RIGHTS + RESOURCES

GORDON AND BETTY MOORE FOUNDATION

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The Status and Future of Rights-Based Conservation in the Amazon of Colombia and Peru

The Rights and Resources Initiative (RRI) is a global coalition of more than 150 organizations dedicated to advancing the forest, land, and resource rights of Indigenous Peoples, Afro-descendant Peoples, local communities, and the women within these groups. Members capitalize on each other's strengths, expertise, and geographic reach to achieve solutions more effectively and efficiently. RRI leverages the power of its global coalition to amplify the voices of local peoples and proactively engage governments, multilateral institutions, and private sector actors to adopt institutional and market reforms that support the realization of rights. By advancing a strategic understanding of the global threats and opportunities resulting from insecure land and resource rights, RRI develops and promotes rights-based approaches to business and development. It also catalyzes effective solutions to scale rural tenure reform and enhance sustainable resource governance.

RRI is coordinated by the Rights and Resources Group, a non-profit organization based in Washington, DC. For more information, please visit www.rightsandresources.org.

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ABBREVIATIONS AND ACRONYMS

ACP	Private Conservation Areas
ACR	Regional Conservation Areas
ADP	Afro-descendant Peoples
ANP	Natural Protected Areas
ANT	National Land Agency – Colombia
CDB	Convention on Biological Diversity
CNTI	National Commission of Indigenous Territories
CONPES	National Council for Economic and Social Policy
DIGESPARC	Dirección General de Saneamiento de la Propiedad Agraria y Catastro Rural
EBD	Rights-Based Approach
FAO	Food and Agriculture Organization of the United Nations
GIZ	German Agency for International Co-operation (Deutsche Gesellschaft für Internationale Zusammenarbeit)
IACHR	Interamerican Commission of Human Rights
IGAC	Geographic Institute Agustín Codazzi
ILO	International Labor Organization
IP	Indigenous Peoples
INEI	National Institute of Statisitics and Information – Peru
LANP	Natural Protected Areas Law, Law Number 26834 – Peru
MIDAGRI	Ministry of Agrarian Development and Irrigation – Peru
MINCUL	Ministry of Culture – Peru
OPIAC	National Organization of Indigenous Peoples of the Colombian Amazon
PCN	Black Communities Process – Colombia
PIACI	Indigenous Peoples in Isolation and Initial Contact
PNN	Natural Nacional Parks – Colombia
PND	National Development Plan – Colombia
RAISG	Amazonian Network of Georeferenced socioenvironmental information
RBC	Rights-Based Conservation
RLANP	Regulation of the Law of Natural Protected Areas – Supreme Decree number 038-2001-AG – Peru
RUNAP	National Registry of Protected Areas – Colombia
SERFOR	National Forestry and Wildlife Service – Peru
SERNANP	National Service of Natural Protected Areas of the State – Peru
SINA	National Environmental System – Colombia

SINANPE	National System of Natural Protected Areas of the State – Peru
SINAP	National System of Protected Areas – Colombia
SPNN	National System of Natural National Parks – Colombia
SUNARP	National Superintendence of Public Registries – Peru
UN	United Nations

EXECUTIVE SUMMARY

This report identifies possible pathways towards the integration of a rights-based approach in the legal conservation frameworks of Colombia and Peru. It does so in the context of tenure rights recognition for Indigenous Peoples (IP) and Afro-descendant Peoples (ADP) as an effective strategy for biodiversity protection in the Amazon. With this in mind, it highlights opportunities for implementing a rights-based approach within current and medium-term conservation frameworks and policies in both countries.

KEY FINDINGS

- At present, there is no direct mention of a conservation approach focused on IP and ADP tenure rights in Colombian and Peruvian legal systems.
- Colombia recognizes the IP and ADP

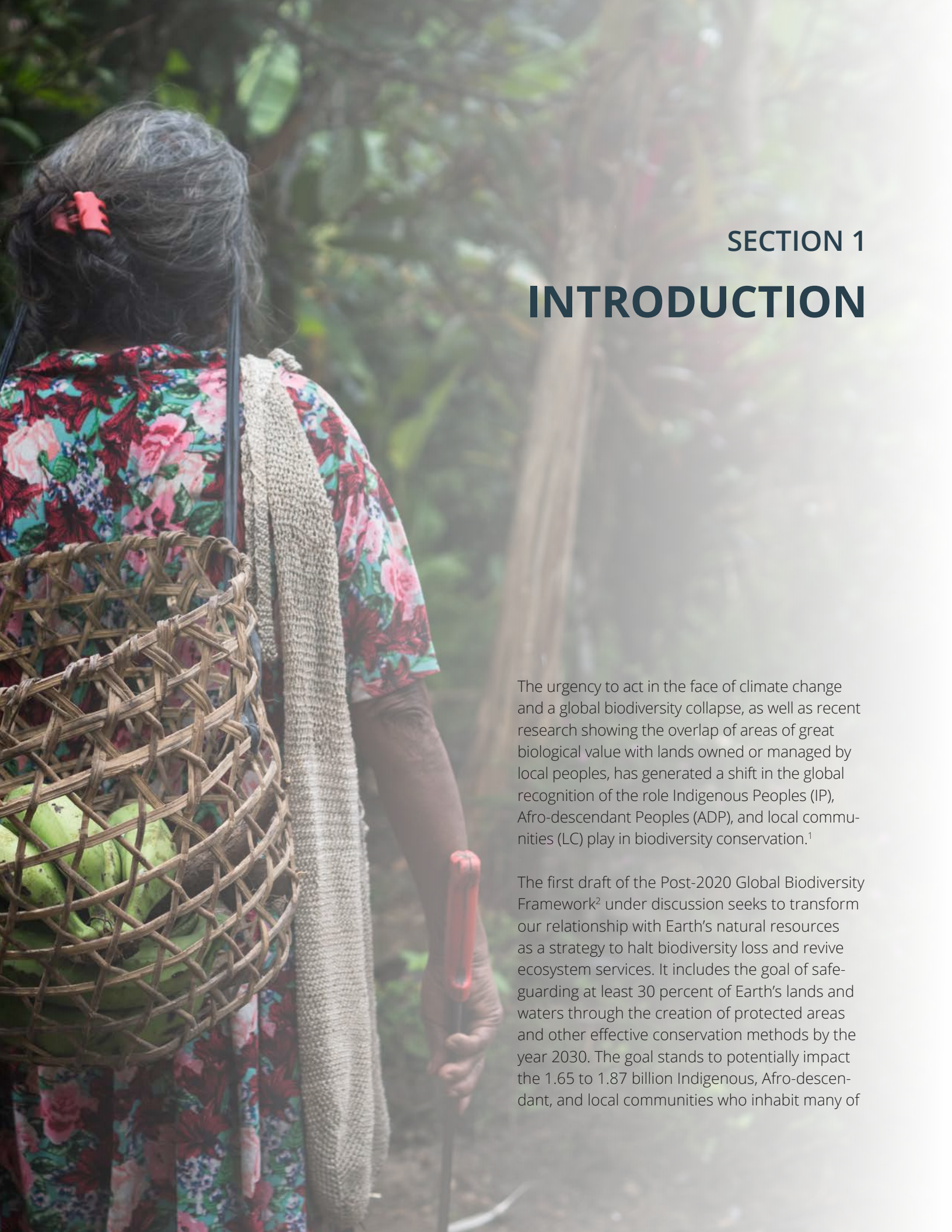
perception of territory in its political constitution and jurisprudence. In contrast, in Peru, the titling of Native communities follows land law patterns from the 1970s that prevent the comprehensive adoption of territory and make it difficult to recognize them within Protected Natural Areas.

- In both countries, the rights-based approach has been partially mainstreamed through dialogue and agreements between states, IPs and ADPs within current frameworks of conservation projects and policies.
- According to the National Land Agency, there are 223 Indigenous *resguardos* (reservations) in the Colombian Amazon encompassing 27,037,828 hectares (ha). In addition, there are at least 234 claims for the expansion of *resguardos* and the constitution of new areas. There are overlaps with the National System of Protected Areas (SINAP) in both the titled *resguardos* and the proposed areas, amounting to approximately 4,007,768.28 ha in 23 SINAP areas. This overlap corresponds to 3.18 million hectares (mha) of Indigenous *resguardos* already formally constituted and 0.8 mha associated with areas that are expected to be expanded or constituted.
- ADPs have six collective legal titles in the Colombian Amazon totaling 5,811 ha and have requested at least 37 more covering an additional 21,567 ha. These additional hectares often overlap with regions of ecological connectivity between National Natural Parks and Indigenous *resguardos*.
- There are currently 2,270 recognized Native communities in the Peruvian Amazon. Government sources indicate that 1,632 communities have property titles, but only 379 of these titles are georeferenced. In addition, there are at least 76 Native communities that overlap with Protected Natural Areas, but due to the lack of georeferencing, it is not possible to determine the extent of this overlap. According to *Asociación Interétnica de Desarrollo de la Selva Peruana* (AIDESEP) data, 692 Native communities are still untitled, 116 have not been recognized, and 74 are requesting expansion.
- We found that there are marked differences between Colombia and Peru with respect to IPs' role as environmental authorities. In Colombia, IPs have suggested they be recognized as environmental authorities in an intercultural dialogue framework with the State, which would legally empower them within the protected areas management system. In Peru, this issue has not been integrated into the debate regarding IP territorial rights in Protected Natural Areas nor within broader discussions between IPs and the State.
- In both countries, existing conservation regimes have focused mainly on protected area systems; little time has been spent conceptualizing and putting together comprehensive conservation systems. The persistence of this approach leads to a reductionist view of conservation that privileges the promotion and creation of Protected Natural Areas under State control and creates new concepts that have little to do with IPs' approach to territoriality.
- In Colombia, Law 70 (1993) offers an opportunity to mainstream a rights-based approach to conservation and should be explored. It establishes that in collective territories awarded to Black (Afro-descendant) communities, special natural reserves may be established where the environmental authority, traditional authorities, and local communities consider it necessary to protect species, ecosystems and biomes related to their territorial rights. However, this type of entity is not yet developed or regulated.
- As a precedent for the rights-based approach in Colombia, the National Natural Parks System Resolution 0156—2018 establishes planning and management mechanisms for the presence of IPs in isolation within the parks system. Likewise, the existence of these Indigenous groups has served as a basis for the creation and expansion of the National Natural Parks System, specifically Río Puré National Natural Park and Serranía del Chiribiquete National Natural Park, where the presence of these communities has been declared as a conservation objective. However, IPs in a situation of initial contact do not yet have a specific protection mechanism in Colombia. In Peru, various Protected Natural Area categories have been fundamental in the preservation of the habitats of *Pueblos Indígenas en Aislamiento y Contacto Inicial* (Indigenous Peoples in Isolation and Initial Contact—PIACI), including Indigenous Reserves and Territorial Reserves. To date, there are seven of

these reserves, two of which were created in 2021.

- Within Colombia's National Natural Parks System, successful cases do exist to harmonize and integrate conservation objectives with broader cultural protection values that include traditional cultural practices. These include: Alto Fragua-Indi Wasi National Natural Park, Orito-Ingi Ande Flora Sanctuary, Río Puré National Natural Park, and Serranía de Chiribiquete National Natural Park.
- Protected National Area legislation in Peru has failed to recognize the indisputable role IPs play in the conservation of ecosystems and their territorial ties. This has led to limitations for IPs accessing natural resources as well as the creation of barriers to the full formalization of their territorial rights. Nevertheless, in practice, the Communal Reserve Administration Contracts experience represents important advances through which communities oversee the administration and management of Communal Reserves.

This report is organized into six sections. The Introduction presents conceptual issues and a background of the rights-based conservation approach, followed by the study's methodology. This is followed by an analysis of contextual elements including: 1) a comparison of IP, ADP and PIACI conservation and collective ownership frameworks; and 2) findings from a dialogue with key stakeholders. The report concludes with indicative pathways and recommendations for implementing a rights-based approach to conservation in the Peruvian and Colombian Amazon.



SECTION 1

INTRODUCTION

The urgency to act in the face of climate change and a global biodiversity collapse, as well as recent research showing the overlap of areas of great biological value with lands owned or managed by local peoples, has generated a shift in the global recognition of the role Indigenous Peoples (IP), Afro-descendant Peoples (ADP), and local communities (LC) play in biodiversity conservation.[1]

The first draft of the Post-2020 Global Biodiversity Framework[2] under discussion seeks to transform our relationship with Earth's natural resources as a strategy to halt biodiversity loss and revive ecosystem services. It includes the goal of safeguarding at least 30 percent of Earth's lands and waters through the creation of protected areas and other effective conservation methods by the year 2030. The goal stands to potentially impact the 1.65 to 1.87 billion Indigenous, Afro-descendant, and local communities who inhabit many of

these important biodiversity areas across the world. This is worrisome as these communities customarily manage and exercise governance over at least 50 percent of the world's total land area but have legally recognized ownership to just 10 percent of these lands.[3] Lack of secure land tenure for IPs, ADPs, and LCs puts them in a vulnerable situation in the face of possible government decisions to designate their lands as protected areas without considering their rights, traditional practices, and ways of life.

At the global level, the Amazon biome is one of the most important ecosystems for the preservation of biodiversity. It is home to the largest area of tropical forestlands and biological ecosystems in the world, plays a critical role in regulating the climate variability of the planet, and is a major carbon sink, storing between 150-200 million tons of carbon.[4]

Likewise, the Amazon region is also the ancestral territory of a diversity of IPs, ADPs, and LCs. According to *Rede Amazônica de Informação Socioambiental Georreferenciada* (RAISG), 47 million people inhabit the area, including more than 410 Indigenous groups—82 of which are living in isolation—with an estimated total population of 2.1 million individuals. Indeed, 27.5 percent of the Amazon is claimed by Indigenous Peoples.[5]

IPs, ADPs, and LCs have struggled for centuries for their territories, traditional knowledge, and ways of life to be protected and recognized as an effective path towards a fair, equitable, and rights-based conservation practice. Under the rights-based approach, these communities have drawn attention to their right to a clean environment as a basic human right, and to their right to its use, access, possession, governance, and authority in conservation.[6] At the IUCN Global Congress in September 2021, both the Global Indigenous Agenda for the Governance of lands, territories, waters, coastal tides, and natural resources and Motion 129 of the call to action, "Avoiding the point of no return in the Amazon protecting 80% by 2025," were approved.[7] This is a substantial achievement led by IPs and LCs in the advancement and consolidation of rights-based conservation initiatives.

In recent decades, a rights-based approach to conservation has gained increasing recognition in conservation policy arenas.[8] However, it remains unclear whether these rights-based approaches can transform existing conservation regimes at the national level. It is also unclear if there is complementarity between conservation regimes and the regimes of collective IP, ADP and LC land and territory tenure rights. Additionally, it is difficult to see what conditions are necessary to make a shift towards a rights-based conservation policy that promotes fair, effective, and lasting conservation practices.

This report synthesizes an analysis that looked at the opportunities, favorable conditions, and disadvantages of promoting and strengthening a rights-based approach to conservation in Colombia and Peru. It examines existing legal frameworks in relation to the recognition of collective tenure rights, conservation frameworks and protected areas. In the case of Colombia, the tenure rights analysis focuses on Indigenous and Afro-descendant Peoples' rights. In Peru, the tenure rights analysis focuses on Native communities' rights. **This report presents indicative pathways of achieving and expanding a rights-based approach to conservation and assesses the feasibility, challenges, and priorities involved in promoting transformations that contribute to long-term conservation effectiveness, including strengthening or securing IP, ADP and Native tenure rights as an effective conservation solution.** The report concludes with identifying some of the enabling conditions needed for implementing rights-based conservation practices.

This analysis considered that rights-based conservation is not an a priori concept defined in global discussions and promoted as an infallible formula within biodiversity conservation policies, nor is it a template to adapt the collective tenure systems of IPs and ADPs inhabiting and exercising governance over ecosystems of special importance for conservation of the Amazon. On the contrary, this study aimed to identify the range of possibilities where conservation and collective land tenure rights can be found, and where greater implementation, dialogue, and standardization between the extensive regulations and conceptualizations exists.

For this, it was necessary to delve into how tenure rights and conservation policies have evolved in the last 50 years in Colombia and Peru and to identify the agreements and disagreements between these regulatory frameworks, as well as the current experiences of each country. This contextual look and historical review made it possible to develop a series of recommendations when planning projects and conservation policies, with an inclusive focus on Peoples inhabiting the Amazon. Discussions with stakeholders from Indigenous and Afro-descendant communities, civil society, and the State concluded that it is necessary to adopt a comprehensive perspective and an intercultural framework which understands IP and ADP rights. Furthermore, the practice of rights-based conservation should not be confined to a limited space, like Protected Natural Areas (PNAs). The concept of Indigenous territories that integrate social, cultural and spiritual elements; ethnic identity; political relations and ethics; governance; and economic and other rights interdependent with the natural environment are crucial for undertaking effective and rights-based conservation. The recognition of communities as legitimate authorities in conservation governance is a necessary step to ensure an inclusive and rights-based conservation practice.

SECTION 2

SOURCES, METHODOLOGY AND REVIEW PROCESS

The data presented in this report were obtained in three research stages, applying documentary analysis methods and expert consultation. First, a group of Colombian and Peruvian specialists carried out detailed investigations on the legal evolution of tenure and conservation frameworks. This research involved the review of secondary sources, legal frameworks, jurisprudence, and other related sources. Likewise, research about each country compiled quantitative and cartographic data that allowed for an estimate of the number of protected areas in the Colombian and Peruvian Amazon, as well as the overlap of Indigenous and Afro-descendant communal territories with PNAs. Additional cartography at the national level in Peru was directly undertaken by RRI to better understand the chronological evolution of the implementation of conservation and tenure frameworks, using various sources. Although this study acknowledges the great cultural

diversity which exists in the Amazon, with important recognized settlements with claims to individual and collective tenure rights, this study only analyzed the legal tenure regimes of IPs and ADPs in Colombia and those of Native communities in Peru.[9]

Secondly, throughout the study, dialogues, interviews and focus groups were convened with experts from both countries—civil society, Indigenous and Afro-descendant organizations and authorities, and government entities. These conversations with key stakeholders allowed for a local assessment of the main problems and existing opportunities to promote a rights-based conservation approach. Some interviews with civil society stakeholders are ongoing. Third, based on comparative analysis matrices, synthesis reports were generated from the main results. These have resulted in structured proposals expected to bring to light a better understanding of the complex legal, political, environmental and social realities of the Amazon biome in these two countries.

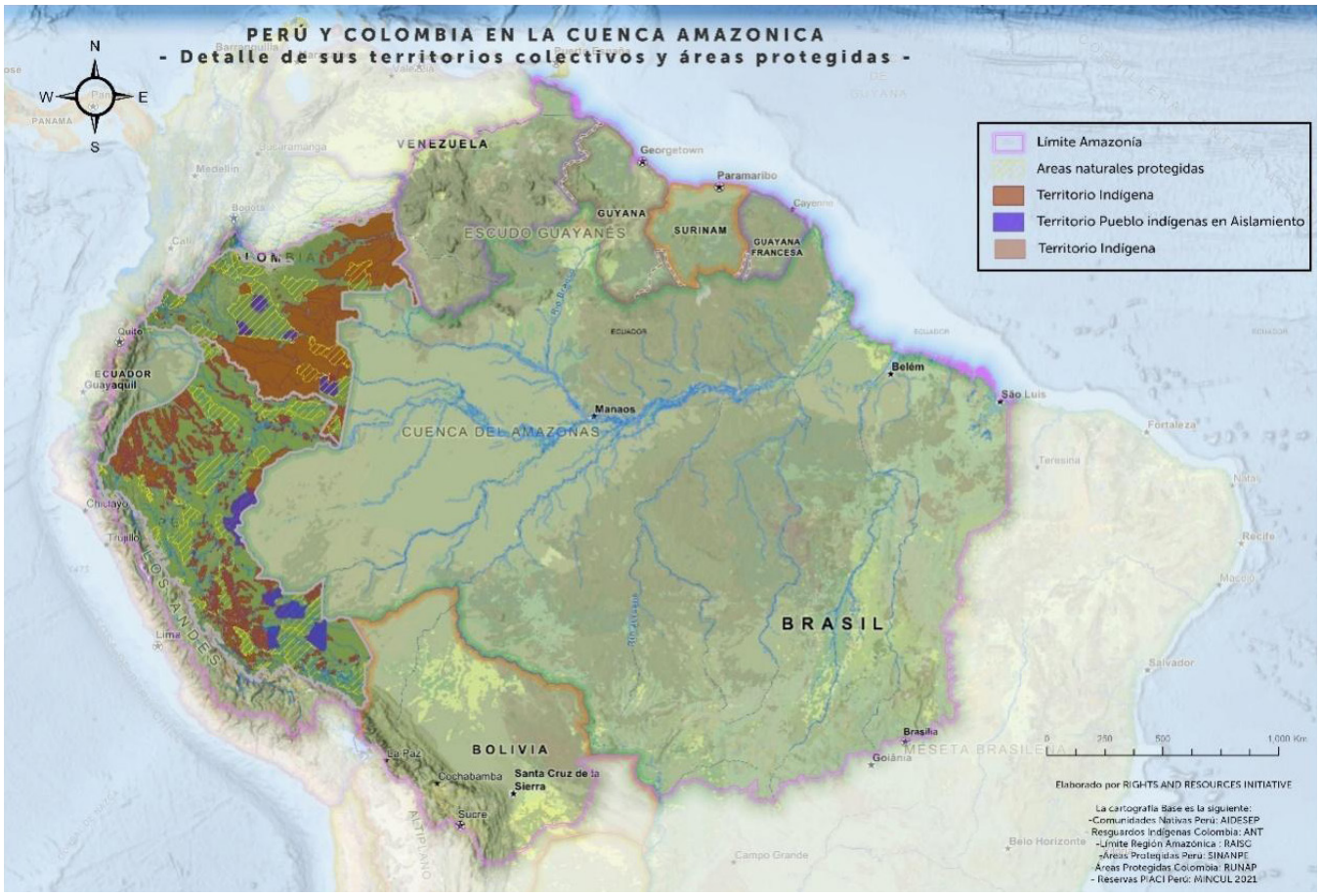
SECTION 3

THE AMAZON IN CONTEXT

The Amazon, in addition to being a biome of great importance for conservation and planetary climate regulation, is an inhabited, built territory, and an integral part of the Peoples inhabiting it. Even though the recognition of collective rights is relatively recent, the reality is that the Amazon has always been inhabited by an unknown number of communities and Peoples, many of them Indigenous. The latter, over the past seven decades, have demanded recognition of their rights over the territories they occupy and the common assets they have traditionally preserved; these are the same areas conservationists seek to regulate.

Out of the nine countries sharing the Amazon, Brazil, Peru and Colombia are the countries that harbor the largest geographical area (see Map 1). Although important global and national interests seek a management that guarantees the preservation of the Amazon, each country has its own

MAP 1. AMAZON BASIN DETAILING INDIGENOUS TERRITORIES AND ANPS IN THE PERUVIAN AND COLOMBIAN AMAZON. SOURCE: STUDY AUTHORS



regulations regarding conservation and territorial planning policies. The biggest contrast between Amazonian countries is how they deal with the inhabitants of the Amazon, specifically the IPs, ADPs, LCs and Native communities that express territoriality within the Amazon Basin and the region's plains and mountains. Indigenous territories and PNAs alone occupy more than 40 percent of the Amazonian area.[10] However, establishing agreements and protocols that reconcile conservation paradigms with a focus on IP rights has not been easy. Additionally, the Amazon area faces problems associated with climate change that are exacerbated by conflicts of use such as mining, deforestation, extensive livestock ranching, monoculture and other problems that pressure ecosystem degradation and threaten the fundamental rights of its inhabitants. This report shows how the implementation of IP, ADP and Native tenure systems have evolved in Colombia and Peru, and to what extent the generation of conservation policies converge or diverge from IPs', ADPs' and Native communities' customary rights.

OVERVIEW OF COLLECTIVE TENURE RIGHTS AND CONSERVATION LEGAL REGIMES

Article 7 of the 1991 Political Constitution of Colombia recognizes the country's ethnic and cultural diversity and constitutes the basis for the recognition and protection of IP and ADP collective property rights within the country's legal system. Even though legislation regarding IPs' collective property rights derive from the colonial period, it was not until 1991 that Indigenous *resguardos* and Afro-descendant communal

lands acquired an unseizable, inalienable and imprescriptible character. In Peru, the Agrarian Reform Law of 1964 formally recognized Aboriginal jungle tribes. Ten years later in 1974, this legal concept was expanded to include a definition of Native communities (a term commonly used to refer to the Indigenous Peoples in Peru). These two laws recognized the legal existence and status of Peru's Aboriginal jungle tribes and Native communities for the first time, establishing the foundation for the recognition of collective Indigenous land rights in the Amazon. This was during a time of great political upheaval, after the 1968 coup d'état. Similarly, Article 89 in the 1993 Constitution in Peru recognized Native communities as autonomous in their organization, communal work, the ability to use and freely dispose of their lands, economic pursuits and administration.

There also exists extensive background in terms of conservation policies. In Colombia, Law 200–1936 empowered the government to designate uncultivated land as Forest Reserve Zones (ZRF). Later, the ZRF entity—linked to the forest economy as well as soil, water and wildlife protection—would be further developed into Law 2–1959 and converted into a protected area category. Between the 1940s and the 1960s, various regulatory instruments for agricultural and forestry management gradually incorporated notions of conservation and provisions about reserves and national parks into their discourses, although a national environmental authority did not yet exist.[11] The Cueva de los Guacharos, established in 1960, was the first National Natural Park in Colombia. The creation of national parks that seek to keep Earth's natural resources in and people out is not new. The first national park ever created was Yellowstone National Park in the United States in 1872 which promulgated a global conservation movement based on colonial approaches to natural resource management.

However, starting in 1977, Colombian legislators began to consider the idea that areas recognized for Indigenous Peoples were compatible with the National Natural Park System (SPNN). Compatibility between SPNN areas and Indigenous Reserves is thus noted as an exception. The most important change came with promulgation of the 1991 Political Constitution, considered by the Constitutional Court as an ecological constitution insofar as it considered the environment as a legal asset needing special protection. In the years after 1991, conservation areas overlapping with IP and ADP territories would undergo important changes, particularly related to Indigenous communities, as will be discussed later.

In Peru, the evolution of conservation policies coincides temporally with Colombia. In 1961, the Cutervo National Park was established, and is recognized as the first Protected Natural Area (ANP) in Peru.[12] In June 1997, the ANP Law (No. 26834) was declared with the purpose of defining and clearly establishing the guidelines for the declaration, selection and management of these areas. Currently, the National Service for Natural Areas Protected by the State (SERNANP) is working on a Protected Natural Areas Master Plan update within the framework of establishing Peru's 2050 vision, which for the first time, includes a working group on ANPs and Indigenous Peoples.[13]

The Protected Natural Areas Master Plan is a multi-sectoral planning tool that defines strategic planning and policy guidelines for national, regional and private ANPs in the country. This working group is number seven of at least 12 specialized groups and includes representatives from the Executors of the Communal Reserve Administration Contract, Indigenous organizations, specialists, experts, and public and private national-level institutions and organizations. The working group is fighting to include the concept of rights-based conservation strategies in the new Master Plan, as well as the formal recognition of IP rights to territory, their self-determination to manage their lands, and IP participation in decision-making spaces.

All of this has materialized in the current Amazon where the number of protected areas and the level of advancements in the recognition of tenure or title rights has facilitated the creation of a map (see Map 1) where various entities coexist and oftentimes overlap. However, this map differs greatly from the environmental and agrarian orderings Colombia and Peru had created in the 1950s. The rights recognition process has undoubtedly modified national territorial maps where previously unclaimed forests are now

owned by IPs and ADPs or are designated as protected areas. However, both IPs and ADPs still have a long way to go to ensure their customary territories in important conservation areas are recognized, mapped and properly titled.

STATISTICS FOR CONSERVATION AND COLLECTIVE TENURE FRAMEWORKS

INDIGENOUS AND AFRO-DESCENDANT PEOPLES

According to the latest census in Colombia, at least 1.9 million IPs live in the country. Almost 80 percent live in rural areas—the majority in officially recognized *resguardos*—which cover approximately one-third of the country's total land area. Meanwhile, it is estimated that 60 Indigenous groups with a population of 233,678 live in the Colombian Amazon. Official figures also estimate that there are approximately 30,000 inhabitants in the Amazon who self-identify as Afro-descendant. There are two groups of Indigenous Peoples in isolation already recognized, and 14 are in the process of being recognized. In the Peruvian Amazon, there are 51 Indigenous or Native groups. According to the 2017 National Census, 25.7 percent of the national population of Peru self-identify as belonging to an Indigenous group. Of these, approximately 200,000 people belong to an Amazonian Indigenous group.[14] Peru's Ministry of Culture believes that approximately 7,000 people are Indigenous Peoples in Isolation and Initial Contact (PIACI), made up of 20 Indigenous groups.[15]

The advances in tenure recognition for IPs and ADPs in Colombia and Peru are significant. Table 1 shows which collective tenure rights have been recognized and which ones are still pending.

The complexity of the existence of the various collective tenure and ANP entities can be spatially identified in Map 2 and Map 3. In the case of Peru, the map of the current state of recognition of IP rights of use and collective property rights shows how national and regional conservation spaces and Indigenous territories have evolved as either titled Indigenous communities and campesino communities or under the PIACI Indigenous Reservation entity, both of which have gained greater notoriety in the last 20 years.

In Peru, the titling of Native communities started in 1975, 14 years after the creation of the first ANP in 1961 (National Park Cutervo). In 1978, forests were decreed as property of the State (meaning they could not be titled as part of Native communities), resulting in the decrease of the titling of Native communities during the 1980s. However, the opposite occurred in the conservation regime, where during that same decade, nine ANPs were created, including the first Communal Reserve in 1988 (Yanesha). In the 1990s, there was a resurgence of titling with the promotion of the formalization of sites and properties. In addition, the first four PIACI reserves were created. The 2000s, after the dictatorship, saw the lowest amount of titling, in part because the central government from 2006–2011 had an opposing stance towards IPs. Notwithstanding, the 2000s were the most prolific decade for the creation of ANPs, with 17 new areas. After Baguazo was established in 2009 and the end of the Garcia administration in 2011, various titling incentives emerged.

Currently, there are 2,271 recognized Native communities in Peru but only 1,631 are titled covering 13,788,953.9 ha according to data from the Interethnic Association of the Peruvian Amazon (AIDESEP) as of February 2022. There are also seven PIACI territories, including Indigenous Reserves and Territories, that make up 4.11 mha. The last two Indigenous Reserves were created in 2021: Yavarí Tapiche and Kakataibo Norte y Sur. The area of ANPs at the national level in the Amazon totals 16.2 mha, of which 2.16 mha represent 10 Communal Reserves which are co-managed by the State and Indigenous Peoples.

Therefore, a gap remains in Peru: 692 Native communities left to title, which have referential and extension plans that still need to be spatialized (in Figure 1 they are shown as points). Seventy-four Native communities have expansion requests pending and 1,010 have requests for geo-referencing. There are three territorial reserve proposals: RT NapoTigre and tributaries (in Loreto, bordering Ecuador), RT Yavari-Mirim (in Loreto, borderin Brazil) and Sierra del Divisor Occidental (between Loreto and Ucayali), totaling 2.6 mha.

TABLE 1: INDIGENOUS PEOPLES AND AFRO-DESCENDANT PEOPLES PROTECTED AREAS AND RECOGNIZED COLLECTIVE TENURE IN COLOMBIA AND PERU—POPULATION AND TERRITORIAL DATA

VARIABLES	PERU	COLOMBIA
Amazon area by country	78.2 mha	48.5 mha
Percentage of the Amazon that falls within State borders	61.16% of the country's land area	42.3% of the country's land area
IP and ADP population	**IP:** 212,823 people / 51 groups	**IP:** 233,678 / 60 groups **ADP:** 30,000
Number of protected areas in the Amazon and total area	50 government-administered conservation areas (37 Protected Natural Areas and 13 Regional Conservation Areas) that cover 19.3 mha 150 private conservation areas that cover 245,864 ha	55 areas within the National Protected Areas System spanning 11,126,355 ha These include: 1 Recreation Area; 14 National Natural Parks; 4 Regional Natural Parks; 2 Natural Reserves; 5 National Forest Reserve Protectorates; 1 Flora and Fauna Sanctuary; 1 Flora Sanctuary; and 27 Civil Society Reserves The Civil Society Reserves cover 2,228 ha
Number of recognized IP and ADP territories	1,631 titled IP or Native communities covering approximately 13.8 mha	**IP:** 223 resguardos 27,037,828 ha (National Land Agency) **ADP:** 6 Community Councils 5,811 ha
Pending recognition, demarcation or titling procedures	116 Native communities to be recognized[16] 692 Native communities to title 1,010 to geo-reference 74 expansion requests received No extension data	**IP:** 234 claims 3,224,396 ha (National Land Agency) **ADP:** 37 Community Councils 21,567 ha
Overlap of IP territories and protected areas	76 Native communities No extension data	57 Indigenous territories overlap with 23 protected areas 4,007,768.28 overlapping ha, including expected and constituted resguardos[17]
PIACI	26 Peoples groups (approximately 7,000 people) 7 reservations created between 1990 and 2021	2 recognized and 14 to be recognized No population data available

Note: Prepared by RRI staff from the following sources:[18] Colombia: Geoportal de la ANT and OTEC/PUJ. Red Hídrica, Departments and Capital Cities: IGAC, RAISG, RUNAP, SINAP and DANE. Peru: SINANPE with an Amazon boundary RAISG, DIGESPACR, MINCUL, GIZ, AIDESEP and SPDA.

MAP 2: COLLECTIVE TERRITORIES AND NATURAL PROTECTED AREAS IN PERU

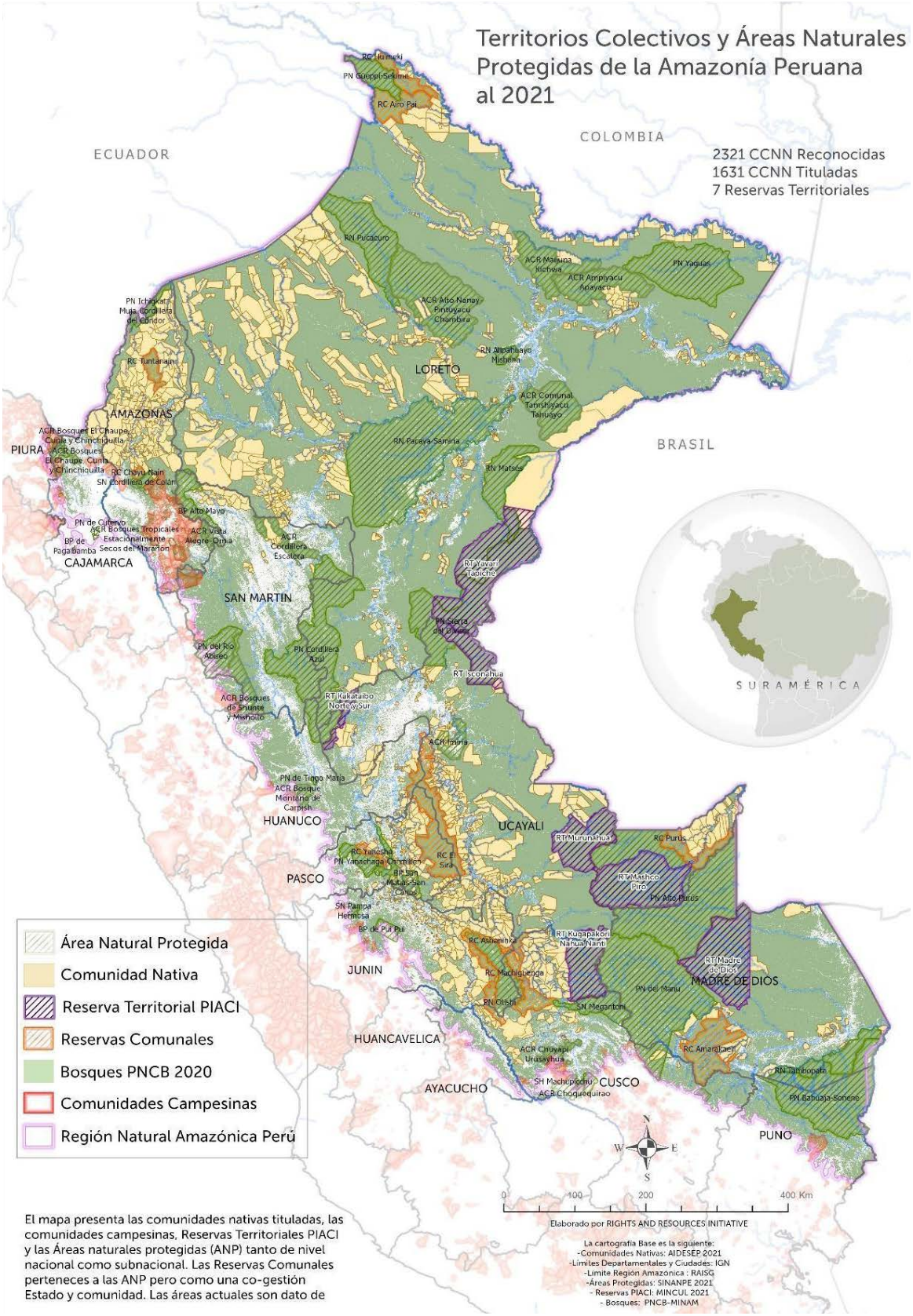
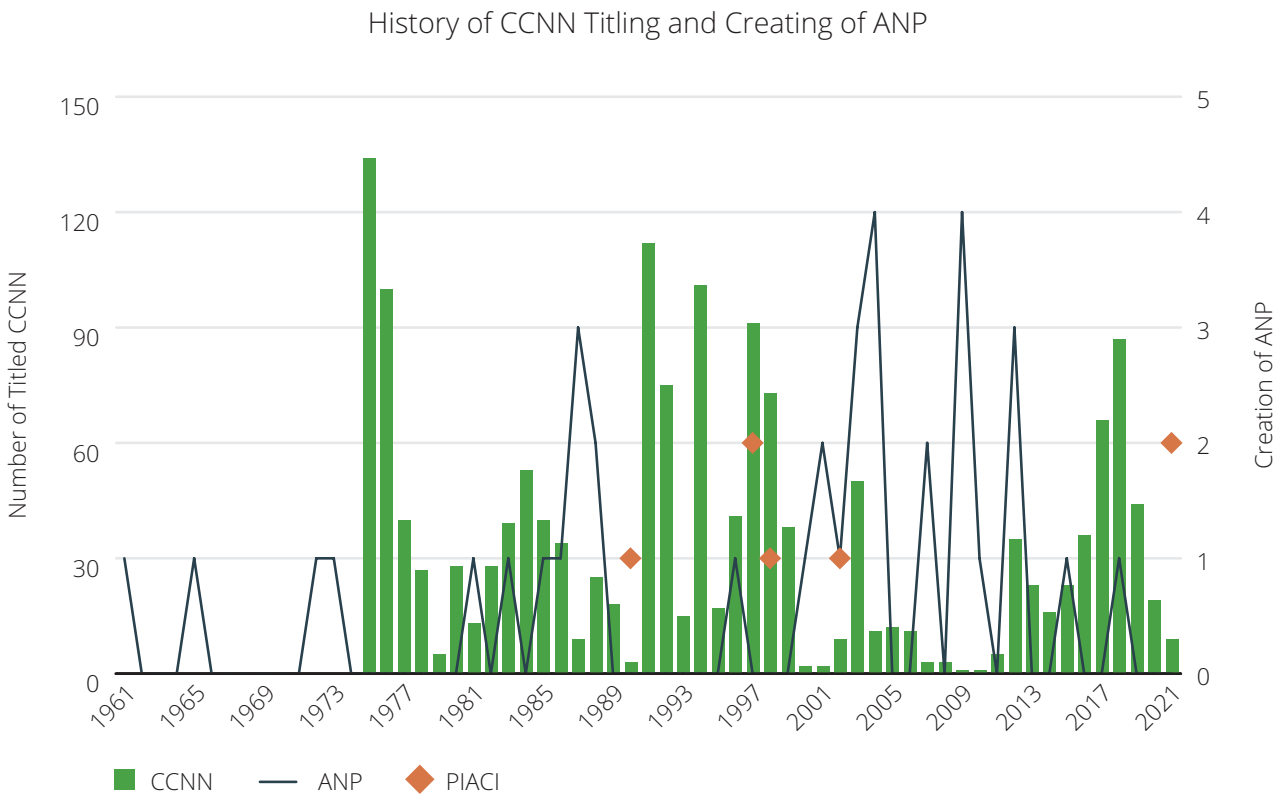


FIGURE 1. NUMBER OF NATIVE COMMUNITIES ESTABLISHED AND EXPANDED, ANPS DECLARED AND PIACI TERRITORIES CREATED BETWEEN 1961–2021

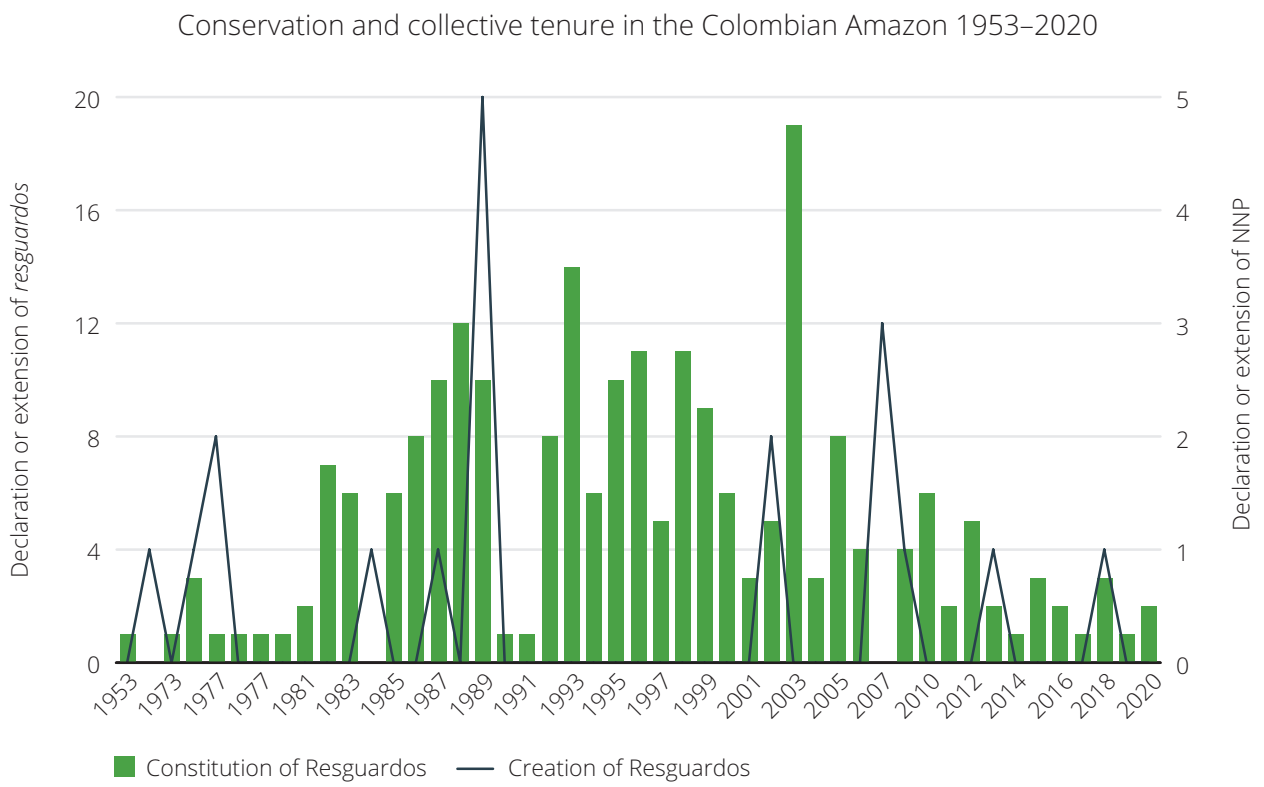


In the case of Colombia, collective law subjects and collective tenure entities are even more diverse. Indigenous *resguardos* are the preponderant type of entities, especially in the eastern Amazon, and, to a lesser degree, on the plains and extreme western regions. Indigenous *resguardos* surpass protected areas by more than 15.5 mha while Indigenous territories (grouped with anticipated IP territories) overlap with protected areas by 36 percent. Afro-descendant Peoples' territories are so small in hectares that it is difficult to represent them cartographically on a scaled map of the Amazon area. For ADP titled lands to be visible, maps would need to be drafted on a more detailed scale to show the little more than 6,000 ha making up the territories legally adjudicated in their favor.

The periodicity of these recognitions is not a minor matter. In the Colombian Amazon, it began with the creation of Indigenous *resguardos* in 1953. To date, there are 223 territories, totaling 27,037,828 ha. In 2003, there was a significant peak in titling, but the period of greater statistical representation was between 1986 and 1995 (the formalized titling of 80 Indigenous *resguardos* in the eight departments, which today, with their subsequent extensions, add up to 17,753,040 ha). When this timeline is compared with the creation of protected areas in the period between 1960–2020, 17 natural protected areas (PNN and Reserves) were created in the Amazon. Between 1996–2005, 79 Indigenous *resguardos* titles were formalized in the eight departments, an amount similar to the previous period. However, the total titled hectares of this time period are located mainly in the piedmont, with sizes ranging from small to very small, which promotes the fragmentation of ancestral territory. As of 2015, titling begins to reduce. This can be explained by several factors: the availability of land, the fragmentation of the territory due to colonization processes, the expansion of agriculture and political will.

As shown in Table 1, the establishment of ANPs in the Peruvian Amazon has advanced much more than

FIGURE 2. AMOUNT OF CONSTITUTED *RESGUARDOS* AND DECLARED AND EXPANDED NNPS



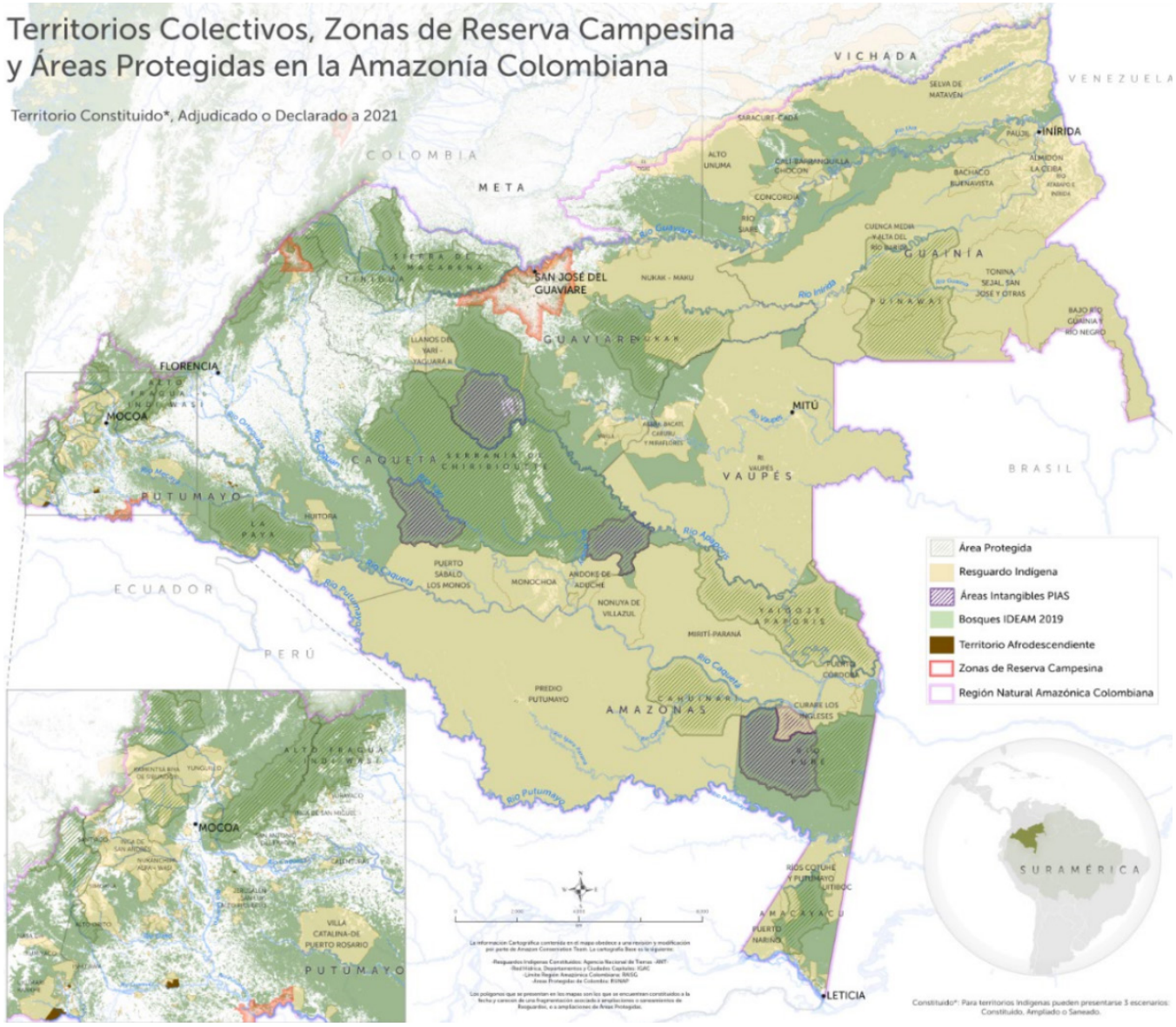
communal land recognition. However, the political, social and economic context that explains this trend (greater recognition of ANPs than of communities) is yet to be analyzed in this study. Peru has 30 million more hectares in the Amazon than Colombia but has titled less than half the hectares of IPs' territory allocated by Colombia. It must be noted that Native communities in Peru are comparatively smaller than Indigenous communities in Colombia, and their borders do not correspond to geographical landmarks, as in the Colombian case.

It is also necessary to better analyze the impact of the 1974 Agrarian Reform in Peru, the natural resources legislation (which decrees forests as State property) and the forest law on Native communities' land tenure in the Amazon, and how this could limit rights-based conservation. Regarding the expectations for new titles for IPs in the two countries, data shows worrying behavior from the State in terms of unanswered requests. In Colombia, there are 234 requests in process for the creation and/or expansion of *resguardos*, although the territorial expectations are higher. Government figures estimate these requests to roughly cover 3,224,396 ha. In Peru, some research shows that the problem lies in unrecognized communities, a step prior to demarcation and titling procedures.[19] A 2021 investigation by Mongabay in Loreto, Ucayali, Pasco, Huánuco and Madre de Dios found that 647 Native or self-identified Indigenous communities are unrecognized by the regional certification authority.[20] Due to this, it is not possible to determine the total territorial area pending titling in the Peruvian Amazon.

PROTECTED AREAS

Based on the RAISG cartographic delimitation of the Colombian Amazon, there are 55 protected areas (52 total within the biome) corresponding to different management approaches: Fauna and/or Flora Sanctuary; Regional and National Protected Forest Reserves; Civil Society Natural Reserve; Natural Reserve; Regional Natural Parks; National Natural Park;

MAP 3: COLLECTIVE TERRITORIES, PEASANT RESERVE ZONES AND PROTECTED AREAS IN THE COLOMBIAN AMAZON



and Recreation Areas. The private initiatives included in the 27 Civil Society Reserves stand out. In total, 23 percent of the Colombian Amazon biome is located within a protected area, that is, 11,122,841.74 ha.

The declaration of protected areas in Colombia began in 1960 based on the legislation available at the time. However, Figure 2 shows that the frequency of the declaration of protected areas was relatively low until 1989, when the trend of recognizing one National Natural Park (PNN) every 5–7 years was surpassed.

Several milestones stand out: the Macarena PNN in 1971; the Amacayacu PNN in 1975; and the La Paya PNN in 1984. All were created on territories used ancestrally by IPs. Between 2006–2015, Serranía de los Churumbelos and Cascabel Doña Juana PNN (2007), Orito Ingi Ande Flora Sanctuary (2008) and Yaigoje Apaporis PNN (2009) were also created. The creation of these three protected areas incorporated cultural values associated with the knowledge of the Yagé and Yuruparí Peoples in conservation. Likewise, the Alto Fragua-Indi Wasi and the Puré River PNNs also

stand out as similarly successful cases. These have managed to harmonize and integrate conservation objectives with broader cultural protection values. In 2013 and 2018, the country's largest protected area, Serranía del Chiribiquete PNN, was expanded.

AFRO-DESCENDANT COMMUNITIES

Another population group within the Colombian Amazon is Afro-descendant Peoples. The official 2018 census estimated close to 30,000 inhabitants self-identifying as Afro-descendant in the region, although there is little mention in the tenure, conservation and settlement literature related to the Amazon area. Their presence is concentrated in the Putumayo and Guaviare Departments. Studies show migratory flows of Black settlers starting in the 1950s, consolidating in important settlements, especially along the Caquetá, Putumayo and Mocoa Rivers. Although there is a presence of ADPs in other parts of the Amazon, the guaviare and Putumayo regions are the most represented macro-regions in the collective titling processes.[21]

In the Putumayo Department, there is a large concentration of Afro-descendant communities with great possibilities of achieving recognition of collective tenure in important ecological areas. Table 2 shows that six collective titles have already been awarded in the Amazon, covering 5,811 ha. In addition to the collective titles in Nariño, there are collective titles in Putumayo, a region where more land could be awarded if the land titling procedures described below are completed. Regarding those holding titles, it should be noted that they are all in close proximity to various protected areas such as PNNs and Flora Sanctuaries and Natural Reserves, both in Colombia and Ecuador.

Regarding expectations of titling to date, the OTEC Information System reports 45 community councils filed collective titling procedures between 2010 and 2020 with the country's National Land Agency (ANT). Putumayo Department has the most requests with a total of 37, distributed in the Puerto Asís, Orito, Puerto Guzmán, Villagarzón, Puerto Caicedo, Mocoa and Valle del Guamuez municipalities. Only partial information about territorial dimensions is available because the data on the requested area is incomplete. Even so, the ANT estimates 21,567 ha are requested within the 37 applications.

LOCAL COMMUNITIES

Although not part of the tenure regime analysis of this study, it is worth noting the presence of campesino communities in the Colombian Amazon that have organized themselves under collective land and ecosystem management schemes. Many of these families came from the interior of the country

TABLE 2: LIST OF COMMUNITY COUNCILS WITH COLLECTIVE TITLES IN THE AMAZON

ITEM	NAME	LOCATION	HA	YEAR	SINAP AREAS NEARBY
1	La Nueva Esperanza	Ipiales, Nariño	1,770	2012	SFPM Orito Ingi-Ande, Reserva Ecológica Cofán Bermejo (Ecuador)
2	Nuevo Renacer	Ipiales, Nariño	1,133	2012	SFPM Orito Ingi-Ande, Reserva Ecológica Cofán Bermejo (Ecuador)
3	Liberación y Futuro	Ipiales, Nariño	137	2012	SPNN La Paya
4	Los Andes	Puerto Asís, Putumayo	15,041	2016	SFPM Orito Ingi-Ande
5	Community Council Orquídea	Puerto Guzman, Putumayo	1,158	2018	SPNN La Paya
6	Community Council Marthin Luther King	Mocoa, Putumayo	126	2020	Serranía de los Churumbelos NNP

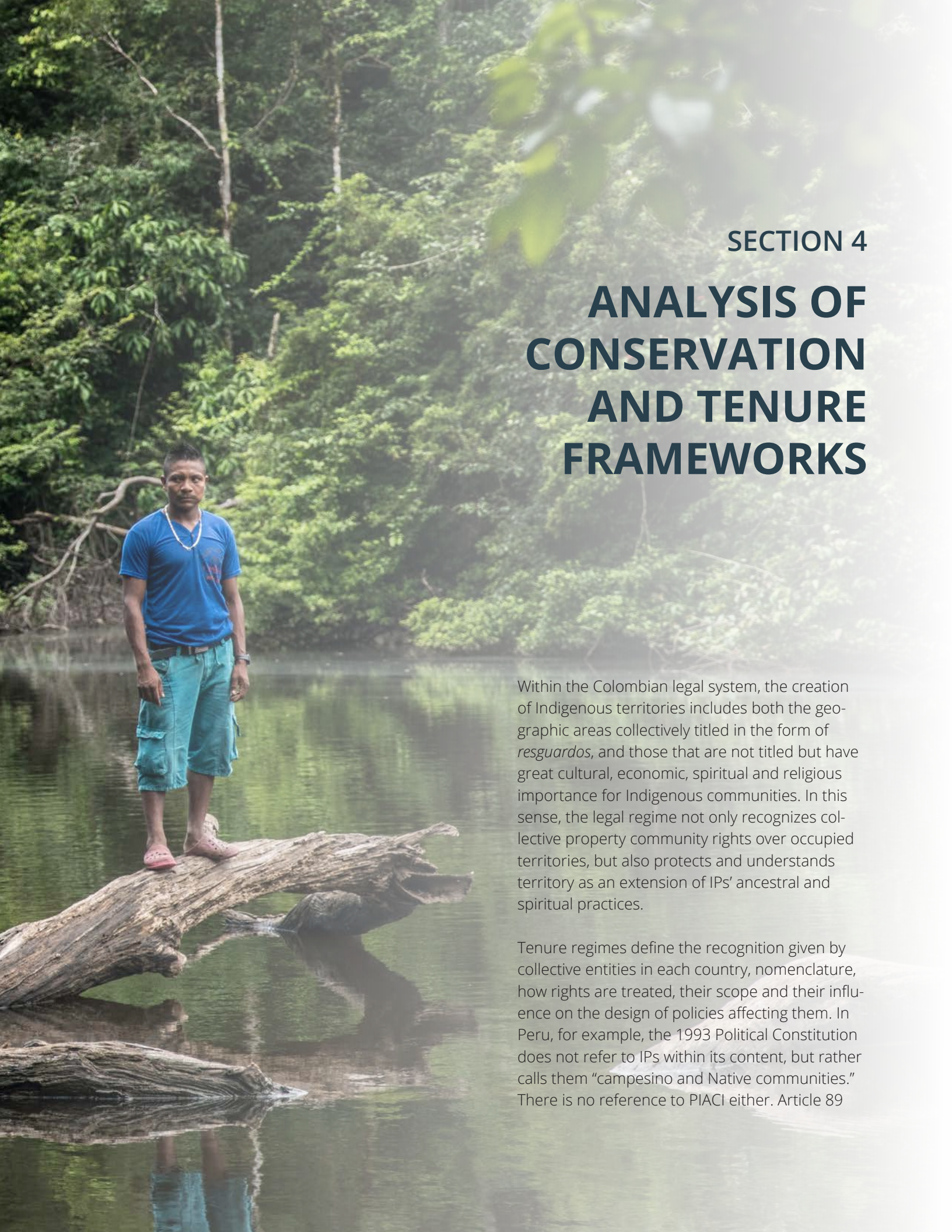
Source: OTEC Information System (2021), ACT Information System (2021) and Protected Areas Information System (2021).

TABLE 3: CAMPESINO RESERVE ZONES (ZRC) IN THE AMAZON

ITEM	NOMBRE	LOCATION	HA	YEAR	SINAP AREAS NEARBY
1	Guaviare	San José Del Guaviare, Guaviare	472,853	Resolution 054 (18–12–1997)	Sierra de la Macarena and Serranía de Chiribiquete
2	Cuenca Rio Pato y Valle de Balsillas	San Vicente Del Caguán, Caquetá	73,030	Resolution 055 (18–12–1997)	Cordillera de los Picachos, Siberia and part of the Cuenca Alta del Rio las Ceibas, Cuenca del Rio las Ceibas Natural Areas
3	Perla Amazónica	Puerto Asís, Putumayo	36,466	Resolution 069 (18–12–2000)	La Paya NNP

in search of land after being expelled in the 1950s by La Violencia and, later, in search of new opportunities.[22] In the Colombian Amazon, there are three constituted Peasant Reserve Zones (ZRC) (Table 3). This entity was created by Law 160 in 1994 with the purpose of regulating and organizing the occupation of vacant lots and consolidating peasant economies in the country. The ZRCs were a way in which campesino/peasant organizations responded to the socioeconomic and environmental problems derived from the historical trajectory of violent conflict and colonization.[23] There is a total of 582,350 ha in three departments: Putumayo, Caquetá and Guaviare.

These were created between 1997–2000. In other words, a ZRC has not been created in the region in the last 21 years. However, during the political transition period currently being experienced by the country, the creation of ZRCs has been re-proposed as a model for peace building and biodiversity protection.[24] ZRCs manage territory collectively and are an opportunity to innovate strategies and actions in biodiversity management with potential benefits in territories currently implementing the peace agreement.[25] It is recommended that an in-depth study of ZRCs' scope, and their contribution to conservation be undertaken in another report.



SECTION 4

ANALYSIS OF CONSERVATION AND TENURE FRAMEWORKS

Within the Colombian legal system, the creation of Indigenous territories includes both the geographic areas collectively titled in the form of *resguardos*, and those that are not titled but have great cultural, economic, spiritual and religious importance for Indigenous communities. In this sense, the legal regime not only recognizes collective property community rights over occupied territories, but also protects and understands territory as an extension of IPs' ancestral and spiritual practices.

Tenure regimes define the recognition given by collective entities in each country, nomenclature, how rights are treated, their scope and their influence on the design of policies affecting them. In Peru, for example, the 1993 Political Constitution does not refer to IPs within its content, but rather calls them "campesino and Native communities." There is no reference to PIACI either. Article 89

recognizes the legal existence and legal status of these communities and declares the "imprescriptibility" of their lands, except in the case of abandonment. The Colombian legal system, on the other hand, recognizes Afro-descendant and Indigenous communities' collective property. Collective property enjoys the same escrows as private property, but also special constitutional protection. This is because this property is removed from the free trade regime by being declared inalienable, imprescriptible and unseizable by the 1991 Constitution, which prohibits its sale and termination.

In Peru, according to Article 88 of the Peruvian Political Constitution, the State guarantees the right to property over the land in a private, communal or any other associative way. That is, it commits to guaranteeing collective property. The Constitutional Court has indicated that Constitutional articles 88 and 89 must include the concept of territory. While the concept of "land" is restricted to the civil or patrimonial dimension, the concept of "territory" implies political self-government and autonomy, which is more in line with IPs' reality.[26] Notwithstanding the foregoing, the Peruvian State only allows two legal channels for this: the Native Communities and Agrarian Development Law and Law 28736 for the Protection of PIACI.

Both countries have ratified ILO Convention 169, an instrument that guides the main contents of territorial law, self-determination and the principles of the State's relationship with IPs and ADPs. Peru ratified it together with Legislative Resolution 26253 (December 5, 1993). In Colombia, this was done through Law 21 (1991). Despite the broad institutional guarantees recognized in the Constitution, legislation and jurisprudence, in the Colombian case, there is still great infringement on IP, PIACI and ADP collective and individual rights. This has led the Constitutional Court to declare these groups as subjects of special constitutional protection due to the circumstances of vulnerability and historical patterns of discrimination in which they find themselves.

Here is a summary of the elements which make up the tenure and conservation frameworks in each country:

PERU

TENURE RIGHTS FOR NATIVE COMMUNITIES

The **scope and content** of territorial law is highly complex, not only because of the administrative procedures leading to titling, but also because of the fragmented notions of collective tenure rights. ILO Decree 169 establishes IP rights to natural resources on their lands (use, management and conservation), but also provides an exception: *"the exception to the general principle occurs in cases in which the ownership of minerals, subsoil or other resources belong to the State."*[27] This exception also applies in Peru where Article 66 of the Constitution states that "natural resources, renewable or non-renewable, are the patrimony of the Nation." This means that Native communities cannot integrate forest cover ownership into property titles, but rather can only fully title the lands for agricultural use. For forests, they can apply the concept of land use cession with access to forests within Native community demarcated territory. So, within the demarcated community, the Land Classification Regulations for their Greater Use Capacity (*Reglamento de Clasificación de Tierras por su Capacidad de Uso Mayor*) will determine which lands are subject to titling, and which are not. If both types of land classification exist, the Regional Agrarian Office will issue the title to the land for agricultural use and the Regional Forestry and Wildlife Authority will issue the land use cession contract.

Native communities originate from tribal groups in Selva and Ceja de Selva and are made up of family groups linked by language or dialect, cultural and social characteristics, customary tenure, and common and permanent usufruct of the same territory, with grouped or dispersed settlements (Art. 8, Law No. 22175/1978). Regarding subsistence use, there are no restrictions (Art. 17, Law No. 26821/1997; Art. 50, 81 Law No. 29763).

The legal framework allows for receiving titles. Although Native communities are legally recognized—they are autonomous in terms of organization, communal work, use and free disposition of their lands—the Constitution establishes that natural resources belong to the Nation (Art. 66, 1993). The titling

process is entirely directed by the regional governments who, as executors, guide processes according to regulations issued by the General Directorate of Agrarian Property Consolidation and Rural Cadaster *(Dirección General de Saneamiento de la Propiedad Agraria y Catastro Rural, DIGESPACR)* of the Ministry of Agriculture and Irrigation, the governing agency. IPs must first initiate a legal procedure for recognition as Native communities. After recognition, the law establishes three other legal-physical consolidation procedures to secure the communal territories: titling, georeferencing and expansion. The process is long and it may even take years for IPs to obtain results. That is, if there are no factors that may complicate the process, such as overlap with other rights or with PNAs.

PIACI TENURE RIGHTS

Law 28736, also known as the PIACI Law, went into effect on May 18, 2006. This is the main legal instrument adopted by the Peruvian State to establish a Special Trans-Sectoral Regime (*Régimen Especial Transectorial, RET*) for the protection of the PIACIs of the Peruvian Amazon. This Law was issued with the purpose of guaranteeing the PIACI rights to livelihood and health.

This same Law introduces Indigenous Reservations as a protection mechanism for the PIACI, defined as: lands of transitory intangibility delimited by the Peruvian State, ceded to Indigenous Peoples in isolation or in a situation of initial contact, and as long as they maintain such situation, their rights, habitat and conditions ensuring their existence and integrity as Peoples, are protected.[28] To create these reservations, they must be proposed by regional or local governments, academic organizations and by Indigenous organizations or communities. For this purpose, Article 18 of the Regulation requires a previous Supreme Decree recognizing the existence of the Peoples in Isolation and Initial Contact. All this must receive favorable technical qualifications from the Vice Ministry of Interculturality.

The content of these rights is broad, including the right to protection of life and health through preventive actions and policies. They also include: the right to self-determination as Peoples who have decided not to maintain frequent contact with the majority of society; the right to protect their culture and traditional ways of life; the recognition of the PIACI spiritual relationship with their habitat; the right to own the lands they occupy and entry restrictions to third parties; the right to free access and use of their lands and natural resources for subsistence; and the right to establish Indigenous Reservations. Regarding land property, Aside D establishes that **property** will not be recognized until a sedentary way of life is adopted.

This tenure regime establishes the intangible nature of Indigenous Reservations (Article 5). In this sense, it prohibits the establishment of population settlements other than PIACI, prohibits the undertaking of any activities not related to ancestral uses and customs, and prohibits the granting of rights that imply the use of natural resources. Despite this prohibition, an exception has been established allowing the granting of rights over the use of natural resources if they are carried out through methods that do not affect PIACI rights, and provided it is feasible according to an environmental study approved by the Ministry of Interculturality.

It is important to note that the new Forestry Law establishes that these lands fall under the provisions of Law 28736/2006, and it does not regulate areas retained by IPs (Article 27, d, 1). The law guarantees PIACI rights to free access and extensive use of its lands and natural resources for traditional subsistence activities.[29]

These reservations enjoy temporary intangibility as long as IPs continue to live in isolation or initial contact. This provision results in a malicious incentive for third parties who have an interest in eliminating intangibility to establish contact.

COLOMBIA

TENURE RIGHTS THROUGH THE CREATION OF INDIGENOUS RESGUARDOS

Recognition of land ownership by Indigenous communities has been a matter of discussion since the colonial and independence periods. Under the 1991 Constitution, the Colombian State granted a special

guarantee of recognition, protection, and equal conditions to all ethnic groups and cultures that inhabit Colombia. Before, Law 89 (1890) considered Indigenous communities as savages.

The historical milestones in Colombia are extensive. The most relevant in terms of territorial rights involve Law 25 (1824) which indicates, for the first time, that all Indigenous properties will be respected. Law 89, which considered IPs as savages, also included that IPs could constitute a *Cabildo* according to their own traditions. Through the first Article in Law 60 (1916), written 26 years after Law 89, which legislated "on Indigenous *resguardos* on uncultivated lands," Congress empowered the Government to demarcate, at the request of interested parties, uncultivated lands on which there were Indigenous Peoples.[30]

Regarding the **content and scope** of territorial law, it should be noted that ethnic groups' collective property territorial rights were recognized by the Constitutional Court with the rank of fundamental rights during the first jurisprudential developments of the 1991 Constitution. Additionally, this fundamental right to collective property cannot be separated from other recognized fundamental ethnic groups' rights. On the contrary, it is intimately and inextricably linked to them.

The Constitutional Court, on different occasions (T-617/2010, T-698/2011 and T-235/2011) has said that the "title" of property of Indigenous groups is derived from ancestry. Specifically, it explains that *"the ownership of that territory, according to the jurisprudence of the Corporation and the Interamerican Court of Human Rights, derives from ancestral possession by communities, and not from State recognition."*[31] Thus, the Constitutional Court imposed the importance of ancestry over third party domain titles. Specifically, in T–617 (2010), the Court confirmed that, even when a third party has a property title over an Indigenous territory, prior consultation should not be ruled out for any project.

Since the ratification of the Constitution of 1991 and Law 21 (1991), the regulatory framework has been evolving. A more recent milestone came in 2016 with Constitutional Court Ruling T–622, which emphasized **biocultural rights** in a case involving the Atrato River in the biogeographic Chocó. In this ruling, the Court confirmed that, although the Atrato River is a guarantor of protection in itself, it must also be protected due to its special cultural and spiritual relationship with the Black communities that traditionally inhabit its surrounding area. Subsequently, Ruling 4360 (2018) declared the **Colombian Amazon as a rightsholder** in a final decision by the Supreme Court of Justice based on guardianship filed by 25 children and adolescents. Recognition as a rightsholder is a way to protect the vital ecosystem composing it. In this way, recognition of titleship is another way to receive protection, conservation, maintenance and restoration from the State, responsible entities, and nations, that are part of its territory. However, this ruling has been questioned because it deals tangentially with the ethnic communities that have ancestrally inhabited the Amazon. The Supreme Court of Justice has focused exclusively on analyzing the environmental effects of future generations but ignores the communities with consolidated tenure rights and those who have ancestrally and traditionally inhabited these territories.

Regarding recognition and titling procedures, Law 160 (1994) established that the expansion, restructuring, or consolidation programs of the Indigenous *resguardos* should be aimed at helping to fulfill the property's social and ecological function in accordance with the uses, customs and culture of these communities, as well as ethnic group preservation and improvement of their quality of life. The Ministry of Environment and Sustainable Development (MADS), verifies and certifies the fulfillment of the ecological function, in consultation with Indigenous *cabildos* or authorities (Paragraph 3, Article 85). The administrative procedure for the constitution, restructuring, expansion and consolidation of Indigenous *resguardos* is detailed in Decree 1071 (2015). Decree 2333 (2014) establishes mechanisms for the protection and legal security of the lands and territories ancestrally occupied by IPs. Article 3 in Decree 2333 (2014) defines ancestral territory as: "*Indigenous* resguardos*, lands and territories historically occupied and owned by Indigenous Peoples or communities and that constitute the traditional environment of their social, economic, cultural and spiritual activities."*

COLLECTIVE OWNERSHIP RIGHTS TO LANDS TRADITIONALLY OCCUPIED BY BLACK/AFRO-DESCENDANT COMMUNITIES

Transitory Article 55 of the Colombian Political Constitution ordered the creation of a law that recognized collective property for Black communities. For this reason, Law 70 was issued in 1993, recognizing the collective property rights of Black communities of the rural riparian zones of the rivers of the Pacific Basin, as well as those of Black communities with traditional practices occupying uncultivated, rural and riparian areas in other parts of the country. This is consistent with Article 13 of ILO Convention 169.

Law 70 (1993) recognizes Black communities' right to collective property in Article 4 and designates adjudicated land as "Black Communal Land." Traditional production practices are defined by the same law as those activities and techniques—agricultural, mining, forestry extraction, livestock, hunting, fishing and gathering of natural products—that have been customarily undertaken by Black communities to guarantee their livelihood and sustainable development.

For this purpose, ADPs must create Community Councils for the collective adjudication of lands, and the Council Assembly is the highest authority of these collective land. The councils are those that own the title of collective property of Black communal lands. This procedure is defined in Decree 1745 (1995).

Article 6 of Law 70 (1993) establishes that, with respect to the soils and forests included in the collective title, the property will be used in a social manner, and an ecological function is inherent. Article 20 adds that, according to Article 58 of the Constitution, collective property in areas governed by Law 70 (1993) will be exercised in accordance with their inherent social and ecological functions: "*Consequently, the titleholders must comply with the obligations to protect the environment and renewable natural resources and contribute with the authorities in the defense of this heritage.*"

A point to highlight about the rights-based conservation approach is that Law 70 establishes the possibility that special natural reserves can be created in collectively adjudicated areas where the environmental authority considers it necessary to protect species, ecosystems or biomes. Communities and local authorities must be part of this process. However, these entities have not yet been regulated.

PEOPLES IN ISOLATION AND PEOPLES IN INITIAL CONTACT

The Colombian legal system has not developed a specific protection mechanism with a differentiated approach for Indigenous Peoples in Initial Contact as has been done for Indigenous Peoples in Isolation. **Decree 4633 (2011) is of utmost importance for the protection of the territorial rights of IPs who were victims of the armed conflict in Colombia. It is the first regulation with the force of law to include within its scope the interests of Indigenous Peoples in Isolation.** Also, it is the only regulation that recognizes the same special situation for Indigenous Peoples in Initial Contact. However, a differentiated policy that focuses on regulating relations with these Indigenous communities, or the consolidation of their territories, still does not exist. For this reason, identified and recognized PICI communities in Colombia have a history of dramatic contact with the majority of society resulting in the impairment of their rights over the ancestral territories they have occupied.

The first regulatory sources that recognized the protection of Indigenous Peoples in Isolation and in Initial Contact were the resolutions of the Special Administrative Unit for National Natural Parks of Colombia. Concretely, the creation of the Río Puré National Natural Park and the two expansions of the Serranía de Chibiriquete National Natural Park: "Resolution 0764 (2002), which created the Río Puré National Natural Park, was the first administrative act aimed at protecting an isolated group in Colombia, and the management of National Natural Parks in Colombia has partly focused on this task."[32]

Additionally, there is Decree 1232 of 2018. This norm establishes special measures for the prevention and protection of the rights of Indigenous Peoples in Isolation or Natural State and creates the National System for the Prevention and Protection of the Rights of Indigenous Peoples in Isolation. Unlike Peru, the

intangibility enshrined in this Law is more robust and does not allow for the use or exploitation of natural resources. The purpose of this norm is to create a model for coordination and comprehensive action for the prevention and protection of the rights of Indigenous Peoples in Isolation protected by ILO Convention 169, in compliance with the State's duty to prevent harm and protect the rights of this population. Decree 1232 defines Indigenous Peoples in Isolation as Indigenous Peoples, or parts thereof, who, "when exercising their self-determination, remain in isolation, and avoid permanent or regular contact with people outside their group, or with the rest of society."[33] This definition also establishes that the condition of isolation will not be lost due to sporadic contact of short duration. These Peoples will also be referred to as being in a *situation of natural state,* a definition proposed by Indigenous communities referring to the "close relationship with ecosystems, their original way of life, and the high degree of conservation of their cultures."[34]

Peoples in Isolation who have been identified and confirmed in Colombia—the Yuri Passe—inhabit the Colombian Amazon, specifically within the SPNN and within the Indigenous *resguardos* established in this region of the country.

In 2018, a Special Administrative Unit in the SPNN issued Resolution 0156 establishing internal guidelines for the formulation and implementation of instruments and mechanisms for planning and management with a differential approach regarding the presence of Indigenous Peoples in Isolation within the SPNN. Resolution 0156 (2018) warns that they have a special bond with their territory given that their survival depends on it. It also recognizes the extreme vulnerability caused by exposure to unknown diseases, territory reduction, forced displacement, and the alteration of their lifeways and cultural practices.

Before this, Decree Law 4633 (2011) dictated "measures of assistance, care, comprehensive reparation and restitution of territorial rights to victims from Indigenous peoples and communities." Article 193 refers to special procedures, which apply to the PIACI, referring to both forms of communities in isolation, who suffered damages and impacts from the armed conflict. Regarding PIACI communities, "the strategies, mechanisms, and measures for comprehensive care, protection, comprehensive reparation, and restitution of territorial rights, as defined in the Permanent Table for Coordination with Indigenous Peoples and Organizations regulated by Decree 1397 (1996)."[35]

BIODIVERSITY CONSERVATION MODELS AND POLICIES

Just as tenure rights have evolved, conservation policies have changed from more restrictive guidelines to participation and shared governance schemes with IPs in Colombian and Peruvian natural areas. Although there is not currently a full adoption of a rights-based approach to conservation in legal systems—nor in guidelines for relations with communities—there have been advances that create a foundation to promote and strengthen inclusion and implementation guidelines between Amazon biome tenure rights and conservation models. To summarize, essential elements of both countries' legislation are presented, emphasizing policies that create dialogue, help co-manage and harmonize the views of the State with those of IPs and ADPs. Section 4.1 also lists some of the persisting and difficult obstacles for the conjunction of collective tenure and conservation frameworks.

In Peru, ANPs were introduced by Law 26834 (1997), which regulates different related provisions. To make the Law viable, in June 2001, the Law's Regulation—Supreme Decree number 038–2001–AG—was established. Years before that, in 1961, the first protected area was established under available legal parameters, but it was not until 1990 that National System of Natural Areas Protected by the State (SINANPE) was created (Supreme Decree No. 010-90-AG) in Peru. ANPs are territorial and marine spaces created to not only conserve biological diversity, but also associated cultural, landscape and scientific diversity. These conserved areas have special legal protection since they can only be reduced or modified through law. Likewise, Article 4 establishes that they cannot be awarded to individuals.

The legal framework in Peru is broad, starting with the Constitution itself, which declares natural resources as patrimony of the Nation, with the State exercising eminent domain over them (Article 66).

The General Environmental Law, the Organic Law for the Sustainable Use of Natural Resources and the National Environmental Policy are the general legal instruments that guide the country's environmental management. Article 9 is also of great importance since it establishes that the provisions contemplated will be applied according to ILO Convention 169. In this sense, the creation of an ANP requires transparent consultation processes with IPs. Additionally, Peru has approved the Law Concerning the Conservation and Sustainable Use of Biological Diversity and the National Strategy for Biological Diversity (2001).

ANPs have been fundamental in the preservation of PIACI habitats. By 2018, their presence had been acknowledged in seven ANPs: Purús Communal Reserve, Alto Purús National Park, Manu National Park, Sierra del Divisor National Park, Megantoni National Sanctuary, Matsés Natural Reserve, and Cordillera Azul National Park.

Unlike Colombia, Peru has adopted the IUCN category of Communal Reserve, a conservation concept that recognizes human occupation. Communal Reserves are co-managed through an administration contract signed between the Peruvian State, represented by SERNANP, and the Communal Reserve Administration Contract Executor (ECA) that represents the beneficiary communities of the reserve. There are two types of contracts: on the one hand, an Administration Contract signed by SERNANP and NGOs; and on the other, those who sign with an ECA. A substantial difference between the two is that, in the first case, management and administration actions are implemented to achieve specific results agreed upon in the contract (Supreme Decree No. 007–2011–MINAM). Meanwhile, in contracts of the administration of reserves, duly organized communities—represented by a legal entity such as an ECA— must undertake the administration and management of a communal reserve established through ANP legislation and execute the communal reserve master plan.[36]

In Colombia, the granting of powers to the State in environmental matters given by the 1991 Constitution resulted in the reform of the public environmental sector. This was carried out through Law 99 (1993), which created the Ministry of the Environment and the National Environmental System (SINA, in Spanish). The Ministry was designated as the governing body of the country's environmental management. It oversees defining policies and regulations for the recovery, conservation, protection, organizing, management, use and exploitation of renewable natural resources. The category of National Natural Parks is contained in Law 2 (1959), which declared the snow-capped mountains and their surrounding areas as national parks. Later, the Resources Code of 1974 created the National Natural Parks System with its various associated categories. This is explained in regulatory Decree 622 (1977). It was not until 1991 that the Political Constitution established that the parks, as well as ethnic groups' territories, are inalienable, imprescriptible and unseizable. Some years later, the Constitutional Court, in Ruling C–649 (1997), confirmed that "the areas bordered or delimited as parks, given their special ecological importance, remain unharmed and intangible and, therefore, cannot be altered by the legislator, and even less by the administration." That is, it was determined that these areas cannot be the subject of theft or change of destination.

Between the creation of the first park and the Political Constitution, several political processes occurred and left their mark on regulations. Decree 622 (1977), which regulated the SPNN, defined areas of historical and cultural importance as "those where archaeological remains, traces or signs of past cultures, survivals of Indigenous cultures, and historical features are found."[37] Likewise, Article 7 of this Decree established that the creation of a National Natural Park is compatible with Indigenous reservations and *resguardos*. Decree 622 (1977) states specifically: "The declaration of a National Natural Park is not incompatible with the creation of an Indigenous Reservation, consequently, when, for ecological and biogeographic reasons, an area occupied by Indigenous groups must be included, totally or partially, within the National Natural Parks System."

The legal definition of a protected area is found in Law 165 (1994), which approved the Biological Diversity Convention, stating: "a *protected area is understood to be a geographically defined area that has been designated or regulated, and has been managed in a way in order to achieve specific conservation objective*" (Article 2, Law 165/1994). Likewise, the concept of

a protected areas system is also derived from said Law,[38] which is the general framework through which *in situ* conservation is registered.

Beginning in the 2000s, the governing agency of the SPNN created the Social Participation Policy (2001), which for a period, guided the agency's relationship with the local communities in the SPNN, as well as established National Nark Park's objectives and strategic guidelines. Similarly, the policy refers to the theoretical and social foundations of the SPNN's conservation approach. This policy was the result of a collective and democratic construction process "in which all officials of the National Natural Park System participated at the local, regional and national levels"[39] in an effort to "merge nature conservation ethics with social equity principles."[40]

Decree 3570 (2011) established that the Ministry of Environment and Sustainable Development is the competent authority to formulate SPNN policy, as well as to reserve and delineate the areas comprising it. Similarly, Decree 3572 (2011) created the National Natural Parks of Colombia as a Special Administrative Unit that would manage the SPNN.

As explained earlier, Colombian protected areas have been the framework used to justify PIACI protection in the absence of a specific law. It was in the conservation policy, particularly coming from the National Parks Unit, that the first instruments were created which motivated National Natural Park creation and expansion, aiming to protect Indigenous Peoples in isolation. Two cases show these highly complex political and technical processes: the Río Puré National Natural Park and the Serranía de Chiribiquete National Natural Park. The latter is the largest National Natural Park in the Amazon.

POINTS OF AGREEMENT AND CONTENTION BETWEEN IP AND ADP TENURE RIGHTS AND CONSERVATION

Currently, in neither Colombia nor Peru, there is no specific mention of a rights-based conservation approach in relation to protected areas or conservation entities in national legislation. However, despite the fact that this concept is not expressly incorporated in domestic legislation, the application of environmental legislation in general—and protected areas in particular—like all other legislation, is subject to compliance with the constitutional rights catalog and its legal developments, which the rule of law implies.

In the case of **Peru, the situation is more restricted. The only entity that acts as a bridge between Peoples' rights and conservation is the Communal Reserve**. These, as direct use ANPs, allow local populations to use resources. In this co-management arrangement, IPs have rights of use, but this does not involve titling or ownership of the lands.

In **Colombia, the wide range of ethnic group recognized rights in the constitutional bloc and its developments make a bridge with the conservation framework**. These include rights linked to autonomy and self-determination; territorial rights and the use of their natural resources; right to self-government, exercise of authority in their territories and to their own legislation; the right to decide their own development priorities; the right to prior consultation and other forms of participation, among others. All of which become fundamental rights due to the links between their guarantee and the subsistence of these groups, as well as with the ethnic and cultural diversity principle.

Also, the ethnic and cultural diversity principle, and the implications derived from the set of the aforementioned rights developed by jurisprudence, are a mandatory reference to interpreting the scope of the application of environmental legislation in collective territories. In this way, without specifically using the term "rights-based conservation approach," there is in itself an indisputable subjection of conservation measures to the respect for ethnic group rights that coexist, use, or in some way interact with, protected areas. Likewise, there is in itself a subjection to the role of environmental authorities in protected areas that continues to present tension and different

degrees of conflict, which the Courts often resolve casuistically through their rulings.

In both Colombia and Peru, environmental authorities play a central role in protecting IPs in isolation. Among the conservation objectives and purposes adopted for the creation and management of ANPs and PNNs, both the biodiversity and ecological worth of certain areas and the protection and survival of the cultural diversity of Indigenous communities, are included. Both cases recognize the fact that the survival of Indigenous Peoples in Isolation depends on the environmental and ecological conditions of their territories. In the Peruvian case, SERNANP has recognized PIACI presence in seven ANPs. In these cases, the different ANP management and planning instruments have recognized PIACI existence and have established measures for the protection of their physical and cultural integrity. Unlike the Colombian case, Peru has no SERNANP guidelines that govern management and planning in PIACIs where there are Protected Natural Areas. This can generate a disparity in the planning mechanisms of the different Protected Natural Areas that in some cases can lead to the lack of protection for IPs in isolation. It is striking that, in Colombia, despite the pluralist trend and constitutional guarantees, high court jurisprudence has barely mentioned PIACIs, and the 1991 Political Constitution does not expressly reference them.

In both countries, intangibility is one of the mechanisms used to protect IP determination to remain in isolation and avoid unwanted contact. However, in Peru, Article 28 of Supreme Decree No. 008–2016–MC, clarifies that intangibility will be maintained as long as IPs remain in a situation of isolation or initial contact. In Colombia, the intangibility granted by isolation will be maintained until Peoples, in a post-contact situation and with full information, decide to make adjustments. However, it has been noted that the protection regime adopted by Colombia includes absolute intangibility as a principle against the use of natural resources by third parties. One of the mechanisms for the protection of the territories of IPs in isolation is the intangibility against forms of dispossession, institutional interventions in any form (programs, policies or projects) and any activity that is also excluded from the environmental conservation regime of the SPNN. In the Peruvian case, intangibility is weaker, as it opens the possibility of using natural resources in situations when the State considers it to be in the national interest, an act that was evidenced more than once during the COVID-19 pandemic where forest licenses were granted inside PIACI territories.

In the Peruvian case, there is a specialized directorate for PIACI protection, namely: the Directorate of Indigenous Peoples in Isolation and Initial Contact within the MINCUL. In the Colombian case, there is no department or agency in the Ministry of the Interior whose main function is to deal with PIACI. In Colombia, the responsibility falls on the Directorate of Indigenous, Rom and Minorities Affairs. Currently, this Directorate does not have sufficient and specialized human—or other—resources to deal with these Peoples.

It is undeniable that there exist more (and better) convergences between tenure rights and conservation policies in Colombia. This is evidenced by several legislative and jurisprudential developments as well as concrete conservation practices that involve intercultural dialogue with IPs, as detailed in Table 4.

Regarding the disagreements, the next section highlights those identified in each country and that, if not overcome, will be obstacles in the implementation of a rights-based conservation approach.

PERU

Legislation related to conservation in Peru, mainly for ANPs, has failed to recognize the indisputable role that IPs play in the conservation of ecosystems and their link to the territories. Furthermore, it can be determined that the failure to regulate this link creates limitations for IPs to exercise their right to territorial recognition and to natural resource access. For example, the administrative procedure for Native community recognition is not subject to a territoriality or overlap evaluation. Nevertheless, there are still many Native communities that overlap with protected natural areas, and for this reason have not started the recognition process. Since a community can only initiate the titling process after

TABLE 4: COMPARISON OF CONVERGENCE POINTS BETWEEN CONSERVATION POLICIES AND COLLECTIVE TENURE REGIMES IN COLOMBIA

Points of Consideration	Content and Scope
Conservation of Bioculturality (T–622– 2016)	Based on this ruling, the conservation of cultural diversity is associated with the conservation of biological diversity. Consequently, the design of policy, legislation and jurisprudence should focus on the conservation of bioculturality, which refers to the existing relationship between the integrity of nature and human rights.
Tenure Rights: Ecological Function of Property	Article 58 of the 1991 Political Constitution established that property has an inherent ecological function. The disposition of uncultivated property for the creation of Indigenous resguardos is compatible with the fundamental role that these groups play in the preservation of ecosystems. The Constitutional Court warns that the right to collective property does not grant an all-encompassing power to Indigenous communities to freely dispose of natural resources. The autonomy of Indigenous authorities, especially with respect to the use of natural resources, must be exercised with full responsibility as expressed in T–380–1993. In the case of ADPs, holders of collective property rights will continue to conserve, maintain and promote the regeneration of vegetation and fragile ecosystems (C–371–2014, Law 70–1993).
Overlap Between Protected Areas: Indigenous resguardos and Reservations	For ecological and biogeographic reasons, there may at times be a total or partial overlap of an area occupied by Indigenous groups with the National Natural Parks System (Decree 622/1977). This requires the establishment of a Special Management Regime (REM), a planning and management entity in areas overlapping with resguardos, and the entering of agreements with Indigenous authorities regarding the use and management of natural resources (Decree 622/1977). These entities must respect the permanence of Indigenous communities and their right to the traditional use of natural resources. Constructing REMs has not been a simple process, since by virtue of the constitutional rights of the Indigenous communities, it must be undertaken in conjunction with traditional authorities. For this reason, they must be built around dialogue spaces and in scenarios of coordination between authorities. Among the main lessons learned from the establishment of Amazonian REMs is the recognition that Indigenous territories are not just delimited areas of the conservation regime. The territories have a cultural and spiritual relevance that is neither reduced nor exhausted in a legal institution of the conservation regime. Likewise, dialogue between the National Natural Parks authority and traditional authorities implies that two authorities of different natures share jurisdiction over the same territory. It is not the same to be a public entity created for the achievement of certain purposes with specific functions as it is to be a collective subject with fundamental rights administered and managed by a traditional authority. This coexistence between authorities requires an intercultural and horizontal dialogue developed with a common language between ethnic communities and State entities, allowing for the integration of both visions in relation to nature. It is important for researchers to undertake studies in the medium or long-term analyzing the lessons learned from REMs and other conservation modalities implemented by the communities.
Overlapping Protected Areas: Collective Property of Afro-descendant Peoples	In the case of ADPs, collective adjudications will not include areas of the National Park System except in the case of areas of the SPNN where there are families or individuals from Black communities that have settled in them prior to the declaration of the protected area. In this case, a management plan of traditional practices of these communities that is compatible with the ecosystem must be defined (Art. 22, Law 70/1993). In addition, special natural reserves may be established in collective territories if the environmental authority deems it necessary based on ecological criteria, but the communities and local authorities will participate in the delimitation, conservation and management (Art. 25, Law 70/1993).

Points of Consideration	Content and Scope
Prior Consultation	Administrative, legislative and private measures that may directly affect the communities in a positive or negative way should be made in consultation with them. In the case of protected areas, the declaration of new areas, the expansion of protected areas, management plans and concessions, among others, should also result in consultation. In areas that are not titled—but constitute Indigenous territory—prior consultation is also required whenever the community is directly affected (positively or negatively). Permanent habitation is not required and the use they make of the area affected by a project, work or activity, may be used by communities sporadically (CP, Law 70/1993, Decrees 1745/1995, 1320/1998, 1066/2015, 1071/2015, Decree 2353 2354/2020).
Environmental Functions and Indigenous territories	Law 99 (1993) outlines the functions of environmental authorities, municipal and district territorial entities (Article 65 and Article 66) and Indigenous territories (Article 67). This was later supplemented by other regulations such as territorial ordinance laws (Law 388/1997; Law 1454 /2011) and Decrees 1953 (2014) and 632 (2018) which dictate regulations on how to put Indigenous territories into operation, among others. Decree 1953 (2014) establishes in No. 1 of Article 14, that one of the general competences of Indigenous territorial authorities is to ensure the proper ordinance, use, management and exercise of collective property of the territory, according to their worldview. Decree 1953 (2014) recognizes that Indigenous territories have a special political-administrative status which allows them to exercise competences and public functions. According to Article 3 of the Decree, Indigenous territories may be put into operation on a transitory basis in the following cases: (i) when a constituted resguardo has its boundaries clearly identified; (ii) when a resguardo created in the republican or colonial origin has initiated a clarification process determining its boundaries; (iii) when the titling of an area owned exclusively, traditionally, uninterruptedly and peacefully by Indigenous communities has been requested; and (iv) when one or more of these entities decide to group together. Both Decree 1953 (2014) (No. 3, Article 13), and Decree 632 (2018) (No. 3, Article 5) establish as a general competence of Indigenous territories, the definition, execution and evaluation of their own economic, social, environmental and cultural policies in their respective territories within the framework of their life plans, national legislation, and in accordance with the principles of coordination, concurrence and subsidiarity. Decrees 1953 (2014) and 632 (2018) represent a significant advance in the self-determination and autonomy of IPs. However, the normative instruments may be limited with respect to the expectations of the Peoples; limitations that would be solved, in part, if Congress of the Republic were to issue the Organic Ordinance Law—established in Article 329 of the Political Constitution—which would formalize the functioning of Indigenous Territorial Entities (ETIs).58
PIACI	As a precedent of rights-based protection and conservation, when their existence was not yet formally confirmed, the first normative sources that recognized PIACI protection were the SPNN resolutions: the creation of the Río Puré NNP and two extensions of the Serranía de Chibiriquete NNP (Resolutions 0764/2002, 035/2007, 1038/2013 and 1256/2018). Likewise, Resolution 0156 (2018) established internal guidelines for the management of IPs in isolation within the SPNN.
CONPES Documents National Council for Economic and Social Policy (Law 19/1958)	CONPES 4021/2020 National Policy for Deforestation Control and Sustainable Forest Management. Through these documents, the ANT is requested to go forward in the formalization of ethnic territories, including areas found in the core areas of High Deforestation. CONPES 4050 (September 27, 2021) approved the Policy for the Consolidation of SINAP and uses the concept of justice and rights approach on two occasions. First, in the diagnostic phase it finds that there is insufficient effective participation by all strategic stakeholders in the different SINAP management areas. Second, it refers to the approach in the policy action plan through a strategy aimed at improving governance to achieve inclusive and co-responsible management of different SINAP protected areas through a justice and rights approach.

being recognized, alerts regarding potential incompatibilities are activated. Given the dispersed legal framework which does not include clear criteria to address the alleged discrepancies, the status quo remains, and IPs are prevented from fully exercising their rights. **Consequently, although Peoples' rights are not in themselves incompatible with protected natural areas, the lack of integrated and comprehensive legislation for both regimes (conservation and collective rights) hinder their right to territory.**

The compatibility of rights is another important point. Although this is a widespread criterion in ANP regulations, and is valid, there is no specific mention of extractive activity compatibility and other rights, such as those of IPs. Likewise, compatibility with a favorable opinion from SERNANP for the development of other activities (e.g., mining, hydrocarbons) is evaluated with respect to impacts on conservation objectives that do not include IPs and is therefore limited to observing only one variable of land management. A rights-based approach is clearly lacking in the compatibility criteria.

At the regulations level, **the main disagreement occurs in interpretation** rather than in operation. That is, there are no expressed limitation for these two regimes to be compatible. However, in practice, IPs' territorial rights are not recognized in ANPs. It is a disagreement that occurs in the reading of the eminent domain of the State over the ANPs created by the Constitution. This prevents the granting of property within them, except in the case of pre-existing rights. Despite this, demonstrating the pre-existence of IPs triggers various administrative procedures that, instead of being declarative of rights, have become constitutive, limiting IPs' collective rights. Consequently, the titling of Indigenous territories overlapping with PNAs is currently limited, and there is no specific legal mechanism to address this premise.

The scenario is complicated further by Article 11 of the Native Communities Law. It establishes a limitation of eminent domain of the State over natural resources, stating that forestlands found in territories demarcated for Native communities are only granted as an assignment in use cession and not as property. Consequently, only hectares of demarcated lands classified for agricultural use in accordance with the Land Classification Regulations for their Greater Use Capacity (RCTUCM, in Spanish), may be titled.

This determination is made in the agrological evaluation process that is executed in the field stage of the demarcation. Thus, if both types of land classification are found, the Regional Agrarian Directorate will issue the property title for agricultural land and the Regional Forestry and Wildlife Authority must issue the contract for the transfer of use. According to DAR (2019) the adequacy of the RCTUCM has been a stalled issue for years, leading to the perverse incentive of deforestation to push for a titled agricultural classification of soils that actually had once been forest. This entity has had the participation of IPs who have requested that the processes of legal-physical consolidation of Native communities be considered, taking into account precedents such as the guidelines for the execution of the process of agrological evaluation of Native community lands, and the classification by their capacity for greater use for titling purposes (RM No. 194–2017–MINAGRI).[41]

Finally, the regulations framework related to IPs, specifically regarding Native communities, is outdated. It was largely influenced by the agrarian reform process of the 1970s and lacks comprehensive vision in terms of the development of IP rights, including their collective territorial rights. Previous studies have shown that regulatory changes in the 1970s not only created a dichotomy between agricultural and forest lands, but these changes also had considerable influence on the advancement of the titling of Native communities ever since.[42] More specifically, this occurred when the first law on forest resources and wildlife was approved in 1975 (Law 21147) that centralized State control over forests and the consequent repeal and creation of a new Native Communities Law in 1978 (Law 20653).

COLOMBIA

Although in this comparison there are more agreements than disagreements, some elements that can cause conflicts should be listed, as discussed in Section 5 of this report, which summarizes the stakeholder dialogues.

First, ethnic group legislation considers the application of their own regulatory systems, linked to self-government, to be a right that distinguishes them from other communities and as an integral element of their self-definition. The Constitutional Court (Ruling T–236/2012) stated that what underlies the constitutional recognition of their capacity for self-governance is belonging to a territory. There, they are governed by their own rules and develop their own culture and customs. In this manner, the coexistence between self-governing ethnic group regulatory systems and national government regulations and authorities, is recognized. In practice, the application of two systems of law on the same territory, by national government authorities and by ethnic group authorities, at times generates conflicts and tensions.

In these ways, **respect for one's rights, legal autonomy, and constitutional and legal scope, must be a fundamental axis when speaking of a rights-based conservation approach.** This must involve a structural entity that will implement a rights-based conservation approach related to the SPNN not only from a formal law perspective, but also from the law systems of each ethnic group coexisting within the different protected areas.

Another aspect to consider is that it is jurisprudence which has recognized that a collective title implies natural resource ownership in the case of Indigenous communities (T–380/1993, reiterated in other rulings). Some exceptions to collective property include ownership of the subsoil and a large part of the bodies of water. These differences in ownership definition over certain renewable natural resources present in legislation in Colombia is similar to the fragmented environmental legislation framework. This framework independently regulates each renewable natural resource (continental waters, hydrobiological resources, forests, and others); yet, it has difficulties dealing with the ethnic group concept of territory. The notion of territory is not conceived as something independent. Indeed, one source of tension continues to be that while material and immaterial cultural elements form an inherent unit within the territory concept, formal law has distanced itself from this concept of territory held by ethnic groups altogether.

This interaction between nature and culture has been designated as the biocultural approach in recent Constitutional Court decisions. The approach recognizes the links between ethnic communal lifeways and territories, with the use, conservation and management of their natural resources. Although the Constitutional Court has indicated State requirements for biocultural conservation, regulations must be explicit when creating conservation systems integrating the recognition of community rights.

To end the disagreements section, it is also worth reviewing land restitution legislation and the SINAP. The Victims Law does not explicitly contemplate a situation where the restitution of a property, affected by some category of the SPNN, would be requested. However, tensions were confirmed through Decree 440 (2016), which introduces in Article 2.15.1.3.5, the obligation for judges not to begin studying applications of claimed properties located within the SPNN or within Forest Reserve Zones. This regulation rejected the possibility that the rights of ethnic group victims could be consolidated with the different categories of environmental rights SINAP seeks to protect.

SECTION 5

DIALOGUES WITH STAKEHOLDERS

Most elements highlighted by the stakeholders convened in focus groups and during interviews have been streamlined and integrated into this report. Section 5 will showcase select details of these discussions and emphases of actors from civil society, ethnic peoples, the State and other participating stakeholders. Given the particularities of the institutional and regulatory context and the relationship between the State and the Peoples, we share the results country by country.

CONVERGENCE POINTS IN COLOMBIA

Beyond **multiculturalism**, there is a need for an **intercultural approach** in the dialogue between ethnic Peoples and the State that allows for the recognition of the faculties of IPs as **environmental authorities**. Currently, what is part of

the essential core of what the government considers the exercise of environmental authority is reserved for the Regional Autonomous Corporations, National Natural Parks, the National Environmental Licensing Authority and, exceptionally, the Ministry of Environment, which is not in principle an executing entity. However, Law 632 (2018)—the Law of Indigenous territories in non-municipalized areas of Amazonas, Guainía and Vaupés—grants faculties to IPs and authority in territorial planning. This is not a recognition of environmental authority that grants exploitation licenses or similar activities that are already regulated by various entities, but rather shows the Peoples aim for an exercise in autonomy in environmental land management and **self-government**. There is often a misunderstanding when it is stated that IPs are environmental authorities. If the Indigenous Territories Decree is duly implemented in five years, the political-administrative map of the country would change; its implementation would protect approximately 9 mha and 35 Indigenous groups in one of the best-preserved areas of the country. The Decree would consolidate Amazonian Indigenous governance.

It is here where differences in the understanding of whether or not Indigenous communities are environmental authorities arise. In the Government's opinion, IPs are not an environmental authority since this role is reserved for those who grant permits and other means of use and exploitation of renewable natural resources, mainly the CAR, Parks, and the National Authority of Environmental Licenses. In this view, granting IPs environmental authority would extend beyond the Constitution. IPs can be granted an administrative role in the protection of the natural heritage of their territories; however, this would not be a competence of environmental authority as understood for CAR, which is to manage resources through permits, licenses, authorizations, concessions and control over the use of those resources in their jurisdictions, including in Indigenous territories.

In the case of ADPs, the legal discussion is more complex since they are not recognized as having jurisdictional faculties, and it would not be easy to propose their role as environmental authorities in the Amazon area, but their territorial rights should be considered. A feasible framework for this is the process taken by jurisprudence on biocultural rights.

In terms of **self-government**, stakeholders agreed on the need to draw attention to the consolidation of Indigenous territories (Decree 1953/2014 and Decree 632/2018) because this is a set of rights that IPs are exercising, rights that are not only territorial, but also environmental and cultural.

For the implementation of Decree 632, the organization GAIA has led important legal, investigative and articulative actions with IPs in Colombia. They have pointed out that although the Decree would consolidate Amazonian Indigenous governance, to do so would require stopping the exceptional creation of municipalities, a mechanism that removes Peoples' right to territorial administration and the possibility of deploying their own land-use planning measures.[43] This requires working on the creation of a political-administrative ordinance that responds, with cultural and environmental relevance, to the challenges of the eastern Amazon. It also requires several phases: i) the creation and registration of Indigenous Councils—a form of government conformed and regulated through IPs' uses and customs; ii) the application of their territorial management, starting from Indigenous authorities' life plans, their territorial delimitations, administrative regimes, institutional strengthening plans for their territories and a proposal of needed administrative and culturally relevant functions; and iii) the establishment of a mechanism guaranteeing respect for Indigenous autonomy and self-determination in the administration of resources and other inputs needed for the development of their own policies and territorial integrity.[44]

This leads to biocultural rights, which as stated by the Constitutional Court of Colombia, are not new rights but the necessary integration of a block of protections that includes the environmental, cultural, political, social and economic rights of Peoples and communities whose life systems are closely dependent on the natural environment in which they live. It is a matter of recognizing the interdependences in the realization and enjoyment of rights involving territory/environment and culture/cultural identity. Based on this recognition, adapting approaches, modes of

relationships, forms of work and relevant instruments should all aim to protect bioculturality. This approach must include the rights of IPs and ADPs.

To think about the transition from Protected Area Systems to an **integral conservation system**, tenure rights and conservation must go beyond the vision of delimited property rights. Territorial rights are cultural, and it is the Peoples who must determine the scope of their territoriality. This goes hand in hand with the jurisprudence of the IACHR that points out ancestral possession in the framework of human rights, not in the framework of civil law. The Peoples must make their models and schemes visible to enrich the wider debate and their own frameworks. **The challenge is that IP and ADP territorial-environmental planning must itself be binding; it must not be a strategy on the margin, a complementary exercise, but the central axis of conservation policy created by an Indigenous authority in dialogue with the State.** An illustrative case is the Yurupari Macroterritory. In the case of ADPs, it is worth reviewing the experiences of other Amazonian countries with a high presence of ADPs, such as Brazil and Suriname, where they are recognized not only for their current presence, but also for their contributions to the conservation of the Basin.

Insisting on a reductionist vision of conservation has led to policies and entities that do not properly engage with territorialities. Hence, agreements established between State authorities and ethnic Peoples lack a clear language premised on a rights-based approach. This lack of adaptation implies that in the indicators, there is currently no clear goal of increasing dialogue with IPs and ADPs for conservation. This is the case with the Colombian National Development Plan (2018–2022) and the Biodiversity Action Plan (2016–2030). The latter presents an opportunity for increased dialogue on rights recognition because the new framework and new targets for a post-2020 Global Biodiversity Framework are currently being negotiated and are expected to be approved in Montréal in December 2022. Additionally, the strategic plan and the Aichi biodiversity targets set in 2011 are currently being reviewed within the framework of these new CBD negotiations; none of the 20 Aichi biodiversity targets have been achieved at a global level.

A report on the thematic workshop on human rights as an enabling condition in the post-2020 Global Biodiversity Framework was presented at the third meeting of the CBD's Subsidiary Body on Implementation, held in May and June 2021 in Chiang Mai, Thailand. This document highlights the fact that cultures, particularly those of IPs and LCs, have diverse worldviews, values, ethics and spiritual beliefs that guide their reciprocal relationships with the planet. These should therefore be our guide, rather than the utilitarian approach, that sees nature only in terms of services and benefits. It also deduces that halting biodiversity loss also requires breaking inequality and that the post-2020 Global Bbiodiversity Framework must address governance, human rights and the equitable sharing of benefits and costs.

The paper proposes several themes for integrating human rights into this post-2020 framework. Key messages proposed include: i) considering a goal that addresses the mutual and interdependent well-being of nature and people; ii) securing the rights of Indigenous Peoples and local communities to their lands and resources as well as their governance systems, knowledge and practices; iii) providing a safe and enabling environment in which environmental defenders, with special attention to Indigenous Peoples, local communities and women, can operate free from threats, harassment, intimidation and violence; and iv) stopping the expansion of unsustainable and inequitable economic growth models that harm both biodiversity and human rights.

Civil society stakeholders and ethnic peoples are concerned about the CONPES of the SINAP, approved on September 30, 2021, as they represent a step backwards in the understanding of decisive stakeholders in conservation. The technical and biologistic language on biodiversity under exclusionary paradigms is once again gaining strength. IPs were named in a secondary role, ignoring the rights and principles that have already been integrated into the legal system.

Another topic of interest in the stakeholder dialogue was the collective tenure formalization processes within the Amazon region. Stakeholders' most frequent perception was that territorial rights contribute to the protection of ecosystems due to

the cosmovision held by IPs, thereby counteracting environmental issues by promoting the sustainable management of natural resources in line with the CONPES 4021 policies of December 21, 2020 (Ruling 4360/2018 of the Colombian Supreme Court) and the Leticia Pact for the Amazon of September 6, 2019.

PERCEPTIONS BY SECTOR OF THE RIGHTS-BASED APPROACH TO CONSERVATION IN COLOMBIA

GOVERNMENT

- For rights-based conservation to be effective, it will be important to have a constant institutional adaptation process because coordination with IPs and other social actors is essential in the Amazon.
- Currently, there are opportunities to advance rights-based conservation: The Amazon as a rightsholder; Decree 1232 for the protection of Peoples in a natural state; Decree 632 for non-municipalized areas; and, more recently, the Leticia Pact. Additionally, governments must include processes, initiatives, planning instruments and coordinating agencies in which the IPs of the Amazon participate at the local, regional and national levels.
- Implement the multipurpose cadaster, which would make it possible to identify the amount of vacant land in terms of number of hectares and location.
- Generate conservation and productive transformation actions together with the Ministry of Environment to reduce deforestation in the Amazon region, while involving Indigenous, Afro-descendant, and local communities.
- Align objectives and goals with the Leticia Pact, which seeks the integration of different countries in favor of the protection of the Amazon biome.

CIVIL SOCIETY

- The rights-based approach is present in the consolidation of Indigenous territories because it is a set of rights that IPs are exercising, rights that are not only territorial, but also environmental and cultural.
- Currently, conservation continues to be enunciated from a scientistic field of biologists or experts in ecology and biodiversity. IPs are recognized for their knowledge, but at an inferior status, and their contributions to conservation continues to be undervalued.
- Civil society remains skeptical about processes such as the CONPES, SINAP or the Leticia Pact, especially because the current government is an expert in making grand declarations that are often mythologized and then fail to materialize.
- Seek congruence among the various existing entities, as has been done with the Law for Victims, the Development Plan, and many other Decrees. Decree 1232 creates a coordination system and establishes prevention and protection measures, but the system still has not been implemented.
- Existing entities within SINA are enough but have limitations inherent in its conservation policy (financing, intercultural dialogue and risks due to conflict). As for Indigenous *resguardos*, they are also entities with many possibilities, but they are not free of problems in the exercising of their own authority and have limitations in the establishment of management plans that consider PIACIs. Colombia lacks a technical team with trained personnel in each of the State institutions with competence in the implementation of Decree 1232.
- Colombia's new government took office on August 7, 2022, and it is important to follow up on the National Development Plan's commitment to create Indigenous Protected Areas within SINAP.

INDIGENOUS AND AFRO-DESCENDENT GROUPS

- IPs preserve the Amazon because of their holistic belief that they are one with the Amazon, as opposed to seeing themselves as subjects separate from the land. They are once part of a whole and see conservation as a way of life. Rather than a duty or an obligation, conservation is life.
- The rights-based approach to conservation must consider the heterogeneity of Amazonian IPs, some more fragile than others, with more pressure, less population and greater threats to their integrity and survival.
- Within the framework of the Permanent Roundtable for Coordination, IPs in Colombia have proposed the creation of Indigenous Conservation Areas to the State. They have also made proposals to institute Indigenous authorities as

environmental authorities (Sentence T236), but the but the previous government did not agree to either proposal.

- Collective titling is an opportunity for Afro-descendant communities inhabiting areas that are not parks or Indigenous *resguardos.* These would be areas of connectivity and greater protection for the Amazon.
- National Natural Parks are also an important protection principle that, although not enough, are complementary to Indigenous territories if there is adequate coordination between authorities.

CONVERGENCE POINTS IN PERU

Biodiversity conservation cannot be reduced to a technical-scientific debate devoid of a rights-based approach. In this sense, conservation will always be incomplete if it does not include the participation of IPs, give them a voice, recognize their contributions, and convene them through their own participation structures. For the rights-based approach to become a reality in Peru, it is necessary to strengthen and make visible IPs' own proposals. One example is the **Amazonian Indigenous REDD+** proposal, a vision that goes beyond the carbon market and includes comprehensive Indigenous knowledge of the management of water, food, and all other resources and was addressed at CoP20 in Lima.

Some convergence points in Peru include:

- Present to the government the problems of communities who already have **titles** but experience problems of land **invasion**. Titling does not resolve conflicts that may exist in criminal contexts. Issues such as deforestation, illegal species trafficking, mining and other forms of occupation by people from outside the communities transform the use and management systems of the Amazon territory.
- Strengthen the concept and legal instruments **considering nature as a subject with rights** to counteract the Western perception of control over nature. Organizations are already proposing bills that can be alternatives to the current conservation model.
- There are many and diverse conflicts between ANPs and IPs in Peru. One of the most representative examples is the **Pacaya-Samiria National Reserve**. It is the largest reserve in Peru and home to several Cocama-Cocamilla communities. When the reserve was created in 1977–1978, 156 communities did not declare themselves to be Native, so there is still an ongoing conflict that could be resolved through legal means since customary law takes precedence over conservation laws. The communities did not declare themselves Native or Indigenous because they were mocked and mistreated by the authorities because of that identification. Yet, they were all present before the Reserve was created. The same is true for the Santiago Comaina, Pichi and Manu communal reserves.
- Establish a titling agenda in the ANPs. As the legal path does not exist today, it is necessary to promote reforms that will allow it. Today, there are problems of invasions of Indigenous territories and protected areas that will not be solved with titling. A different type of intervention is needed. In some cases, the protected area has worked, but in other cases, it may fall short due to the size of the threats and the area being invaded.

In general, stakeholders recognize Communal Reserves as a possible bridge between tenure rights and conservation, but it is an entity that still needs to be perfected and will not solve the problem of inaccessibility to the titling of collective territories in favor of IPs alone. IPs need further strengthening: more technology, more training and better monitoring of their own conservation work to be able to strengthen horizontal dialogue with State entities.

PERCEPTIONS BY SECTOR OF THE RIGHTS-BASED APPROACH TO CONSERVATION IN PERU

GOVERNMENT

- Several protected areas should have been communal reserves because they have features that fit the profile, such as being historically populated by Native communities. However, they were not created as such. This is a lesson learned for SERNANP. When declaring new communal reserves,

it is important to take into consideration the type of reserve that will deliver the most benefits to the local community—and includes Native populations—who will have a negative view of conservation and see it as the cause of their problems.

- There are already several cases in which Peru's IPs claimed rights similar to Colombian *resguardos*. However, Peru's current legal system does not allow this, which is why deep reforms are needed before titling rights and legal security of tenure proceed.
- Prior to the Consultation Law regulation, many protected areas were established without the participation of IPs. Currently, intercultural dialogue is being used as a tool to harmonize rights since conflicts persist between IPs and environmental sector entities.
- The State is concerned with an increase in illegal activities affecting IPs. This is related to environmental infractions and crimes, such as illegal mining, illegal logging and drug trafficking which put entire communities at risk, including their most visible leaders who denounce these crimes.
- Some entities consider the overlap with ANPs as one of the main obstacles to the recognition of rights. If this limitation is maintained, it will be difficult to consolidate a rights-based approach.
- After CoP26 in Glasgow, Indigenous communities no longer want NGOs to speak for them. They already have the capacity for dialogue on various issues. SERNANP is demonstrating this in several projects, including transferring funds directly to communities and their executors.
- Government officials state that currently there is no possibility of granting land titles to Native communities in ANPs. It is known that institutions must review on a case-by-case and landscape-by-landscape basis and will recognize rights when present.

CIVIL SOCIETY

- In just a few years, the country went from approaches guaranteeing the rights of IPs in the Amazon to scenarios of great limitation, discrimination and promotion of colonization. Peru was a country at the forefront of tenure rights in 1979, and then underwent radical changes in the proceeding decades.
- Greater implementation of ILO Convention 169 is needed in Peru, especially the notion of Indigenous territory as an essential part of the country's administrative and environmental ordinance.
- One of the main obstacles to the legal regulation of Indigenous lands is that there is not enough publicity or visibility of the fact that the existence of the Permanent Protected Forest (*Bosque de Protección Permanente*—BPPs) in community territories is not an impediment to titling. The National Forestry and Wildlife Service (SERFOR) and SERNANP should be more diligent in this regard, as well as in the resizing of forests overlapping with Indigenous territories.
- The General Directorate of Agrarian Property Sanitation and Rural Cadastre (DIGESPAR) should correct Resolution 443 which increases the participation of local water management agencies in the titling process as this is a hindrance due to the National Water Authority's (*Autoridad Nacional del Agua*) lack of technical capacity.
- It is not written in stone that ANP lands cannot be titled; everything can be revised if common law is recognized.
- Should not lose sight of the campesino and riparian communities that should also have access to titling. The regulation of the Law of Campesino/Peasant Communities allows for the titling of riverine settlements in the Amazon. Riparian communities assimilate to the forest in a way similar to that of IPs. They are not settlers; they are Natives who have lost their language and have mixed with other communities.
- The 30x30 goal of protecting at least 30 percent of the world's lands by 2030 is aimed at the creation of new protected areas. How these new areas will consider the rights of people, incorporate a rights-based approach and identify what type of rights in the broad spectrum between tenure and ownership remains to be seen. If this involves management and use rights, how will the overlap between these new areas and Indigenous territories be managed?
- A thorough analysis of the judicial mechanisms and their contribution to land law is needed as there is currently a boom in not only property rights, but also consultation, social organization, environmental issues and other aspects related to land claims.

- In the short term, it does not seem easy to position the rights-based approach in forestry reforms in Peru because it requires the articulation and alignment of the country's IPs, the State and civil society, which seems unlikely.

INDIGENOUS GROUPS

- The State must update its conservation perspective in accordance with international instruments that already recognize the importance of IPs in conservation, including the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- AIDESEP's proposal[45] for integral territories in Loreto is a model that should be taken up again.
- For all of this, it is necessary to help leaders better understand the judicial system, the actions of the courts, the routes available to position these rights, and the monitoring of systemic effects.
- The State must improve its relationship with IPs, who cannot be only seen as watchmen or guardians because this reduces them from key stakeholders in conservation with rights, cosmovision and ancestral knowledge.
- Forestry and environmental regulation cannot be a barrier to titling. IPs and their contributions to global conservation goals came first, and then the regulations of the State, which have been changing over the years and are rolling back rights previously recognized in 1974.

BINATIONAL WORKSHOP

At the end of this study, we convened a diverse group of stakeholders to hear their reactions, assessments, and contributions to the main findings. Below is a summary of the dialogue and questions raised by the participants, which will contribute to future research and help strengthen the rights-based approach to conservation in Colombia and Peru.

COLOMBIA

In Colombia, this study's research will be useful for Indigenous communities so that they can have inputs and evidence to participate effectively with institutions regarding the overlapping of protected areas, Indigenous territories and *resguardos*. The research will also act as a tool for communities for the current discussions regarding the multipurpose cadaster. It will be useful in the face of the overlapping of Indigenous territories with other areas of national interest.

Civil society has called attention to the reality that protected areas and conservation entities require scientific validation because they have been created from positive science. In this sense, IPs' conservation proposals must also be incorporated in this dialogue between different forms of knowledge.

Academia has insisted that research has a challenge with respect to Afro-descendant communities in the Amazon. The marginalization of the Afro population in the Amazon owes to various stereotypes that result in their being considered foreign to the region, a migrant population displaced by the gold rush or rubber bonanzas. Therefore, it is necessary to insist on creating awareness about their presence and their positive contributions to their lands and forests.

Civil society organizations also contributed inputs on subjects developed in this study. For example, they raised the importance of reinforcing the concept and institution of territory, which has been a jurisprudential development. They also proposed not to focus on tenure, but to link tenure with territorial rights. They shared that there exists a comprehensive vision that involves a system of government, political rights, right to self-development, territorial planning and natural resource management. Likewise, emphasizing SINAP policies and figures, but under a biocultural approach, is important.

An emerging theme for future research could delve into how cultural and intangible heritage entities can offer an opportunity for ecosystem conservation. For example, in Colombia, the protection of relevant sites through cultural heritage protection tools has been discussed. However, the application of a rights-based approach needs to be strengthened.

A critical analysis of Other Effective Area-based Conservation Measures (OMEC) is important because they

emerge as a response to the absence of a rights-based approach in the interpretation of the protected area concept. Instead of correcting this absence, these measures emerge. The OMECs do not make up for this absence. The interpretation given by the institutions to the OMECs is that they are not determinant in territorial planning. It is important that the communities see the implications OMECs entail in registration. It is equally important to effectively recognize the authority and systems of government of IPs and LCs.

State entities suggest that they have made progress in the rights-based approach to conservation not only in REMs in overlapping areas, but also in terms of political will, mechanisms and prior consultation in planning instruments. This has been a commitment of National Parks for the last seven years.

IPs, ADPs and civil society agreed on the importance of doing more in-depth territorial planning of IPs as authorities, and that this be binding for third parties. The challenge is for their land use planning to be a determining factor for sectoral developments. They also suggest that the analysis of IP rights should be more comprehensive, for example by including their economic rights and rights to improve their community well-being and territorial living in accordance with their own concepts. They also need to be able to determine their own methods for cultural protection and environmental conservation, without pressures to give up their autonomy in protected areas.

PERU

Some IP organizations in Peru believe that even with a legal framework that recognizes titles, the country's Native communities that are going through the titling process will continue to be dispossessed of their lands. This is done through contracts of use cession, marginal strips and vegetation cover variability. These organizations are concerned that there is no cross-cutting structure in the institutional framework that can advance Native community titling processes, nor is there coordination or the necessary tools and financing for communities. They blame this on the lack of political will on the State's part, and express particular concern about the current proposed agrarian reform, which they consider an attack on the Amazon.

In the same vein, other civil society organizations insisted that in Peru, only the land is titled and not the territory. For this reason, it is necessary to promote that the State recognizes and respects the ancestral and integral territorial property of the original IPs who are organized in campesino and Native communities. The State must restore and adjudicate the lands that have been taken from these Peoples in accordance with ILO Convention 169. In this context, protected areas are also considered a form of territorial dispossession.

Faced with this situation and the administrative difficulties in the titling process, Peru's civil society organizations call for promoting normative reforms and recovering the spirit of the Native communities in Law No. 20653, in force from 1974 to 1979. This Law offered a guaranteed and comprehensive territorial rights framework, however, given legal complexity of a legal reform, including one at the constitutional level, its implementation has lagged. This can be remedied by improving mechanisms for recognition of property titles for the communities.

State intervention has been clear on one point: it asks communities to recognize the progress made and not only focus on the weaknesses. From the perspective of the participating government officials, it is important to take into account the progress so far and work collaboratively to resolve existing gaps. One example of such collaboration would be exercises in National Parks or within the Protected Areas System that allow governance to be shared between the State and IPs without the need to create communal reserves. This is demonstrated in the Loreto region where conservation areas are being managed by Native communities.

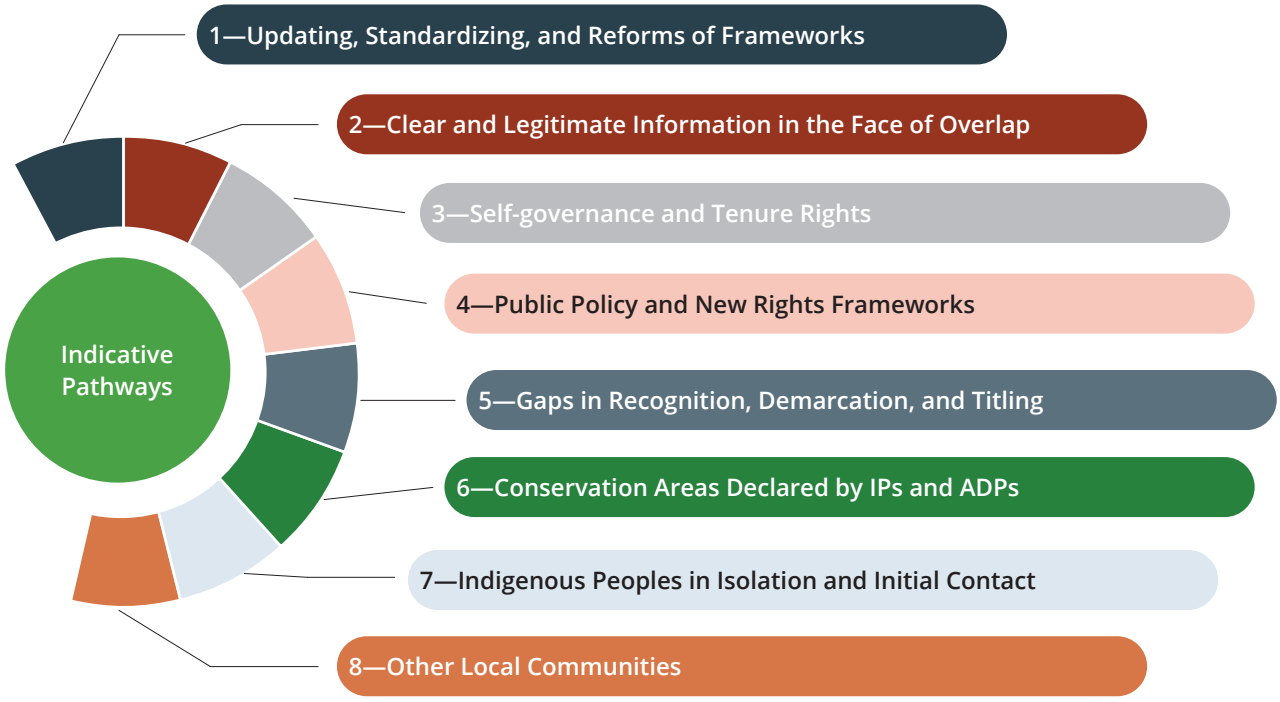
Similarly, it is important for state officials to understand laws beyond the statutory perspective, as those do not always coincide with Indigenous traditional practices. This is extremely important to identify the type of conflicts that may arise from this incongruence (statutory law vs. practice). It must be noted that these conflicts could also be linked to the feasibility of IPs to exercise territorial rights within their territorial management.

SECTION 6

INDICATIVE PATHWAYS

This section has been organized by identifying priority indicative pathways in the region that are feasible given the current political and institutional context. As is known, Colombia elected a new Congress and a new president during the first half of 2022, which suggests possible changes in approaches to current public policies. In the case of Peru, there is a government already in place, but in a climate of political instability. In addition, there are changes of officials and personnel in the environmental and agricultural offices. In any case, in the search for specific proposals to support the rights-based approach to conservation, this framework of indicative pathways incorporates concrete steps, points out ongoing processes and stakeholders with whom to coordinate. Annex 1 identifies the priority for some of these actions.

FIGURE 3: INDICATIVE PATHWAYS



UPDATING, STANDARDIZING AND REFORMING OF REGULATORY FRAMEWORKS

Both Peru and Colombia should aim to update their regulatory instruments related to collective tenure rights in important biodiversity conservation areas, or those with hydrobiological resources, in the Amazon. Current protected areas—or those planned for the future—cannot be barriers to territorial rights, since the evolution of the tenure and conservation regimes shows that convergence is feasible. These can coexist by striking a balance between points of view and governance formats.[46] To achieve this, current conservation approaches in both countries should not lose sight of the indivisibility, interdependence, integrality, dynamism, progressiveness, and irreversibility, of fundamental rights.

This update is necessary because the Colombian Protected Areas System is, for the most part, made up of categories originally created in the 1974 Renewable Natural Resources Code (5 of 7) and two come from Law 99 (1993), practically pre-constitutional. In the Peruvian case, the regulatory framework continues to be influenced by the language and procedures from the 1970s agrarian reform process. It lacks a comprehensive vision in accordance with IP land rights. This is aggravated by a very fragmented and weak conservation legal framework which does not converge with Peoples' tenure rights.

In the Peruvian case, the following indicative pathways can transform this reality:

i. Overcome the compartmentalized institutional model, which has led to different stakeholders with similar competencies and priorities being in the same territories without tools or alternatives and, above all, without incentives to create intersectoral links and convergences. These include: SERNANP, a protected natural areas authority;

MINCUL, an authority dealing with territorial or Indigenous Reservations; DIGESPACR, another in charge of titling Indigenous Peoples' territories but without the power to issue titles per se since this rests with the corresponding Regional Governments. The alternative model involves improving inter-institutional coordination to guarantee Native communities' territorial rights. This requires the development of joint intervention guidelines between DIGESPACR and SERNANP that clarify to regional governments how to proceed with the demarcation of Native communities overlapping with ANPs. Additionally, include the faculties of those authorities linked to the use of natural resources, such as ANA for water issues, SERFOR for forest resources, and other sectors, such as energy and mines.

ii. The development of jurisprudence and other law sources is needed. While it is true that Peru has obtained favorable rulings in the Constitutional Court in favor of the rights of IPs regarding land and territory, these are insufficient. So far, Peruvian courts have not addressed this issue in depth, as have other countries in the region, where jurisprudence helps specific cases develop into a doctrine that harmonizes interpretation and maximizes guarantees for groups in vulnerable conditions. In view of this, Indigenous organizations (such as AIDESEP, ORPIO and FENAMAD) should be strengthened so that they can play an active role in the defense of their rights through different jurisdictional channels: administrative and judicial. Actions such as the development of projects that allow these organizations to have their own legal offices and/or have access to adequate legal sponsorship that enables them to make the decision to resort to the courts, administrative or judicial, to claim their collective rights.

iii. Along the same lines as the development of jurisprudence, progress in reforming the judicial system would allow access to effective justice so that IPs can make appeals, leading to binding precedents in favor of their rights. Proposed actions for these reforms include:
    - Training and/or sensitization programs for judges and prosecutors at the national level.
    - Strengthening of the Public Defense System to guarantee access to free and highly trained lawyers knowledgeable of IP rights issues. This service provides free legal advice and representation on various matters. To date, there is just one specific group serving IPs in the system, which is insufficient. This effort must involve MINJUSDH, MINCUL, the Judiciary branch and the Public Prosecutor's Office.

iv. There is a proposal to modify existing legislation regarding the titling of Native communities overlapping with ANPs. New legislation would need to include all the assumptions related to this overlapping, to establish the criteria that give administrative credit to ancestral possession, following international guidelines. This would involve the following stakeholders: MIDAGRI, MINCUL, MINAM and SERNANP. Modification of Ministerial Resolution 0443–2019–MINAGRI is also key. Guidelines for the demarcation of the territory of Native communities should consider other evidence regarding land possession, and not only the recognition of a particular community. This measure should be coordinated with SERNANP and consider their technical intervention. In addition, MIDAGRI should establish guidelines in coordination with SERNANP to detail how such possession can be proven before the regional governments.

In the Colombian case, indicative pathways include the following:

i. Implementing two entities that intrinsically integrate conservation and collective property. Although SINAP does not include public protected areas expressly designed to coexist with ethnic group territories and rights, nor protected areas directly declared by ethnic groups, existing legislation opens up these possibilities.

   On the one hand, Law 70 included a provision (Article 25) that allows the environmental authority to declare special natural reserves, as public protected areas, in collective territories of Black communities. This represents an opportunity to develop a special (albeit public) entity that coherently integrates the aspirations of the environmental authority for biodiversity conservation, with the recognition and respect for the range of rights of Black communities.

This requires a regulatory process of Law 70. It could be of just Article 25 or of the entire Chapter IV of this Law, which deals with land use and the protection of natural resources and the environment (including Articles 19 to 25). This Article has not been regulated, although there have been several attempts and drafts of norms, without ever being signed. A complete regulation of this Article and all of Chapter IV of Law 70, would allow for important developments to advance the effective integration of a rights-based conservation approach as well as broad and effective shared governance in public protected areas overlapping with Black communal territories.

As mentioned above, several regulation processes of Law 70 have been attempted between the State and the communities. Many times, communities have followed different social protest scenarios (strikes), but to no avail. These have never succeeded due to different disagreements between the parties and changes in government that have truncated or suspended ongoing processes in this matter.

To issue a regulatory decree related to Article 25, the President of the Republic and the Ministries related to the issue at hand, in this case the Ministry of Environment, must be involved. If it is Chapter IV as a whole that is to be regulated, the Ministries of Mines and the Interior would also need to be involved.

The entire process of crafting regulations must be participatory with representation from Black communities and their authorities. In any case, prior consultation must be carried out with these communities before signing since the regulation may affect them; consultation is required even if the measure has positive direct impacts on the community, which is done through the Ministry of the Interior. As can be seen, this implies a long process that can last for years.

The feasibility of undertaking this task again with the support of the Presidency will depend on the commitments of the Petro administration to ethnic groups since the last government was not capable of moving this issue forward. The communities themselves must once again promote the issue to the new government and advocate for the redrafting of regulations, which is a long-term action. This a process in which Afro communities can be supported, both in the drafting of the texts and in political advocacy.

In the short term, Afro-descendant communities can be supported in advocacy to add to the regulation of Article 25 in the new National Development Plan (PND) to be formulated by the new government in the second semester of 2022, and to be approved in the first semester of 2023 (no later than May 7, 2023).[47] The PND will have a validity of four years during the term of the new government and will undergo its own process of prior consultation (to be carried out in November and December).

However, it is important to note that including regulations in the PND does not imply that the government will follow through with the commitments. This has happened with many of the issues resulting from prior consultation protocols with ethnic groups of the current PND. Support to ethnic groups in this short-term process of prior consultation in the formulation of the new PND can enable the incorporation of express issues related to rights-based conservation in general, and of specific regulations on protected areas and the valuation of collective territories in biodiversity conservation in particular. A further recommendation is to support these groups after the approval of the Plan, to advocate with the government so that it complies with the protocol commitments and so that they do not remain forgotten, as has happened so many times before.

In relation to participation and consultation spaces for ADPs, it is essential to support the functions of the High-Level Consultative Commission (CCAN) for the Black, Afro-Colombian, Raizal and Palenquero Communities established by Article 45 of Law 70. To support CCAN activities requires following up on the role and management of the institution with respect to the technical assistance accompaniment being given in the titling of collective territories for

Afro-descendant communities and Peoples, as requested in the western region of the Colombian Amazon. Likewise, it is important to assist Community Councils and Grassroots Organization representatives of the Afro communities living in these Amazonian territories and strengthen their participation in this consultation space between ADPs and State institutions. It is also essential to support the activities of the Consultative Commissions of the Amazonian departments where there are constituted community councils and legalized collective property titles, to promote the formalization of requests for the creation of other Afro-descendant collective territories. The Consultative Commissions are created through Article 2.5.1.1.1.5. of Decree 1640 (2020), to "serve as a means for dialogue and interlocution between Black, Afro-Colombian, Raizal and Palenquero communities being represented and the departmental or district government." Due to this, the capacity of ADPs should be strengthened to have greater participation in these decision-making spaces.

ii. Follow through on the creation of the **Indigenous conservation area**. As agreed in prior consultations for the current National Development Plan (2018–2022), this would be a legal environmental conservation institution, integrated into SINAP. This would consist of a SINAP protected area, destined for conservation, and managed through a special model based on the ancestral cultural perspectives of IPs. In this way, the cosmovision and traditional knowledge that have allowed them to maintain their territories in excellent ecological conditions would be the fundamental basis for the care of these special interest territories.

    As in the case of Afro-descendant communities, this category of Indigenous conservation areas can be established through regulations with broad participation by Indigenous communities and their authorities in the preparation of the text. This should be done through prior consultation of the corresponding draft decree, which includes the following government stakeholders: the Presidency of the Republic, the Ministry of Environment and Interior, and other ministries involved in the issues to be regulated in the decree.

    As in the previous point, this is a long-term process in which the communities can be supported in the drafting and consultation of the text and in political advocacy to make progress on this issue. For the short term, the same can be done during the drafting and prior consultation of the NDP of the incoming government. These communities should also be supported after the approval of the plan, to advocate with the government so that it complies with protocol commitments.

iii. In order to guarantee the ecological integrity and conservation of the Amazon, it is necessary to work simultaneously on the creation of collective and individual rights of ethnic communities. In this sense, measures and actions are needed to guarantee social justice for these communities, which have historically been exposed to social, economic, cultural and political exclusion. A step towards advancing the creation of individual, collective and territorial rights of IPs are Decree 1953 (2014) and Decree 632 (2018). These two instruments create the special regimes that make Indigenous territories function with respect to the administration of their own systems. This legal framework allows IPs and communities to develop the autonomy granted to them by the Constitution through the attribution of faculties in health, education, drinking water, basic sanitation and the granting of the necessary resources to exercise them directly.

iv. It is imperative to promote regulations that expressly integrate separate provisions coming from protected area and ethnic group legislation into a single comprehensive legal framework. This must be done in such a way that IP and ADP rights and responsibilities converge with State duties in those collective territories which coincide with protected areas.

    There is a great need to create a standard that integrates the rights-based approach in a broad way, not only for Park System areas, but for all SINAP public areas that coincide with ethnic groups' territories. This is necessary because the other SINAP categories currently regulate this relationship yet do not require the creation of special management regimes. This is inexplicable

and should be extended to all public categories overlapping with collective territories.

A legal provision of this type would help resolve the tensions that can arise when a collective territory overlaps with the different National System of Protected Areas entities and would protect IP and ADP rights.

The CONPES 4050 (2021) recommends the kinds of actions as listed in the examples of numbers I, II, and III of the indicative pathways: *"Manage the adjustment of the framework of protected area management categories and the definition of national conservation goals, which link other forms of knowledge and other levels of biodiversity at the national level and in the different subsystems of the SINAP."*

This implies that The SINAP must propose regulation that modifies the existing categories by linking "other forms of knowledge." This is supposed to link to community management categories and areas, among others. Additional support to ethnic groups would allow them to bring forward issues of rights-based conservation in these discissions on 'other forms of knowledge.'

This could be done either by making separate regulations for Article 25 of Law 70 and for Indigenous conservation areas, or to conjoin these with the norm requiring the review of the SINAP categories, which, if carried forward, would provide a much broader regulatory scope.

This is not exclusive of what is recommended in the two previous points because it is not known which of the processes may be more feasible: individual regulations of Article 25 of Law 70 and the Indigenous conservation area, or the issuance of a regulation that completely revises SINAP categories, which is what CONPES asked of National Natural Parks.

Therefore, it is necessary to be in contact with PNN and follow up on this process, in case it is actually carried out by this entity (the 2010 SINAP CONPES said the same thing, but it remained on paper), to support the SINAP and Indigenous and Black communities. This framework should include not only its own conservation categories that ethnic groups can declare directly in their territories in a consistent and broad manner, but also specific rules to be followed with respect to the rights framework for these groups when declaring public protected areas in their territories, the principles of good governance and the different governance modalities, the coordination relations between environmental authorities and ethnic groups and, in general, the rights-based conservation issues recommended in this paper for Colombia.

It is important to consider the type of law to be issued in order to review the categories (decree or law), in order to carry out political advocacy, since, if it is a law, it is up to the Congress of the Republic to approve it, which implies influencing not only the PNN and MADS in the drafting of the law presented to Congress, but also the rapporteurs and the group of members of the congressional committee 5 (Senate and House). Those persons identified can include articles and texts in this regard.

In any case, any regulation project proposed to comply with this CONPES recommendation requires prior consultation, so that the ethnic groups can also be supported in the prior consultation process so that the issues in the PNN proposal are included in a consistent manner. This is also a long-term, and still uncertain, process.

However, work can begin now on a clause to be discussed with the communities to advance the conversation related to whether the process entrusted to RNN will take place. Likewise, the same short-term advocacy is recommended for the new PND in the two previous points. It should be carried out on this issue, including it as part of the commitments to be formalized in prior consultations of the PND.

v. Conservation is not only achieved through protected areas. Therefore, it is important to highlight the value of collective territories in biodiversity conservation. Likewise, it is recommended to choose at least one case as a pilot, to be recognized as

an OMEC, and to be reported in the worldwide database managed by the World Conservation Monitoring Center.[48]

This is because many of these territories are being managed by the communities and their authorities in a way that is characteristically very similar to protected areas and can meet the criteria to be considered OMECs. For example, they have internally zoned boundaries, set permitted and restricted uses and have rules for exploitation and restrictions. In addition, they have outlined management and administration actions through their authorities based on plans.

To advance this process, first the communities would need to agree to have their territories be classified as an OMEC. This would need participation throughout the process, being clear about the implications of OMEC designation, and go through an evaluation to see if the territory meets the criteria to be classified as such. This implies identifying the pilot and moving the process forward.

The Ministry of Environment recently presented a procedure for the identification and reporting of the country's OMECs that should be followed through. This process involves submitting the request for the nomination of OMECs to the Ministry of Environment, Directorate of Forests, Biodiversity and Ecosystem Services[49]. This is an action that can be started in the short term, although the process may be long.

vi. The creation of special management regimes currently underway (La Paya, Amacayacu and Alto Fragua Indi Wasi Parks) could be supported. The development of the REM for La Paya (Putumayo) is a priority given that, to date, this process is only partially financed by GEF Corazon Amazonia, and the need to complement this financing has been identified in order to move forward.

    It is also necessary to support the implementation phase of the REMs already signed in the Amazon in the Cahunarí and Yahojé Apaporis parks. Each year the steering committee of each REM, which includes the PNN and Indigenous authorities, meet to evaluate the implementation, which is recorded in the minutes of these committees. These minutes can help identify where progress and needs are found.

    This implies working together with PNNs to identify what support they require in these processes, identify the communities and authorities with which they are working and support both parties jointly in the creation of these REMs.

    It is also important to support the construction of the neighborhood agreement that is being developed between Chiribiquete National Park and the *resguardos* adjacent to the park (they do not overlap with the park but are in the buffer zone, so they do not sign a REM, but rather, a neighborhood agreement).

vii. The first draft of the new post-2020 Global Biodiversity Framework, currently under negotiation, increases the percentage of protected areas to be conserved by 2030. It also includes a target related to ensuring the equitable and effective participation of IPs and LCs in decision-making related to biological diversity and in respecting their rights over their lands, territories and resources. In addition, it includes for the first time, as an enabling condition for the successful achievement of this framework and its targets, the use of rights-based approaches.

    A concrete contribution on how to develop this rights-based approach in the qualitative analysis of progress and fulfillment of the objectives and goals of the post-2020 Global Biodiversity Framework and their integration into the national and local goals of the Party countries, in order to contribute to the global ones, would be essential so that this expression, which is envisaged as an enabling condition, does not remain on paper.

    A project that finances this analysis and evaluates progress two years after the new goals have been approved would be very useful. Management cannot stop at influencing the current negotiation but must focus on the follow-up of the agreed

commitments and their qualitative aspects (goals are not met with percentages and figures).

In the short term, as soon as the new plan and its goals are approved within the framework of the CBD, work can begin by financing a multidisciplinary team, involving representatives of ethnic groups, to develop the methodology, conceptual scope, contents and indicators that should be considered to carry out this qualitative analysis of progress in integrating the rights-based conservation approach in Goal 3 and Goal 21 of the post-2020 Global Biodiversity Framework, as well as the current baseline in this area that will be used to measure progress.

This contribution can be divided into a general framework applicable to the Amazonian countries within the 80x25 Strategy, the Leticia Pact and country-specific chapters, identifying specific aspects of each country as well as pilot cases to evaluate their integration into national and local goals.

It is essential to weave regional networks that contribute to the fulfillment of these goals in the Basin (or join existing ones), to establish chains of contribution at the regional, national and local levels, all working towards its fulfillment in an articulated manner, demonstrating how they interact with each other to achieve the global goals of biodiversity conservation.

In the process of conceptualizing and giving content to this rights-based approach to conservation, the normative systems specific to each country's ethnic groups must be considered. Thus, the developments of this rights-based approach must be seen not only in the context of formal law, but also of customary law.

PRIORITIZATION OF PROPOSALS

In relation to the prioritization of these proposals, some of them are detailed in Annex 1. However, collectively, they will require dialogue and participation with the stakeholders involved in the indicative pathways identified. There are many issues to be considered, such as: i) the time required to advance them versus their work plans and funding possibilities; ii) the areas and scales of work involved in each proposal; iii) the crossovers and complementarities with activities already funded in the country and in the region; and iv) the risks involved in funding activities that may never materialize into something concrete, such as supporting the drafting of regulations that in the end are not issued.

In the proposals, there are actions at the national level, such as the creation of regulation that imply long-term national processes. This entails political advocacy scenarios that are uncertain today due to the new change of government. Others imply concrete and specific actions in the territories, such as support of REMs, neighborhood agreements and the selection of a pilot for the nomination and reporting that territory as an OMEC.

There are actions that involve work in phases, such as the methodological and conceptual work proposing to advance the evaluation of the inclusion of the rights-based conservation approach in the fulfillment of the goals of the post-2020 framework. One is starting this year with the construction of a general framework. For this, with a multidisciplinary team, is scheduled to be applied in about two years to the evaluation of the country's progress in meeting Goal 3 and Goal 21 in the post-2020 Global Biodiversity Framework.

There are actions that have short-term impact, such as what is proposed for action in the formulation and prior consultation phase of the National Development Plan. Thus, prioritization will depend on the analysis of all these factors.

CLEAR AND LEGITIMATE INFORMATION IN THE FACE OF OVERLAP

Peru does not have official information on the IPs that inhabit ANPs, nor how the different rights granted within them affect their way of life. Faced with this dramatic situation, two strategies related to the cadaster are proposed:

- On the one hand, it is necessary to update the data of the SICAR Cadastral System and the SIC–Communities (official cadastral systems managed by MIDAGRI). For this purpose, the competent stakeholders are MIDAGRI, DIGESPACR and regional governments. For its implementation, the development of public investment projects is required. To update the information, there is a need to improve the information storage systems used by the GORES (regional governments at the subnational level in Peru) and, finally, a need for the georeferencing of Native communities. However, it is important to keep in mind that if a Native community has a non-georeferenced property title (i.e., issued with old and inaccurate surveying techniques), this contour cannot be considered in the national cadaster. In this sense, no matter how many systems are developed for the GORES that are interoperable with the national cadaster, the information will continue to be inaccurate.
- On the other hand, it is necessary to establish a single land registry system shared by the institutions that grant or recognize rights. It would be updated online and allow for real-time identification of the situation of the territory and the applications submitted. This system must be interoperable and linked with SICAR and SIC Communities to identify in real time the situation of the territory and the applications submitted. The stakeholders with whom to articulate this initiative are MIDAGRI, GORES and MINEM. For its implementation, a single regional cadaster that feeds into a national cadaster could be established as a first step.
- This implies a modification of Article 14 of the Organic Law on Sustainable Use of Natural Resources: Article 14–Public Registries. The various public registries on concessions and other modalities of granting rights over natural resources are part of the National System of Public Registries.
- A modification could be proposed under two assumptions: i) incorporating a paragraph to this Article on the single cadaster of resource use rights and land ownership; or ii) developing it as another mandate of the Environmental Ministry of Peru (MINAM). MINAM would implement a single cadaster that is technically compatible with that of the National Superintendence of Public Registries (SUNARP). This would facilitate an analysis of overlaps based on technical criteria, and a rights-based approach would guide the construction of better tenure information. The Peruvian Ombudsman's Office has insisted that the information and guidelines used by regional governments to deal with the overlapping of communal lands with forest concessions and protected natural areas are insufficient.[50]

In Colombia, the ANT maintains an information system on pending applications for both IPs and ADPs.[51] However, it is common to find disparity between sources of information, outdated data, difficulty of access, and precariousness in the spatial identification of communities pending titling. It is fundamental to update this database to strengthen and improve its collection and recording methods. This would help it to function as a mechanism to safeguard ethnic communities' territorial rights.

In this regard, one process underway is the updating of the cadastral registry throughout the country through the implementation of the Multipurpose Cadaster, which aims to promote the adequate and sustainable productive use of land, as agreed in the Peace Agreement. For this reason, ethnic organizations are advancing processes of enforceability so that the new cadaster includes the safeguards and guarantees established in the Ethnic Chapter of the Peace Agreement. Prior consultation is one of the main demands of the authorities of these Peoples who are demanding participation in more balanced scenarios. Likewise, the policy of the Social Property Management Plans led by the National Land Agency and the IGAC requires strengthening the focus on the rights of IPs and ADPs.

SELF-GOVERNANCE AND TENURE RIGHTS

In Peru, it is essential to establish special criteria and management models that respond to the dynamics of Indigenous and ANP territorial management. The SERNANP, within the framework of its authority, budgetary limits, and technical capacity, has been promoting more participatory management through some concrete actions when faced with IP natural

resource use in the ANPs. But these advances are still incipient and not enough to create convergence between IP rights and conservation initiatives. If there was institutional will, the opportunity would be great. The multisectoral space also stands out within the IP Policy design framework and agreement. Known as the **Indigenous Agenda**, its purpose has been to identify the problems affecting the execution of IP collective rights. This policy is still missing protocols, and the Ministry of Culture will lead the consultation required for its approval.

Thus, it becomes fundamental to promote effective governance. This requires that IPs and ADPs have an institutional arrangement that firmly includes them in making decisions regarding management and governance over land and natural resources. Since IPs and local communities have a close relationship with their territories, they need recognition as the main decision-making stakeholders. An effective arrangement would require legal competence to create regulations (especially customary rules) and enforcement rights them within their territory. These decisions also have an impact on biodiversity conservation and associated cultural values, regardless of the original motivations. That is, conservation may, or may not, have been the main management objective, but it has occurred just the same.

A problem to overcome is the lack of robust information about the number of Native communities and their size in hectares, in the ANPs. Therefore, field research is recommended to collect accurate information on the number of communities recognized before or after the establishment of ANPs, including those without property titles, and their approximate size. SPDA is currently conducting research with field work to collect official and reliable information on these cases in the regions of Loreto and Madre de Dios. SPDA also plans to collect information on the number of communities that, despite having a property title, need to be geo-referenced. From the unofficial information gathered, it appears that most of the cases are in Loreto.

Rights-based environmental governance would be clearer if national Protected Area legislation in both countries expressly incorporated the rights-based conservation concept as the new CBD Post-2020 Biodiversity Framework is doing. This may not add new rights by itself but will attract attention to the existing rights framework. It will shine a light on the issue of rights, currently not included in protected areas legislation. This would bring this broad catalog of rights together under the concept of conservation. To be functional, the rights-based framework should be deployed, case by case, in practical situations, to verify its respect and inclusion within protected areas. In Colombia, this rights framework should also be mediated through duties. The Constitution establishes correlative duties vis-à-vis environmental, property and participation rights, establishes limits to the autonomy of ethnic groups so that it is not absolute, and grants functions and duties to the ethnic group authorities.

This is in tune with the first project of the new post-2020 Global Biodiversity Framework, currently being negotiated. It aims to increase the percentages of protected areas to be conserved by 2030, and includes an express goal related to guaranteeing equitable and effective IP and LC participation of IP in making decisions related to biological diversity. It also aims to respect their rights over their lands, territories, and resources. Additionally, this project framework includes, for the first time, the use of rights-based approaches as an enabling condition for the success of this framework and its goals. It is an opportunity to expressly include the focus on some of the goals and have them be mainstreamed in the text. It also associates qualitative progress analyzes, and the fulfillment of the post 2020 framework objectives and goals to both countries' national and local goals.[52]

Whether IPs and ADPs should be considered **environmental authorities** is a central debate in Colombia. This is key because only the State environmental authorities are legally recognized within the National Environmental System. In Colombia, it is important to develop guidelines that regulate the coordination and cooperation between IP and ADP authorities as traditional environmental authorities and the State environmental authorities. This is needed to be able to face threats against territorial integrity which could have repercussions on

Indigenous communities' territorial rights. This would be a coordinated system designed to mainly monitor and control the environmental integrity of IP, ADP and SINAP collective territories.

In Colombia, it is also important to focus on the accompaniment in technical, financial and operational strengthening of the National Commission of Indigenous Territories (CNTI). There should be support for its functions as a coordinating body that facilitates access to information for the territorial needs of Indigenous communities.

PUBLIC POLICY AND NEW RIGHTS FRAMEWORKS

In Colombia, Indigenous environmental policy will be included in the different environmental policies, such as SINAP, as part of the prior consultation framework required for approval of the National Development Plan (2018–2022). The design and implementation of public policy for the protection of sacred sites of high cultural and environmental value, and a public policy for the protection and guarantee of territorial rights, was agreed upon with IPs. None of this has been implemented despite the fact that this government ended its term in August 2022. It would be very important to proceed with implementation to develop the rights-based conservation approach in depth within this specific policy, and not just under the framework of SINAP policy.

In Colombia, Ruling T–622 (2016) of the Constitutional Court determined that programs, projects, policies and conservation measures must be aligned with the mandate of bioculturality. For this purpose, the National Environmental Council is fundamental as an actor in its quality and function of intersectoral coordination in environmental matters. The Council, within the framework of the National Environmental System, should lead the formulation of guidelines that require the adoption of a rights-based approach and a bioculturality mandate in all environmental programs. Likewise, it is necessary to review and adapt existing environmental conservation policies, programs, measures, projects and guidelines to a rights-based approach and the bioculturality mandate.

Thus, the scope of an Indigenous environmental policy, formulated from biocultural rights as a category that integrates in the same clause the provisions on environmental matters and the rights to culture of ethnic communities, understanding them as inseparable, would allow broader and deeper developments directly from Indigenous legislation.

In addition, based on the mentions made in the SINAP CONPES of the "justice and rights approach" and the environmental functions assigned to Black communities by legislation, this environmental policy would be extended to Black communities with all of their particularities. In other words, the current SINAP policy would be complemented with concrete and specific developments that would reflect the scope of rights-based conservation in ethnic group territories based on the express formulation of an environmental policy for ethnic groups that would meet and align with that of SINAP.

It is also important to provide support to the Amazon Regional Roundtable, a participation space that seeks to reach agreements with different government agencies, get recommendations, and follow up on the formulation and implementation of development policies for IPs and communities living in the Amazon region of the country. The proposal is to work in coordination with this institution and support its advisory functions regarding policy definition for the "concerted management of the protected areas located in Indigenous territories of the Amazon region" (Decree 3012/2005, Article 3–4). Likewise, it is necessary to strengthen the agency and participation of ethnic communities in this institutional decision-making space and it is important to promote equal opportunities for Indigenous women's participation and influence in these spaces.

The formalization of ethnic communities' collective property is the main mechanism for territorial protection. However, the Colombian legal ordinance has other entities that can have the same effects in terms of protection. Besides the demarcation of ancestral and traditional territories in Decree 2333

(2014) and the National Natural Parks System entities, there are other mechanisms to shield ethnic territories against ecological damage which should be explored as indicative pathways. Within these modalities and mechanisms, there are different entities and institutions for the protection of the assets of cultural interest that can serve as efficient mechanisms for territorial protection. One example of this is the case of Jaba Tañawiskaka, the first sacred site declared of national cultural interest by the Ministry of Culture.

Meanwhile, in Peru, it is transcendental that SERNANP is becoming an institution with an intercultural approach. This is also true for DIGESPACR, GORES, among others. Therefore, it is suggested that normative guidelines be developed and approved in a participatory manner to clarify how SERNANP applies the intercultural approach, as well as the obligations acquired within the framework of the *Política de Transversalización del Enfoque Intercultural.* This regulation can be created based on the positive experience had with Communal Reserves and should include specific actions to guarantee the effectiveness of IP rights. The key stakeholders are SERNANP and MINCUL. This would result in clear guidelines for how to guarantee the protection of IP rights in the NPAs, including gender, collective tenure, health and education.

In harmony with the above, the update of the Natural Protected Areas System's Master Plan (2021) is an opportunity to include these guidelines.[53] The process of updating the ANP Master Plan (national conservation strategy for all of Peru's ANPs that defines policy and planning guidelines) is currently underway, including intercultural criteria and approaches as one of the criteria and approaches. In this sense, without the prejudice of seeking express development of this concept in regulations, SERNANP can incorporate strategies to guarantee its recognition and effectiveness as part of the development of the intercultural approach that governs this updating procedure. Thus, civil society and Indigenous organizations participating in the process of updating the Master Plan may request and present a proposal to incorporate specific components to make viable, including: (i) the recognition of the right to territory within NPAs; (ii) the management of these spaces; and (iii) participation in decision-making about them.

In both countries, the existing convergence spaces between the State, IPs and ADPs must be strengthened. In these spaces, regional, national and traditional authorities must work together to strengthen collective tenure and other community rights (health, education and a dignified life, among others). Likewise, public policies and programs for IP and ADP development should be planned in these spaces. They should promote intercultural dialogue where the ancestral and constitutional legitimacy of IP and ADP authorities is recognized in a horizontal framework.

At the same time, the participation of State authorities must be plural, interdisciplinary, and must have financial and human resources for its proper operation. In Colombia, these scenarios must also be created for ADPs.

It is worth mentioning that the Leticia Pact was signed between Bolivia, Brazil, Ecuador, Colombia, Peru, Guyana and Suriname in September 2019. Its action plan, which was approved later, has specific mandates and actions for the signatory countries in the regional protected areas. This Pact contains a pronouncement from Peoples emphasizing the degradation faced by the Amazon biome which has transformed the ecosystems and its inhabitants' lifeways. These Peoples requested to include certain provisions in the Pact, including more consideration for the great risk defenders, the conclusion of territorial rights processes, and greater opportunities for intercultural dialogue.[54]

When a rights-based conservation approach is discussed in Colombia, the concept that the Amazon itself is also subject to rights must be respected by all, including the ethnic groups inhabiting it. At the same time, an effective guarantee of the Amazon's rights should result in greater protection of IP and ADP rights, especially territorial ones. This is in accordance with a Supreme Court declaration through Ruling STC–4360 (2018). Despite the Amazon biome's recognized rights based on an eco-centric vision that promoted the ruling, there is still a long way to go in terms of elevating the Amazon as a

living entity. **What has been fully established is that the guarantee of fundamental rights for the region's Indigenous Peoples and Afro-descendant Peoples, and the rights of the Amazon, are essentially intertwined.** This poses new challenges and demands comparisons and developments for the adequate implementation of a rights-based conservation approach in the region.

In view of the weak State institutions in existence in Peru, it is proposed to strengthen the role of the Ministry of Culture as guarantor of IP rights, with emphasis on the Vice-Ministry of Interculturality. To this end, the approval of a National Policy on IPs is essential. It should be noted that a first version was published in 2021 for comments. This should be reviewed and, if appropriate, lead to a process of free, prior, and informed consultation that should be carried out at the national level. However, the development of an action plan with real and measurable goals, objectives and indicators is required; the identification of the budget gap of each directorate is needed to ensure that the mechanism for implementing, monitoring and reporting of their obligations is accurate, as well as the development and/or updating of regulatory tools that clarify the functions of these directorates to third parties. The guidelines that contribute to the recognition of communities belonging to Indigenous or Native Peoples, in accordance with the provisions of Legislative Decree No. 1360 which specifies the exclusive functions of the Ministry of Culture of 2018, are pending development. The key stakeholders in this proposal are MINCUL–VMI, MEF.

Peru also proposes incorporating the concept of rights-based conservation in the proposed National Policy for Indigenous Peoples, as well as activities and indicators that SERNANP must comply with to guarantee the implementation of this approach in the management of SINANPE. The current version of the proposed National Policy on Indigenous Peoples submitted for comments does not include this approach, nor does it establish activities that SERNANP should implement to safeguard the rights of IPs. However, this version can be improved by the current MINCUL administration and incorporate the changes it deems necessary before submitting this instrument for prior consultation.

GAPS IN RECOGNITION, DEMARCATION AND TITLING

Currently, **titling** of Native communities in Peru involves complex paperwork, and the application process is difficult. The lack of a special regulatory framework for this does not allow for the closing of the titling gap. Therefore, the development of specific criteria for the formalization of Indigenous communal lands within ANPs should be prioritized. For this, an unavoidable technical task is to improve official information on the number and situation of IPs inhabiting ANPs. Without this, it is not possible to demonstrate and evaluate territorial demand nor the implications for ecosystems considering the already recognized role of IPs in conservation. As stated by an Indigenous leader in the focus group convened for this study, ***"Let's first talk about guaranteeing Indigenous Peoples' rights, and then let's talk about conservation."***

Titling and the recognition of communal property is a way of ensuring greater control over territory, safeguarding natural resources against third party expansion, and ensuring living spaces and cultural continuity for future generations. Consequently, titling—especially in protected natural areas—not only represents access to property right for IPs but is also a way to exercise their right to self-determination.

IPs are being forced to constitute themselves as Native communities in order to exercise collective rights, which is why a constitutional change is required to leave behind this legal status and move from the agrarian approach to the approach of subjects with collective rights. In Peru, the process of constitutional modification starts with a legislative initiative. This can be presented by the executive branch itself or by a Congress person of the Republic; therefore, considering the current political situation, this is not viable.

In this regard, Article 89 of the Political Constitution of Peru states that the Campesino and Native communities have legal existence and are autonomous legal entities in their organization, communal work, use and free disposal of their lands, as well as in economic and administrative matters within the framework established by law. As they have legal

personality, they are required to apply the current Civil Code which establishes organizational rules that the community must assimilate to in order to be recognized as such. This is the only entity expressly mentioned in the current Constitution. Therefore, neither the subnational levels nor the Executive Branch currently recognize other organizational entities of IPs.

In Colombia, the recognition of collective property rights in favor of Indigenous and Afro-descendant communities, as well as the demarcation of ancestral and traditional territories, is still an incomplete task. Although Colombia has compatibility between protected areas and IP rights, a significant recognition of IP territories remains pending. For this reason, administrative procedures must be expedited, both to recognize the territorial rights of ethnic communities and to register and preserve the ecological integrity of these territories.

In this sense, it is necessary for the ANT to continue purging and adjusting the collective land applications and allocations. To date, it has not been possible to build a consistent information system that allows for effective decision making. Equally important is to advance the procedural route to close backlogged processes and clarify roles and functions within ANT with the purpose of prioritizing processes that have been suspended for a long period of time.

There are approximately 234 procedures for the establishment and expansion of *resguardos* needing attending to, and in the case of ADPs, there are 45 requests for titling in the entire Amazon area, which could increase. It is significant to note that 32 community councils in Putumayo are located in the middle of three large, protected areas. This is a plains area with potential as an ecological corridor between Serranía de los Churumbelos NNP, Orito Ingi-Ande Sanctuary and La Paya NNP. If the territorial expectations of ADPs are met, at least 15,515.84 hectares of conservation-relevant ecosystems could be protected under collective tenure schemes. In Guaviare, the titling requests are located in a highly relevant group of protected natural areas and constituted Indigenous *resguardos*. Spatially, they are in the form of a corridor between the Nukak Reserve and Chiribiquete NNP. If the State approves the collective titling process for these communities, this region would be protected with collective tenure schemes and forms of ethnic governance that could include close to 9,000 ha.

In any case, the contradictions and tensions that arise between the conservation regime and the collective tenure regime in Colombia must be harmonized, especially for Afro-descendant communities. This is because legislation excludes the overlapping of a collective title with areas of the Park System, but it can coexist with the other SINAP categories. Even if the community inhabits the area prior to the declaration of the park, it is not possible to grant them a title. They are only allowed to remain in the area and the activities that the Afro-descendent community can carry out are regulated and agreed upon in the park's Management Plan; that is, it is only a right to use the area (Article 22, Law 70).

Likewise, for territories under threat and external pressures by armed actors, landmines, industries, and agriculture, among others, it is proposed as an indicative pathway to expedite the demarcation of territories within the framework of Decree 2333 (2014). This is a strategy and transitional protection measure while the administrative procedures for collective titling are being carried out. Likewise, as an indicative pathway, it is required to advance the titling or expansion of untitled areas in the Department of Amazonas. These are located between Indigenous *resguardos* and do not have any protections. All of these commitments and measures should be contained in the National Development Plan (2022–2026) of the incoming government.

CONSERVATION AREAS DECLARED BY IPs AND ADPs

In practice, territories awarded to Peoples are being managed similarly as protected areas. For example, both titled and protected areas have limits they have zoned internally, indicating those which are intangible, sacred and with restricted use. Therefore, in the suggested regulatory adjustment route in both countries, it is essential to consider the areas declared and administered by IPs and ADPs at the same level as the public ones (not as second-class). It is

also important to recognize the value and contribution of collective territories to conservation (without the need to be declared under any protected area category). In Colombia's case, the State's role would change, since it will no longer manage these areas, but should rather promote, support and accompany these ethnic community processes with technical assistance, financial resources, training, research and coordination with other SINAP categories.

Conservation has focused on protected area systems rather than on conceptualizing and creating comprehensive conservation systems. Insisting on a reductionist view of conservation has led to the promotion of areas and new entities that do not align or converse well with territorialities. This is a challenge for Peoples themselves who must make their models and schemes visible to be able to enrich the debate and their own entities. A good number of these environmental management practices are included in Decree 632 (2018) for the Eastern Amazon. In other areas, REMs, life plans, ethno-development plans and support for demarcation processes of spatially protected ecosystems inhabited by IPs would facilitate that their own models gain rigor and articulation with the other instruments.

Land tenure rights and conservation must go beyond the notion of delimited property rights. In this sense, territorial law is cultural. IPs determine the scope of their rights. Thus, as the expert groups consulted for this study have insisted, a consequence of the rights-based approach is not to speak of governance, but rather about government. In other words, there is a right to self-government, and sometimes the use of the term governance softens—or even limits or denies—expressions and the exercise of self-government. Additionally, one should not only speak of "participation" or "management," but also of the exercise of authority and the right of administration over territory and resources. Even more, the right to free, prior, and informed consent (FPIC) in various contexts, decisions or consequences.

To protect biodiversity elements, it is necessary to recognize the types of systems that hold this biodiversity in place—social, historical and cultural. Policy design should focus on biolculturality and protect subjects and relationships found between them. For example, recognizing the right to life. This would imply recognizing communities as a part of their life systems (i.e., recognizing interdependence with the natural world).

PIACI

It is clear that both Peru and Colombia have legal and regulatory provisions establishing protection measures for both isolated Peoples and those in initial contact, and in this, the role of environmental authorities has been decisive. In Colombia, the category of Natural National Park is the legal entity that provides the most adequate guarantees that ensure *biocultural conservation* interests of areas where IPs are found in isolation. In Peru, the Reservations established in the seven ANPs provide protection to about 20 PIACIs.

However, it is important to take into consideration the factors that threaten the integrity of the territories where the PIA and PIACI live. In Colombia, despite the existence of Decree 1232 (2018), PIAs and their ancestral and traditional territories are still under threat. In recent years, mining activities and armed stakeholders have been witnessed inside the Rio Puré National Natural Park, home to 2 PIAs. In this regard, it is a priority to expedite the development and implementation of the mechanisms for the prevention and protection of PIA rights established in Decree 1232 (2018). For this, financial support is necessary for technical strengthening and promoting the participation of local authorities in regional and national spaces for the implementation of the prevention and protection mechanisms of the afore-mentioned Decree. Two fundamental stakeholders in this process are the National Commission for the Prevention and Protection of the Rights of Indigenous Peoples in Isolation and the Local Committees for the Prevention and Protection of the Rights of Indigenous Peoples in Isolation. As a priority measure, the approval of the internal regulations of the National Commission is required.

The principle of intangibility, stricter in Colombia than in Peru, adopted by each regime, continues to be a normative provision contained in documents that

must be strengthened to its maximum degree of guarantee of rights. They seek to mitigate what happens in reality: the immersion of external agents in the protected areas for the PIACI. This puts the integrity of their territories and the survival of these communities at risk. In Colombia, there is a risk of physical and cultural extinction for the PIACI, as noted by the Constitutional Court. In this sense, the development of a special policy that establishes different protection mechanisms and regulates the relationship with these Indigenous communities is required. One example that demonstrates the neglect of the Colombian government is the case of the Nukak people who have been waiting since 2009 for the Safeguard Plan ordered by Constitutional Court Order 004.

In the case of Peru, the fundamental principle of no contact for IPs in isolation, expressed in the UN Guidelines on these Peoples, is being violated. It is therefore proposed to modify Law 28736—the Law for the Protection of Indigenous or Original Peoples in Isolation and in Initial Contact—through a legislative modification proposal presented by the Executive Branch or a congressperson. This indicative pathway should consider that the Reserves created in favor of the PIACI are intangible territories, although this is limited in the case that within these reserves there is a natural resource whose use is of public necessity for the State (Article 5, Literal c. Law 28736). This puts the life and integrity, both physical and cultural, of the PIACI at serious risk given their close relationship with the land. That is why this Article must be recognized in their favor and why it is necessary for the development and preservation of their culture of their culture. The recognition of this link explains the relevance of the intangibility of the PIACI's territory since contact implies risk to their very subsistence. In this sense, we believe that intangibility within the reserves should be absolute.

Through a project financed by the Moore Foundation, technical guidelines for action between MINCUL and SERNANP were developed in ANT with the presence or transit of PIACI.[55] However, given the continuous changes in MINCUL, the guidelines and other operational documents for the control and surveillance of Indigenous reserves have not been approved by DACI.[56]

Even though the Supreme Decree 014–2021–MC was approved on July 22, 2021, ratifying the new ROF of MINCUL and creating the new general directorate of PIACI (Article 33), it was repealed by Supreme Decree 020–2021–MC on December 8, 2021. Hence, the change of the DACI to a general directorate remains without effect.

OTHER LOCAL COMMUNITIES

In Colombia, the three ZRCs are related to Protected Natural Areas and at least 8 SINAP areas. This is a compelling reason to consider these stakeholders when dealing with conservation management. Generally, rural population and its multiple lifeways—in this case the campesinos who are in the region due to colonization —have a local knowledge of the ecosystems and their operation. In addition, they also have a high incidence in decision-making within rural territories at local and regional scales, thus creating an opportunity for more sustainable management of rural territories.[57]

ENDNOTES

1. Dawson, N. M., B. Coolsaet, E. J. Sterling, R. Loveridge, N. D. Gross-Camp, S. Wongbusarakum, K. K. Sangha, L. M. Scherl, H. Phuong Phan, N. Zafra-Calvo, W. G. Lavey, P. Byakagaba, C. J. Idrobo, A. Chenet, N. J. Bennett, S. Mansourian, and F. J. Rosado-May. 2021. The role of Indigenous peoples and local communities in effective and equitable conservation. Ecology and Society 26(3):19. ; Brittain, S., Tugendhat, H., Newing, H., & Milner-Gulland, E. (2021). Conservation and the rights of Indigenous peoples and local communities: Looking forwards. Oryx, 55(5), 641-642. doi:10.1017/S0030605321000946; ; FAO and FILAC. 2021. Forest governance by indigenous and tribal peoples. An opportunity for climate action in Latin America and the Caribbean. Santiago. FAO. https://doi.org/10.4060/cb2953en; Walker, Wayne, et al. 2020. The role of forest conversion, degradation, and disturbance in the carbon dynamics of Amazon indigenous territories and protected areas. PNAS 117 (6): 3015-25. doi: 10.1073/pnas.1913321117.

2. UNEP. 2021. "1st Draft of The Post-2020 Global Biodiversity Framework." United Nations Environment Program. Available at: https://www.unep.org/resources/publication/1st-draft-post-2020-global-biodiversity-framework.

3. Rights and Resources Initiative (RRI). 2020. Estimated area of land and territories of Indigenous Peoples, local communities and Afro-descendants where their rights are not recognized. Washington, DC: Rights and Resources Initiative. doi: 10.53892/UZEZ6605.

4. Science Panel for the Amazon. 2021. The Amazon We Want: SPA Publications. Available at: https://www.theamazonwewant.org/spa-reports/.

5. RAISG. 2020. Amazonía Bajo Presión: Una radiografía de las principales amenazas al bosque tropical más grande del mundo y el avance de su deterioro. Available at: https://atlas2020.amazoniasocioambiental.org/.

6. Corson, Catherine, Julia Worcester, Sabine Rogers, and Isabel Flores-Ganley. 2020. From paper to practice? Assembling a rights-based conservation approach. Journal of Political Ecology 27 (1): 1128-47. doi: 10.2458/v27i1.23621.

7. International Union for Conservation of Nature (IUCN). 2021. "Indigenous Peoples launch self-determined agenda at IUCN World Conservation Congress." IUCN World Conservation Congress Marseille. Available at: https://www.iucncongress2020.org/newsroom/all-news/indigenous-peoples-launch-self-determined-agenda-iucn-world-conservation-congress.

8. IUCN. 2016. "El Enfoque Basado en los Derechos de la UICN: Sistematización de Instrumentos de Política, Estándares y Directrices." International Union for Conservation of Nature; Larson, Anne, Iliana Monterroso, and Peter Cronkleton. 2018. Titulación colectiva en la Amazonía peruana: Una historia en tres actos. Bogor: Center for International Forestry Research (CIFOR). Available at: https://www.cifor.org/knowledge/publication/6915/; Food and Agriculture Organization of the United Nations (FAO). Forest governance by indigenous and tribal peoples: An opportunity for climate action in Latin America and the Caribbean. Santiago: FAO. Available at: https://www.fao.org/documents/card/en/c/CB2930EN. See also: Nelson, Gerald C., Virginia Harris, and Steven W. Stone. "Deforestation, Land Use, and Property Rights: Empirical Evidence from Darién, Panama." Land Economics 77, no. 2 (2001): 187–205. https://doi.org/10.2307/3147089.; Hayes, Tanya Marie. "Does tenure matter? A comparative analysis of agricultural expansion in the Mosquitia forest corridor." Human Ecology 35, no. 6 (2007): 733-747.; Bottazzi, Patrick, and Hy Dao. "On the road through the Bolivian Amazon: a multi-level land governance analysis of deforestation." Land Use Policy 30, no. 1 (2013): 137-146.; Nolte, Christoph, Arun Agrawal, Kirsten M. Silvius, and Britaldo S. Soares-Filho. "Governance regime and location influence avoided deforestation success of protected areas in the Brazilian Amazon." Proceedings of the National Academy of Sciences 110, no. 13 (2013): 4956-4961.; United Nations Environment Programme and the Food and Agriculture Organization, The United Nations Decade on Ecosystem Restoration. 2020, UNEP & FAO: Online.; Ding, H., Veit, P. G., Blackman, A., Gray, E., Reytar, K., Altamirano, J. C. & Hodgdon, B. 2016. Climate Benefits, Tenure Costs: The Economic Case for Securing Indigenous Land Rights in the Amazon. Washington D. C., World Resources Institute (WRI); Blackman, Alan, Leonardo Corral, Eirivelthon Santos Lima, and Gregory P. Asner. "Titling indigenous communities protects forests in the Peruvian Amazon." PNAS 114, no. 16 (2017)> 4123-4128. https://www.pnas.org/doi/full/10.1073/pnas.1603290114; Bayi, Ella. "Indigenous Peoples of Brazil: Guardians of the Amazon Rainforest." (2019).; Pérez, César J., and Carl A. Smith. "Indigenous knowledge systems and conservation of settled territories in the Bolivian amazon." Sustainability 11, no. 21 (2019): 6099.; Vélez, Maria Alejandra, Juan Robalino, Juan-Camilo Cárdenas, Andrea Paz, and Eduardo Pacay. "Is collective titling enough to protect forests? Evidence from Afro-descendant communities in the Colombian Pacific region." Evidence from Afro-Descendant Communities in the Colombian Pacific Region (February 5, 2019). Documento CEDE 2019-03 (2019).; Baragwanath, Kathryn, and Ella Bayi. "Collective property rights reduce deforestation in the Brazilian Amazon." Proceedings of the National Academy of Sciences 117, no. 34 (2020): 20495-20502.

9. In Peru, Indigenous Peoples are more frequently referred to as Native communities (comunidades nativas). Throughout this report, the term Native communities refers to Indigenous Peruvian Peoples.

10. Amazon Network of Georeferenced Socio-Environmental Information (RAISG)." Amazonia 2019 – Protected Areas and Indigenous Territories" 2019 https://dev.amazoniasocioambiental.org/en/publication/amazonia-2019-protected-areas-and-indigenous-territories/.

11. The Institute for the Development of Renewable Natural Resources (*Instituto de Desarrollo de los Recursos Naturales Renovables)* is a national environmental authority and was created by Decree 2420 (1968) as part of an important administrative reform which attached it to the Ministry of Agriculture. Later, through Decree 133 (1976), the agricultural sector was restructured, changing its name to the National Institute of Renewable Natural Resources and the Environment (*Instituto Nacional de los Recursos Naturales Renovables y del Ambiente)*.

12. This is a controversial datapoint, since, in the 1950s, there were other declarations such as the Tumbes National Forest, which was legally established in 1957.

13. Single Digital Platform of the Peruvian State for Citizen Orientation (GOB). 2021. Sernanp inicia actualización de estrategia nacional de Áreas Naturales Protegidas al 2050. Lima: Single Digital Platform of the Peruvian State for Citizen Orientation. Available at: https://www.gob.pe/institucion/sernanp/noticias/343444-sernanp-inicia-actualizacion-de-estrategia-nacional-de-areas-naturales-protegidas-al-2050.

14. Instituto Nacional de Estadística e Informatica (INEI). 2018. Perú: Perfil Sociodemográfico Informe Nacional. Censos Nacionales 2017: XIII de Población, VII de Vivienda y III de Comunidades Indígenas. Lima: Instituto Nacional de Estadística e Informática. 214–215. Available at: https://www.inei.gob.pe/media/MenuRecursivo/publicaciones_digitales/Est/Lib1539/libro.pdf.

15. SPDA Actualidad Ambiental. "Isolated." SPDA Actualidad Ambiental. Available at: https://www.actualidadambiental.pe/piaci/reconociendo-a-los-piaci.

16. The formalization requests numbered here include communities that find themselves at different steps in the titling process. To gain collective land titles, IPs must go through a process of recognition as Native Communities. After recognition, the law establishes three other legal-physical consolidation procedures to secure the communal territories: titling, georeferencing and expansion.

17. Analysis of overlap between protected areas and community territorial claims by Amazon Conservation Team.

18. Various data sources were consulted when writing this report: For information on constituted Indigenous resguardos, Community Councils, Indigenous expectations and Campesino Reserves, we consulted the National Land Agency's (Agencia Nacional de Tierras) geoportal. Available at: https://data-agenciadetierras.opendata.arcgis.com; The Universidad Javeriana and the ANT provided additional insight on Community Councils and Indigenous expectations; For information on the water networks, departments and capital cities, we consulted the Instituto Geográfico Agustín Codazzi (IGAC). Available at: https://geoportal.igac.gov.co/contenido/datos-abiertos-igac; For information on the Colombian Amazon Region boundary, we consulted cartographic data from RAIG. Available at: https://www.amazoniasocioambiental.org/es/mapas/#!/descargas; For information on Colombian protected areas, we consulted the Sistema de Información Ambiental de Colombia (SIAC). Available at: http://www.siac.gov.co/catalogo-de-mapas.

19. Defensoría del Pueblo. 2018. "Informe de Adjuntía N° 002–2018–AMASPPI PPI. El largo camino de hacia la titulación de comunidades campesinas y nativas." Defensoría del Pueblo. Available at: https://www.defensoria.gob.pe/informes/informe-de-adjuntia-no-002-2018-amasppi-ppi-2/.

20. Praeli, Yvette Sierra. 2021. "In Peru's Amazon, deforestation and crime sweep through Indigenous communities." Mongabay. Trans. Sarah Engel. Available at: https://news.mongabay.com/2021/11/in-perus-amazon-deforestation-and-crime-sweep-through-indigenous-communities/.

21. Restrepo, Eduardo. 2019. Afrodescendientes en el Putumayo. Informe de Investigación del semillero de investigación Afroamazónicos de la Pontificia Universidad Javeriana.

22. Hein, Jonas, Carlos Del Cairo, D. Gallego, Tomás Gutiérrez, J.S. Vélez, and J.C.R.D. Francisco. 2020. A political ecology of green territorialization: Frontier expansion and conservation in the Colombian Amazon. DIE ERDE–Journal of the Geographical Society of Berlin 151(1): 37-57. doi: 10.12854/ERDE-2020-456.

23. Pérez, Manuel. 2007. Las zonas de reserva campesina (ZRC) en Colombia. Revista Javeriana (738): 68-77. Available at: https://dialnet.unirioja.es/servlet/articulo?codigo=2354302.

24. Instituto Von Humboldt. 2017. "Zonas de Reserva Campesina en el escenario del posconflicto: Una herramienta comunitaria para el manejo de la biodiversidad." Biodiversidad. Available at: http://reporte.humboldt.org.co/biodiversidad/2017/cap4/404/#seccion1.

25. Ibid.

26. Government of Peru. 2009. Constitutional Tribunal. Ruling EXP 01126–2011–HC/TC of 11 September 2009, Principle 22.

27. International Labor Organization (ILO). 1989. "C169— Indigenous and Tribal Peoples Convention, 1989 (No. 169)." International Labor Organization. Available at: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169#A22.

28. Ibid. Article 2, Aside D.

29. See: Article 4, Law No. 28736/2006; Article 25; Article 34; Supreme Decree No. 008/2007; Law No. 28736/2006 (Law for the Protection of Indigenous Peoples in Situations of Isolation or Initial Contact); Supreme Decree No. 008/2007; Article 55, Article 66 and Article 89 of the Peruvian Constitution of 1993; Law No. 27308/2000 (Forestry and Wildlife Law).

30. It is important to clarify that many years later, through Ruling C–139/1996, the Constitutional Court declared the word "savage" unconstitutional. The Court stated: *"The terminology used in the text, which refers to "savages" and "reduction to civilization" ignores both the dignity of the members of Indigenous communities and the fundamental value of ethnic and cultural diversity. A pluralist conception of intercultural relations, such as that adopted by the 1991 Constitution, rejects the idea of domination implicit in integrationist tendencies. Although it can be understood that the terms of the referred article have been tacitly repealed by the new laws regulating the matter (e.g., ILO Convention 169, which speaks of "Indigenous and tribal peoples") and, above all, by the 1991 Constitution, the Court finds no reason to maintain this article in force, since its meaning, regardless of the terms in which it is expressed, is contrary to the Constitution."*

31. Colombia, Constitutional Court Ruling T-495 of 2007. Magistrate Rapporteur Jamie Cordoba Triviño.

32. Franco Roberto. Cariba malo: Episodios de resistencia de un pueblo indígena aislado del amazonas leticia: Universidad Nacional de Colombia, 2012. xi.

33. President of the Republic of Colombia. 17 July 2018. Decree 1232 of 2018. Whereby Chapter II, of Title II, of Part X, of Book II of Decree 1066 of 2015: Sole Regulatory Decree of the Administrative Sector of the Interior is added to establish special measures for the prevention and protection of the rights of Indigenous Peoples in Isolation or Natural State and the National System for the Prevention and Protection of the Rights of Indigenous Peoples in Isolation or Natural State is created and organized.

34. Ibid. However, this provision does not mention or include Indigenous Peoples in Initial Contact.

35. Ibid. Article 193.

36. Servicio Nacional de Áreas Naturales Protegidas por el Estado. Reservas Comunales de Perú: Co-gestión entre Pueblos Indígenas y Estado para la Conservación y Desarrollo. https://conservation-development.net/rsFiles/Datei/Peru_Reservas.Comunales_Co-Manejo_2017.pdf

37. President of the Republic of Colombia. 1977. Decree 622 of 1977. Whereby Chapter V, of Title II, of Part XI, of Book II of Decree–

Law 2811 (1974) on the "National Park System"; Law 23 (1973) and Law 2a (1959) are partially regulated. Article 5, numeral 5.

38. The CNRNR refers to the National Natural Park System, which has several entities within it, but all are part of the category using the denomination Park regulated by the same regulation. However, the protected areas system with categories other than parks derives from the first instance of Law 165 (1994).

39. Parques Nacionales Naturales de Colombia. 2001. "Política de participación social en la conservación." Unidad Administrativa Especial del Sistema de Parques Nacionales Naturales, Ministerio del Medio Ambiente. Bogotá: Parques Nacionales Naturales de Colombia, 9.

40. Parques Nacionales Naturales de Colombia. 2001, 24.

41. Carrillo, Claudia Zúñiga, and Doménica Villena Delgado. 2019. Análisis Sobre: la Propuesta del RCTUCM. Lima: Derecho Ambiente Y Recursos Naturales. Available at: https://dar.org.pe/archivos/publicacion/analisisdar_rctcum.pdf.

42. Monterroso, Iliana, Peter Cronkleton, Danny Pinedo, and Anne M. Larson. 2017. Reivindicación de Derechos Colectivos: Reformas de Tenencia de Tierras y Bosques en el Perú (1960–2016). Bogor: Center for International Forestry Research (CIFOR). Available at: https://www.cifor.org/publications/pdf_files/WPapers/WP227Monterroso.pdf.

43. As happened with the creation of the Barrancominas municipality.

44. GAIA Amazonas. 2020.

45. Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP). 2020. "Socializan enfoques sobre 'territorio integral' entre pueblos indígenas y sociedad civil." Asociación Interétnica de Desarrollo de la Selva Peruana. Available at: http://www.aidesep.org.pe/noticias/socializan-enfoques-sobre-territorio-integral-entre-pueblos-indigenas-y-sociedad-civil.

46. In Colombia, the exception is the exclusion in Law 70 of 1993, which states that a collective title cannot overlap with park system areas. However, they can coexist with other SINAP categories.

47. For more information on the deadlines for the preparation, participation, consultation and approval of the NDP, see: Departamento Nacional de Planeación. "Tiempos de Implementación del Plan Nacional de Desarrollo." Government of Colombia. Available at: https://www.dnp.gov.co/Plan-Nacional-de-Desarrollo/Paginas/Tiempos-de-implementacion-del-Plan-Nacional-de-Desarrollo.aspx.

48. See: Resnatur, Instituto Humboldt, Fundación Natura, and Proyecto Regional Áreas Protegidas Locales. 2021. Otras Medidas Efectivas de Conservación Basadas en Áreas (OMEC): Guía para su identificación, fortalecimiento y reporte en Colombia. Bogotá: Asociación Red Colombiana de Reservas Naturales de la Sociedad Civil. Colombia has already reported the country's first two OMECs in this database which appears in this report in three parts. The first part explains the international context of OMECs. The second part shows the step-by-step application of the criteria, giving indications on how to run them and verify the results, and finally part three illustrates the topic with seven cases of potential OMECs. Two cases are about Type D governance by ethnic groups, one from the Awá Indigenous community (Nariño), and the other from a Black community in the Pacific (Valle). See also: IUCN. 2019. Reconociendo y reportando otras medidas efectivas de conservación basadas en áreas del Grupo de Trabajo de la Comisión Mundial de Áreas Protegidas. Gland: International Union for Conservation of Nature.

49. Ministry of the Environment and Sustainable Development. 2021. Report on Other Effective Measures of Conservation Based on Areas – OMEC, Process: Environmental instrumentation. Not Published.

50. Defensoría del Pueblo. 2018. El largo camino de hacia la titulación de comunidades campesinas y nativas.

51. Observatorio de Derechos Territoriales, Secretaría Técnica Indígena, and Comisión Nacional de Territorios Indígenas. 2019. Informe Estado Actual de las Solicitudes de Formalización de Territorios Indígenas. Bogotá: Comisión Nacional de Territorios Indígenas. Available at: https://cntindigena.org/documents/Informes/OBS_Informe_Formalizaciones_23_06_2020.pdf; Data on Afro-descendant communities in the process of collective titling is available on the Observatorio de Territorios Étnicos de la Universidad Javeriana website. See: Observatorio de Territorios Étnicos y Campesinos. "Consejos Comunitarios: Mapa Interactivo de Consejos Comunitarios." Available at: https://consejos.etnoterritorios.org/.

52. Secretariat of the UN Convention on Biological Diversity (CBD). 2021. "Preparations for the Post-2020 Biodiversity Framework." Convention on Biological Diversity. Available at: https://www.cbd.int/conferences/post2020.

53. The Master Plan is reviewed and updated every 10 years in a broad participatory process led by the National Service of Natural Areas Protected by the State. See: Servicio Nacional de Áreas Naturales Protegidas por el Estado (SERNANP). "Biblioteca." Plan Director: Sistema de Áreas Naturales Protegidas del Perú." Available at: https://plandirectoranp.pe/.

54. MUQUI. 2021. "Pronunciamiento por un Pacto de Leticia Con Los Pueblos Indígenas Tras Incendios del 2019." MUQUI. Available at: https://muqui.org/noticias/pronunciamiento-por-un-pacto-de-leticia-con-los-pueblos-indigenas-tras-incendios-del-2019/.

55. Technical guidelines for joint action between the Ministry of Culture and the National Service of Natural Areas Protected by the State in Natural Protected Areas and buffer zones where the presence or displacement of Indigenous Peoples in isolation and initial contact has been determined.

56. Although Supreme Decree 014–2021–MC was approved on 22 July 2021, approving the new ROF of MINCUL and creating the new general directorate of PIACI (Article 33), it was repealed by Supreme Decree 020–2021–MC, emitted 8 December 2021. In this sense, the change of the DACI to a general directorate is without effect. The Sole Final Complementary Provision of this Supreme Decree states that the Executive Branch, with the endorsement of the Minister of Culture, has a term of no more than 120 working days (15 May 2022), counted from the day after its publication, to approve Section One of the ROF of the Ministry of Culture.

57. Instituto Von Humboldt. 2017.

58. GAIA Amazonas. 2020. "Territorialidades Indígenas y Diversidad en la Amazonía: Perspectivas de Consolidación Político Administrativa de la Amazonía Oriental Colombiana." GAIA Amazonas. Available at: https://www.gaiaamazonas.org/uploads/uploads/books/pdf/Memorias_Foro_Territorialidades_Indigenas_en_la_Amazonia_compressed.pdf.

ANNEX 1

Prioritization of indicative pathways of the actions and processes identified according to low, medium and high feasibility (follow color spectrum for correct reading).

FEASIBILITY		
LOW	MEDIUM	HIGH

A. PERU

Indicative Pathway	Actions and Stakeholders
Explicit adoption of a rights-based approach in the conservation regime	1) Incorporate the concept in the proposed National Policy on Indigenous Peoples as well as activities and indicators that SERNANP must comply with to guarantee its implementation in the management of SINANPE. Incorporate a component in this policy proposal that expressly establishes the concept and details lines of action to be implemented by SERNANP. It is important to note that this would be the first policy for Indigenous Peoples in the history of Peru. **Stakeholders:** MINCUL, SERNANP
	2) Development of guidelines on this concept within the framework of the updated ANP Master Plan. Without the prejudice of seeking the express development of this concept in our regulations, SERNANP can incorporate strategies to guarantee its recognition and effectiveness as part of the development of the intercultural approach that governs this updating procedure. Thus, civil society and Indigenous organizations participating in the process of updating the Master Plan may request and submit a proposal to incorporate specific components to make viable: (i) the recognition of the rights to territory within NPAs; (ii) the management of these spaces; and (iii) participation in decision-making for them. **Stakeholders:** SERNANP, Indigenous Organizations, Civil Society
Regulatory integration between the environmental conservation regime and the collective tenure regime	1) Investigation with field research to gather accurate information on the number of communities recognized before or after the establishment of the PNA that do not have land titles and their approximate size. The SPDA is carrying out field research to collect official and reliable information on these cases in the regions of Loreto and Madre de Dios. Likewise, information will be collected on the number of communities that, despite having a property title, must be georeferenced. **Stakeholders:** Civil Society, Indigenous Organizations
	2) Strengthening SERNANP to become an intercultural institution. Participatory development and approval of guidelines that clarify how SERNANP applies the intercultural approach in its various activities. **Stakeholders:** SERNANP, MINCUL
	3) A proposal to modify the existing regulations regarding the titling of Native communities overlapping with ANPs. It is necessary to include all assumptions related to this overlapping and, mainly, to establish the criteria that credit ancestral possession in the administration following international guidelines. **Stakeholders:** MIDAGRI, MINCUL, MINAM, SERNANP

Indicative Pathway	Actions and Stakeholders
	4) Elaboration of joint intervention guidelines between DIGESPACR and SERNANP that clarifies for regional governments how to proceed with the demarcation of Native communities overlapping with NPAs. Regulation should be approved through a Supreme Decree linking both ministries. As an additional action to the articulation of the ministries, a joint budget and monitoring plan for accountability should be created. Administrative procedures should contain administrative sanctions for non-compliant officials. **Stakeholders:** MIDAGRI, SERNANP, MINAM
	5) Promote the approval of the regulation project "Technical guidelines for joint action between the Ministry of Culture and the National Service of Natural Areas Protected by the State in areas of natural protected areas and buffer zones where the presence or displacement of Indigenous Peoples in isolation and initial contact has been determined." **Stakeholders:** MINCUL, SERNANP, MINAM
	6) Strengthening of the General Directorate of Indigenous Peoples in Isolation and Initial Contact by providing it with a larger budget as well as additional personnel to monitor the reserves.
Other measures to guarantee the exercise of the rights of Indigenous Peoples in Peru	1) Strengthen Indigenous organizations so that they can play an active role in the defense of their rights in the different jurisdictional channels, including administrative and judicial. Develop projects that allow these organizations to have their own legal offices and/or have access to adequate legal sponsorship. This will enable them to take the decision to resort to the courts, administrative or judicial, in order to claim their collective rights. Stakeholders: Indigenous organizations (AIDESEP, ORPIO, FENAMAD)
	2) Update the data of the SICAR Cadastral System and the SIC–Communities (official cadastral systems managed by MIDAGRI). Development of public investment projects to update information, improve the information storage systems used by the GORES and, finally, the georeferencing of Native communities. Stakeholders: DIGESPACR, regional governments
	3) Modify Law 28736, the Law for the Protection of Indigenous or Native Peoples in Isolation and Initial Contact. **Stakeholders:** Congress of the Republic

B. COLOMBIA

Indictive Pathway	Actions and Stakeholders
Explicit adoption of the rights-based approach and the bioculturality mandate in the conservation regime	1) Socialize and introduce to the National Environmental Council the rights-based approach and the mandate of bioculturality in conservation through different exposure, participation and decision-making methodologies.
	2) Within the National Environmental System framework, the National Environmental Council, in its capacity and function of intersectoral coordination in environmental matters, should lead the creation of guidelines that require the adoption of a rights-based approach and a biocultural mandate in all programs, projects, policies and measures of authorities with environmental functions.
	3) Review and adapt existing environmental conservation policies, programs, measures, projects, and guidelines to a rights and biocultural approach in a cross-cutting manner within the National Environmental System.
	Stakeholders for Actions 1, 2 and 3: Ministerio de Ambiente y Desarrollo Sostenible; Corporaciones Autónomas Regionales; Parques Nacionales Naturales; Sistema Nacional Ambiental; Consejo Nacional Ambiental; Territorial Entities; Autoridad Nacional de Licencias Ambientales; Instituto de Hidrología; Meteorología y Estudios Ambientales (IDEAM); Instituto de Investigación de Recursos Biológicos Alexander Von Humbold; Instituto Amazónico de Investigaciones Científicas (SINCHI)
Creation and expansion of collective territories and strengthening of the process of organization, systematization and digitization of the public digital archive of data on collective territories	1) Establish an inter-institutional communication strategy that promotes the coordination of authorities in the administration of collective territories.
	2) Prioritization of constitution and expansion of collective territories requests.
	3) Strengthening and improving the methods used by the National Land Agency to collect and register information, and update, complement and adjust the National Land Agency's databases.
	4) Demarcation of Ancestral and Traditional Territories under Decree 2333 (2014).
	Stakeholders for Actions 1, 2, 3 and 4: Ministry of Agriculture and Rural Development; National Land Agency (ANT); Ministry of the Interior; Public Instruments Registry Office; Agustín Codazzi Geographic Institute; Ministry of Environment and Development.
Implement legal figures that intrinsically unite conservation and collective property	1) Development of regulations that expressly integrate in a single legal framework, provisions that come from environmental and ethnic group legislation, overcoming the logic of regulating this relationship by way of exception.
	2) Legal development of conservation entities created by the ethnic communities themselves.
	3) Consider, with the consent of the ethnic groups, collective territories as possible complementary conservation strategies (OMEC), without the need to be declared under protected area categories (i.e., work on pilot cases proposed by the communities themselves).
	4) Explicit and structural adoption of the rights-based approach in legislation and forms of governance of protected areas and other complementary conservation strategies.
	Stakeholders for Actions 1, 2, 3 and 4: Congress of the Republic or Presidency (depending on whether a law or decree is required); Ministry of Environment, Interior and Agriculture; Regional Autonomous Corporations; ethnic groups (prior consultation).

Measures to encourage a rights-based approach to conservation	1) Develop a rights-based approach in the qualitative analysis of compliance with the objectives and goals of the post-2020 Framework and its integration in national goals. Develop the methodology, conceptual scope, content and indicators for qualitative progress analysis of the integration of the rights-based conservation approach in targets 3 and 21 of the post-2020 Framework. Field work to give substance to this rights-based approach to conservation, also in light of and based on, ethnic groups' own normative systems (i.e., customary law), in pilot cases. **Stakeholders:** Ministry of the Environment; ethnic groups
	2) Support the formulation and implementation of special management regimes (REM). Support the construction of REMs in process (La Paya, Amacayacu and Alto Fragua Indi Wasi Parks) and participate in the elaboration of the REM for La Paya National Park (Putumayo). Support the implementation phase of the REMs signed in the Amazon in the Cahunarí and Yahojé Apaporis parks. Support the construction of a neighborhood agreement between Chiribiquete National Park and the resguardos adjacent to the park in the buffer zone. **Stakeholders:** National Natural Parks; Indigenous communities; Ministry of the Interior