

Mining and Indigenous Peoples in Colombia

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February 2016

1. Legal background

Following the adoption of various regulations that allowed for the private ownership of mines and oil fields and required the State to grant concessions for their exploitation on ‘empty’ State lands, Law 20 of 1969 established the nation’s dominion over mineral resources and the subsoil, declared the public utility and social interest of the mining industry and opened up the possibility of direct exploitation by the State. In application of this Law, the Colombian Oil Company, Ecopetrol, and the Colombian Mining Company, Ecominas, were created and established as the direct administrators of the subsoil resources, which were to be exploited directly or via Partnership Agreements. The El Cerrejón coal mines, in La Guajira, thus began operating and a public company, Carbones de Colombia, S.A. or Carbocol, was established for this purpose. In 1976, a Partnership Agreement was signed between this company and Intercor, a subsidiary of the North American Exxon Mobil Corp.

A new Mining Code was adopted in 1998 by means of Legislative Decree No 2655. This Code retained the system of preferential granting of mining rights to State-owned companies and the rights to coal were allocated to Nacional Minera Ltda., or Minercol, for their exploitation through Partnership Agreements. This legislation changed substantially following the 1991 Political Constitution.

Indigenous peoples in mining legislation

According to the Dane 2005 census¹, Colombia is home to more than 90 indigenous peoples, comprising some 1,374,000 inhabitants or 3.2% of the national population. Information from the National Indigenous Organisation of Colombia (ONIC) suggests that 28 of these peoples are on the verge of extinction since they now comprise fewer than 500 inhabitants each. Recognised indigenous territories take the form of 713 reserves covering an area of approximately 32 million hectares (Incoder 2013), equivalent to 28.2% of the national territory. Around 80% of these territories are situated in the Amazonian forest or Pacific region, the savannahs of the Colombian east or the desert region of La Guajira, all of which are home to a large proportion of the country’s natural, forest, mining and energy resources.²

As a result of prior consultations with the indigenous organisations, the 1988 Mining Code restricted mining on indigenous territories, which were declared Indigenous

¹ <http://www.dane.gov.co/index.php/esp/poblacion-y-registros-vitales/censos/censo-2005>

² According to Mingorance 2008, there is a 55.5% overlap between hydrocarbon production areas and indigenous reserves. A large proportion of the indigenous reserves are affected by mining titles granted by the State.

Mining Reserves, established indigenous peoples' preferential right to exploit them and excluded mining activity from sacred areas or areas of symbolic importance to the communities. At that time, progress was already being made in the titling of indigenous territories as reserves, in the context of the agrarian reform laws (Law 200 of 1936 and Law 135 of 1961) which required the Colombian Agrarian Reform Institute (Incora) to establish indigenous reserves. This legislation also prohibited 'empty' lands occupied by the communities from being allocated to private individuals without the favourable opinion of the Ministry of Government (former Ministry of the Interior). This protection of territories occupied by indigenous people was transformed, via Law 30 of 1988, into an obligation to devote these lands solely to the formation of indigenous reserves.

The 1991 Constitution widely enshrined the collective rights of indigenous peoples, including the inalienable ownership of their territories, and made natural resource exploitation on those territories conditional upon the continuing social, economic and cultural integrity of the communities and their involvement in decision making (Arts. 63 and 330).

A new Mining Code was drafted towards the end of the 1990s and passed by means of Law 685 of August 2001. With this Code, the government sought to open up the national territory to mining and it therefore deliberately proposed restricting³ indigenous rights. In actual fact, the new Code placed limitations not only on these rights but also on those established in the 1991 Constitution itself. It also claimed to be higher-ranking law, subjecting mineral exploitation solely to the requirements established in its own text, and rendering environmental standards and indigenous rights inapplicable.

This Code was challenged as unconstitutional on numerous occasions due, among other things, to the proposed precedence it would take over environmental legislation; the lack of prior consultation of those ethnic groups that would be seriously affected; and the lack of prior consultation in the procedures for exploiting the non-renewable resources on their territories. The Constitutional Court issued its opinion on these complaints by means of judgments C-339, C-418 and C-891 of 2002, all of which ruled in favour of the Code's constitutionality while clarifying the scope of the aspects challenged.⁴

Under this Code's regulations, mining was extended to the whole national territory, significantly increasing the titles issued over a large proportion of the recognised indigenous territories.

The Mining Code establishes the following rights in relation to the ethnic, indigenous peoples and Afro-Colombian communities:

- Delineation of indigenous mining zones in their territories.
- Right of pre-emption when granting a concession in indigenous mining zones.
- Right of the indigenous authorities to delineate zones excluded from mining by virtue of their cultural, social and economic importance.
- Right to cultural, social and economic integrity with regard to mining activities on their territories.

³ Its recitals openly stated that indigenous rights were an obstacle to mining development in the country.

⁴ A reform of this Code was adopted by means of Law 1382 of 2010 but this was declared unconstitutional for lack of prior consultation with the ethnic groups. The main legislation governing mining activity thus remains Law 685 of 2001.

- Right to consultation and prior, free and informed consent for mining activities to be undertaken on their territories.

The scope of the above rights has been clarified in successive judgments of the Constitutional Court, passed in response to multiple lawsuits lodged by indigenous communities and organisations due to the serious conflicts and impacts caused by mining activity on their lives and territories. Among these judgments, it is important to note the repeated obligation to consult the communities before granting mining rights over their territories to private individuals, consultation which in recent years has become an obligation on the government to obtain the consent of the affected communities for any high-impact activity.⁵

2. The coal industry in Colombia

Colombia's first large-scale coal mining operation was the El Cerrejón mine, which focused primarily on coal for export. This is one of the largest opencast mines in the world, located in La Guajira department of the Caribbean region, in the Ranchería river basin bounded by the Sierra Nevada de Santa Marta mountains to the east and the Perijá mountains to the west, and on the ancestral territory of the indigenous Wayúu people, which covers an area of some 65,000 hectares.

This mining complex was established in 1976 following the signing of a Partnership Agreement between the State, through Carbocol, and a subsidiary of Exxon, known as Intercor. The Partnership Agreement was initially intended to run until 2009 but, in 1999, it was extended to 2034. The following year, Carbocol's rights were sold to subsidiaries of Billinton, Anglo-American and Glencore, the same companies which bought out Intercor in 2002, leaving them the sole owners of the whole Cerrejón Zona Norte operation. In 2006, Glencore transferred its rights to Xstrata plc, and this company has held them ever since.

Intensive coal mining is also found in the municipalities of Jagua de Ibirico, El Paso, Becerril and Chirguaná, in Cesar department, which lies directly to the south of La Guajira department. In this area, the Puerto Zuñiga, Calenturitas and Cerrejón Central mines are being operated by C.I. Prodeco S.A., a subsidiary of Glencore, which also owns the La Jagua mine (Carbones de La Jagua, S.A., Carbones El Tesoro S.A. and Consorcio Minero Unido) and the Puerto Nuevo S.A. port company; it owns 39.7% of the shares of Fenoco, the company that controls the transportation of coal via rail to the port in Santa Marta. In terms of reserves, "Prodeco has more than 337,000,000 tonnes..." Hawkins 2014: 27)

Mining in Cesar department took off in the 1990s and, over the years, it has become a hub for coal exports, with some 45,000 million tonnes exported in 2013 as opposed to 33,000 million from La Guajira (Cerrejón Zona Norte). These two regions account for 90% of the country's coal production and all of its exports.

⁵ Judgements C-418 and C-891 of 2002 and Judgement T-769 of 2009 are noteworthy in this regard as they specifically suspended a mining concession on indigenous territory for lack of consultation and ordered the necessary prior, free and informed consent of the communities.

Other coal-producing regions in Colombia can be found in the departments of Boyacá, Santander, Córdoba and Antioquia, the production of which is destined primarily to supply internal demand coming from the cement, steel and thermoelectric industries.

2.1. The coal industry and indigenous peoples' territories

In La Guajira department, the operations of El Cerrejón Zona Norte have determined and, in fact, restricted the indigenous Wayúu people's territory. These are the region's ancestral inhabitants and the land was, until the mid-1980s, considered 'empty' land. Their territory only began to be titled as reserve land from the mid-1980s on, with coal-rich areas excluded.

The historic territory of the Wayúu people stretches from La Guajira department in Colombia as far as Zulia State in north-west Venezuela. The first reserve was titled in 1984 in the semi-arid and arid regions of Alta and Media Guajira, over an area of 930,880 hectares, and was later expanded to 1,076,000 hectares. Later areas titled to the Wayúu covered only small plots which, together, came to some 11,000 hectares. In all, there are 21 reserves carved arbitrarily out of the ancestral territory of this people (Annex, Table 1).

According to 2013 projections extrapolated from Dane's 2005 census, this people now has a population of 270,414 inhabitants.

In addition to the Wayúu people, the coal mining area also affects the lands of Afro-Colombian communities. Mining has expanded to affect groups such as those living in Tabaco village, Hatonuevo municipality, which comprises some 450 families (PIDHDD, 2009).

The Yukpa people live in Cesar department, in the Perijá mountains bordering Venezuela. On the Colombian side, they are primarily settled in the municipalities of Codazzi and Becerril and, to a lesser extent, La Paz municipality. They currently have five recognised reserves covering an area of 34,156 hectares (Annex, Table 2).

The Yukpa territory is bordered to the east by Venezuela, to the west by the municipalities of El Paso and La Paz (Cesar), to the north by Manaure municipality (La Guajira) and to the south by La Jagua de Ibirico (Cesar), where the mining activity is concentrated. According to 2013 projections extrapolated from Dane's 2005 census, the Yukpa number 5,872 inhabitants.

In addition, the Kogui, Arhuaco, Wiwa and Kankuamo peoples live in the departments of La Guajira, Magdalena and Cesar, in the Sierra Nevada de Santa Marta zone. They have a population of almost 50,000 inhabitants living on a territory of 600,000 hectares. Although these peoples are not directly affected by the mining activity, their traditional territory, delineated by the "*Black Line*", is now hemmed in by the infrastructure required to transport the coal. The "*Black Line*" forms a long boundary that encompasses the Sierra Nevada de Santa Marta, and within which are located sacred sites or places attended by indigenous peoples at certain times to make their offerings. The demarcation of the *Black Line* was recognised by means of Resolution No. 000002 of 1973 of the Ministry of Government (former Ministry of the Interior) and subsequently amended by Resolution 837 of 1995 of the Ministry of the Interior as the border of the ancestral territory of the four peoples (Molina, 2014).

2.2. The effects of coal mining

Perhaps the first and most significant effect of the mining industry on the rights of indigenous peoples generally is the expropriation of their ancestral territories. Under agrarian reform laws that were current in the middle of the last century, when ILO Convention 107 and other international instruments establishing special protections for indigenous rights and territories were also in force, many indigenous territories were allocated to mining and hydrocarbon activity. These areas were subsequently excluded from the recognised reserves, as in the case of La Guajira.

Even after ILO Convention 169 and the 1991 Political Constitution came into force, there were still repeated failures to consult indigenous peoples regarding mining activity on their territories, and this resulted in their exclusion from the lands necessary for their survival, seriously affecting their environment and their physical, social, cultural and economic integrity.

The coal industry is no stranger to such violations of the fundamental rights of indigenous peoples (see Annex, Map of Industry and Effects). The General Comptroller of the Republic thus wrote in his 2011/2012 report on the state of natural resources and the environment:

“... Opencast coal mining is an activity with a high environmental, social and cultural impact. This is due not only to the cavities left by the extraction of coal but also to the large areas of land that are covered with waste material, the contamination of ground and surface waters, the diversion and contamination of nearby water courses, and the effects on the groundwater. This is saturated with dust from the blasting which is then distributed, both in suspension and through the underground river network, to points far distant from the place of extraction, affecting the vegetation and contributing to erosion. It also has a social impact due, among other things, to the displacement of adjacent communities, changes in the region's economic activity and the influx of increasing numbers of outsiders. These impacts are all the more significant when the mining activity takes place in environmentally or socially sensitive areas.” (Comptroller 2012: 233).

El Cerrejón and indigenous rights in La Guajira

The indigenous Wayúu people have experienced some of the worst human rights violations caused by coal mining. The carboniferous areas of their ancestral territory were handed over to the mining industry and they were not consulted about the decision to begin operations; on top of this, the government bodies responsible for implementing protective rules failed in their duty of care.

In the area around El Cerrejón mine, in Baja Guajira, indigenous reserves were formed out of small, dispersed plots, thus destroying the people's territorial continuity.

What's more, the areas they were allocated were not those of their traditional agricultural and goat pasturing lands. On top of all this, the Wayúu people have had to put up with mining on their traditional territory for more than 30 years now, along with the systematic violation of their most fundamental rights.

Around the turn of the century, work began to construct the railway line that would carry coal to Bolívar port for export. This line crosses the Alta y Media Guajira reserve, causing negative economic, environmental and health consequences for the people. Two hundred and thirty (230) communities live adjacent to the railway line and 13 more in the area surrounding Bolívar port, making a total a population of some 16,000.

With the construction of the railway line and the port, these communities began to suffer numerous problems ranging from encroachment onto their territory through to restrictions on their mobility, as they were unable to use their traditional paths for pasturing their goats. There have even been deaths of people and animals, knocked down by the train.

Although there is no accurate data on these effects, given the few investigations conducted, the communities have constantly lodged complaints, particularly with regard to respiratory illnesses caused by contamination created during the loading and movement of coal.

“Coal extraction generates gases through the combustion of the equipment used, although this effect is scarcely perceptible in the neighbouring communities due to the size of the project area. The situation is different, however, for the gases produced due to the self-combustion of coal. In all open pits, coal seams ignite spontaneously, generating sulphur oxides, nitrogen oxides and carbon dioxide, among other gases, which are noticeable due to their smell. This self-combustion increases when it rains and neither the company nor the environmental authorities have made any commitment to control this phenomenon, which causes pulmonary diseases among the neighbouring populations, affecting the children and elderly in particular” (Uriana 2008:118).

The Wayúu territory of Alta y Media Guajira, characterised by its arid and semi-arid climate, presents serious challenges in terms of providing the local population with water. The Ranchería River, which runs through nine of the department's 15 municipalities, forms the region's main source of water and several municipal water systems rely on it, as does the local people's agricultural and livestock production. Given the scarcity of water, many communities have wells from which they draw their supply but the region generally suffers from very serious deficiencies. According to data from the Censat Agua Viva organisation, per capita water consumption in La Guajira is 0.7 litres a day when, according to the UN, the minimum requirement is 50 litres. This creates a paradoxical situation in the region: while the communities are dying of thirst, data from UNDP shows that the El Cerrejón mine is consuming 17 million litres of water every single day (Gonzales, 2016).

In 2011, the El Cerrejón company submitted a plan to divert the course of the Ranchería River over a stretch of 26 kms, with the aim of extracting the coal from its riverbed (Tostón, 2013). This diversion has not only broken the water cycle but is affecting the groundwater recharge from which the communities obtain their supply, and is thus restricting yet more a resource that the local people rely on for their food production.

The food situation of the Wayúu people of Alta y Media Guajira is also critical. According to ENSIN's 2010 National Survey of Health and Nutritional Status, this region has the highest levels of global malnutrition in Colombia, along with a high prevalence of diarrhoeal and respiratory diseases among the under fives (11.6% and 15.2% respectively) and a mortality rate of 32 per thousand. This situation, added to the lack of water suffered by most communities, led the Inter American Commission on Human Rights (IACHR) to issue precautionary measures in favour of these people in December 2015, urging the Colombian state to put in place special protective measures for them (IACHR, Resolution 60/2015).

While the population of La Guajira, living on the territories left available to them by the coal industry, are dying of thirst and hunger, the great wealth being generated by El Cerrejón is unable to address this problem, and it is here that the real significance of the mining industry can be seen. The investments made through the Plan for the Comprehensive Support of the Indigenous Communities (PAICI) are derisory in comparison to the profits being derived from coal exports:

Although the Wayúu represent one-third of the population of La Guajira, and the railway line and part of the mining operations border their indigenous reserves, the total accumulated investment of the PAICI programme between 1982 and 2002 was in the region of 5 million dollars in constant prices (2002), or two and a half days' worth of coal production (Bahamón 2004:11).

Other affected populations

Towards the end of the 1990s, as the transfer of El Cerrejón's rights to the Glencore, BHP Billiton and Anglo-American consortium was taking place, the Afro-descendant community of Tabaco village in Hatonuevo municipality also became aware of the expansion of mining onto their territory. The company arrived directly in the village and began to buy up plots, later entering into negotiations with the families living there, some of whom agreed to sell their land while others did not.

Successive complaints from the communities demonstrated that they were being subjected to multiple pressures aimed at evicting them from the territory, including the suspension of public services and closure of health facilities and schools, the burning of their cemetery and some houses, the diversion of the river to the benefit of the company, and so on. Both the families that had sold up and those that had refused to do so were, in the end, forcibly evicted in August 2001 by means of a large military operation.

A protective order was handed down by the Supreme Court of Justice in May 2002 ordering the Hatonuevo municipal council to commence proceedings for the adoption of effective solutions aimed at building communal infrastructure and developing a housing plan for the community members. However, according to repeated public complaints by the community, this ruling was never implemented and the former inhabitants of Tabaco ended up living spread throughout the department's different municipalities (PIDHDD, 2009). In 2012, a new ruling of the Constitutional Court ordered Hatonuevo municipality and the Cerrejón company to guarantee the resettlement of the families and compensate them for the numerous negative effects suffered but, in 2014, the community again denounced the failure to comply with this ruling (Fjellheim, 2014).

The communities of Palmarito, Cabezaesperro, La Jamichera (now Agua Luna), El Espinal and Tamaguito are also based in the south of the department but have been forced to move due to the deteriorating economic, social and environmental conditions caused by the mine's pits and slag heaps. These communities are made up of 21 rural black and indigenous communities numbering some 22,000 people whom the company considers to have been the beneficiaries of *involuntary resettlement* programmes (Vicaria, 2012: 7).

The construction of the Brisa multipurpose port in Dibulla municipality is another example of a violation of the fundamental right of prior consultation. In 2001, the company applied for an environmental licence to begin construction of the port and the Ministry of the Interior confirmed a lack of indigenous communities or sacred sites in the area despite the fact that, five years previously, a resolution had been passed demarcating the borders of the traditional territory of the peoples inhabiting the Sierra Nevada de Santa Marta. After several years of legal disputes and progress in the port's construction, a delayed consultation was held and the port was inaugurated in 2014 without the indigenous population's minimum expectations having been met (Gailer, 2012).

The impacts of mining activity in Cesar

The situation in Cesar department, which is currently the primary centre of Colombian coal production, is much the same as in La Guajira. There is a clear lack of understanding of the communities' rights, with the continuing displacement of settlements to allow for operations to expand, an action that government officials and company agents euphemistically term *involuntary resettlement*.

In an unprecedented measure, the Ministry of the Environment, Housing and Regional Development was forced to issue Resolution 0970 of 2010, later amended by Resolution 1525 of 2010, ordering the involuntary resettlement of the communities of Hatillo, Plan Bonito and Boquerón, with the costs to be covered by the Glencore, Vale and CNR (controlled by Goldman Sachs and Drummond) companies (Holguín, 2011).

There is no precise information on the effects suffered by the indigenous peoples of this region, possibly due to the Yukpa people's relative degree of isolation from organisational processes. An ethnographic report from the Ministry of Culture (2008) states that little is known of this people outside their local area, anonymity being a mechanism for cultural survival. They do, however, participate in representational bodies and territorial plans, government programmes and production projects linked to economic and social dynamics with those people neighbouring their territories.

According to this report, only part of their traditional territory has been titled in the form of reserves, the remainder being in the hands of large estate owners for the extraction of natural and hydrological resources. Due to the small size of their territory, the Yukpa population have been squeezed onto the least most fertile and productive areas of their lands, the dry tropical and subtropical forests with little vegetation and where parts of the alluvial soils are exposed to flooding and others are located on slopes exposed to erosion (Mincultura, 2008).

The little information that is available on the impacts of mining in Cesar therefore refers primarily to peasant communities, although this may quite possibly also include indigenous populations. For these communities, the main consequence of mining, in addition to the transformation of the landscape, has been the restriction of their access to productive lands and the food insecurity that has ensued because of this. The course of the Calenturitas River, diverted by Glencore over a 17 km stretch, has resulted in the destruction of the hydrobiological resources, forcing fishing communities to abandon their traditional practice.

According to indicators of unsatisfied basic needs (UBN) and poverty, it is also clear that large-scaling mining has not transformed the people's conditions. Based on projections extrapolated from the 2005 census, while UBN stood at 27.8% nationally, the average in the mining municipalities of Cesar was 56.87% and in La Guajira 57.93%. Poverty stood at 30.6% nationally but in Cesar it was 47.2% and in La Guajira 55.8% (CINEP 2014:51).

Individual human rights violations

Since the 1970s, the regions of La Guajira and Cesar have suffered the presence of the Fuerzas Armadas Revolucionarias de Colombia (FARC) guerrillas as well as those of the Ejército de Liberación Nacional (ELN) and Ejército Popular de Liberación (EPL). Their objective is to control the Perijá mountains along the border with Venezuela and towards the Caribbean as these zones are strategic not only for contraband and drugs trafficking but also for mining, from which an income can be obtained by extorting protection money out of the companies operating there.

In the mid-1990s, paramilitary groups also began to expand into La Guajira and Cesar. They consolidated their position between 1998 and 2002, at a time when the Northern Block of the Autodefensas Unidas de Colombia (AUC), led by *alias Jorge 40*, and the Hernán Giraldo Block took control of the zone. According to information from Codhes (2005), a widespread humanitarian crisis unfolded in the region at this time, as a result of high rates of murder, the forced displacement of peasant and indigenous populations, massacres and the containment of communities. Figures from Rudas, 2013:

The Cesar municipalities, where coal is produced for export, experienced high levels of violence and displacement between 2001 and 2008 although particularly so in the earlier years of this period. In Jagua de Ibirico (Cesar), the municipality with the highest per capita coal production in the country, there were more than 360 violent deaths and more than 140 people displaced per 100,000 inhabitants in 2002. In Becerril (Cesar), too, another municipality with high levels of per capita coal production, these same indices reached levels of between 240 and almost 280 violent deaths in 2002 and 2003, and between 140 and 180 forced displacements for every 100,000 inhabitants (Rudas 2013:16).

Violations of indigenous rights tend to be worse in areas of mining activity, although cannot necessarily be explained by this. However, mining is assumed to be a determining factor in the violence and the Constitutional Court has issued multiple pronouncements in

this regard, urging the government to regularise and control mining activity as one of the underlying factors linked to the armed conflict.⁶

It is important to note that, despite the mandate of the Law on Victims and successive demands made of the government by the Constitutional Court to provide a breakdown of human rights violations suffered by indigenous peoples, there is no such record to date. ONIC's and Cecoin's⁷ indigenous peoples' information systems give figures on individual violations of the human rights of indigenous peoples and breaches of international humanitarian law in the two departments, and record 7,172 cases of forced displacement of indigenous individuals and 637 cases of death through political causes between 1980 and 2014 (see Annex, Table 3, Violations of the human rights of Indigenous People).

3. The peace process with the FARC and indigenous participation

Since the end of 2012, talks have been ongoing between the FARC to produce a *General Agreement for the end of the conflict and for the construction of a stable and lasting peace*. The FARC are the oldest insurgent group in the country and, indeed, on the continent, with a significant military deployment in different areas of the country, including the territories where indigenous peoples are settled, and which have thus experienced some of the worst impacts of the war. A possible agreement to bring the conflict with this armed group to an end would therefore have important consequences for the country's indigenous peoples.

One of the rules established for the Round Table Talks was that the discussions would not be made public and so, to ensure social participation, a mechanism was designed to receive proposals from citizens and organisations.⁸ The UN system in Colombia and the National University's Centre for Reflection and Follow-up to the Peace Dialogue were also delegated to conduct national forums to discuss the agenda items with different social sectors.⁹ The participation of the indigenous peoples and, indeed, of the different organised social sectors has thus taken place in this context.

In addition, for the agenda point on victims, it was agreed that the Round Table Talks should hold hearings with the direct involvement of victims. Between August and December 2014, five hearings were held in which a total of 60 direct victims of the armed conflict participated, selected by the UN and the National University's Centre for Reflection and Follow-up to the Peace Dialogue, together with the Episcopal Conference, on the basis of predefined criteria, ensuring that the different social sectors affected were included. Indigenous delegates were among those who travelled to Havana to participate and make known their situation and proposals.

In addition to these participatory spaces, the indigenous peoples and their organisations have been active in the current peace process in other ways. One year before the General Agreement between the government and the FARC became common knowledge (August 2012), they launched the *Indigenous Movement's Proposal for Peace*

⁶ See, in this regard, T-025 of 2004 and Follow-up Order 004 of 2009, T-769 of 2009, among others.

⁷ Cecoin: Centro de Cooperación al Indígena

⁸ The proposals and comments are received via a website (www.mesadeconversaciones.com.co) and used as inputs by the negotiators.

⁹ The reports from the forums and working groups, with their respective rapporteurs, have been published on the website of the National University's Centre for Reflection and Follow-up to the Peace Dialogue <http://www.investigacion.unal.edu.co/piensapaz/index.php/foros-participacion-ciudadana>

for the Colombian People, which took place on indigenous territory in Cauca department in December 2011. And once the General Agreement was made public, the indigenous peoples stated their support for the peace dialogues and presented their proposals through their organisations.

The indigenous movement has been in a constant state of reflection, issuing proposals and public statements throughout the whole period of the negotiations. In February 2015, after several months of regional work, the indigenous member organisations of ONIC produced the *National Peace Agenda for Indigenous Peoples*, which includes their different demands and proposals in relation to the six thematic areas being discussed in Havana. For the purposes of this report, we will focus primarily on the area of Comprehensive Rural Reform.

The Havana pre-agreements on land

In general, the pre-agreements of the Havana Round Table Talks are sufficiently broad to be able to include the proposals of the indigenous organisations and they have been drafted in an inclusive way that is respectful of the local peoples' cultural diversity and rights. Moreover, as requested by the indigenous and other rural populations, their implementation is conditional upon processes of social dialogue at the different regional administrative levels of the State.

On the issue of Comprehensive Rural Reform, the pre-agreement includes three components: access and use of lands, formalisation of ownership and protection of reserve zones; development programmes from a territorial focus; and national plans for comprehensive rural reform. The "development from a territorial focus" component includes programmes aimed at protecting ethnic and cultural diversity and harmonious co-existence in inter-ethnic spaces, as well as developing the peasant economy and economies specific to the ethnic communities.

Although the programmes proposed in the first component on land ownership are aimed at rural peasant populations and communities generally, the emphasis is placed on peasant land ownership and there is no explicit reference to the titling of ethnic communities. However, in line with the indigenous movement's proposals, it does include the need to define mechanisms for resolving conflicts over land ownership and use, including traditional mechanisms and the communities' own intervention. It also includes the need to define social consultation and dialogue mechanisms between the three regional levels of government, the ethnic communities and other communities in which different ethnic groups co-exist, and even with private sector companies in order to promote an agenda for common development.

In order to redistribute land, a Land Fund will be established which will primarily comprise lands where the ownership has expired, 'empty' lands unlawfully appropriated or occupied and which will be recovered, and areas removed from forest reserve land.

The indigenous movement's concerns

The indigenous organisations have expressed a number of concerns regarding the content of the pre-agreements on land. Firstly, the indigenous peoples' Peace Agenda contains demands that are clearly not included in the Havana pre-agreements such as, for example, placing limits on the concentration of ownership and prohibiting land grabbing, particularly by foreigners and multinational corporations, and suspending the mining/energy operations on their territories until consultations have been conducted.

With regard to land distribution, the indigenous agenda proposed the restitution, evaluation and protection of territories recognised or claimed by the communities and demanded that they should not be classified as natural parks, business development areas or land fund. This latter point means that they do not agree that this fund should include lands that are claimed by the indigenous peoples, which may fall into the categories of expired ownership or recovered 'empty' lands. The indigenous peoples have historically rejected this concept of 'empty' lands because it ignores the communities' ancestral occupation and ownership thereof. They are also opposed to the removal of areas of forest reserve because these largely overlap with the indigenous territories.

With regard to the autonomous zones "Peasant Reserve Zones" (Reservas Campesinas), they state that these must be established in areas not inhabited by indigenous peoples but must instead come from the large estates and, in the case of reserves already formed or underway, they are calling for prior consultation.

All the above means that the issue of land tenure, which is one of the main factors underlying Colombia's armed conflict,¹⁰ can in actual fact only be resolved by means of agreements between the different social sectors if overlaps and inter-ethnic conflicts are to be avoided. These kinds of conflict have already emerged in some regions due to the responsible institutions handing over lands to sectors who are not the original claimants, and also in relation to the formation of Peasant Reserve Zones. It is for this reason that, in their peace agenda, the indigenous peoples are calling for spaces for dialogue between the social sectors to resolve these and other possible tensions and they are promoting this through their representative organisations.

Although the Havana pre-agreements envisage measures to address this problem, their implementation will require legal reforms, defined at the appropriate moment, and this may well depend on the balance of power at that time.

Finally, it is clear that the agreements reached in Havana in and of themselves will not bring the violence to an end, nor will they resolve the numerous problems being suffered by Colombia's rural sector. They are clearly only a starting point from which to begin to construct the peace in territories that have suffered differing dynamics and impacts. This is perhaps why the indigenous peoples, in their National Peace Agenda, are proposing the need to encourage concrete spaces for regional dialogue in order to begin to promote peace and reconciliation.

¹⁰ Most reports from the experts that made up the Historic Commission on the Conflict and its Victims, established by the Round Table Talks, are agreed on this point.

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ANNEX

Table 1

Indigenous Wayúu reserves in La Guajira Department

Reserve	Municipality	Year	Area
Alta y Media Guajira	Maicao	1984-1994	1,067,505.43
El Zahino-Guayabito Muriaytuy	Barrancas	1986	1,175.02
Lomamoto	Barrancas	1987	1,572.27
Provincial	Barrancas	1988	447.6423
San Francisco	Barrancas	1988	56.9604
Trupigacho and La Meseta	Barrancas	1988	2,309.76
Caicemapa	Fonseca	1994	504.892
Mayabangloma	Fonseca	1994	1,400.5373
Cuatro de Noviembre	Maicao	1995	505.85
Las Delicias	Riohacha	1996	187.31
Potrero	Distracción	1997	36.1785
Monte Harmón	Riohacha	1998	41.2558
Mañature	Riohacha	1999	649.1428
Okochi	Maicao	2000	229.2928
Una Apuchon	Riohacha	2000	483.7
El Soldado Parate Bien	Riohacha	2000	586.775
Cerro de Hatonuevo	Hato Nuevo	2001	183.9912
Cerrodeo	Barrancas	2002	1,251.45
Wayúu Rodeito El Pozo	Hato Nuevo	2003	106.843
Perratpu	Riohacha	2006	120.5847
Total area titled			1,079,354.88

Source: Incoder, 2012

Table 2

Indigenous Yukpa reserves in Cesar Department

Reserve	Municipality	Year	Area
Iroka	Codazzi	1976-1983	8,678.0000
Socorpa	Becerril	1977-1983	25,000.0000
Menkue-Misaya la pista	Codazzi	1997	309.6883
Caño padilla	La Paz	2000	92.9373
El Rosario, Bellavista and Yucatán	La Paz	2000	137.2155
Laguna-El Coso- Cinco Caminos	La Paz	2009	156.5888
Total area titled			34,374.4299

Source: Incoder, 2012

Table 3

Violations of the human rights of indigenous peoples and breaches of international humanitarian law in the departments of Cesar, La Guajira and Magdalena, 1980-2014

People	Displaced	Military action	Collective threat	Individual threat	Deaths	Forced disappearance	Arbitrary detention	Injuries	Kidnapping	Torture	Rape	Total
Wiwa	2,615	168	7	4	68	11	18	9	4	28	1	2,933
Kankuamo	2,128	6	2	15	276	11	27	102	13	21	1	2,602
Wayúu	1,209	3	28	11	260	44	14	48	15	21	1	1,654
Arhuaco	450	204	0	11	23	6	4	5	0	9	0	712
Kogui	570	2	0	10	5	5	0	0	4	0	0	596
Yukpa	200	0	0	0	5	0	0	2	0	0	0	207
Total	7,172	383	37	51	637	77	63	166	36	79	3	8,704

Source: Colombia's Indigenous Peoples' Information System - Cecoin, 2014

Map

Coal mining and its effects on indigenous territories

