



**Impunity and
Abuse of Power:
Strategy of Violence
Against the Indigenous
Peoples of COLOMBIA**



2021

INDIGENOUS PEOPLES RIGHTS INTERNATIONAL



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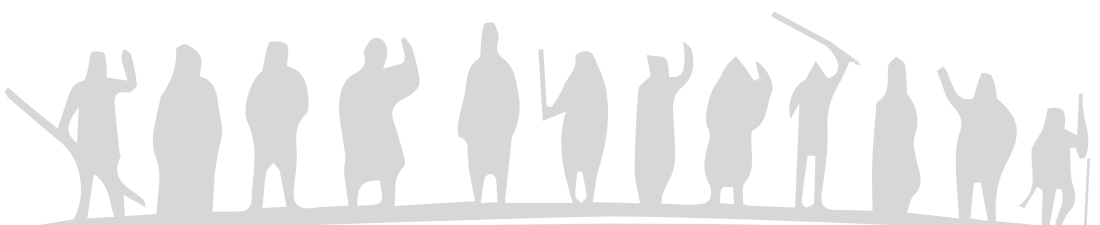



Presentation

Indigenous Peoples Rights International (IPRI) was created in 2019 by former United Nations Special Rapporteur, Victoria Tauli-Corpuz and former member of the United Nations Permanent Forum on Indigenous Issues and UN Champions of the Earth award-winner, Joan Carling.

IPRI was established to respond to the increased violence and criminalization inflicted upon indigenous peoples throughout the world. These human rights violations impact indigenous peoples, individually and collectively, as their collective rights as peoples and communities are also often (sometimes simultaneously) implicated or negatively affected. Increased violence and criminalization is frequently a response to legitimate actions undertaken by indigenous peoples and their communities to defend their rights, rights universally recognized by the international community, inter alia, in the 2007 United Nations Declaration on the Rights of Indigenous People.

When indigenous communities engage in the defense of their fundamental human rights they are regularly subjected to homicide, forced disappearance, forced displacement, and unfounded charges that put





indigenous leaders in jail. Such violations are carried out in an environment that grants full impunity to perpetrators, a situation that is made worse by indigenous peoples' limited access to justice mechanisms.

To respond to this deeply concerning situation, IPRI has worked to increase awareness and advocacy, capacity-building programs and campaigns that highlight for the international community the need to support indigenous peoples' initiatives to denounce injustices and to protect themselves, individually and collectively. IPRI has also created a legal and sanctuary fund that provides individual and collective support for indigenous victims of violence and criminalization.

IPRI is presently active in six pilot countries, all experiencing high rates of violence and criminalization against indigenous peoples, all in a context of widespread impunity. These are the Philippines and India in Asia; The Democratic Republic of Congo in Africa; and Brazil, Colombia, and Mexico in Latin America. IPRI has carried out investigations and established alliances with organizations, indigenous leaders, and other relevant actors in each country to understand local conditions and trends in impunity, violence, and criminalization. In each country, IPRI also supports local actions and initiatives for prevention and increased protection.

IPRI is proud to present this report produced by the IPRI–Colombia team. The report analyses the relationships between indigenous peoples and the State. These relationships are characterized by domination and the arbitrary use of power in three different forms: cultural assimilation through regulations in State law, repression, and physical and cultural elimination. In each instance, the State targets particular lifeways as a function of the capitalist mode of production. Here, indigenous communities are deemed to be a central challenge for profit accumulation insofar as they engage in collectively organized living that demonstrate that alternate forms of inhabiting the planet are possible.

Specifically, the report highlights the ways that criminalization responds to three distinctive patterns of abuse of power involving discourse, regulation, and brute force, respectively. It thus situates criminalization, impunity, and other forms of violence within a complex web of actors, networks, and relations that contribute to the State enterprise of eliminating collectively organized ways of living.

This report is the result of a collective work in Colombia, which reflects IPRI's mission and vision for Latin America. It was elaborated with the participation of defenders of indigenous communities' human rights and victims of criminalization in the Departments of Cauca, Nariño, Guajira, Cesar, Caldas, and Chocó. The report was organized by Leonor Zalabata Torres¹, Francisco Hernando Vanegas Toro², María Elvira Guerra Cújar³, Edith Bastidas⁴, and Sonia Catalina Fracica⁵. The report was translated by Igor A. Rodríguez.

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PHOTO: Francisco Vanegas | IPRI Colombia



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⁶ Resguardo is the term used in Colombia for the lands and territories titled to Indigenous Peoples. Colonial Resguardo or Resguardo of Colonial Origin means that the titling was made at the time of the Spanish colony.





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Table of Contents

	PÁG.
Acronyms	11
Introduction	13
1. Indigenous Peoples in Colombia	17
2. Patterns of Abuse of Power	23
2.1. Limitation to Rights through Norms and Institutions	26
2.1.1. <i>The Regulation of Consultation</i>	28
2.1.2. <i>Control of Institutions: The Public Ministry of Colombia and Increased Impunity for Human Rights Violations of Indigenous Peoples and their Communities</i>	30
2.1.3. <i>Control of Peaceful Protest</i>	32
2.1.4. <i>Invisibility of Violence in Statistics</i>	36
2.2. Abuse through Discourse	38
2.3. Abuse of Force	41
2.3.1. <i>The Return of Violence against Indigenous Peoples after the Signing of the Peace Accord with FARC</i>	41
2.3.2. <i>New Repertoires in Violence</i>	43
2.4. Multiple Effects Resulting from the Abuse of Power by the State and Other Actors in the Defense and Exercise of Indigenous Peoples' Human Rights	44
2.4.1. <i>The Criminalization of Autonomy</i>	47
2.4.2. <i>The Criminalization of the Territory</i>	48
3. Some Existing Protection Measures for Indigenous Peoples	51
4. Conclusions	55
5. Recommendations	59
6. Works Cited	63





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ACIN	Association of Indigenous Councils of Northern Cauca
ACIPS	Indigenous Association of Public Councils of Pueblo Siona
BACRIM	Organized Criminal Bands
CAMAWARI	Major Open Council of the Awá People in Ricaurte
CERD	Committee on the Elimination of Racial Discrimination
CNMH	National Center for Historical Memory
CNPV	National Population and Housing Census
CNTI	National Commission of Indigenous Territories
CRIC	Regional Indigenous Council of Cauca
CRIDEC	Indigenous Regional Council of Caldas
DANE	Administrative Section for National Statistics
ELN	National Liberation Army
ESMAD	Anti-disturbance Mobile Squadron
EWS	Early-Warning system
FARC	Revolutionary Armed Forces of Colombia
FPIC	Free, Prior and Informed Consent
HRC	Human Rights Council (United Nations)
IACHR	Inter-American Commission on Human Rights
INCORA	Colombian Institute for Agrarian Reform
INDEPAZ	Instituto for Development and Peace Studies
IPRI	Indigenous Peoples' Rights International
JEP	Especial Jurisdiction for Peace
LGBTI	Lesbian, gay, bisexual, transsexual, intersex
MPC	Permanent Roundtable for National Accords
NGO	Non-Government Organization
NPR	National Park Reserve





- OHCHR** Office of the UN High Commissioner for Human Rights
- ONIC** National Indigenous Organization of Colombia
- ORIVAC** Regional Indigenous Organization of Valle del Cauca
- RUV** Registry of Individual Victims
- SNSM** Santa Marta Snowy Mountain Range
- UARIV** Special Administrative Unit for the Support and Integral Reparations of Victims
- UDEFEQUA** Protection Unit of Human Rights Defenders–Guatemala
- UNIPA** Awá People’s Indigenous Unity





Introduction

This report was written in a crucial moment of Colombian history, during the popular uprising in the country. The uprising was the result of ongoing injustices and abuse of power by centrist and right-wing elites that have governed the country for decades. The national population has suffered gross human rights violations and even crimes against humanity.⁷ As regards the current uprising, organizations have reported 66 killings (INDEPAZ, 2021), 123 disappearances (Judicial Memorandum, 2021), 866 persons wounded, 2,152 detainees (Defender la Libertad, 2021), and 22 cases of sexual violence (Tembloros, 2021) as of November 19, 2021.

⁷ For indigenous peoples, this urban/rural collective action was just one more action in a long series of mobilizations for the defense of territories and ethnic, physical, and cultural survival. This extended struggle has cost thousands of lives and involved criminalization and subjection to the decision of State and non-State actors seeking to dismantle their ways of life.





These numbers include gunshot injuries against ten indigenous participants from the Regional Indigenous Council of Cauca (CRIC) on May 9th in the city of Cali. These attacks also resulted in the hospitalization of twenty-three-year-old leader Daniela Soto, who required three surgical procedures to save her life.⁸ On May 16th, Erasmos Pérez, a fifty-two-year-old Awá indigenous man from the Ulbí Nubalbí Alto Resguardo in the municipality of Barbacoas, was also wounded by gunfire, presumably by military personnel, as he drove to the community of Predio el Verde to join the humanitarian minga.⁹ That same day, Jhon Alexander Chagüendo Yotengo, a young Nasa man, was killed in Cali.¹⁰ On May 22, the Indigenous Regional Council of Caldas (CRIDEC) reported the forced disappearance of Andrés Córdova Tamaniza, an Embera inhabitant of the Totumal Indigenous Resguardo, who had participated in the demonstrations and was seen transported away in the morning of May 22 from the Municipality of Belalcazar.¹¹ On May 23, the Regional Indigenous Organization of Valle del Cauca (ORIVAC) reported the detainment and disappearance of Nasa villager Oliver Tenorio Noscue, member of the Indigenous Guard,¹² once again presumably at the hands of Military personnel. His whereabouts are presently unknown.¹³ On May 24, indigenous organizations reported the disappearance and subsequent killing of three Koreguaje persons of the Becocha Cabildo, Guajira, in the Municipality of Leguízamo in Putumayo.¹⁴ On May 28, Sebastián Jacanamejoy, an Inga youth, was assassinated and Isam Imbacho, member from the Yanacona people, was seriously injured in a single incident.¹⁵

⁸ Radio Nacional de Colombia, “Familia de Daniela Soto reportó evolución positiva en su recuperación”, May 12, 2021. <https://www.radionacional.co/actualidad/familia-de-daniela-soto-reporto-evolucion-positiva-en-su-recuperacion>

⁹ Minga is a Kichwa word that refers to the practice of collective work for the interest of a community. In Colombia it is used for the reunion of indigenous peoples and their organizations for common actions to defend a common cause.

¹⁰ CRIC. “Cabildo Pitayó Comunicó: Sixteen persons injured or killed as a result of gunfire”. May 19, 2021. <https://www.cric-colombia.org/portal/comunicado-cabildo-pitayo-disparos-dejaron-como-resultado-mas-de-16-jovenes-heridos-y-dos-muertos/>

¹¹ CRIDEC. “Denunciation of forced disappearances of indigenous person and member of the Totumal reservation”. <http://crideccaldas.org/denuncia-desaparicion-forzada-andres-cordoba/>

¹² The indigenous guard is an autoprotection mechanism geared at preventing rights violations, including the rights to territory, autonomy, identity, life, personal integrity, liberty, and other rights threatened in the course of defending indigenous human rights.

¹³ Comisión de Derechos Humanos de los Pueblos Indígenas. Falso positivo y un desaparecido en la vía al mar Buenaventura. <https://comisionddhpi.com/2021/05/24/falso-positivo-y-un-desaparecido-en-la-via-al-mar-buenaventura/>

¹⁴ Feliciano Valencia. <https://www.facebook.com/FelicianoValenciaM/posts/3998845740194644/>

¹⁵ Contagio Radio. “Asesinan a Sebastián Jacanamejoy en medio de las manifestaciones en Cali”, May 29, 2021. <https://www.contagioradio.com/asesinan-a-sebastian-jacanamejoy-en-medio-de-las-manifestaciones-en-cali/>

This list accounts for only a fraction of the aggressions committed against indigenous leaders. Twenty homicides have occurred so far in 2021, bringing to 316 the number of assassinated indigenous persons since the signing of the Peace Accord with the Revolutionary Armed Forces of Colombia (FARC).¹⁶ Most recently, on April 20 IPRI–Colombia reported the homicide of Nasa indigenous authority, Sandra Liliana Peña Chocué.¹⁷

Beyond these tragic events, COVID-19 has infected 5,040,665 persons and caused 120,723 deaths as of November 19, 2021, according to the Colombian National Institute of Health. This makes Colombia the country with the third-highest number of COVID-related deaths in Latin America, with dramatic implications for indigenous peoples, particularly those in the Colombian Amazon.¹⁸

Furthermore, the ultra-right leadership of the incumbent Democratic Center Party has coopted various sectors of the government to favor large financial institutions. It regularly appeals to extractive companies with tax incentives, which then brings extractive projects into the traditional territories of indigenous peoples and peasant and Afro communities. Moreover, the government's lack of compliance with the Peace Accord, the cessation of dialogue with the National Liberation Army (ELN), the rising socio-political violence, the rampant violence against human rights defenders, and the increased presence of FARC splinter groups, ELN Guerrillas, paramilitary groups and national and international drug cartels have intensified the violence against the peoples and the communities.

In 2019 INDEPAZ identified the existence of fifteen paramilitary groups, six FARC splinter groups, and nine so-called “residual groups” in Colombia with a total number of 3,400 illegal combatants, while the ELN counts on 4,000 combatants.¹⁹ According to InSight Crime, which means that there are presently more than 10,000 illegally armed units throughout the country.²⁰

¹⁶ Notes from December 2020, <https://www.rcnradio.com/judicial/desde-la-firma-del-acuerdo-de-paz-han-sido-asesinados-316-indigenas-comision-etnica>

¹⁷ Indigenous Peoples Rights International. “Declaración sobre el asesinato de la gobernadora Indígena Sandra Peña en Colombia”. April 21, 2021. <https://iprights.org/es/campanas/peticiones-de-firma/colombia-declaracion-sobre-el-asesinato-de-la-gobernadora-indigena-sandra-pena-en-colombia>

¹⁸ Indigenous Peoples Rights International, 2021. Defending our Lands, Territories, and Natural Resources amid the Covid-19 Pandemic: Annual Report on Criminalization of, Impunity and Violence against Indigenous Peoples. April 2021, Baguio City, Philippines, pg. 29. <https://www.iprights.org/resources/publications/global-report-2020>

¹⁹ Indepaz. Informe sobre presencia de grupos armados en Colombia. 2020. <http://www.indepaz.org.co/wp-content/uploads/2020/11/INFORME-GRUPOS-ARMADOS-2020-OCTUBRE.pdf>

²⁰ InSight Crime. “Ejército de Liberación Nacional”, October 2021. <https://es.insightcrime.org/noticias-crimen-organizado-colombia/eln-colombia/>





As a last chapter of this somber story, the Colombian government has initiated institutional reforms that have increased impunity and the vulnerability of the communities. This includes the weakening of the Office of the Ombudsperson (*Defensoría del Pueblo*) and of the Office of the Inspector General of Colombia (*Procuraduría General de la Nación*); the institutional capture of the Office of the Attorney General of Colombia (*Fiscalía General de la Nación*), as well as the issuance of regulations that limit the fundamental right to free, prior, and informed consent and consultation, despite the fact that they contravene national and international jurisprudence and the treaty obligations of the State.

This report provides insights to better understand and to help prevent criminalization, impunity, and other manifestations of abuse of power against indigenous peoples. It considers the specific conditions of the different indigenous peoples in the country and the varied forms of violence deployed by the State and illegal actors with the objective of consolidating a capitalist model of accumulation through the dispossession of indigenous territories.

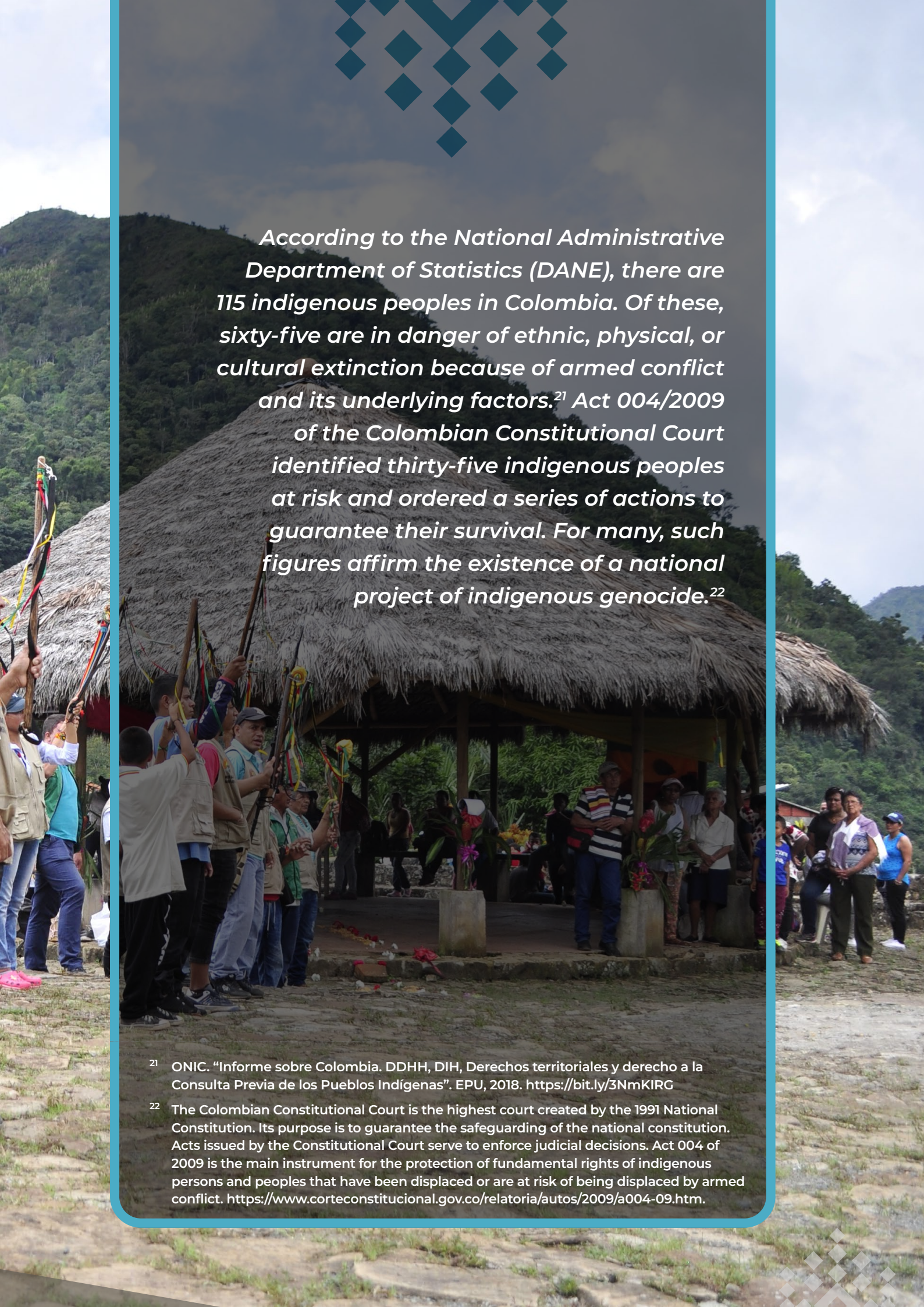
1 | Indigenous Peoples in Colombia



Source: www.etniasdecolombia.org



Photo: Francisco Vanegas | IPRI Colombia



According to the National Administrative Department of Statistics (DANE), there are 115 indigenous peoples in Colombia. Of these, sixty-five are in danger of ethnic, physical, or cultural extinction because of armed conflict and its underlying factors.²¹ Act 004/2009 of the Colombian Constitutional Court identified thirty-five indigenous peoples at risk and ordered a series of actions to guarantee their survival. For many, such figures affirm the existence of a national project of indigenous genocide.²²

²¹ ONIC. "Informe sobre Colombia. DDHH, DIH, Derechos territoriales y derecho a la Consulta Previa de los Pueblos Indígenas". EPU, 2018. <https://bit.ly/3NmKIRG>

²² The Colombian Constitutional Court is the highest court created by the 1991 National Constitution. Its purpose is to guarantee the safeguarding of the national constitution. Acts issued by the Constitutional Court serve to enforce judicial decisions. Act 004 of 2009 is the main instrument for the protection of fundamental rights of indigenous persons and peoples that have been displaced or are at risk of being displaced by armed conflict. <https://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm>.



In 2018, DANE identified 838 indigenous resguardos in 279 municipalities within twenty-nine Departments. According to the 2018 CNPV, 1,905,617 persons self-identify as indigenous, 4.4% of the total population. Between the General Census of 2005 and the 2018 CNPV, the indigenous population increased by 36.8%. However, despite these figures, DANE also reported a drastic, seemingly arbitrary indigenous population decrease in more than 500 resguardos. This has been attributed to new methods and concepts employed by DANE that generate a phenomenon that indigenous organizations have termed as “genocide by statistics.”²³

Colombia, as government representatives regularly reiterate, possesses progressive legislation on the rights of indigenous peoples. Indeed, Colombia’s 1991 Constitution includes a broad list of rights, and subsequent legislation and jurisprudence have been elaborated in accordance with the constitutional provisions and international instruments concerning indigenous rights. All this provides a seemingly robust legal system that should protect indigenous rights. Unfortunately, this only obscures the systematic process of ethnic, physical, and cultural extinction in Colombia.

The large gap between constitutional framework for protection and the reality experienced by indigenous peoples was noted in the above-mentioned Act 004 of 2009, which alerted the country and the national government to the process of extinction threatening indigenous peoples in the country. This is the result of centuries-old patterns of abuse of power, the actions of illegally armed groups and State agents inside indigenous territories, the expansion of extractive operations, drug trafficking, logging, the extermination of political and spiritual authorities, the inadequate regularization of indigenous ancestral territories, and the State neglect in terms of health and education services.²⁴

Statistics offered by UARIV paint a clear picture of the vulnerability hiding under the strong normative shield. Data gathered by the RUV between 1985 and January of 2021 records 233,937 indigenous victims, 219,971 of which were subjected to forced displacement.²⁵ After the signing of the Peace Accord

²³ ONIC. “Pueblos Indígenas demandamos garantías plenas en el proceso del Censo Nacional de Población y Vivienda”, August 2017. <https://www.onic.org.co/comunicados-onic/2023-pueblos-indigenas-demandamos-garantias-plenas-en-el-proceso-del-censo-nacional-de-poblacion-y-vivienda>

²⁴ CNMH & ONIC, 2019.

²⁵ Red Nacional de Información. Registry of individual victims, filtered by ethnicity and perpetrator. Available at: <https://cifras.unidadvictimas.gov.co/Cifras/#!/enfoqueDiferencial>

by the Colombian government and FARC in 2018, violence in indigenous territories continued and has recently intensified.²⁶ This is partly the result of the operational reorganization and restructuring of the paramilitary groups, the ELN, and the so-called BACRIM. This situation, together with security and drugs policies, and the seeming urgency to implement extractive and infrastructure projects, has increased the interests in strategic indigenous territories, triggering a new phase of physical and cultural extermination.

²⁶ <https://www.jep.gov.co/Normativa/Paginas/Acuerdo-Final.aspx>



2

Patterns of Abuse of Power

The term 'abuse of power' can be understood as a set of multiple, regular violent acts and omissions that unleash multifaceted human rights violations against indigenous peoples and their communities. These acts and omissions silence voices that denounce, oppose, or offer alternatives. They undermine the exercise of indigenous peoples' rights to self-determination and control over lands, territories, and natural resources, and to jurisdictional autonomy. They occur in a context of large asymmetries of power and resources between private companies and indigenous communities, and State disregard for national and international obligations requiring respect, protection, and the exercise and enjoyment by indigenous peoples of their rights (Aprodeh et al, 2018).



Three mechanisms can be identified as patterns of abuse of power: 1) the abuse of power through legal regulations and institutions; 2) through stigmatizing, racist, and discriminatory discourses; and 3) the abusive use of physical force.

The **abuse through legal regulations and institutions** pertains to State monopoly over the production, interpretation and application of laws, which consolidate legal frameworks that favor the interests of the State and powerful private sector groups. This manifests in regulations for natural resource exploitation; regulations on FPIC and consultation;²⁷ institutional judicial procedures that delimit, define, and provide titles for indigenous lands;²⁸ legal frameworks that, together with racist hermeneutics, are used to punish the defense of territorial rights; and normative mechanisms that regulate population censuses and enable the statistical genocide of indigenous peoples in territories of interest for public and private actors.²⁹

The **abuse of power through stigmatizing, racist, and discriminatory speech** refers to the use of the strong and all reaching voice of power (via the institutions and the media) to criminalize, defame, and the stigmatize social struggles for the defense of rights.

The final mechanism involves the State's monopoly of formal coercive power and its capacity to engage in the **abuse of physical force** to inflict harm upon indigenous peoples. The abusive use of force by the State, sometimes delegated by the State to non-State agents, to impose economic projects on indigenous territories includes, among other things, homicides; massacres; violent repression by State institutions; fumigation with glyphosates; omission of territorial protection; delegating the use of force to private actors, paramilitaries, and other armed actors; resource exploration and extraction in indigenous territories without FPIC; displacement; confinement; forced evictions; and arbitrary detentions.

²⁷ The State does not recognize indigenous peoples' own protocols and has tried to regulate the right to free, informed, and prior consent and consultation through presidential decrees that place the territorial interests of private actors over those of indigenous peoples.

²⁸ The territorial recognition of multiple indigenous Resguardos does not include extensive areas of ancestral lands. This is justified under civil regulations that favor individual property rights over collective property rights. Internal law regulates the donations of and the voluntary relinquishment of rights over collective lands through mechanism of civil law.

²⁹ The National Population and Housing Census reduced the population in over 522 indigenous Resguardos throughout the country. Some reservations were shown to have experienced an 80% population reduction. Before the development of "statistical genocide," the national government carried out a hermeneutical exercise concerning "habitual residents" and "indigenous territory" that departed from international standards in terms of census procedures and of the protection of indigenous territories.

The Colombian State has embraced the view that the internal armed conflict ended with the signing of the Peace Accord with FARC, and so all remaining conflicts are due to organized crime or illegal interests. This results in, by act or omission, the armed groups being allowed to freely occupy and operate in indigenous territories. This also reduces the political cost for the State and private actors of implementing megaprojects or legalizing the plundering of indigenous territories. A reduced political cost contributes an increase of selective attacks against high profile indigenous defenders. Perpetrators have realized of the “irrelevance,” or at least the mostly ineffectiveness, of the victims’ complaints at the national and international level.³⁰

An indigenous authority from Chocó portrayed the ongoing dynamics in his home territory since the signing of the Peace Accord thus:

After the signing of the Peace Accord the government changed strategies for operating in indigenous territories. In years past, indigenous communities had resisted with the strategy of continuous presence on the territory, which avoided forced displacement. Now, the government tries to achieve this by being unresponsive to everything. It relinquishes control and withholds information that residents require. Take for example Bajo Atrato: silence reigns in Acandí, Unguía, and Riosucio, people abandon their lands or are compelled to sell them to new settlers, who are expanding and occupying the lands and, currently, they are after the collective titles. They arrive because of illicit crops. Substitution and eradication is not happening. They have unilaterally taken the radical decision to continue aerial fumigations that mean, on one hand, the destruction of indigenous communities’ subsistence crops, which leaves them dealing with hunger, and [on the other] deforestation for the expansion of cattle. The government allows deforestation and cattle expansion. It’s a new way to displace people without making a sound.³¹

³⁰ Even with a rise in selective homicides, forced displacement and confinement, the main method for expelling the population has not been general homicide but to the broader strategy of weakening, dividing, coopting, and displacing it through different forms of the abuse of power.

³¹ Interview with mayor mayor Alberto Áchitoby María Elvira Guerra and Francisco Vanegas for IPRI-Colombia (October 2020).





As regards extractive projects threatening indigenous territories, the use of public and private force has three main effects: 1) to ensure territorial access for companies so that they can carry out their operations; 2) to establish territorial control for companies through cooptation, the creation of social division, surveillance, repression, and criminalization; and 3) to silence, control, and eliminate any criticism or resistance to the extractive activity (Aprodeh et al, 2018, pg. 22).

The arbitrary use of power and domination against indigenous peoples is fueled by two key phenomena. First, Colombian society continues to embrace a colonial mentality that established a political, economic, social, and cultural hierarchy of first *criollos*, mestizos, and then “premodern, uncivilized communities, as indigenous peoples were characterized.” Second, the capitalist development model employs these hierarchies for self-validation and to legitimize assimilation, repression, and extermination as the only way for safeguarding individual freedoms, private property, and free market from the ‘threat’ represented by the collective ways of life of indigenous communities.

Indigenous peoples’ collective modalities of living are founded on the pillars of self-determination, territory, autonomy, identity, culture, and indigenous law, all of which are viewed as a threat to the capitalist model. Accordingly, State and non-State agents attack each of these pillars, especially insofar as indigenous peoples and communities are considered to transgress the role of *indio permitido* (“acceptable Indian”) (Hale & Millamán, 2006), and become disruptors of capitalism. Ironically, indigenous peoples’ territories — once considered barren and useless — are now sought after by actors that seek to profit from their natural resources or strategic locations, and who will use violence to achieve these ends.

2.1 Limitation to Rights through Norms and Institutions

Some indigenous authorities in Colombia have expressed concern at the abuse of power through the institutional control that either excludes them or incorporates them in clientelist structures that reduce autonomy and foster divisions among peoples and organizations. This concern is reflected in the following views of an indigenous authority who participated in the discussions on the abuse of power:

Indigenous victims have no representation in the system. The decisions made by indigenous authorities are not reflected in the decisions made by institutions. The institutions that determine the issues affecting indigenous peoples in Colombia respond to the will of individual indigenous persons and ignore the decisions taken by legitimate indigenous bodies, the government uses this, the coopting of leaders. They train their own people and are even developing capacity-building programs for indigenous persons.

There is no adequate communication between peoples and institutions; everything goes through appointed interlocutors. The rights of indigenous peoples are weakened and that benefits the system. Those in power get their way by using tricks and tactics of national law that ignore the indigenous law.

Furthermore, the system makes laws about indigenous rights making themselves competent to make the decisions. But in many cases their decisions go against those of indigenous authorities. For example, decisions on certification of indigenous peoples, or laws that do not recognize that indigenous authorities are environmental authorities. The State has an endless number of norms to control indigenous peoples and territories. The abuse of power in cases concerning the territory and autonomy is the result of these government legal capacity to make decisions for indigenous communities. That's why communities endlessly argue and enter into conflict with institutions.³²

³² Interview with mayor Leonor Zalabata by María Elvira Guerra and Francisco Vanegas for IPRI-Colombia (November 2021).



2.1.1 The Regulation of Consultation

“In the regulations on consultation there is a risk that the cultural practices of indigenous peoples will go unrecognized.”³³



Although consultation has been presented as an effective means for indigenous peoples to have a say in matters related to external actors that impact their territory or culture, this has proven to be ineffective for two main reasons. First, the power that external actors can exert far exceeds that of impacted communities. In Colombia, these projects include dams, regional or national roads, and conservation initiatives, among other things. The imbalance of power arises either because opposition is numerically insignificant or outnumbered (low percentage of indigenous population affected versus the high percentage of beneficiaries/other interests at the regional or national levels) or because the expected economic, cultural, or environmental outcomes are deemed “essential” by the State. Beyond this, there are various malpractices that affect indigenous peoples, through subterfuge (replacing or bribing of local authorities), through influence peddling or by using academic experts and persons with power in the communities to impose or validate consultations.

Second, the immediate interest of the affected people may obscure the negative medium and long-term impacts. The initial incentives offered by these projects can be seen as a type of ‘saving grace’ in a context where some indigenous peoples’ survival is threatened by the loss or weakening of their traditional productive systems. Short-term gains can provide the urgent goods or service needs in the community. It is important to bear in mind that it is the State itself that designs the prior consultation procedure (Decree 2353 of 2019) and decides when it is applicable (Presidential Directive 08 of 2020).

During the month of April 2020, the draft statute “*by which the Fundamental Right to Prior Consultation is regulated, and other provisions are provided*” was discussed in the Senate. At the same time, before the social uprising, the national government attempted to consult through the Permanent Roundtable for National Accords (MPC) on the adoption of a decree to modify the 2015 Decree on Prior Consultation.

Such normative instruments have two objectives and one contextual factor in common. They seek, on the one hand, to weaken national and international standards for consultation and FPIC, including the State's obligation to respect community practices, customs, and institutions, and, on the other, to reduce the time and cost of consultation and FPIC processes to facilitate extractive projects in indigenous territories. The following statement made by the Cañamomo Lomaprieta Colonial Resguardo illustrates the risks to autonomy and the survival of indigenous communities posed by these governmental actions:³⁴

The risk for autonomy and ethnic and cultural diversity: being that Colombia contains a diverse plurality of indigenous peoples, the establishment of a general, abstract, and impersonal regulation, which is any statutory law or presidential decree, is not the constitutionally appropriate way to establish normative guarantees for enabling the fundamental right to consultation and [FPIC]. The objective of a regulation is to enable the exercise of a right, not to limit, fracture, or disfigure it. A statute or presidential decree that imposes the same, uniform normative standards on all indigenous peoples in matters of consultation operates, by definition, against the ethnic and cultural diversity that State is constitutionally required to protect.

The current criminalization context degrades [FPIC]: the current debate over the regulation of consultation is carried out in a context involving clear power asymmetries between the regulation advocates and indigenous peoples. It is public knowledge that this unfavorable situation undermines tranquility, which is a necessary condition for the free expression of the true will. Between 2016 and February 2020 more than 300 indigenous persons involved in the defense of territories and collective ways of life have been killed in the country. There were more than 85 massacres committed in 2020 and six massacres have been carried out so far in 2021 generating terror in rural Colombia; there have been more than 35,000 contagions and 1,208 COVID-19-related deaths among indigenous peoples, including the deaths of political and spiritual authorities.

³⁴ Cañamomo Lomaprieta Colonial Heritage Reservation. Petición urgente a la Mesa Permanente de Concertación con los Pueblos Indígenas. January 31, 2021. Available at: <http://www.indepaz.org.co/wp-content/uploads/2021/01/210010-Comunicado-final.pdf>





Indigenous peoples are suffering famines, massive displacements, confinements, and threats in Chocó, Guajira, Antioquia, Southern Córdoba, Nariño, Putumayo, North Santander, Cauca, and other indigenous territories, all while paramilitary groups, the ELN, drug traffickers, FARC splinter groups, and the military occupy these lands.³⁵ Moreover, mining and agro-industry companies and State agents increasingly fracture organizations and weaken autonomy with stigmatizing, racist hate speech, abuse of law, and the arbitrary use of force.

These circumstances preclude the possibility for indigenous peoples to provide FPIC to any initiative, including the regulation of the fundamental right to consultation. Moreover, the State initiative is an expression of abuse of the normative power of the State to reduce autonomy and ignore the principles of ethnic and cultural diversity.

In addition to the tragic situation described above, the national government is threatening to declare indigenous peoples in refusal -to engage in consultation processes- thus obliging them to engage in consultations amidst a physical, cultural, and statistical genocide.

2.1.2 Control of Institutions: The Public Ministry of Colombia and Increased Impunity for Human Rights Violations of Indigenous Peoples and their Communities

The Public Ministry is the Colombian authority charged with the protection and promotion of human rights, the safeguarding of public interests, and oversight of the conduct of public servants. Article 18 of the Colombian Constitution establishes that:

The function of the Public Ministry will be carried out by the Inspector General of Colombia, the Ombudsperson, and the agents of the Public Ministry, alongside jurisdictional authorities, designated district and municipal agents, and other public servants as determined by law. (...)

³⁵ Confinement happens when indigenous people cannot move out or around their communities due to the presence and control of armed actors. This prevents them, amongst others, to tend to their subsistence activities, such as agriculture, fishing or farming, which has resulted in famines. Moreover, they have to live together with the armed actors in control, forcibly providing for their needs.

The functions of the Office of the Ombudsperson include the design and promotion of policies that will promote and enable human rights throughout the country. Together with the Inspector General of the Nation, this Office is also responsible for safeguarding these rights. It must advance adequate respect for human rights in law and government action, fight against impunity that affects indigenous peoples and communities and use all its capacities to stop all forms of criminalization. The appointment of ‘government-friendly’ actors to these institutions threatens their independence from the Executive power. Such appointments lead to an increase in impunity and conceal abuses of power against indigenous communities.

The Office of the Ombudsman possessed the most up-to-date statistics, close to those of the movement for victims of indigenous communities, civil society organizations (such as *Somos Defensores* and *Indepaz*), and international bodies, including the OHCHR. This is largely due to its presence throughout the national territory, its investigative capacity through EWS, and its increased autonomy resulting from the signing of the Peace Accord.³⁶ The following table illustrates this:

Figure 2 | Comparative Information Sources Concerning Crimes Against Human Rights Defenders

ALTO COMISIONADO DE NACIONES UNIDAS PARA LOS DERECHOS HUMANOS (ACNUDH)	DEFENSORÍA DEL PUEBLO	SOMOS DEFENSORES	INDEPAZ
2016 59	2016 133	2016 80	2016 21*
2017 121	2017 126	2017 106	2017 207
2018 110	2018 178	2018 155	2018 298
2019 108	2019 134	2019 124	2019 279
TOTAL 398	TOTAL 571	TOTAL 465	TOTAL 805

*(desde el 24 de noviembre)

Source: *El Espectador*, 2021³⁷

³⁶ Office of Public Defense. Sistema de Alertas Temprana (SAT). Available at: <https://www.defensoria.gov.co/es/public/atencionciudadanoa/1469/Sistema-de-alertas-tempranas---%20SAT.htm>

³⁷ Available at: <https://www.elespectador.com/colombia2020/pais/los-peligros-de-unificar-las-cifras-de-asesinatos-de-lideres-alrededor-de-la-fiscalia/>





Unlike the Office of the Ombudsperson, the Office of the Inspector General is institutionally weak. Its coverage of the national territory is scant, particularly since there are areas where its functionaries cannot enter due to safety concerns. The Office of the Inspector General has tried to openly modify statistics to show favorable results for its fight against impunity. It has thereby joined the ranks of State and non-State agents that contribute to the stigmatization and criminalization of indigenous communities.³⁸

The OHCHR representative in Colombia has expressed concerns regarding government practices to manipulate statistics, limit the autonomy of institutions such as the Office of the Ombudsperson, and fall short of its obligations to prevent violations, investigate cases, file charges, and guarantee reparations for victims: “The important thing is to prevent killings, attacks, and threats against human rights defenders and social movement leaders; whether it be ten, twenty, or a hundred cases. Each threat, each attack, each homicide against defenders is geared at silencing their efforts, and this hurts democracy and the state of law” (El Espectador, 2021).

In this context, the risk exists that guarantees and protections for the rights of indigenous peoples in the country will be further retracted and result in an increase of criminalization and impunity. There are already precedents that illustrate what happens when the Public Ministry persecutes those that question the status quo and the capitalist order. The risk of impunity has also risen. International monitoring focused on indigenous peoples is thus fundamental.

2.1.3 Control of Peaceful Protest

On 18 January 2021, human rights organizations presented a report on political protests, police violence, and territorial control (Lazos de Dignidad Foundation et al, 2020). The report focused on the city of Bogotá and did not differentiate populations by ethnicity. Nevertheless, it provided evidence for four patterns of systematic infringements against social protest. It is relevant to note that the indigenous movement is represented in most of these protests in Bogotá, as they mobilize from their territories to the locus of government power to present their demands.

³⁸ The Office of the Attorney General of Colombia characterized the participation of indigenous groups in the national strike as “an armed national strike.” This characterization was denounced in a communiqué published by the CRIC. It characterized the Attorney General’s Office as engaging in abusive discourse that stigmatized and criminalized indigenous groups. See: ONIC (2021).

The patterns identified in the report are: 1) stigmatization, raids, and judicial farce; 2) the violation of protocols and disproportionate use of force by the national police; 3) police violence; and 4) aggression against human rights defenders. These harmful practices take on a heightened significance alongside the following data: in the year 2020 alone, 592 cases of police violence were registered, the majority of these committed on September 9, 10, and 11.³⁹ The violations include six cases of sexual abuse, fourteen killings, eleven gunfire injuries, and thirty-three aggressions committed against social movement leaders and human rights defenders.

Table 1 | Violent Events during the 2021 National Strike.

Event	Number of victims	Source
Homicide	66	Indepaz
Disappearance	123	Office of the Public Defender
Injury	866	Defender la Libertad Campaign
Detention	2152	Defender la Libertad Campaign
Sexual violence	22	Temblores (NGO)

Source: Created by IPRI Colombia based on various sources.

Table 2 | Violent Events Against Indigenous Persons during the National Strike of 2021.

Event	Number of Victims	Source
Homicide	8	ONIC, CNTI y ACIPS
Disappearance	5	Indigenous organizations
Injury	12	Indigenous organizations

Source: Created by IPRI Colombia based on various sources.

The number of killed and injured during the protest, alongside the government’s silence, the directives for militarizing the country, and the impunity for crimes makes it clear that the use of lethal violence against demonstrators is a State policy. It increases the number of civilian victims exponentially and enables worse kinds of violations against fundamental rights and liberties, including peaceful protest.

³⁹ These dates correspond to a protest against police violence due to a previous killing by the police





Table 3 | Comparison of Homicides and Injuries during the Protests.

Event	Period	
	2019 - 2020	Abril – Mayo 2021
Homicide	14	66
Injury	300	866

Source: Created by IPRI Colombia based on various sources.

2.1.3.1 The Regulation of Social Protest

The level of lethal brutality by police during social demonstrations in the period 2019–2020 presents a new chapter in the history of social protest in Colombia, since violence particularly targeted young organizers and participants. Fourteen people died during the protests and more than 300 were injured though actions considered by the police to be a legitimate response to the supposed “vandalism” of protesters. This repression was operationally grounded in Resolution 2903 of 2017, which regulates the use of force, weapons, ammunition, and non-lethal weapons by the National Police, and on the National Police Service Manual for Demonstrations and Disturbance Control.⁴⁰

The Colombian Supreme Court of Justice recognized the arbitrary and disproportionate use of violence against demonstrators in Decision STC-7641-2020 of September 22, 2020. It ordered the President of the Republic to review protocols on the use of force in demonstrations and to issue a statute on the use, reaction, and verification of force. This Decision paved the way for Decree 003 of 2021, enacting the protocol for reaction, use, and verification of legitimate State force and protection of the right to peaceful citizen protest. Some of the key problems of the Decree are reflected in paragraphs 50 and 53 of said document:⁴¹

⁴⁰ Ministerio de Defensa – Resolución 02903 “Reglamento para el uso de la fuerza y el empleo de armas, municiones, elementos y dispositivos menos letales, por la Policía Nacional”. June 23, 2017. <https://www.policia.gov.co/sites/default/files/resolucion-02903-uso-fuerza-empleo-armas.pdf>. Ministerio de Defensa – Resolution 3002. “For the issuance of the National Police Service Manual for Demonstrations and Disturbance Control.” June 29, 2017. https://www.policinglaw.info/assets/downloads/2017_Regulation_on_the_Handling_of_Public_Demonstrations.pdf

⁴¹ Presidential Decree 003, “Statute for reaction, use, and verification of legitimate State force and protection of the right to peaceful citizen protest.” January 5, 2021. See items 50 and 53. <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=154406>

- The government failed to review and restructure existing directives, even though they allow for police violence.
- The government failed to allow any citizen participation in the review of academic materials used for training and capacity-building of police officers, and it also rejected citizen participation in the Unified Command Outposts from which institutional responses are coordinated during the demonstrations.
- The government opposed defining clear, guaranteed, protective criteria in accordance with the State's international obligations for limiting detentions, transfers for protection, and transfers for police procedures, and it rejected the proposal that human rights organizations can verify the personal integrity of demonstrators subjected to those measures.

2.1.3.2 The Ministry of Defense: The Return of War and Violence and the Restricted Right to Social Protest

The return of war in indigenous territories is not surprising for the national government. In fact, it can be said that the return of war is a public policy effectively implemented by the current government. This is reflected in statements made during the organization of President Duque's cabinet by a retired military advisor in relation to obstacles for implementing the Peace Accord and the impunity surrounding serious rights violations against indigenous peoples and other rural groups. The advisor, made the following comment:


You that rejoice in having no wounded military in the Military Hospital, get ready because war is returning! (Metro. 2018).



General Barrero had already termed the Office of the Attorney General, in charge of investigating the so-called 'fake positives', as a 'mafia organization in charge of prosecuting the public forces'.

The Ministry of Defense has been simultaneously promoting the return to war and the regulation of social protest to transform it into an ordered expression of support for the status quo, all whilst conflict expands in indigenous territories. Former Minister of Defense, Guillermo Botero, proposed regulating social protest in the following sense:





As for the social, we respect demonstrations but also believe that protests should be orderly and fully represent the interests of all Colombians, not just those of a small group (Ciudadanía, 2020).



He subsequently accused protesters of being paid agitators connected to illicit funding and illegal actors, which he called organized mafias. For his part, the newly appointed Minister, Diego Molano supports the government's position to restrict the fundamental right to peaceful protest and he characterized the obstruction of roadways as "terrorist acts."

2.1.4 Invisibility of Violence in Statistics

The government engages in efforts to erase the impact of social and political conflict in indigenous communities and, more broadly, its impact on rural victims through the manipulation of statistics. Official figures on these matters fall below those reported on by civil society organizations and even other government entities. Institutional reorganization is also employed as a strategy in accordance with a so-called "new reality" to render invisible violence against indigenous peoples and communities.

The conflicting figures reported by governmental entities is shown by comparing those from the RUV and the CNMH. The RUV gathers information from governmental entities engaged in complaints concerning sociopolitical violence throughout the country. The CNMH, a national public entity charged with, among other duties, contributing to integral reparation and the right to truth, has created a database that cross-references official data with the testimonies of victims engaged in the reconstruction of historical memory.

According to information from the RUV, between 1985 and January of 2021 there were 233,937 indigenous victims affected by the following types of human rights violations: 13,105 threats, 454 cases of forced abandonment or eviction from lands, 19,913 cases of confinement, 9,824 homicides, 2,479 cases of enforced disappearance, and 219,971 cases of forced displacement.⁴²

During the celebration of the 2020 International Day of Indigenous Peoples, the CNMH presented figures for the same period that differed from those of the RUV. The CHMH reported 3,042 homicides and 659 cases of forced disappearance, which represent drastically lower rates than those reported by the RUV (CNMH, 2020).

⁴² It should be noted that a person can be the victim of multiple modalities of violence at the same time.

Table 4 | Erasure through State Statistics

	RUV	CNMH
Homicide	9.824	3.042
Forced Disappearance	2.479	659

Source: RUV data up to December 2018; CNMH, up to August 2020.

This contrast in government-derived data demonstrates the tendency to erase, or at least, reduce the magnitude of violence against indigenous peoples. These efforts are also enabled through strategies such as institutional restructuring or the use of euphemistic “technical language” that misrepresents reality and reduces the impact of serious human rights violations.

The Office of the Ombudsperson provides a recent example of institutional restructuring. This concerned the change of title of the *Delegate Ombudsman for the Rights of Displaced Population* to *Delegate Ombudsman for the Rights of Population in Human Mobility*. A forcibly displaced indigenous person from the Embera Chami community in the village of Totumal, Caldas described the name change thusly:

When we were first displaced, we had ways of organizing ourselves and we understood the process for demanding rights to the State. Then they changed the rules and we had to find new ways to organize. Now the Office of the Ombudsperson talks to us about human mobility, as if we were moving from one place to another because we wanted to do so and not because war and the government expelled us. Tomorrow, what will we be? Whatever. But we continue to be abandoned, moving from one place to another and without our own territory.

Another recent example of the use of “technical language” and euphemisms to cover up serious human rights violations and their impact on indigenous and non-indigenous communities concerns the semantic debate of whether to use the term “massacre” or “collective homicide” in official documents, a debate ongoing amid ninety-one massacres in 2020 and forty massacres in 2021.⁴³ (Indepaz, 2021). Presently, the national government uses the military-coined term “collective homicides” to refer to the killing of four or more

⁴³ Data available through May 26, 2021.





persons in a single incident. The imposition of this term not only reduces the number of massacres, it also symbolically reduces the severity of the facts and ignores the tragedy involved in this kind of aggressions for a people or a community.

Despite attempts at statistical erasure of the impacts of the social and political conflict on indigenous communities, there is evidence enough to affirm that indigenous peoples have been one of the main victims of the armed conflict, both before and after the signing of the Peace Accord with the FARC-EP.

2.2 Abuse through Discourse

General Recommendation 35 of the CERD identifies the contributing role of racist hate speech in mass human rights violations, genocide, and the worsening of conflict situations. According to CERD, racist hate speech is “a form of discourse that denies the fundamental principles of human rights, the importance of human dignity and equality, and seeks to reduce the esteem held by specific individuals and groups in society.”⁴⁴ It involves the deployment of stereotypes and stigmatization of indigenous peoples by State agents, companies, and media outlets, which ultimately foments aggression and criminalization.⁴⁵

In the case of Colombia, stigmatization of indigenous peoples and their authorities regularly falls into two broad categories; the first entails a long-held doctrine about the “internal enemy” and the second involves the unjustified notion that recognition of and respect for indigenous territorial rights could somehow negatively affect national “development.” The internal enemy doctrine can be traced back to the 1950s. It holds that every social or political actor that questions the established order presents a risk to national security and can therefore be considered to be an internal enemy. In the history of Colombia, this doctrine has effectively transformed political and social actors into targets of lethal violence by the State, paramilitary groups, and the law. A statement made by retired Army General Álvaro Valencia Tovar in 1988 clearly expresses the reach of the internal enemy doctrine:

⁴⁴ CERD General Recommendation No. 35; Combating racist hate speech. September 26, 2013, CERD/C/GC/35, Spanish version available at: <https://www.refworld.org/es/docid/53f4596b4.html>. Accessed on 21 November 2021.

⁴⁵ Report of United Nations Special Rapporteur on the Rights of Indigenous Peoples, V. Tauli-Corpuz, A/HRC/39/17, August 10, 2018, paragraph 47.



Every political or social actor that is opposed to the status quo automatically enters into the “internal enemy” category, thereby becoming a target for destruction, or one that is susceptible to being discredited, disqualified, or harassed.

Companies or other actors often make use of media outlets, taking advantage of the general lack of knowledge about the rights and traditions of indigenous peoples, to stigmatize them and portray them as barriers to development. The response by municipal counselors to Constitutional Court Decision T-005 of 2016 (protecting the Arhuaco people’s fundamental rights to autonomy, territory, participation and self-determination) provides a vivid example of this kind of speech. They were reacting to the court order to remove the telephone communication towers on the Alguacil Mountain, which is an Arhuaco sacred site. Their views were presented in an article entitled ‘Protection measure for the Arhuaco leaves Pueblo Bello villagers without internet and telephone’:⁴⁶



According to Pueblo Bello Councilman, Álvaro Imbrech, the protection measure [for removal] was submitted to the Sixth Revision Committee of the Constitutional Court, which ultimately enforced it. This decision has upset the Nuevo Colón and Nabusimake population because it means that local inhabitants will not have access to the internet because of the service provider’s necessary compliance with the court decision for deactivation of the phone lines” (El Pílon, 2021).

There are many similar examples. Consider the following article titles: ‘The dream of domestic gas service in Pueblo Bello finds an executioner in Arhuaco leaders’⁴⁷ and ‘Los Besotes Dam, a fifty-year aspiration, continues to be a dream: The project to supply water to Valledupar is thwarted by the ethnic groups and the lack of authority of the government’.⁴⁸


Stigmatizing speech like this ignores the cultural and spiritual reasons behind indigenous peoples’ decision to oppose such projects, for instance, as expressed by the elder Juan Bautista Solís:

⁴⁶ *El Pílon*, January 28, 2021.

⁴⁷ *La Calle*, 2021.


⁴⁸ *El Heraldo*, 2019.





Regarding the Rancheria River dam, the impacts do not depend on where it is built, either in the Guajira or the Magdalena territories. Rivers are like veins in a body: they extend to Mother Sea, bringing nutrients produced in the Sierra. Mother Sea lives alongside the volcanoes that purify the spirits, which then enter the air, clouds, and the snow. This means that the Sierra Nevada has the rights to its springs, to flow down to Mother Sea and to not be obstructed by pipelines. The natural flow has been prevented for years, like a prisoner. The sacred site of Besotes means communication of the upper and lower beings, of the four planets, of the illumination of stars, of the moon and the sun, is a self-sustaining body. It was created as nature, and to nature belongs.

Duty is law. Nothing that is good for Planet Earth can understood by force, only by spirit, from here and to rest of the world. That is the decision of the Mamo, for us to know the connections that exist between places and require the maintenance of what is natural. Leave us in peace, may they know the logic of our thought, just as we are iku Colombians.⁴⁹



It is unlikely that they will ever give us back Valledupar, Santa Marta, Riohacha... but we are still entrusted to them spiritually. An elder that sustains the nature of what was born—from the nine-month planet to the moon-derived transformations that keeps our bodies present—will have the possibility to rest.

These water-giving places that we are talking about, they are the connection. The telephones and the laws that were ignored... I speak and I listen, and know that we must experience the importance of existence now.

Remembering the social cartography of the past .. there is disorder in the present. [...] connecting knowledge is difficult ... advancing in the defense of the territory not only as indigenous, but as bunashi.⁵⁰ The snowy range is made up of nine mountains that belong only to Colombia; the territory cannot be transformed or endangered; it cannot be rented or lent out; it simply belongs... the indigenous person cannot sell a fruit; you cannot sell a philosophy because this will destroy the resources. Searching and dialogue guide us, and we must now meet these duties.⁵¹

⁴⁹ Arhuaco Colombians.

⁵⁰ White person.

⁵¹ Interview with mayor Juan Bautista Solís by Sonia Catalina Fracica for IPRI-Colombia.

Media outlets and aerial helicopter broadcastings also play a central role in the stigmatization of indigenous communities. It is through these transmissions that members of indigenous communities are said to have links with armed groups and drug smugglers, actions that put entire communities at risk. As for individual members of indigenous communities, it is soul-crushing for them to see their heroes, leaders, shamans, and others in such situation of vulnerability. Those who were deemed untouchable, able to enter different worlds and become invisible turn out to be all too susceptible to bullets. Indeed, criminalization can lead to suicide and collective despair.⁵²

2.3 Abuse of Force

2.3.1 The Return of Violence against Indigenous Peoples after the Signing of the Peace Accord with FARC

With the signing of the Peace Accord in 2016, violations against human rights and infringements of international humanitarian law went down noticeably in Colombia (CERAC, 2016). This decrease, however, did not last long in indigenous territories. The reorganization of paramilitary groups, the ELN, and BACRIM, alongside government security policies and the war on drugs, as well as the seeming urgency to implement extractive and infrastructure projects, made indigenous peoples a target once again, beginning a new phase of physical and cultural extermination.

According to the most recent Indepaz report, between 2016 and June 9, 2020, 269 indigenous persons have been assassinated in the country. Until the close of this report in 2020, forty-seven homicides have been registered, fourteen of them occurring during the COVID-19 quarantine. The Departments with the greatest number of victims during 2020 are Cauca (28), Nariño (5), Caquetá (3), Valle (3) and Caldas (2) (Indepaz, 2020).

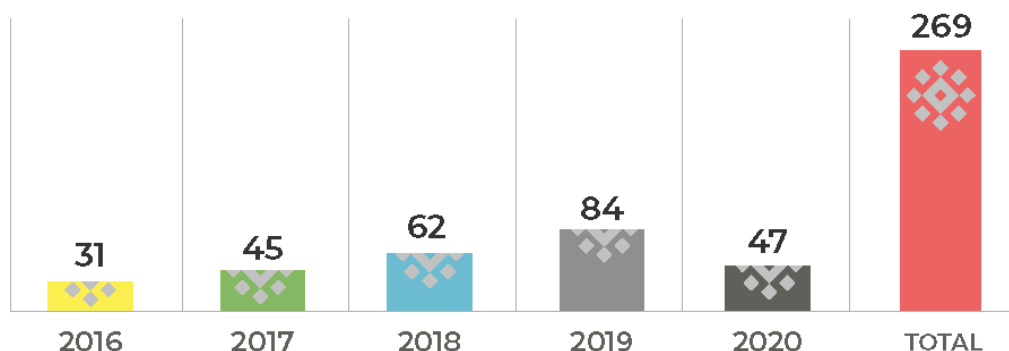
The following graphic shows the number of assassinated indigenous leaders and indigenous human rights defenders per year:

⁵² Particularly in the department of Chocó, displacement, cultural uprooting, the lack of opportunity to mourn losses, and recruitment practices negatively impacts the mental health of community members. For more information see: <https://www.elespectador.com/colombia-20/conflicto/los-suicidios-de-jovenes-indigenas-en-choco-que-nadie-atienda/>





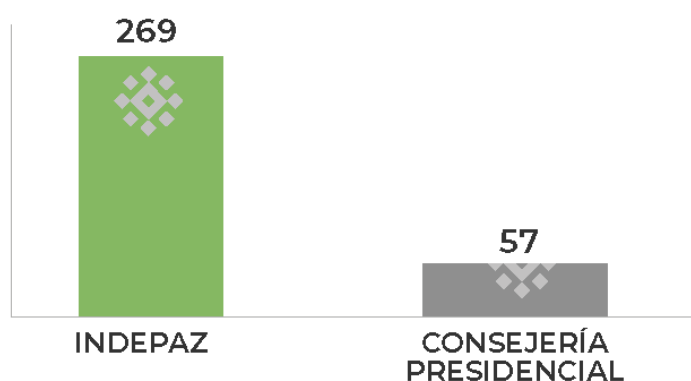
Figure 3 | Assassinated indigenous leaders and indigenous human rights defenders.



Source: Indepaz, 2020.

The report presented by the Presidential Council for Human Rights and International Issues, (based on information from OHCHR – Human Rights and National Police Elite Corps Newsletter from January 14, 2020) states that fifty-seven indigenous leaders were assassinated between 2016 and 2019. However, this number contrasts with the figure reported by Indepaz, which is 222 (Consejería Presidencial, 2020).

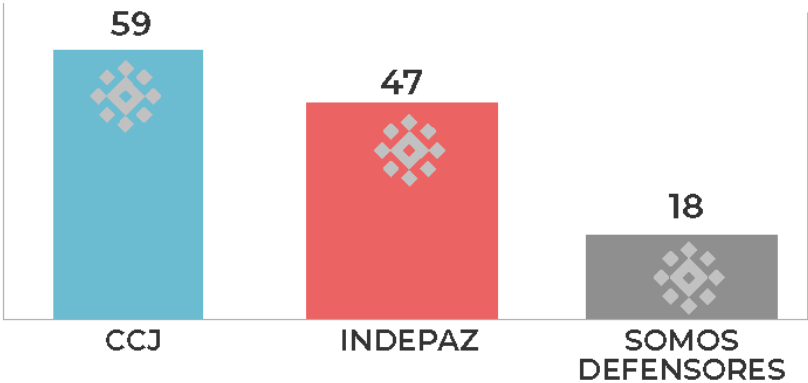
Figure 4 | Comparison of reported number of assassinations of indigenous leaders.



Source: Created by IPRI Colombia based on data from Indepaz and the Presidential Council for Human Rights.

The Colombian Commission of Jurists reported the premeditated killings of fifty-nine indigenous leaders during the first half of 2020 (Colombian Commission of Jurists, 2020), while the organization *Somos Defensores* reported the assassination of eighteen indigenous leaders (Somos Defensores, 2020).

Figure 5 | Comparison of homicide figures of indigenous leaders.



Source: Created by IPRI Colombia based on data from CCJ, Indepaz and Somos Defensores.

During the period 2016–2019, assassinations of indigenous leaders were mainly concentrated in the Departments of Cauca, Nariño y Putumayo. Most of the victims were indigenous authorities involved in the territorial defense (Indepaz, 2020). The Department of Cauca accurately reflects the kinds of conflicts that impact other territories with indigenous communities. These include conflicts over territories involving legal and illegal mining, monocrops, logging, cattle raising, land grabbing, oil projects and hydroelectric dams; conflicts concerning restitution, perfecting title, and the expansion and reorganization of resguardos; disputes among criminal and mafia organizations for control of territories and for gains derived from illegal activities; and conflicts stemming from the presence of national police in indigenous territories for eradication projects or the protection of mining and oil companies (Indepaz, 2020).

2.3.2 New Repertoires in Violence

The systematic violation of the human rights of indigenous peoples and communities when defending their territorial and environmental rights involves different intensities in the use of lethal violence and terror. Figures from the period after the signing of the Peace Accord (2016–2020) demonstrate a reduction of lethal violence as compared to the period 2003–2012. However, this reduction responds to more refined attacks, specifically focused on territory defenders. It also responds to the reconfigurations of organizations and actors that make conflict management difficult for communities. Before the Peace Accord, conflict management was based





on knowledge of each other, meaning that there were actors that were familiar to communities and who were open to establishing agreements. New reconfigurations of actors in the fight for territorial control, including FARC dissidence groups, ELN guerillas, paramilitary groups, and national and international drug cartels, have altered this situation by eliminating the presence of clearly identifiable interlocutors for dialogue, a situation that has contributed to the increase of violence against indigenous communities.

As a result, generalized homicides, massacres, and ‘exemplifying’ violence are no longer the principal ways of controlling, dissuading, evicting, or imposing projects on indigenous territories. As noted by Kalyvas (2000), political actors involved in conflicts selectively escalate violence as a means of obtaining territorial control. This could explain the reduction of massacres and homicides alongside the rise of non-lethal methods of violence such as forced displacement, stigmatization, and hate speech alongside the disruption of indigenous organization and the fueling of inter- and intra-ethnic conflict. These strategies reduce indigenous autonomy, self-governance, and the capacity for collective territorial defense.

2.4 Multiple Effects Resulting from the Abuse of Power by the State and Other Actors in the Defense and Exercise of Indigenous Peoples’ Human Rights

With the objective of creating a strategic national plan to prevent criminalization and impunity against indigenous peoples and enhance access to justice, IPRI Colombia organized dialogues with indigenous organizations to analyze the concept of criminalization. Criminalization is generally understood to involve the abuse of the punitive power of the State. However, this understanding is too limited for three reasons. First, direct abuse by official punitive entities is not frequently exercised against indigenous peoples. According to recent reports on criminalization in Colombia, based on testimonies by indigenous authorities and national experts, this kind of criminalization is more regularly employed against peasants, union workers, political party activists, and non-ethnic human rights defenders.⁵³ The second reason is that, for State and non-State agents, the abuse of formal punitive power is insufficient for weakening autonomy, undoing collective property, and eliminating any other form of collective life. Finally, the State and other actors will prefer the informal and illegal methods

⁵³ See CSPP, 2018; OBS, 2018; ONIC, 2018

to exercise punitive power to intimidate, dissuade, and eliminate individuals and communities that defend their collective way of life.

Indigenous communities identified as acts of criminalization both the institutional actions used by the State to confront any opposing political idea, and crimes committed by the State that violate fundamental rights like those of autonomy, authority, and existence. Both lead to the discrediting of indigenous communities and facilitate access to their territories and resources. Two kinds of violence were specifically mentioned: the criminalization of autonomy and the criminalization of the territory. The criminalization of autonomy involves the abuse of law by the State using its normative and interpretative monopoly. It can function through the creation of parallel indigenous organizations, the denial of legal pluralism, the weakening of uses and customs, and decisions that prevent indigenous communities from exercising political autonomy. The criminalization of autonomy deprives indigenous peoples of their political autonomy and erodes tradition and culture through affecting existing structures and dividing organizations. These strategies hamper local decision-making processes and weaken unity around territorial and cultural defense initiatives, and thereby advance cultural extermination.

The criminalization of the territory involves the deployment of abusive speech and public force to displace indigenous communities from their territories so that external actors can make use of their strategically advantageous locations or engage in legal or illegal resource extraction therein. This is developed through stigmatization, criminalization of social protest, forced displacement, forced recruitment, homicides, confinements, and massacres.

In Colombia, to criminalize indigenous peoples, mechanisms are used that ignore their collective identity and life plans. This encompasses a wide range of human rights abuses, from homicides to tagging, stigmatization, discrediting and limitation of the Indigenous Special Jurisdiction, lack of perfecting title of the lands and forced displacement in a context of violence. Criminalization also involves the non-recognition of indigenous law within the national legal system, thus legalizing plunder by outsiders and altering justice by making the indigenous peoples the 'bad actors'.

Since the signing of the Peace Accord, human rights violations resulting from the armed conflict and those arising from systemic violence are intertwined. The reasoning goes that anything that happens in Colombia is the result of the armed conflict, so addressing a symptom, but not the cause,





of ongoing violence. It is important to separate the human rights violations directed against indigenous peoples, their organizational structures, and their defense of the land, that are the result of the armed conflict and those that respond to structural racism to identify the underlying causes and be able to find strategic solutions.

This pattern of willful or systematic misrecognition is reflected in the words of *Mamu Faustino Alvares*, of the Gunchukwa community around territorial recuperation in the Department of Cesar:

In every peace process, they always come to ask what happened, how it happened, if it hurt; and we have always told everything that happened, what happened in our territory; but there has never been any kind of reparation. Whenever there is war, indigenous communities are the victims; they are the ones that carry the weight of war; they're the ones that must bury their dead; the ones deprived of their lands, whence their sacred spaces are ruined. After the war, what happens is the appropriation of land. We have always demanded justice for these wrongs, but nothing has been remedied, there is always impunity for the damages and crimes that have happened on our territory.




It has always been the same, the abuse and extermination only increases; we experienced a violence that came from outside; we never started the problems, but we always ended up as the victims, and it is important to recognize that the victims are not just people; there is also victimization of the land, of sacred sites, and a victimization of our ways of government. Many of the wars in the history of the Banachu people are related to land and all of the resources therein, but beyond that, there is the damage to so many of our sacred sites which has generated much darkness, which then engenders more war. During colonization, they ruined many sacred sites, temples, kankurwas⁵⁴ and those actions unleashed war. The continuous damaging of the territory, the bodies of victims of violence on the ancestral land create cycles of imbalance in the Sierra, and this is a result of the pollution by Butisinnu that took place in the territory.

2.4.1 The Criminalization of Autonomy

The criminalization of autonomy involves normative, institutional, formal, and informal mechanisms used by the State and non-State actors to eliminate the political, organizational, cultural and spiritual autonomy of indigenous peoples, all to restrict their right to self-determination and weaken their capacity to defend their territories. State laws are regularly used to limit the jurisdictional autonomy of indigenous peoples to the regulation of internal conduct and the administration of their territories. When indigenous justice goes against State precepts of order and private property, the State responds with various kinds of abuse of power. Among these, the following stand out:

- The abuse of the power for the production and interpretation of laws, especially to arbitrarily overrule or delimit indigenous justice. El abuso del poder de producción e interpretación normativa, incluido para desconocer o limitar arbitrariamente el derecho propio de las comunidades.
- The abuse of institutional functions. The Ministry of the Interior has developed institutional procedures to mediate and resolve conflicts in ways that weaken indigenous autonomy.
- Taking advantage of the existing socio-economic vulnerabilities to render respect for fundamental rights transactional. An example is making a community's access to health services conditional on their agreement to allow mining companies to operate in their territory.
- The extortion of indigenous authorities. For example, involving indigenous authorities in acts of corruption to control their decision-making.
- Physical, moral, and political attacks against visible indigenous leaders, which impact individuals and communities alike. At an individual level, they impact the authorities' moral status, thereby physically or symbolically discrediting their participation in the public sphere. At a collective level, they generate mistrust in the role of indigenous leaders and generate fear of physical and symbolic violence.
- The designation of parallel leadership positions that receive incentives from government and non-State agencies. This strategy occurred regularly, was reinforced during the government of President Álvaro Uribe Vélez, and has since then intensified with each





government. Parallel leadership structures enable the discrediting of traditional leadership structures and creates new interlocutors to legitimize spurious prior consultations that favor the interests of companies and the government, among other infringements. These are created through the establishment of Juntas de Acción Comunal by the municipalities inside indigenous territories, and through the restructuring of the resguardos, among others.

- The abusive use of language in media. This strategy generates a social ideological terrain for legitimizing the dissolution of indigenous communities' organization structures based on the premise that they are an obstacle to development and the "common good." This strategy extends to stigmatizing tropes, racist opinions, and mal/mischaracterization of indigenous groups in the broader society.
- Business strategies that manipulate cultural values and take advantage of socio-economic asymmetries.

2.4.2 The Criminalization of the Territory

Land is generally associated with the economy, either as an active or as the basis of production. For many indigenous peoples, territories are a much more complex thing. Territories are framed within a conception of Mother Earth, where property and divisions are nonexistent, as well as any claim for the persistent or exclusive use of land. All uses are transitory and relative to the integral conditions of the community, especially as regards integral, collective health. Seen in this way, the territory is not simply a place where people are settled. Rather, territories are part of the peoples, and vice-versa. Accordingly, whatever impacts a territory impacts it as whole, including the peoples that have traditionally possessed, utilized, or occupied it. This conception views the territory as a unified, living organism that has distinctive parts and contains multiple organisms. Any transformation of a part or organ, as insignificant as it may appear, thereby impacts the vitality of the whole.

From this perspective, impacts suffered by the actions of the State, armed groups, and companies in indigenous territories necessarily impact every member of the community. In cases where an indigenous territory presents a strategic location for drug cartels, armed groups will involve indigenous peoples via forced recruitment, forced labor and confinement. Indigenous peoples are stigmatized as belonging to another armed faction. Then, they

charge the indigenous leader as a collaborator of an armed group, and another group turns up offering protection against this if they enroll in their ranks.

Once this dynamic is established, State and illegal actors can easily criminalize indigenous communities and their territory. This dynamic has both physical and symbolic ramifications. On a symbolic level, the territory becomes a “hot zone” in which violent operations can be easily legitimized. All cultural manifestations on the territory become secondary to the fact that the territory can be treated as a site of armed conflict and not as an indigenous territory.

For indigenous peoples, all the expressions of violence that happen then, such as sowing illicit crops, the installment of anti-personal landmines, bombing operations, and checkpoints, all within areas that are vital to the survival of communities, including rivers and transportation routes, means the criminalization of the territory, which is not a biocultural space anymore but a theater of war.

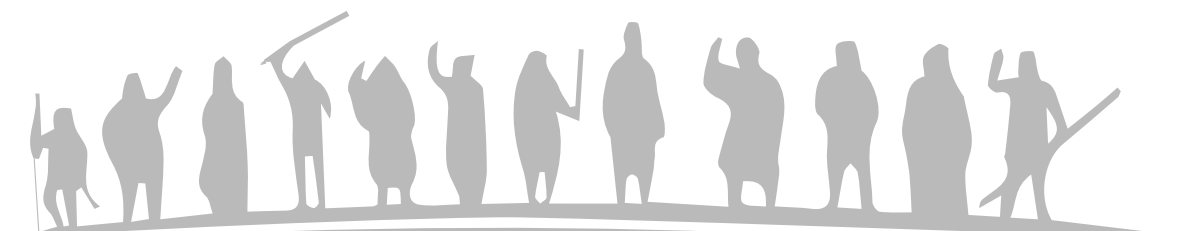
Biocultural dynamics of the territory are also transformed by tourism, imposed on the communities by tourist operators and agencies. This territorial incursion is often presented as deterring violence and an economic alternative, to generate income and as a substitute for productive activities and to procure ways to link the indigenous professionals to their territory and communities. One driver of tourist expansion is the National Natural Parks (NNP). NNPs are imposed by the international imperative to conserve carbon-sequestering lands and reduce global warming. Indigenous territories are areas of primary interest to conservation because of their good conservation status due to traditional forest management practices. Thus, most of the NNPs overlap collective territories and resguardos, a situation that results in the imposition of regulations that disrupt the traditional practices.

Many NNPs foster ecotourism, adventure travel and research travel as funding mechanisms for conservation projects, whose costs can surpass those assigned by the national treasury. These activities take place in attractive natural and cultural environments, usually taking advantage of indigenous peoples presence without consultation, as management is in the hands of the Parks Authority. They directly and indirectly impact indigenous peoples, both for the uncontrolled access to their cultural values and for the disruption on their daily life due to touristic activities happening in their lands.





The State is the main perpetrator of violations of the right of indigenous peoples to their lands, territories, and natural resources. Ironically, it is this main perpetrator in enacting or enabling the expulsion of indigenous communities from their territories that saliently claims to have the power to bring about territorial order. How could we escape this vicious circle and how could we understand access to justice in an intercultural legal system from the perspective of inter-legality?






3

Some Existing Protection Measures for Indigenous Peoples

With the establishment of the Special Indigenous Jurisdiction, the 1991 Colombian Constitution's recognition of an extensive list of the rights of indigenous peoples, and the incorporation of international norms for the protection of indigenous peoples, the Colombian Constitutional Court has developed a rich jurisprudence recognizing the State as multicultural and urging it to protect indigenous peoples and communities.





Recent policy changes by the National Unit for Protection that not only provide material measures but also recognize the needs of indigenous communities have been viewed favorably by some indigenous communities. This view is not shared by all the organizations which we have engaged in dialogue insofar as official functionaries continue to prioritize the provision of material protective measures disregarding culturally adequate prevention and protection.

The Early Warning System of the Ombudsman Office, implemented in the indigenous territories with a view to monitoring and alert of risk situations is welcomed by some communities. Nevertheless, its utilization has not been commensurate with the level of risk presented by regularly occurring armed conflict in indigenous communities.

The Integral System for Justice, Truth, Reparation, and Non-Repetition, and particularly, the Special Jurisdiction for Peace have contributed to the fight against impunity. Nevertheless, its tendency to treat violence, plunder, and abuses of power as outcomes of armed conflict is problematic because it obscures structural violence and practices carried out by non-State agents that are not necessarily linked to the armed conflict.

The Integral Program for Security and Protection for Communities and Organizations in indigenous territories, established by Decree 600 of 2018, has an ethnic approach with tools directed to prevent human rights violations, increase access to justice, and ensure truth and remedy through indigenous communities' own mechanisms.⁵⁵ However, the implementation of this Program is in an initial phase, so not yet fully effective at the local level.

Indigenous peoples count on their own mechanism for collective self-protection and prevention of potential human rights violations happening in the context of their defense of their fundamental rights, including rights to territories, autonomy, identity, life and physical integrity and freedom. An example of this is the Awá Indigenous Guard (Inkal awa su Izmurus), which exercises territorial control, stewardship, and protection symbolized in the Staff (the waltiwil), all the while communicating with nature and surveilling their territory according to their mandates and their Law of Origin.

⁵⁵ Available at <https://www.mininterior.gov.co/la-institucion/normatividad/decreto-numero-660-de-2018>

Spiritual fortification and traditional medicine are essential elements of indigenous self-protection mechanisms. The power of medicinal plants enables spiritual connections that generate harmony between a territory and its inhabitants. The ongoing conflicts in indigenous territories are thus an expression of a disharmony of connections that impact the totality of life. They reflect an imbalance in the relations between people and natural spirits because of outside groups and the practices that they bring to the territory and alter indigenous traditional lifeways, including drug trafficking, excessive extraction of natural resources, and the disproportionate concern for material things.




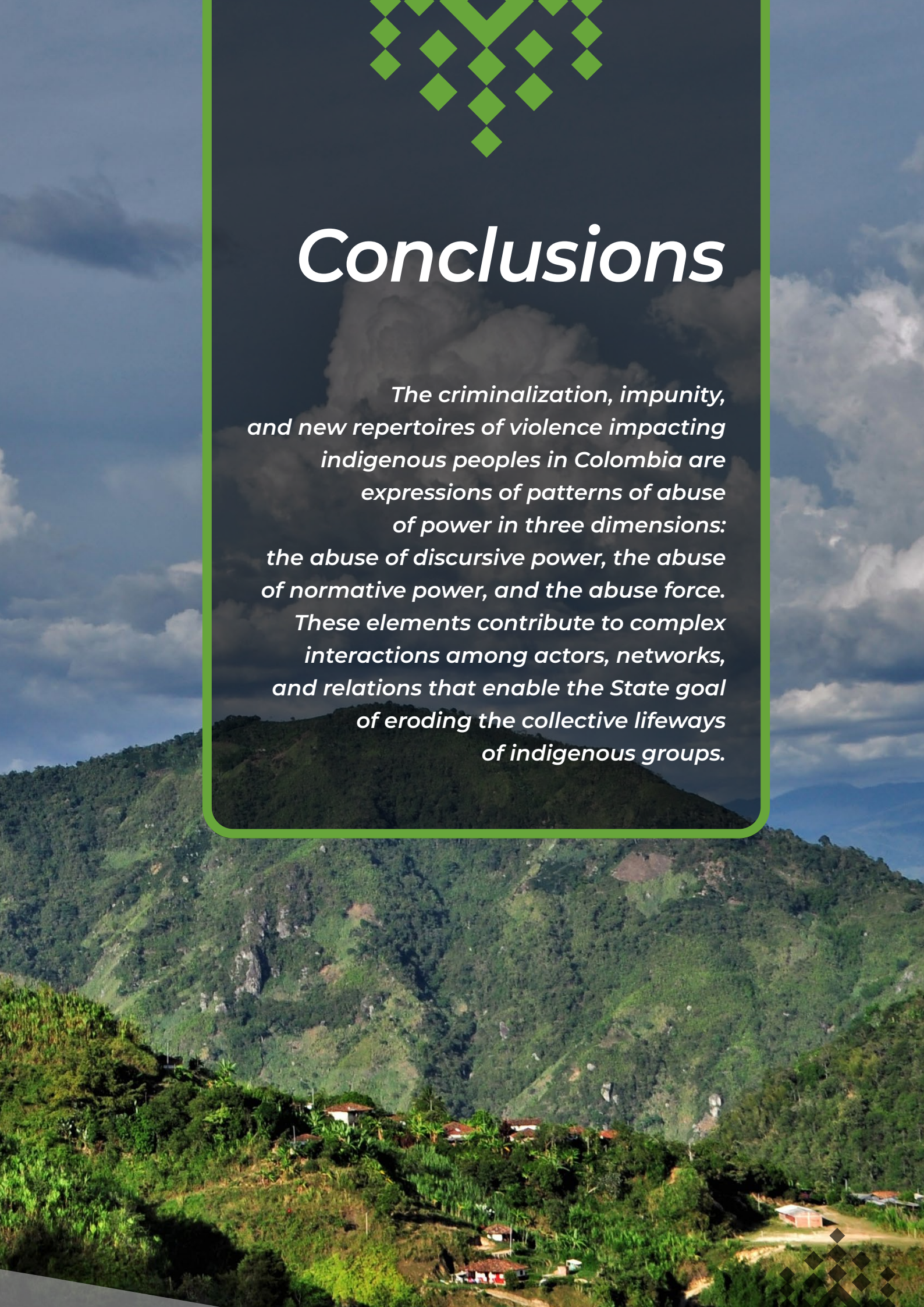


Photo: Francisco Vanegas | IPRI Colombia



Conclusions

The criminalization, impunity, and new repertoires of violence impacting indigenous peoples in Colombia are expressions of patterns of abuse of power in three dimensions: the abuse of discursive power, the abuse of normative power, and the abuse of force. These elements contribute to complex interactions among actors, networks, and relations that enable the State goal of eroding the collective lifeways of indigenous groups.





The signing of the 2016 Peace Accord has not brought peace to the lives of indigenous peoples. On the contrary, the patterns of abuse of power since then have evolved and intensified, particularly against indigenous communities and their territories. This despite the Constitutional Court Act 004 of 2009, ordering the protection of the fundamental rights of indigenous persons and peoples forcibly displaced or in risk of forced displacement resulting from armed conflict, the IACHR precautionary measures, and the efforts of land restitution judges as well as national and international entities.

Impunity for homicides and other attacks against indigenous authorities intensifies the pattern of ongoing rights violations, intimidation, and coercion through fear. This daily situation creates internal tensions, rupture of organizations and the weakening of collective territorial defense processes.

Collusion between State and non-State actors increase the likelihood of violence against indigenous peoples. Criminalization and other abuses of power go beyond the bodies of indigenous leaders, indigenous peoples and their defenders, and extend to the territories and autonomy, attacked through racist and discriminatory speech, the abuse of norms and institutions and the disproportionate use of physical force.

The abuse of norms and institutions to weaken indigenous autonomy, self-determination, and self-government, is on the rise, and has already caused serious social, cultural, and spiritual harms. It is employed by those seeking to neutralize resistance and territorial defense against agricultural megaprojects, the tourist industry, and the exploitation of natural resources. The weakening and criminalization of autonomy favors State and non-State actors' economic interests within indigenous territories.

At the State level, different entities are involved in acts and omissions, including the responsibility to safeguard human rights, further eroding the rights of indigenous peoples. The State has adopted regulations that dilute international standards on the rights of indigenous peoples, including FPIC and consultation. Similarly, the State utilizes census criteria that impacts on the formal recognition of indigenous peoples. Particularly concerning is the so called statistical or census genocide. This includes unreliable figures that posit a 90% population decrease across 500 indigenous groups. Indigenous communities have questioned the methods and procedures used, noting their failure to adhere to international standards concerning the right to territory and self-determination.

In Colombia, violence against indigenous peoples is not reflected in statistics. It is impossible to fully account for the phenomenon, quantitatively or qualitatively. The reasons are diverse, ranging from fear to denounce, the remote locations involved, lack of communication media, a multiplicity of methodologies used by the institutions monitoring these incidents, and even conceptual changes introduced by authorities to downplay the seriousness of the problem.

Accordingly, indigenous communities are reinterpreting the classic concept of criminalization to include two specially harming phenomena: the criminalization of the territory and the criminalization of autonomy. The first one involves the abuse of discourses and force to dispossess indigenous peoples of their territories, imposing resource extraction projects or taking advantage of their strategic locations, use them for legal and illegal projects. the second involves the abuse of the law in the monopolistic production and interpretation of norms in a way that divest indigenous peoples of their political autonomy, eroding culture and tradition through dividing organizations and thus affecting their ability to make decisions as a people and to remain united in the defense of culture and territory.

All of this takes place in a context of impunity for crimes against indigenous groups. This involves systematic failures of the State duty to ensure non repetition. Therefore, the number of crimes against indigenous peoples in Colombia is worryingly escalating.





Photo: Sonia Catalina Fracica | IPRI Colombia



Recommendations

IPRI Colombia would like to express our serious concern over the ongoing daily human rights violations against indigenous peoples in Colombia, which threaten their physical and cultural survival as peoples.



Considering the abuses of power documented in this report, we urge the national government, the Army, the National Police, the justice system, and all State entities to:

Comply with international obligations for the protection of the rights of indigenous peoples and the general population.

Expedite effective investigations into actions by perpetrators of human rights violations against indigenous communities, adopting effective measures to resolve ongoing violations against indigenous people's right to life; bringing perpetrators to justice to prevent impunity; and to enact necessary measures guaranteeing that violations are not repeated.

Respect the principle of presumption of innocence and abstain from carrying out preventive detentions of indigenous persons involved in judicial proceedings.

Establish national protocols for public servants throughout the country to eliminate racist hate speech and other acts of discrimination against indigenous peoples; to adopt effective measures that prevent the repetition of such conducts; and to publicly sanction those who carry them out.

Suspend all FPIC and consultation processes in places where socio-political violence or legal or non-legal intimidation has been carried out by third parties that compromise the indigenous peoples' capacity for self-determination.

Suspend all FPIC and consultation processes in contexts where there exist internal authority conflicts. We recommend that these be substituted by processes that facilitate conditions for indigenous peoples and communities to solve those conflicts through their own institutions, in the exercise of their self-determination, autonomy, and self-government.

Adopt the necessary measures for the Arhuaco people of the Sierra Nevada de Santa Marta to reestablish autonomy and self-determination, solving their internal conflicts without undue interference from State and non-State actors.

Adopt urgent preventive and protection measures to respond to the severe humanitarian crisis affecting indigenous peoples and communities in Chocó, Cauca, and Nariño.

Guarantee access to justice for indigenous peoples and ensure compliance with judicial decisions that protect their rights to lands and territories. We recommend that urgent measures be adopted for the implementation of Decision T-530/2016 in favor of the Cañamomo Lomapieta Colonial Resguardo, adopting precautionary measures in view of the new territorial threats they are facing.

Adopt the necessary measures to revert what indigenous organizations have termed as “genocide by census,” ensuring technical criteria are in accordance with Colombian conventional obligations on the protection of the rights of indigenous peoples.

We specifically recommend that the Public Ministry of Colombia support the protection of peaceful protest, the right to life, autonomy, self-determination, self-government, lands and territories, and other fundamental human rights of indigenous peoples.

Furthermore, we emphasize the key importance for the Colombian Constitutional Court to continue protecting ethnic and cultural diversity in Colombia and safeguarding the fundamental rights of indigenous peoples to self-determination, autonomy, and territory.

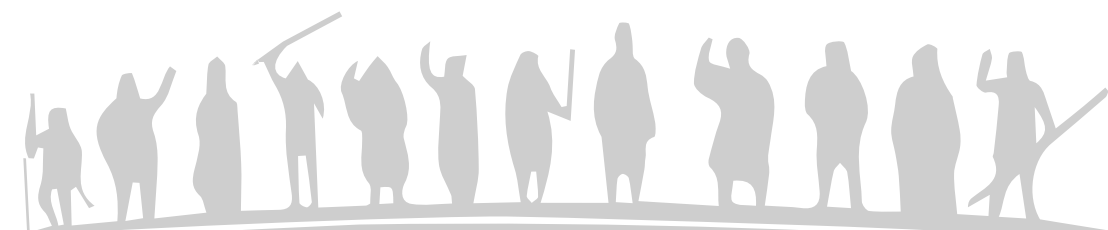
Keeping in mind the fundamental role of regional and international human rights institutions and international civil society organizations in preventing, denouncing, and responding to human rights violations, IPRI Colombia requests that the OHCHR, the UN treaty bodies, the United Nations Special Rapporteur on the Rights of Indigenous Peoples and other Special Procedures of the HRC, the IACHR and the Inter-American Court on Human





Rights, to carry out site visits, produce reports and recommendations and monitor legal processes, within the extent of their mandates, in all cases related to the violation of individual and collective rights of indigenous peoples and persons in Colombia. The international community, including member states of the United Nations, must decisively commit to supporting the exercise of individual and collective human rights by indigenous peoples in Colombia.

Finally, national and international civil society organizations must continue to support awareness raising and accompany the indigenous organizations and other human rights organizations working in the defense of indigenous peoples' human rights in Colombia.





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