

## Collective Tenure Rights in Colombia's Peace Agreement and Climate Policy Commitments

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Between June and August 2016, the Colombian government made two announcements that will profoundly change the country. After four years of peace negotiations with the FARC guerrillas, President Santos announced the *Acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera* [Final Peace Accord for the Conclusion of the Conflict and the Construction of Stable and Lasting Peace], moving the country toward the end of one of the longest internal conflicts in the history of the Americas. In the months prior to this announcement, the *Ministerio de Ambiente y Desarrollo Sostenible* [Ministry of Environment and Sustainable Development] also officially launched the *Visión Amazonía 2020* Program, a low-carbon sustainable development model for the Amazon region. This program is part of the country's commitment to reduce greenhouse gas emissions by 20 percent by the year 2030.

Both announcements, linked to profound historic changes in the country, will generate new proposals related to sustainable development, agriculture, and access to land. They will also raise the question of what institutional changes are needed to effectively respond to these new challenges and opportunities. Given that the implementation of both of these initiatives will coalesce in the territories of the various rural and ethnic populations in the country, it will be necessary to directly address the crucial issue of guaranteeing Indigenous and Afro-descendant communities' collective rights. This issue will be central to effective implementation of the post-peace accord and climate policies, as well as in achieving economic, social, and environmental sustainability.

Collective tenure rights must be prioritized given that the first chapter of the final peace treaty, *Hacia un Nuevo Campo Colombiano: Reforma Rural Integral* [Towards a New Colombian Countryside: Comprehensive Rural Reform], recognizes the issue of land ownership as one of the historical causes for the conflict—one which remains unresolved. Similarly, the *Ethnic Chapter* recognizes the importance of ethnic communities in the country's development and implementation of the peace agreement. It also acknowledges the need for communities to exercise decision-making control over matters that may affect their lands, territories, and resources.

It is important to note that indigenous and Afro-Colombian communities hold about 37.6 million hectares of legally constituted property within Colombia (INCODER, 2015), concentrated in biodiverse regions with great environmental value. These areas include the Amazon rainforest, the Chocó region, the natural savannas of the Orinoco, the mountains and valleys of the Andes, and the Caribbean plains and forests. More importantly, the Indigenous *resguardos*

[reserves] and territories of Afro-descendent communities contain 49.4% of the country’s total forest area.<sup>1</sup>

It is also necessary to note that, in the over half-century of internal conflict, Indigenous Peoples and Afro-descendant communities have disproportionately suffered the consequences of forced land displacement, massacres, and disappearances. Of the more than six million internally displaced persons, close to 15 percent are Afro-Colombian and 10 percent are Indigenous.<sup>2</sup> In spite of this history, ethnic peoples, as political stakeholders, have reaffirmed their commitment to supporting the peace consolidation process. Their experiences of resistance and cohabitation within their territories have been fundamental to the defense of their ways of life and to the cultural diversity of the entire country.

**Table 1: Titled Indigenous *Resguardos* [reserves] and Afro-descendent Collective Territories by Region**

REGION	INDIGENOUS RESGUARDOS Total Area (Ha)	PERCENTAGE	COLLECTIVE TERRITORIES Total Area (Ha)	PERCENTAGE
AMAZON	23,582,135.1155	73.28%	0.00	0.00%
ANDES	754,191.4703	2.34%	249,438.85	4.40%
ORINOCO	4,059,204.2248	12.61%	0.00	0.00%
CARIBBEAN	1,879,019.2495	5.80%	3,430.38	0.06%
PACIFIC	1,906,958.4077	5.93%	5,321,858.00	95.46%
ISLANDS	0.0000	0.00%	100.50	0.00%
<b>TOTAL</b>	<b>32.181.508,4678</b>	<b>100%</b>	<b>5.574.828</b>	<b>100%</b>

(Data: INCODER 2015)

<sup>1</sup> Rights and Resources Initiative (RRI). 2014. “What Future for Reform? Progress and Slowdown in Forest Tenure Reform since 2002.” RRI, Washington, DC. Available at: <http://rightsandresources.org/es/publication/what-future-for-reform/#.V9BCwDWQHaU>.

<sup>2</sup> Centro Nacional de Memoria Histórica. 2015. “Una nación desplazada: informe nacional del desplazamiento forzado en Colombia, Bogotá.” Centro Nacional de Memoria Histórica, Bogotá D.C. Available at: <http://www.centrodememoriahistorica.gov.co/descargas/informes2015/nacion-desplazada/una-nacion-desplazada.pdf>.

## **How does recognizing collective tenure rights contribute to a decrease in conflict and the fulfillment of climate change commitments?**

Research shows that guaranteeing collective tenure rights can contribute to conflict reduction as well as to climate change mitigation. For example, an analysis of 71 cases of internal conflict and/or civil wars at a global scale found that two-thirds of these conflicts were caused by disputes and competition over land.<sup>3</sup> In addition, companies operating in areas of land and forests where collective rights remain unresolved or lack legal certainty may face high investment costs, or risk losing their operations due to conflicts with local communities.<sup>4</sup> Guaranteeing community rights helps prevent these types of conflicts.

Another comprehensive analysis undertaken regarding the relationship between collective tenure rights and the reduction of carbon emissions in 14 countries with large forest coverage, including Colombia, found that when communities have legal certainty over their collective land and resource rights, they are better able to stop forest destruction and, as a result, limit their carbon emissions. At a global level, the 513 million hectares of forest legally recognized as the property of Indigenous peoples and rural communities store almost 37.7 million metric tons of carbon.<sup>5</sup>

## **What are the next steps required to guarantee collective tenure rights awaiting recognition and legalization?**

The Colombian government's international commitment to reduce deforestation and emissions by 20 percent by the year 2030 can serve as a peace-building tool in the country's territories. In order to take advantage of this new opportunity to guarantee sustainable development in the country, organized efforts to prevent deforestation and promote sustainable management of natural resources and sustainable agriculture will be essential. A recent global study on the

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<sup>3</sup> Alden Wily, Liz. 2008. "Whose Land Is It? Commons and Conflict States. Why the Ownership of the Commons Matters in Making and Keeping Peace." RRI, Washington, DC. Available at: [http://www.rightsandresources.org/wp-content/uploads/Securing-Indigenous-and-Communitiy-Lands\\_Final\\_Formatted.pdf](http://www.rightsandresources.org/wp-content/uploads/Securing-Indigenous-and-Communitiy-Lands_Final_Formatted.pdf).

<sup>4</sup> Munden Project and Rights and Resources Initiative (RRI). 2013. "The Financial Risks of Insecure Land Tenure: An Investment View." RRI, Washington, DC. Available at: <http://rightsandresources.org/en/publication/the-financial-risks-of-insecure-land-tenure/#.V9BMqDWQHaV>

<sup>5</sup> World Resources Institute and Rights and Resources Initiative. 2014. "Securing Rights, Combating Climate Change." WRI and RRI, Washington, DC. Available (in Spanish) at: <https://www.wri.org/sites/default/files/securing-rights-full-report-spanish.pdf>.

impacts of peace treaties on natural resources<sup>6</sup> has shown that, of the 800 agreements signed since 1945, fewer than 15% have mentioned natural resources. Half of all peace agreements fail within five years, in part because they do not address one of the underlying causes of internal conflict—the competition for land and resources. Colombia has the opportunity to learn from the experiences of previous conflicts, and effectively apply the principles of environmental sustainability and social justice. In order to promote the country’s rural development, it is necessary—as an essential step for the construction of peace—to focus on indigenous and Afro-descendant territories and their natural resources so that they are not destroyed.

Colombia is experiencing a defining moment in which it can take international leadership. It has formed a peace treaty which integrates the concept of sustainability in its productivity principles, access to land, and socio-environmental management. It also attempts to profoundly transform the countryside through development opportunities for Indigenous and Afro-descendant peoples. The implementation of the peace treaty is the ideal moment to directly address the recognition of these communities’ collective rights. More importantly, addressing collective tenure is one way to decisively settle the outstanding debt of recognizing and titling the indigenous *resguardos* and collective territories which have for years awaited State action.

According to INCODER data as of March 2015, the collective land title requests for at least 699 Indigenous *resguardos* and 235 Afro-descendent communities continue to await resolution.

**Table 2: Pending *Resguardo* and Collective Title Applications, According to INCODER Records (INCODER 2015)**

REGION	NUMBER OF COLLECTIVE TITLES: INDIGENOUS RESGUARDOS	TOTAL REQUESTED AREA (Ha)
AMAZON	217	90.814,9790
ANDES	134	36.642,3605
ORINOCO	88	2.965,5000
CARIBBEAN	80	8.688,5484
PACIFIC	180	335.363,3015
ISLANDS	0	0,0000
<b>TOTAL INDIGENOUS RESGUARDOS</b>	<b>699</b>	<b>474.474,6894</b>

<sup>6</sup> Blundell, Arthur G. and Emily E. Harwell 2016. “How Do Peace Agreements Treat Natural Resources?” Forest Trends, Washington, DC. Available at: [http://www.forest-trends.org/documents/files/doc\\_5068.pdf](http://www.forest-trends.org/documents/files/doc_5068.pdf).

REGION	NUMBER OF COLLECTIVE TITLES: AFRO-DESCENDENT	TOTAL REQUESTED AREA (Ha)
CARIBBEAN	92	133.004
REST OF THE COUNTRY	143	1'108.190
<b>TOTAL AFRO-DESCENDENT COMMUNITIES</b>	<b>235</b>	<b>1'241.194</b>
<b>TOTAL # FOR INDIGENOUS RESGUARDOS AND AFRO-DESCENDENT COMMUNITIES</b>	<b>934</b>	<b>1'715.668,6894</b>

Particular attention should be paid to the situation of the Caribbean Afro-descendant communities, whose land rights have not been recognized at the same rate as those of Pacific coast communities. While in the Pacific region there are 5.3 million titled hectares, on the Caribbean coast only 3,430 hectares are titled, out of at least two million hectares proposed for recognition by the Caribbean community councils.<sup>7</sup> Currently, INCODER is still processing 92 requests for collective titles in this region, which have been pending for between two and five years after their official ratification.

The Caribbean, like other regions, has been greatly affected by the conflict, with a high presence of armed territorial groups and high rates of kidnapping, disappearances, massacres and forced displacement. Many Afro-descendant communities have been recurrent victims of this conflict, losing land rights over their ancestral spaces, and being increasingly confined and limited in the pursuit of their own livelihoods and culture.<sup>8</sup>

Guaranteeing ethnic communities' rights to their territories not only protects the country's cultural diversity, but also allows for the effective implementation of these communities' constitutional rights over their territories and resources, as well as the protection of their ancestral spaces and ecosystems.

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<sup>7</sup> La Pontificia Universidad Javeriana. 2016. Observatorio de Territorios Étnicos y Campesinos: *Posibilidades y limitaciones de la titulación colectiva en los consejos comunitarios del Caribe colombiano*. Work Document # 10. Universidad Javeriana, Bogotá

<sup>8</sup> La Pontificia Universidad Javeriana, 2016.

Today, the world is watching Colombia as a country committed to ending more than 50 years of internal conflict and emerging as a leader in the fight against climate change.

The Colombian State must act quickly and decisively to protect collective tenure rights and expedite the resolution of pending titling requests for indigenous and Afro-descendant communities. It is important for the government to take this opportunity to resolve this historical debt within the implementation of the peace accord and climate change commitments, in which the collective rights of indigenous and Afro-descendant communities are guaranteed.