure that these communities enjoy legal and material security over the indigenous territories and the collective territories of black communities. It is also contributing to efforts to rectify the unconstitutional state of affairs declared in respect of minority ethnic communities by the Constitutional Court in decision T-025 of 2004 and its follow-up orders 004 and 005 of 2009.

<sup>2</sup> The Special Administrative Unit for Managing the Restitution of Expropriated Lands, which was established pursuant to the Victims Act (No. 1448 of 2011), is attached to the Ministry of Agriculture and Rural Development and is the government body responsible for the restitution of expropriated lands as defined in the Victims Act. Its functions include designing, administering and maintaining the Registry of Expropriated or Forcibly Abandoned Land.

## **I. Recommendations on land rights and land restitution, contained in paragraph 21 of the concluding observations on the combined seventeenth to nineteenth periodic reports of Colombia**

### **A. Status of the regulations implementing Act No. 70 and progress made in ensuring the right to collective ownership for persons of African descent**

5. The Ministry of the Interior has provided details of the progress reported by the national institutions responsible for the implementation of Act No. 70 of 1993, enacting transitional article 55 of the Constitution, in the following areas: (i) participation;<sup>3</sup> (ii) land use and protection of natural resources; (iii) mining resources; (iv) development of cultural identity rights; and (v) planning and promotion of economic and social development.

#### **1. Participation**

6. The following actions have been carried out in connection with the aspects of participation set out in article 45 of Act No. 70 of 1993:

- On 20 July 2017, the Ministry of the Interior launched prior consultations related to the relevant draft regulatory decree and set out the methodology to be followed.
- On 2 July 2018, at a meeting of the National Forum for Prior Consultation of the Black, Afro-Colombian, Palenquera and Raizal Communities, the draft regulatory decree was adopted.
- On 1 November 2018, the High-level Advisory Committee was established.
- In 2019, revisions were made to the adopted text by the Legal Advisory Office of the Ministry of the Interior and the Directorate for Black, Afro-Colombian, Raizal and Palenquero Community Affairs. After the commitment to issue the draft decree had been ratified at the plenary meeting of the National Forum for Prior Consultation held in March 2020 in Santiago de Cali, in July the Legal Advisory Office of the Ministry of the Interior submitted the draft decree to the Legal Secretariat of the Office of the President of the Republic for review and comment. In August, at the fifteenth plenary meeting of the National Forum for Prior Consultation, the black, Afro-Colombian, Raizal and Palenquero communities appointed a subcommission to oversee the process of reviewing the comments on and amendments to the draft decree, which was finally submitted for adoption on 6 October 2020.

7. At the time of writing, the steps that remain pending are: the publication of the draft decree for a period of 15 days, in accordance with article 2.1.2.1.14 of Decree No. 1081 of 2015, providing for the issuance of the consolidated regulatory decree of the agencies comprising the Office of the President of the Republic; the submission of a request for comments and recommendations to the subcommittees of the National Forum for Prior Consultation and the High-Level Advisory Committee; and the formal adoption of the decree.

#### **2. Land use and the protection of natural resources**

8. On 20 July 2017, the Ministry of the Environment and Sustainable Development launched prior consultations related to the draft decree regulating chapter IV of Act No. 70 of 1993 on land use and the protection of natural resources and the environment and set out the methodology to be followed. The competent bodies were also asked to provide their comments. The proposal put forward by the Ministry of the Environment and Sustainable

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<sup>3</sup> “Article 55: The right to collective bargaining as a means of regulating labour relations is guaranteed, subject to the exceptions provided for by law. It is the duty of the State to promote negotiation and other measures for the peaceful settlement of collective labour disputes.”

Development, with the changes made and suggested by other entities, is currently pending submission.

### **3. Mining resources**

9. On 20 July 2017, with a view to implementing chapter V of Act No. 70 of 1993 on mining resources, the Ministry of Mines and Energy launched prior consultations related to the draft decree and set out the methodology to be followed. Having made arrangements for feedback to be provided by the Ministry of the Interior, the Ministry of Mines and Energy is currently awaiting the opinion of its Legal Advisory Office. Once this step is completed, an intersectoral meeting will be held and the text will be agreed. The agreed text will then be submitted to the National Forum for Prior Consultation, for implementation of the next stages of the methodology applicable to prior consultations, and to the High-Level Consultative Commission, for the issue of its recommendations.

### **4. Mechanisms for the protection and development of cultural identity rights**

10. With regard to mechanisms for the protection and development of cultural identity rights, which are covered in chapter VI of Act No. 70 of 1993, implementing regulations for the following articles have been adopted:

- Article 39: Decree No. 1122 of 1998, establishing rules for the development of the Afro-Colombian studies programme in all of the country's formal educational establishments and enacting other provisions
- Article 40: Decree No. 1627 of 1997, regulating Act No. 70 of 1993
- Article 42: Decree No. 2249 of 1995, establishing the National Black Communities Education Committee referred to in article 42 of Act No. 70 of 1993
- Article 45: Decree No. 3770 of 2008 (undergoing amendment), regulating the High-Level Advisory Committee for the Black, Afro-Colombian, Raizal and Palenquero Communities, establishing the requirements for the register of community councils and organizations of these communities and enacting other provisions

11. Pursuant to Ruling C-666 of 2016 of the Constitutional Court, the Ministry of Education was instructed to carry out prior consultations on the rules and regulations governing the teaching profession for the black, Afro-Colombian, Raizal and Palenquero communities, which are ongoing. At the time of writing, a meeting with Committee No. IV of the National Forum for Prior Consultation is pending, as is the formal adoption of the rules and regulations.

12. Article 41 of Act No. 70 of 1993 provides that the State must allocate the resources required to support the work under way within black communities to recover, preserve and develop their cultural identity. On 1 July 2020, in connection with this provision, the Ministry of the Interior convened a meeting with the Ministry of Culture at which the latter body was asked to present the proposed regulations, indicate whether article 41 could be applied directly and describe the steps that might be taken to ensure its implementation.

13. The two Ministries are currently discussing the way forward. Prior consultations concerning the bill on the status of ethno-education have yet to be completed.

### **5. Planning and promotion of economic and social development**

14. With regard to chapter VII of Act No. 70, concerning the planning and promotion of the economic and social development of these communities, regulations implementing the following articles have been adopted at the legislative level:

- Article 48: Decree No. 2284 of 1995, partially regulating articles 9 and 11 of the Organic Act on the National Development Plan (No. 152 of 1994)
- Article 56: Decree No. 1523 of 2003, regulating the procedure for the election of the representative and deputy representative of the black communities to the boards of directors of the autonomous regional councils and enacting other provisions
- Article 57: Decree 3050 of 2002, regulating article 57 of Act No. 70 of 1993

15. In February 2018, at the request of the representatives of the black, Afro-Colombian, Raizal and Palenquero communities on the National Forum for Prior Consultation, the following entities also participated in the discussions on the prior consultations related to the draft decree issued on 20 July 2017 by the Ministry of Agriculture and Rural Development: the Ministry of Finance and Public Debt, the Ministry of Trade, Industry and Tourism, the Ministry of Foreign Affairs, the Ministry of the Environment and Sustainable Development, the Ministry of Information Technologies and Communications, the Ministry of Culture, the Ministry of Health and Social Security, the Ministry of Defence, the Ministry of Education and the National Planning Department.

16. In order to support Committee No. II of the National Forum for Prior Consultation in the task of drawing up alternative proposals for regulations, a decision was taken to hire five advisers and three assistants for a period of two months. Steps have not yet been taken to resume the prior consultation process and define the recommendations of the high-level consultative committee and the entities that will finance these advisers.

## **B. Progress made in land restitution processes for indigenous peoples and persons of African descent**

17. The report on this issue drawn up by the Special Administrative Unit for Managing the Restitution of Expropriated Lands is reproduced below. The report addresses three areas: general cases; cases involving particular ethnic communities, such as indigenous peoples and persons of African descent; and the different stages of the restitution process for ethnic groups.

### **1. General cases**

18. In accordance with Act No. 1448 of 2011, laying down measures for the provision of support, assistance and comprehensive redress to victims of the internal armed conflict and incorporating other provisions, a special administrative procedure of a composite nature has been established to provide access to restitution and to formally recognize ownership of dispossessed and forcibly abandoned lands. This procedure has two stages.

19. Stage 1 is of an administrative nature and is overseen by the Special Administrative Unit for Managing the Restitution of Expropriated Lands. It is governed by the guidelines established in title IV, chapter III of Act No. 1448 and by Decrees No. 1071 of 2015, 440 of 2016 and 1167 of 2018. Its object is to arrive at a decision on applications to register land in the Register of Expropriated or Forcibly Abandoned Land.

20. This stage culminates in one of three types of substantive decision: (i) a decision not to initiate a formal study; (ii) a decision to enter the land in the Register of Expropriated or Forcibly Abandoned Land, which allows the claimant to move to the second stage of the restitution process; and (iii) a decision not to enter the land in the Register. In order to ensure due process, appeals may be filed against substantive administrative decisions under article 2.15.1.6.6 of Decree No. 1071 of 2015,<sup>4</sup> as amended by Decree No. 440 of 2016.<sup>5</sup>

21. In stage 2, once the land has been entered in the Register of Expropriated or Forcibly Abandoned Land, if this is appropriate, the request for restitution is brought before a judge specializing in land restitution. Pursuant to article 91 of Act No. 1448 of 2011, the specialized land restitution judges of the Civil Division of the Judicial District High Court rule in sole instance on land restitution proceedings to which there are recognized parties. In cases where there are no recognized parties, proceedings involving requests for land restitution and the formalization of titles for dispossessed persons and persons who have been forced to abandon their lands are heard and adjudicated in sole instance by specialist civil circuit judges.

22. Thus, although requests to register land in the Register of Expropriated or Forcibly Abandoned Land are submitted to the Special Administrative Unit for Managing the

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<sup>4</sup> Decree pursuant to which the consolidated regulatory decree of the administrative sector for agriculture, fisheries and rural development is issued.

<sup>5</sup> Decree providing for the possibility of filing a claim to an administrative court in order to request that proceedings be rendered null and void and that rights be restored.

Restitution of Expropriated Lands, it is the civil judges specializing in restitution who rule on the right to the legal and material restitution of the land. In accordance with Decree Law No. 4633 of 2011, laying down measures for the provision of support, assistance and comprehensive redress and the restitution of land rights for indigenous communities and groups, and Decree No. 4635 of 2011, laying down measures for the provision of support, assistance and comprehensive redress and the restitution of land to victims belonging to black, Afro-Colombian, Raizal and Palenquero communities, the Special Administrative Unit for Managing the Restitution of Expropriated Lands handles the administrative stage of proceedings for the restitution of land rights to victims from these communities but the proceedings are adjudicated by civil judges specializing in restitution who rule on the right to land restitution.

23. The Government ordered the management of the information system constituting the Central Register of Abandoned Land and Territories to be transferred from the Colombian Rural Development Institute, which has been disbanded, to the Special Administrative Unit for Managing the Restitution of Expropriated Lands. The Central Register of Abandoned Land and Territories is an instrument that allows victims of forced displacement due to violence to take administrative measures to protect their right to the possession, ownership or occupation of land that they have abandoned. The procedure for requesting the registration, lifting or annulment of a protection measure through the Central Register of Abandoned Land and Territories, whether by an individual or by a group, is regulated by Decree No. 640 of 2020, in conjunction with section 15 of Decree No. 1071 of 2015.

24. In accordance with the above-mentioned Decree Laws No. 4633 and 4635 of 2011, the Colombian State has established a composite process for the restitution of land rights consisting of an administrative stage, conducted by the Special Administrative Unit for Managing the Restitution of Expropriated Lands, and a judicial stage, overseen by judges specializing in land restitution.

## **2. Cases involving ethnic communities**

25. In these cases, the administrative process set out in Decree Laws No. 4633 and 4635 of 2011 begins with a preliminary study to establish land right violations and culminates in the registration of the ethnic land in the Register of Expropriated or Forcibly Abandoned Land. If the decision reached is to register the land, the application for restitution is submitted to the judges for a decision on the merits. In proceedings for the restitution of land rights, the Special Administrative Unit for Managing the Restitution of Expropriated Lands is responsible for conducting the administrative stage, with a view to exercising legal representation in the event that it is granted the power to do so. It is also responsible for ensuring compliance with the orders issued by the civil judges specializing in land restitution who are under its authority.

26. The restitution of ethnic land rights involves managing 265 territories belonging to ethnic communities. Of these, 76 per cent (202 territories) belong to indigenous communities and/or peoples and 24 per cent (63 territories) to black, Afro-Colombian, Raizal and Palenquero communities.

27. It should be noted that:

- A total of 49,657 ethnic families are pursuing land restitution and/or preventive protection processes in connection with their collective territories.
- A total of 435,813 hectares have been registered by the Special Administrative Unit for Managing the Restitution of Expropriated Lands in the Register of Expropriated or Forcibly Abandoned Land (with administrative procedures completed); 33 per cent of these hectares belong to indigenous communities and/or peoples and 67 per cent to black communities.

### 3. Different stages of the restitution process for ethnic groups

#### *Administrative stage of the process of restoring ethnic land rights*

28. With regard to the administrative stage of land restitution, preliminary studies are being conducted in connection with 163 territories and reports on a further 45 territories are being drawn up. Upon completion of the administrative process, it was decided that 26 of the territories for which the restitution of land rights has been requested would not be prioritized. For 13 of these territories, it was recommended that no land rights violations should be found. However, measures were ordered in connection with the ethnic road map for the protection of land rights for territories belonging to indigenous communities and/or peoples provided for in article 150 of Decree No. 4633 of 2011 and the Special Administrative Unit for Managing the Restitution of Expropriated Lands continues to support and monitor the implementation of the recommendations issued in the administrative decisions adopting the preliminary study.

#### *Judicial stage of the process of restoring ethnic land rights*

29. Where the judicial stage is concerned, table A annexed to this report shows that 31 ethnic restitution claims have been submitted to the civil judges specializing in land restitution. These claims are intended to protect the rights of 7,629 ethnic families over 702,021 hectares of land within the framework of land rights claims.

#### *Post-judgment stage of the process of restoring ethnic land rights*

30. In the period under review, the civil judges specializing in land restitution did not issue any rulings on the restitution of ethnic land rights.

## C. Progress made in titling indigenous territories and expanding reserves

31. In Colombia, indigenous communities' right to land is a fundamental right established in the constitutional body of law. In application of Decree No. 2363 of 2015, the remit of the Directorate for Ethnic Affairs of the National Land Agency is to award land to ethnic communities that either have none or do not have enough to ensure their ongoing physical and cultural survival.<sup>6</sup> Articles 25 and 26 of this decree define the precise functions assigned to the National Land Agency, thereby enabling it to begin the process of granting communities access to what was formerly referred to as land use and allowing ancestral practices to continue.

32. In the current fiscal year, having addressed the various commitments outstanding at the end of 2019, and in accordance with the budget made available for this purpose, the Agency's Subdirectorate for Ethnic Affairs is implementing its 2020 Support Plan, which includes 358 procedures for the formal recognition of territories for indigenous communities and 159 procedures for the formal recognition of territories for black communities, giving a total of 517 active procedures.

33. Land is both a factor of production for communities and a means of ensuring the continuity of the ethnic peoples of Colombia. The constitutional and legal mechanisms ensuring the use and enjoyment of land, and access to it, are governed by Decree No. 2363 of 2015. Processes conducted by the Agency in connection with the formal recognition of ownership are governed by Decree No. 1071 of 2015 and, for the indigenous communities, include the establishment, drainage and expansion of reserves. Processes pertaining to the black, Afro-Colombian, Raizal and Palenquero communities are conducted in accordance with Act No. 70 of 1993, Decree No. 1066 of 2015, with the collective titling procedures being carried out by the community councils.

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<sup>6</sup> Decree No. 2363 of 2015 provides that the National Land Agency, which is the highest authority in the country for land affairs, is mandated to implement the policy on the structure of rural land ownership developed by the Ministry of Agriculture and Rural Development, to manage access to land as a factor of production, to promote its use in compliance with the social function of ownership and to administer and allocate State-owned rural land.



34. Decree No. 1071 of 2015 provides the legal basis for land legalization procedures for indigenous communities. Pursuant to this decree, the National Land Agency may take steps to legally establish a territory as an indigenous reserve. This process is classed as a special administrative procedure owing to the legal nature of the parties who are its intended beneficiaries and the nature of the procedure itself. The procedures that have been completed for the indigenous communities to date in 2020 are listed in the table below.

## 1. Formalized procedures

Table 1

Source: Information provided by the National Land Agency, 20 November 2020

<i>Details of indigenous reserves established (2020 to date)</i>											
<i>No. Reserve</i>	<i>Department</i>	<i>Municipality</i>	<i>People</i>	<i>Agreement</i>	<i>Procedure</i>	<i>No. of Families</i>	<i>Uncultivated land (Ha)</i>	<i>Fdt network (Ha)</i>	<i>Private land (Ha)</i>	<i>Total area (Ha)</i>	
1	Naexal Lajt	Meta	Mapiripán	Jiw	0075-25-10-2018	Establishment	226		1 733.1724	1 733.1724	
					0099-30-10-2019						
2	Fiil Vits La Perdiz	Huila	San Agustín	Nasa	0102-28-11-2019	Establishment	28		495.6339	495.6339	
3	El Águila	Caquetá	Belén de los Andaquíes	Misak	0098-28-10-2019	Establishment	15	406.6461		406.6461	
4	Tamaquito II	La Guajira	Barrancas	Wayúu	0104-28-11-2019	Establishment	42		299.8368	299.8368	
5	Puerta del Macizo	Cauca	La Sierra	Yanacona	0101-28-11-2019	Establishment	128		9.3775	9.3775	
6	Puerto Claver	Antioquia	El Bagre	Senú	0103-28-11-2019	Establishment	87	7 215.3388		7 215.3388	
7	Korodo Ite	Antioquia	Remedios	Embera Chamí	0100-28-10-2019	Establishment	19	75.1104		75.1104	
8	Omagá	Antioquia	Cáceres	Senú	0110-20-12-2019	Establishment	39		27.7693	27.7693	
9	Inkal Watzal	Putumayo	Orito	Awá	120-28-04-2020	Establishment	35	299.3410	47.8387	347.1797	
5	Camaritagua	Amazonas	Areas not controlled by the municipalities in La Pedrera	Yucuna, Miraña, Ticuna, Letuama, Macuna, Matapí	114-28-01-2020	Expansion	19	21 775.3422		21 775.3422	
<b>Total, families benefited and hectares</b>							<b>638</b>	<b>29 771.7785</b>	<b>2 238.1838</b>	<b>375.4448</b>	<b>32 385.4071</b>

## 2. Approved by the Governing Board, pending registration by the Public Instruments Registry Office

Table 2

Source: Information provided by the National Land Agency, 20 November 2020

<i>Agreements approved by the Governing Board, pending registration by the Public Instruments Registry Office</i>										
<i>No. Reserve</i>	<i>Department</i>	<i>Municipality</i>	<i>People</i>	<i>Agreement</i>	<i>Procedure</i>	<i>No. of Families</i>	<i>Uncultivated land (Ha)</i>	<i>Fdt network (Ha)</i>	<i>Private land (Ha)</i>	<i>Total area (Ha)</i>
1	Inga de Santiago	Putumayo	Santiago	Inga	128-15-07-2020	Establishment	1 049	6 215.1921	137.8790	6 353.0711
2	San Antonio 2	Antioquia	Zaragoza	Senú	127-015-07-2020	Establishment	26	63.0761		63.0761

*Agreements approved by the Governing Board, pending registration by the Public Instruments Registry Office*

No.	Reserve	Department	Municipality	People	Agreement	Procedure	Families	Uncultivated land (Ha)	Fdt network (Ha)	Private land (Ha)	Total area (Ha)
3	Nukanchipa Alpa Amukunapa Wasi	Putumayo	Villagarzón	Inga	126-015-07-2020	Establishment	79	30 803.6248			30 803.6248
4	Kanalitojo	Vichada	Puerto Carreño	Sáliba Amorua	130-27-08-2020	Establishment	34	1 300.0640			1 300.0640
6	Estación Tálaga	Huila	La Plata	Nasa	121-28-04-2020	Expansion	124		81.9029	92.3456	174.2485
7	La Concepción	Cauca	Santander de Quilichao	Nasa	124-11-06-2020	Expansion	937			129.7858	129.7858
8	Kizgó	Cauca	Silvia	Kizgó	129-27-08-2020	Expansion 2	1 634		717.9965		717.9965
9	La Reforma	Huila	La Plata	Misak	131-27-08-2020	Expansion	47		46.2641		46.2641
<b>Total, families benefited and hectares</b>							<b>3 949</b>				<b>61 363.4731</b>

### 3. Procedures approved by the Governing Board, pending signature, publication and registration by the Public Instruments Registry Office

Table 3

**Source: Information provided by the National Land Agency, 20 November 2020**

1	Embera Chamí Doquera	Meta	Lejanías	Embera Chamí	Adopted by the Governing Board in April 2020	Establishment	30		144.4906		144.4906
2	Nuevo Horizonte	Cauca	Morales	Kizgó	Adopted by the Governing Board on 27 September 2020	Establishment	184		34.2088	31.8277	66.0365
3	Leonardo José Campanario	Antioquia	Cáceres	Senú	Adopted by the Governing Board on 27 September 2020	Establishment	40		35.7994	44.8479	80.6473
4	Zince La 18	Antioquia	Zaragoza	Senú	Adopted by the Governing Board on 27 September 2020	Establishment	35	15.8605			15.8605
5	Altos del Tigre	Antioquia	Cáceres	Senú	Adopted by the Governing Board on 27 September 2020	Expansion	39		46.5646		46.5646
6	El Medano	Casanare	Orocué	Saliva	Adopted by the Governing Board on 27 September 2020	Expansion	46		200.6628		200.6628
<b>Total, families benefited and hectares</b>							<b>374</b>				<b>554.2623</b>

35. Tables 1, 2 and 3 show the progress made by the National Land Agency in achieving legal security for the collective territories of the indigenous communities and reserves, despite the restrictions on mobility imposed during the health emergency declared by the Government.

#### D. Clarification of statements

##### “The Land Restitution Unit has rejected 64 per cent of land restitution applications”

36. According to the information provided by the Special Administrative Unit for Managing the Restitution of Expropriated Lands, and as stated above, this body's responsibilities include carrying out the administrative stage of land restitution proceedings

for individuals. This involves submitting a request to register the land in the Register of Expropriated or Forcibly Abandoned Land. Accordingly, it must be stressed that, contrary to the Committee's assertion, no individual applications for land restitution have been rejected.

37. In accordance with Act No. 1448 of 2011, the Special Administrative Unit for Managing the Restitution of Expropriated Lands is required to make substantive decisions either: (i) not to initiate a formal study, or; (ii) not to register a piece of land in the Register of Expropriated or Forcibly Abandoned Land, or (iii) to issue a withdrawal decree. The three possible outcomes are explained below.

**1. Decision not to initiate a formal study: pursuant to article 2.15.1.3.5 of Decree No. 1071 of 2015, there are five circumstances in which the Special Administrative Unit for Managing the Restitution of Expropriated Lands may decide not to initiate a formal study in respect of an application and consequently refuse to register a piece of land in the Register of Expropriated or Forcibly Abandoned Land. These circumstances are:**

(a) Where the claims relating to the expropriation or abandonment of the land to be entered in the Register are not in compliance with article 3 of Act No. 1448 of 2011 on the status of victims;

(b) Where the requirements of article 75 of Act No. 1448 of 2011, which relate to the circumstances listed below, among others, are not met:

- Where applications have been submitted for registration in the Registry of Expropriated or Forcibly Abandoned Land that concern uncultivated land located within the forest reserve zones defined in Act No. 2 of 1959; this applies in cases where proceedings for removing land from a forest reserve for the purposes of land restitution have been previously brought before the competent environmental authority and this body has ruled against removal
- Where applications for registration relate to uncultivated land located within areas of the national natural parks system defined in Decree No. 2811 of 1974 and the rules amending or repealing it
- Where applications for registration relate to uncultivated land located within regional natural parks that are considered to be inalienable, imprescriptible and not subject to seizure

(c) Where it is established that the claims made by the applicant are untrue or that the applicant has deliberately changed or falsified information in order to meet the requirements for registration;

(d) Where the violations reported by the applicant do not have a necessary causal link to the abandonment and/or expropriation of the land that is the subject of the application;

(e) Where the applicant lacks the legal standing to initiate the action for restitution, in accordance with article 81 of Act No. 1448 of 2011.

**2. Non-registration in the Register of Expropriated or Forcibly Abandoned Land: the grounds for non-registration are set out in article 2.15.1.4.5 of Decree No. 1071 of 2015 and relate to:**

- Failure to comply with the requirements established in articles 3, 75, 76 and 81 of Act No. 1448 of 2011
- Situations in which it is not possible to precisely identify the land that the applicant wishes to register
- Situations in which it is established that the claims made by the applicant are untrue or that the applicant has deliberately changed or falsified information in order to meet the requirements for registration

3. **Withdrawal of an application for registration in the Register of Expropriated or Forcibly Abandoned Land: although the possibility of withdrawing an application is not provided for in Act No. 1448 of 2011 or in Regulatory Decree No. 1071 of 2015, the legal provisions referred to in article 2.15.1.6.9 of Decree No. 1071 of 2015 are being implemented in order to bridge this gap. This decree provides that “ordinary laws shall apply to matters not covered by the specific transitional law”. It is therefore appropriate to refer to the Code of Administrative Litigation Procedure, article 18 of which provides that:**

“Article 18. Withdrawal of the application. The interested parties may withdraw their applications at any time, without prejudice to the possibility that the respective application may be resubmitted with all the legal requirements being met; however, the authorities may continue the action of their own motion if they consider it necessary for reasons of public interest; in such cases, they shall issue a reasoned decision.”

38. In the light of the above, it is clear that an application for registration in the Register of Expropriated or Forcibly Abandoned Land may be withdrawn. In the area of transitional justice, the Special Administrative Unit for Managing the Restitution of Expropriated Lands retains the power to decide informally whether or not to continue with an action when it deems it necessary for reasons of public interest and to ensure harmony with individual rights. This is in accordance with the Constitutional Court’s ruling in Judgment C-053 of 2001, which states that:

“In order to ensure that the general interest prevails to the extent possible, it is essential that legal professionals carefully analyse the particularities of each case, try to harmonize the general interest with the rights of individuals and, if this is not possible, consider the case in the light of the hierarchy of values established in the Constitution.”

39. Consequently, in order for an express withdrawal to be decreed at the administrative stage, it is essential for the Special Administrative Unit for Managing the Restitution of Expropriated Lands to find that: (a) there is no lack of consent or capacity in the declaration of the interested party; (b) the withdrawal affects only the interests of the applicant; (c) the withdrawal does not involve overriding higher interests in the context of the land restitution process, such as the right to truth and justice.

40. In the case of tacit withdrawal, article 17 of the Code of Administrative Litigation Procedure, replaced by article 1 of Act No. 1755 of 2015, regarding incomplete applications and tacit withdrawal, provides that:

“Article 17. Incomplete applications and tacit withdrawal. In accordance with the principle of efficiency, where the authority finds that an application that has already been filed is incomplete, or that the applicant must carry out a procedural step for which he or she is responsible and that is necessary for a decision on the merits, and that the proceedings may continue without being at variance with the law, within 10 days of the date of filing the authority shall inform the applicant that he or she must complete the application within one month.

From the day after the date on which the interested party provides the required documents or reports, the time limit for ruling on the application shall be re-established.

The applicant shall be understood to have withdrawn his or her request or to have withdrawn from the proceedings if he or she fails to comply with the request, unless, before the allocated time limit has expired, he or she requests an extension for up to the same period of time.

When the time limits established in this article have expired without the applicant having complied with the requirement, the authority shall declare that the application has been withdrawn and the case dismissed by means of a reasoned administrative decision, which shall be communicated to the applicant and against which only a request for review may be filed. The above applies without prejudice to the fact that the respective application may be resubmitted if all the legal requirements are fulfilled.”

41. The concept of tacit withdrawal is applied in accordance with constitutional criteria and the principles governing public administration, which include efficiency, economy and swiftness. Thus, ample opportunity to provide the necessary documentation and information is afforded in order to ensure that a substantive and appropriate response is given. In addition, the aforementioned article establishes the principles of transparency and due process that apply to citizens in general, and to victims of the armed conflict in particular, requiring that the administrative decision of tacit withdrawal be reasoned and that, in order to ensure the right to a defence, a request for review may be filed against the proceedings in which the decision on the application was taken.

42. At the same time, in order to ensure that rights are duly upheld, the same law provides that an application may be filed if all the legal requirements are met, which relieves the evidential burden on applicants for land restitution who wish to file a new application. The burden is relieved because applicants are not required to put forward new arguments in connection with the first application and are not required to have a ruling related to a previous failure to register land in the Register of Expropriated or Forcibly Abandoned Land.

43. As at 30 September 2020, 26,322 individual applications for registration in the Register of Expropriated or Forcibly Abandoned Land have been submitted. In 41.61 per cent of these cases, the application was withdrawn, a formal study was not initiated or a decision not to register the land was taken, as shown in the table below:

<i>Historical applications for registration</i>	<i>100%</i>
Withdrawn	9.26%
Formal study not initiated	16.31%
Not registered	16.03%

*Source:* National Land Agency.

44. There are “long delays on the part of the National Land Agency in implementing decisions of the Court requiring the titling of collective territories, and the reduction in the budgets of both entities”.

45. Procedures for granting ethnic communities formal recognition of land ownership are regulated administrative procedures that depend on interdisciplinary work carried out by legal professionals, agronomists, topographers, experts from other bodies such as the Instituto Geográfico Agustín Codazzi, and representatives of the community itself.

46. Specific information on administrative procedures for formally recognizing territories for ethnic communities is provided below, followed by information on the status of compliance with the decisions of the Constitutional Court in this regard.

#### *Determining factors in formalization processes*

47. Administrative procedures for ethnic communities are conducted in accordance with the technical and legal viability of each case. Although they should be carried out within the legally established time periods, they may take longer than initially established because of circumstances particular to the case that complicate the process and affect the completion time. The factors that influence formalization processes are set out below:

- Before a draft agreement on establishing, expanding and/or restructuring an indigenous reserve reaches the approval stage, it may become apparent that the communities do not have enough land and that additional land must be purchased. This process normally adds at least eight months to the time required to formally recognize reserves.
- In some cases, community members must first complete the process of donating their lands to the community in order to strengthen the claim for legalization.
- The administrative actions carried out by the National Land Agency depend on other entities, such as the Instituto Geográfico Agustín Codazzi, the Notary and Registration

Monitoring Office and the Ministry of the Environment and Sustainable Development.

- Administrative actions that must be carried out in the field are also subject to external circumstances relating to the accessibility of the territory, which is dependent on public order, geographical location, the surface area of the land concerned and its ecosystem. This may result in longer operational times or involve preliminary work such as the implementation of security protocols, logistical coordination with beneficiary communities, inter-agency coordination and the establishment of agreements on phased work plans.
- The administrative actions that make up each procedure are also affected by external factors such as the accessibility of the territory, which depends on its geographical location, the meteorological conditions and the size of the territory concerned.
- Where public order is concerned, field work has been conducted in territories for which the competent authority has had to certify that they are free from anti-personnel mines or unexploded ordnance or for which it has been necessary to coordinate with the Ministry of Defence to ensure that the conditions are safe. It should be noted that, pursuant to Order No. 004 of 2009, land is considered by the Constitutional Court to be a factor related to, and underpinning, the armed conflict, and that the procedures carried out by the National Land Agency tend to give rise to suspicion and even hostility among local actors, especially those who are outside the law.
- The National Land Agency needs to exercise greater caution when technical teams enter territories. On occasion, it has been necessary to suspend field work until public order has been restored and secured. Consequently, since last year, the Agency has implemented a security protocol to ensure that field trips can take place and that actions are coordinated at the national level with the Ministry of Defence and at the local level with the civilian authorities and the security forces.

48. As a result of the above, procedures cannot be completed in a single period and, in some situations, the support plan must be amended, depending on the viability of the case. Information on these factors, together with the content of the land formalization case file, are submitted to the Governing Board<sup>7</sup> of the National Land Agency, which analyses and rules on the case. Cases involving the titling of lands on behalf of black communities are subject to the prior opinion of the expert committee established under Act No. 70.

49. For the reasons given above, and because the formalization procedure is a complex, inter-agency process that must guarantee access to collective lands in accordance with the uses and customs of the ethnic communities, orders issued by the Constitutional Court are executed in coordination with the procedures regulated and established in Decree No. 1071 of 2015 and Decree No. 1066 of 2015.

#### *Status of compliance with the judgments of the Constitutional Court*

50. Annex 2 lists the rulings handed down by the Constitutional Court and the steps taken by the Government in connection with each of them.

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<sup>7</sup> Pursuant to article 2.14.7.3.7 of Decree No. 1071 of 2015 and agreement 2A of 26 July 2016, the Governing Board is a deliberative collegiate body whose decisions are based on an assessment and exhaustive study of the case file and the draft agreement, in accordance with technical and legal criteria defined in the current legal framework applicable to the formal recognition of indigenous reserves.

## **II. Recommendation on indigenous peoples facing extinction, living in isolation or at the initial-contact stage, contained in paragraph 23 of the concluding observations on the combined seventeenth to nineteenth periodic reports of Colombia**

### **A. Progress made in implementing the decisions of the Constitutional Court and the ethnic protection plans relating to peoples that have been identified as being at risk of physical or cultural extinction, in particular, the Awa and Uitoto people**

51. The Colombian State, through the Ministry of the Interior, has been implementing ethnic protection plans in compliance with Orders No. 004 of 2009, No. 174 of 2011, No. 373 of 2016 and No. 620 of 2017, and within the framework of Judgment No. T-025 of 2004, in which the Constitutional Court declared forced displacement to be unconstitutional. This process involves the following stages: (i) consultation, launch, presentation of information and definition of a workplan; (ii) joint analysis of the current situation; (iii) validation of the analysis by the community and the institutions; and (iv) development of programmes and projects.

#### **1. Consultation, launch, presentation of information and definition of a workplan**

52. This stage comprises the official launch of the process, the sharing of information on Order No. 004 and the definition of a workplan covering all the steps that need to be taken in order to develop the protection plan.

53. In January 2010, a general assembly of the Awa people was held in the municipality of Ricaurte, in the reserve of El Palmar, that was attended by representatives of the three organizations of the Awa people of Colombia – the Unidad Indígena del Pueblo (UNIPA), the Cabildo Mayor Awa de Ricaurte (CAMAWARI) and the Asociación de Cabildos Indígenas del Pueblo Awa del Putumayo (ACIPAP) – along with representatives of national and local government agencies, the Office of the United Nations High Commissioner for Refugees, the Advisory Office for Human Rights and Displacement and the *minga* movement. The organizations presented their proposals, the criteria for harmonizing the three documents were defined and five round-table working groups were organized for each prioritized area. In addition, discussions were held on specific issues – namely the protection of leaders; truth, justice and reparation; and guarantees of non-repetition – and short-, medium- and long-term time frames were established.

54. A joint proposal on the Ethnic Protection Plan that took into account all the elements described above was agreed and approved. In September 2011, in the municipality of Orito, in the department of Putumayo, prior consultations on the Protection Plan were officially declared open, setting the stage for agreement on the next steps.

#### **2. Joint analysis of the current situation**

55. This stage involves a comprehensive analysis of the situation of each people in respect of forced displacement and the risk of physical or cultural extinction. Representatives of the indigenous communities, the public bodies involved in the application of Order No. 004 and other stakeholders, as required, take part.

56. Between September to December 2011, each organization of the Awa people of Colombia prepared an analytical study using a participatory methodology that combined technical know-how and traditional knowledge. This flexible methodology involved qualitative research as well as the collection of quantitative data.

57. In the initial fieldwork phase, each reserve is registered and the situation of the people living in the reserves is analysed through a process of direct observation. Workshops are held in order to put together an up-to-date picture of the social and cultural situation, the dynamics of the internal armed conflict and the forced displacement situation, and the main land

violations.

58. In terms of quantitative research, UNIPA relied on information from various statements released to the public and from its own database of the information contained in those statements, as well as data provided by the Ombudsman's Office and information gathered through research within the community.

59. ACIPAP produced a general report and an analysis of human rights violations based on visits to the communities, discussions with the persons affected and the testimony of traditional authorities and leaders with first-hand experience of the armed conflict.

### **3. Validation of the analysis by the community and the institutions**

60. In this stage, a general presentation of the analysis is organized so that any necessary adjustments can be made and the necessary approvals sought. Lines of action consisting of measures to prevent land violations and provide protection and support are proposed.

61. In 2011, a community study group developed a set of policy guidelines for the Ethnic Protection Plan for the Awa People and adjusted the matrices for each component after reviewing documentary material and databases. The group prioritized already existing research material put together previously by Awa organizations, international agencies, non-governmental organizations and academic researchers.

62. Between December 2011 and February 2012, the Ethnic Protection Plan for the Awa People was updated to incorporate the redesign of certain policy guidelines and the addition of new guidelines on topics including "Katsa-Su" (an Awa term meaning cosmos-environment), mining and energy, the greater Awa family (bi-nationality) and women and the family.

63. In preparation for the dialogue and consultation sessions planned for the next stage of the established road map, steps were taken to identify instances of environmental damage and human rights violations and the Plan's programmatic design was adjusted through changes to the matrices for each component, the measures previously envisaged under the Plan having been formulated on the basis of information gathered before March 2010.

64. For the purposes of this update, the Awa people concluded Inter-Administrative Agreement No. 29 of 2011 with the Ministry of the Interior. The analytical study attached to the Ethnic Protection Plan was subsequently validated in June 2012, when the Awa authorities submitted the Plan, which had been prepared and approved by the community, to the Government. This paved the way for consultations on the guidelines established in the Plan.

### **4. Development of programmes and projects**

65. Once the analysis and lines of action have been presented, a road map for consultation on and the formulation of programmes and projects is prepared in agreement with each sector and the local authorities. This is done to ensure compliance with the minimum standards of reasonableness established by the Constitutional Court in Order No. 004 and thus to facilitate the implementation of the Plan. The following advances have been made:

- In September 2012, consultations on the Ethnic Protection Plan for the Awa People with the government bodies involved in the application of Order No. 004 of 2009 began in the city of Pasto, in accordance with the new policy guidelines set out in the updated Plan.
- Because representatives of key government bodies, including the Ministry for Environmental Affairs and Sustainable Development, the Ministry of Agriculture and Local Development and the Ministry of Mining and Energy, were absent, the consultations were postponed. However, consultations on the new policy guidelines resumed in October 2012, in the city of Puerto Asís, and agreements were reached in relation to the cosmogonical concepts and cultural bases that, from the Awa people's point of view, are central to their autonomy and survival.
- In October 2012, Agreement No. 184 of 2012 was concluded with the aim of joining forces to assist ACIPAP in the process of inter-agency consultation on the Ethnic Protection Plan for the Awa People.



- In November 2012, Agreement No. 185 of 2012 was concluded with a view to joining forces to assist CAMAWARI in the process of inter-agency consultation on the Ethnic Protection Plan for the Awa People and thereby expediting consultations with the Awa people as a whole.
- In 2013, the Directorate for Indigenous, Roma and Minority Affairs of the Ministry of the Interior concluded three project-agreements on concerted measures under the governance component of the Ethnic Protection Plan for the Awa People with each of the associations of Awa traditional authorities in Nariño and Putumayo (UNIPA, CAMAWARI and ACIPAP).
- In December 2013, the following agreements were concluded with UNIPA and ACIPAP:

M-1139 of 2013	On joining forces to establish and operate the school for training in the Awa world view and indigenous justice systems and thus to strengthen the Awa people's autonomy and capacity for self-government in the framework of Decree-Law No. 4633 of 2011
M-1140 of 2013	On joining forces to execute the governance component of the first stage of the Protection Plan for the Awa People in compliance with Constitutional Court Judgment No. T-025 of 2004 and Follow-Up Order No. 004 of 2009
M-1147 of 2013 (ACIPAP)	On joining forces to execute the governance and self-government components of the first stage of the Protection Plan for the Awa People, in favour of the indigenous authorities and leaders of the Inkal Awa people of Putumayo, in compliance with Constitutional Court Judgment No. T-025 of 2004 and Follow-Up Order No. 004 of 2009

- In the second half of 2015, an agreement on the first stage of the land rights component of the Ethnic Protection Plan for the Awa People was reached with the Awa indigenous authorities. The Ministry for Environmental Affairs and Sustainable Development launched consultations on the execution of the Cultural and Environmental Management Plan, in accordance with an agreement reached by the Awa People's Coordinating Committee at its session in Chachagüí, department of Nariño, in August 2015 (Decree No. 1137/10). As a result of these consultations, the Awa government, the Ministry for Environmental Affairs and Sustainable Development, the regional autonomous corporations and the Ministry of the Interior agreed on an accompanying four-year implementation plan.
- In 2016, progress was made in developing an annual workplan – the contents, dates and methodologies of which were determined in agreement with the Awa indigenous people – with a view to the next stage of consultations on the components of the Ethnic Protection Plan for the Awa People.
- From 28 November to 2 December 2016, a session of the Awa People's Coordinating Committee was held in Puerto Asís, in the department of Putumayo, with a view to reaching a comprehensive agreement on the human rights and land rights components.

66. In November 2017, a budget line of \$100 million was earmarked for activities agreed with each of the three organizations representing the Awa peoples of Nariño and Putumayo, as part of the second stage of the execution of the self-government component. These activities are set out in the following agreements:

M-2224 of 2017 (CAMAWARI)	On joining the forces of the Directorate for Indigenous, Roma and Minority Affairs of the Ministry of the Interior and CAMAWARI in order to strengthen governance in the context of the development and implementation of the strategic, political and organizational mandate under Judgment No. T-025 and Follow-Up Order No. 004 of 2009
M-2218 of 2017 (UNIPA)	On joining the forces of the Directorate for Indigenous, Roma and Minority Affairs of the Ministry of the Interior and UNIPA in order to strengthen the governance of the Awa people by building their capacities and improving inter-agency coordination on processes and projects, within the framework of Judgment No. T-025 and Follow-Up Order No. 004 of 2009
M-2158 of 2017 (ACIPAP)	On joining the forces of the Ministry of the Interior and ACIPAP in order to strengthen governance in the context of the development and implementation of the strategic, political and organizational mandate under Judgment No. T-025 and Follow-Up Order No. 004 of 2009

- In 2018, direct consultations between the Awa organizations and the Directorate for Indigenous, Roma and Minority Affairs on the road map for the year were initiated during sessions of the Awa People’s Coordinating Committee, with the aim of agreeing a strategy for the formal completion of the Ethnic Protection Plan.
- In 2019, the Directorate for Indigenous, Roma and Minority Affairs of the Ministry of the Interior concluded with UNIPA Agreement No. 1277 of 2019, on joining forces to strengthen the Awa people’s political institutions and promote discussion on the lines of action “women and the family” and “children and young people” in the context of consultations on the Ethnic Protection Plan for the Awa People, within the framework of Judgment No. T-025 of 2004 and Follow-Up Order No. 004 of 2009. This agreement is intended to ensure continuous improvements to the Awa people’s political institutions through measures leading to constructive and communitarian processes that enable them to exercise their collective and individual rights, autonomy, and capacity for self-determination. It also marked the launch of the first of two stages of consultation on the lines of action “women and the family” and “children and young people”.
- Currently, an analysis of the situation of Awa women is being finalized and a leadership training school for young Awa people is under construction, as part of efforts to strengthen and promote discussion on the lines of action “women and the family” and “children and young people” with UNIPA, in the framework of an inter-administrative agreement worth \$370,000,000.
- In addition, a project to help ACIPAP to improve its capacity for self-government with a budget of \$200,000,000 has been launched in the framework of consultations on the Protection Plan, and a second event to help CAMAWARI to improve its capacity for self-government with a budget of \$40,000,000 was held in follow-up to prior consultations held in 2019.
- To conclude the programme and project formulation stage, Agreement No. 1139 of 22 September 2020 was passed with a view to harmonizing and validating the consultations held so far with each of the Awa organizations. This agreement stresses that a joint effort between UNIPA, CAMAWARI and ACIPAP is required in order to follow up on the commitments made at the latest sessions of the Awa People’s Coordinating Committee. These sessions have been used to formulate and discuss programmes and projects and to develop short-, medium- and long-term lines of action with a view to the formal completion of the Ethnic Protection Plan.
- This agreement will conclude the process of consultation with the Awa people. The process must be carried out in a coordinated manner, since the Protection Plan will

incorporate the work that each of the organizations has been carrying out to meet the needs of the communities that they represent, according to their size, geographical location and particular vulnerabilities. This will be coupled with the prior work carried out as a prerequisite to the formal completion of the Ethnic Protection Plan, which will involve the formulation of short-, medium- and long-term lines of action.

- The next stage will be initiated in the coming years. It will comprise the definition of the Protection Plan and the monitoring and evaluation needed for the formal completion of the Plan. The authorities and representatives of the indigenous communities of the Awa people, the public bodies involved in the application of the Order and any other stakeholders required to ensure the execution of Plan in the short-, medium- and long-term will participate in this stage.

## **B. Measures taken to ensure the effective protection of indigenous peoples living in voluntary isolation or in an initial-contact situation, particularly the Nukak Makú people**

67. The Directorate for Indigenous, Roma and Minority Affairs of the Ministry of the Interior has taken preventive action to protect the rights of indigenous peoples living in isolation, particularly the Nukak people who are in an initial-contact situation. The preparation of the Protection Plan for the Nukak People in accordance with Order No. 004 of 2009, the establishment of a forum for self-government in accordance with Order No. 173 of 2012, and other measures taken in respect of indigenous peoples living in voluntary isolation or at the initial-contact stage are explained below.

### **1. Protection Plan for the Nukak People prepared in accordance with Order No. 004 of 2009**

68. Preparing the Protection Plan for the Nukak People has been one of the most complex exercises undertaken by the Government, given the physical and cultural conditions specific to the semi-nomadism of this people, the seriousness of the violations committed against them and their territory, and the fact that they are the last people still in a situation of initial contact with the authorities. On occasion, the measures taken as part of this process have undermined the fragile sociocultural structure of the community, resulting in problems that have led to further rights violations.

69. In view of the above, the Ministry of the Interior designed a special methodology for the preparation of the Ethnic Protection Plan for the Nukak People, taking into account the measures called for by the Constitutional Court in Order No. 004 of 2009. This methodology took due account of the contextual and cultural realities of each local group and of the community as a whole, and was guided by the following considerations: (1) an in-depth knowledge of the sociocultural characteristics of the Nukak people; (2) an understanding of the ecological, economic, social and political dynamics in the department of Guaviare; and (3) an understanding of how indigenous rights institutions function.

70. In the preparation of the analytical study for the Ethnic Protection Plan, due consideration was given to the harmonization and formal integration of the Plan with other areas of public policy. This was ensured by the government agency Social Action, through the necessary administrative procedures. In particular, each protection plan needs to be aligned with existing policies. The Ministry of the Interior prepared the study according to a participatory process of empowerment and inter-agency coordination.

### **2. Establishment and operation of a forum for self-government, in accordance with Order No. 173 of 2012**

71. In accordance with the State's special obligations towards the Nukak people, a self-government structure has been established as a forum for consultation and dialogue with national and local authorities. In 2017, representatives of the Nukak people, the Ministry of the Interior, international partners, the Externado University of Colombia and the National Indigenous Organization of Colombia came together to formally recognize the Nukak authorities and to establish an organization known to the Nukak people as "Mauro Munu".

72. “Mauro Munu” will be led by the Bewene and Webaka authorities, who will establish assemblies to make decisions on behalf of the people. Decisions that affect specific local groups or settlements will be taken by the appropriate Bewene or Webaka authority. The functioning and structure of “Mauro Munu” was presented to the local authorities by the Ministry of the Interior on 23 August 2019.

73. Lastly, the Ministry of the Interior has taken the following steps to comply with the precautionary measures called for in Interlocutory Order No. AIR-18-197, issued in December 2018 in favour of the Nukak people in connection with the Protection Plan:

- Regarding the third measure called for in the Order, an information-sharing campaign with a focus on rights and reconciliation was carried out as part of an educational strategy targeted at the campesino population living in the area of the Nukak indigenous reserve that overlaps with the Guaviare campesino reserve and other neighbouring territories.
- Regarding the nineteenth measure, which calls for the translation and dissemination of the Order, the Ministry of the Interior drew up a road map that takes due account of the special characteristics of the Nukak people. The road map provided for two sessions:
  - (a) The first session involved the translation of basic concepts relating to governance, institutions and the Interlocutory Order into Nukak Nauyi. A glossary of the most important concepts referred to in the Order for the Nukak people was created. These concepts were carefully explained by professionals from the Ministry, and a round table for reflection, discussion and questions was held with the translators so that they could interpret and translate the concepts into the different dialects of the Nukak Nauyi language;
  - (b) The second session was dedicated to the presentation of the translated Order in the Nukak territory in collaboration with the Bewenes and the leaders of each settlement represented in “Mauro Munu”. For this workshop, a participatory exercise was organized involving various round-table discussions, each of which focused on one of eight thematic clusters into which the measures called for in the Interlocutory Order were divided.

### 3. Indigenous peoples living in voluntary isolation

74. In Decree No. 1232 of 2018, the Government urges the State to take the necessary measures to protect and uphold the rights of indigenous peoples living in isolation, including their rights to life, territory and self-determination. To this end, inter-agency coordination bodies and mechanisms have been established in which an important role is reserved for the indigenous communities. Their involvement is essential to ensure that these special prevention and protection mechanisms are sufficiently robust.

75. To expedite the application of Decree No. 1232 of 2018, in June 2019 the Directorate for Indigenous, Roma and Minority Affairs of the Ministry of the Interior took measures to disseminate the Decree among the associations of communities whose territories neighbour those of the two confirmed indigenous peoples living in isolation – the Yuri and the Passé – in the department of Amazonas.

76. These dissemination measures were carried out in such a way as to ensure the participation of the community authorities and representatives of the reserves and communities. Through a robust methodology based on a differential approach, each association of traditional indigenous authorities – the Asociación Indígena Zonal de Arica, the Cabildo Indígena Mayor de Tarapacá, Piine Ayveju Niimu’e Iaachimu’a and the Asociación de Autoridades Indígenas de Pedrera Amazonas – was able to present proposals as to how the local components of the Decree could be applied by the indigenous authorities.

77. In parallel, progress has been made in drafting official studies on the Yuri and Passé indigenous peoples, in accordance with the second registration procedure provided for in Decree No. 1232 of 2018. These studies were officially launched pursuant to article 2 of Decisions No. 041 and No. 042 of 2020. The investigations into and registration of information regarding the Yuri and Passé peoples were undertaken on a pilot basis since this is a new procedure that entails administrative and legal adjustments to administrative records.

Further evidence gathering processes will be carried out, in line with the first registration procedure provided for in the Decree, on the basis of the lessons learned during the registration of information on the Yuri and the Passé peoples.

78. In the second half of 2020, the first session of the Local Committee on Preventive Action to Protect Indigenous Peoples Living in Isolation in the Department of Amazonas was held. The Committee was established pursuant to Decree No. 1232 of 2018 as a forum for designing, implementing and evaluating preventive strategies to protect the rights of indigenous peoples living in isolation. It is attached to the Office of the Governor of the department of Amazonas.

79. In accordance with article 2.5.2.2.2.4 of Decree No. 1232 of 2018, the Directorate for Indigenous Affairs of the Ministry of the Interior has been working to establish a national commission on preventive action to protect the rights of indigenous peoples living in isolation. The functions of this national commission will include developing guidelines for the work of the national system; providing guidance to the local committees; and assisting in the design, implementation and monitoring of special preventive mechanisms for the protection of indigenous peoples living in isolation at the national, regional and local levels.

80. Currently, the local committee of the department of Amazonas is the only one to have been established, since priority has been given to setting up the national commission on preventive action to protect the rights of indigenous peoples living in isolation and bringing it into operation.

81. The considerable impact of the coronavirus disease (COVID-19) pandemic in 2020 has limited the implementation of Decree No. 1232 of 2018. The usual measures, such as fieldwork with neighbouring communities and staff activities in areas of interest, have been scaled down because of the risk that the disease represents for the indigenous peoples living in isolation, neighbouring communities and staff members. According to national and local legislation, all activities must be undertaken in such a way as to minimize the risk of infection.

82. It is important to bear in mind that indigenous peoples living in isolation are highly vulnerable because of their lower immune response capacity. The potentially negative implications of an unwanted contact situation have thus been aggravated by the virus.

83. Lastly, the Ministry of the Interior has concluded a partnership agreement with the Amazon Conservation Team with a view to improving the situation of indigenous peoples living in isolation. The purpose of the agreement is to ensure that preventive mechanisms are in place to protect the rights of indigenous peoples living in isolation, in accordance with Decree No. 1232 of 2018. The Amazon Conservation Team is an organization with considerable national and international experience in protecting and preventing violations of the rights of indigenous peoples living in isolation. Its work has focused on three areas: (1) working with and training the leaders of communities that neighbour the territories of indigenous peoples living in isolation; (2) lobbying for changes to public policy; and (3) managing information.

#### **4. Indigenous peoples in an initial-contact situation**

84. On 20 March 2018, the First Land Restitution Court of Villavicencio, in the department of Meta, issued Interlocutory Order No. 018-068, ordering precautionary measures in favour of the Mapayerri community of Nacuanedorro and the Sikvani community of Awia Tuparro, whose territories are located in the jurisdiction of the municipality of Cumaribo, in the department of Vichada.

85. The Ministry of the Interior has taken a leading role in coordinating the application of the measures called for in the Interlocutory Order, bearing in mind that the Mapayerri indigenous people are in an initial-contact situation and that all activities must be carried out in line with the “do-no-harm” approach. To this end, the Directorate for Indigenous Affairs has been working with bodies involved in providing comprehensive support to these two indigenous peoples to ensure that no harm or negative social and cultural consequences result from entries into and activities in their territories.

86. Thematic round tables were organized as a methodological tool to coordinate the implementation of the Order of the First Land Restitution Court of Villavicencio, department of Meta, through the development of a programme of work setting out measures designed to ensure full compliance. The programme of work was designed to minimize institutional costs

and to require as few entries into the territories as possible.

87. Accordingly, all inter-agency work undertaken in this connection will focus on the joint development of complementary strategies to improve the processes employed by the various bodies, without limiting their autonomy, in compliance with the Order of the Court. The Directorate for Indigenous, Roma and Minority Affairs of the Ministry of the Interior has provided opportunities for consultation and dialogue on follow-up to the commitments of the previous year and the work carried out by these bodies in compliance with the aforementioned Interlocutory Order.

### **III. Conclusions**

88. The institutional measures taken to regulate the implementation of Act No. 70 of 1993, enacting transitional article 55 of the Constitution, and the progress made in ensuring the right to collective ownership demonstrate the importance that the State attaches to land restitution and allocation. In this report, the Ministry of the Interior has given an account of the important steps taken with regard to participation; the protection of natural resources; mining resources; the development of cultural identity rights; and the planning and promotion of economic and social development.

89. The regular procedure for the restitution of land to indigenous peoples and persons of African descent is based on the provisions of Act No. 1448 of 2011 and comprises various phases. The Special Administrative Unit for Managing the Restitution of Expropriated Lands makes substantive decisions in accordance with the content of the application and its fulfilment of the applicable requirements. Depending on the situation, and in cases where difficulties arise, the Special Administrative Unit may decide: not to initiate a formal study; not to register a piece of land in the Register of Expropriated or Forcibly Abandoned Land; or, if necessary, to decree the withdrawal of the application, as explained above.

90. Through its regulations and the administrative work of the competent institutions, the State guarantees access to collective lands in accordance with the uses and customs of the ethnic communities. It respects the principles of legality, private property and legal security of land tenure.

91. Many of the processes normally carried out by the national institutions with jurisdiction in this area have been delayed because of the COVID-19 pandemic, which has restricted access to some territories because of the measures taken to protect the life and health of the communities during the state of public health emergency declared by the Government.

92. With regard to the titling of indigenous territories and the expansion of reserves, the National Land Agency has made considerable progress in providing communities with legal security of tenure for their collective territories. The orders issued by the Constitutional Court are being implemented in accordance with the procedures established in and regulated by Decrees No. 1071 of 2015 and No. 1066 of 2015. Compliance with these orders constitutes the cornerstone of the processes of land titling and the allocation of land to communities whose rights have been violated and whose protection has been ordered by the high courts.

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