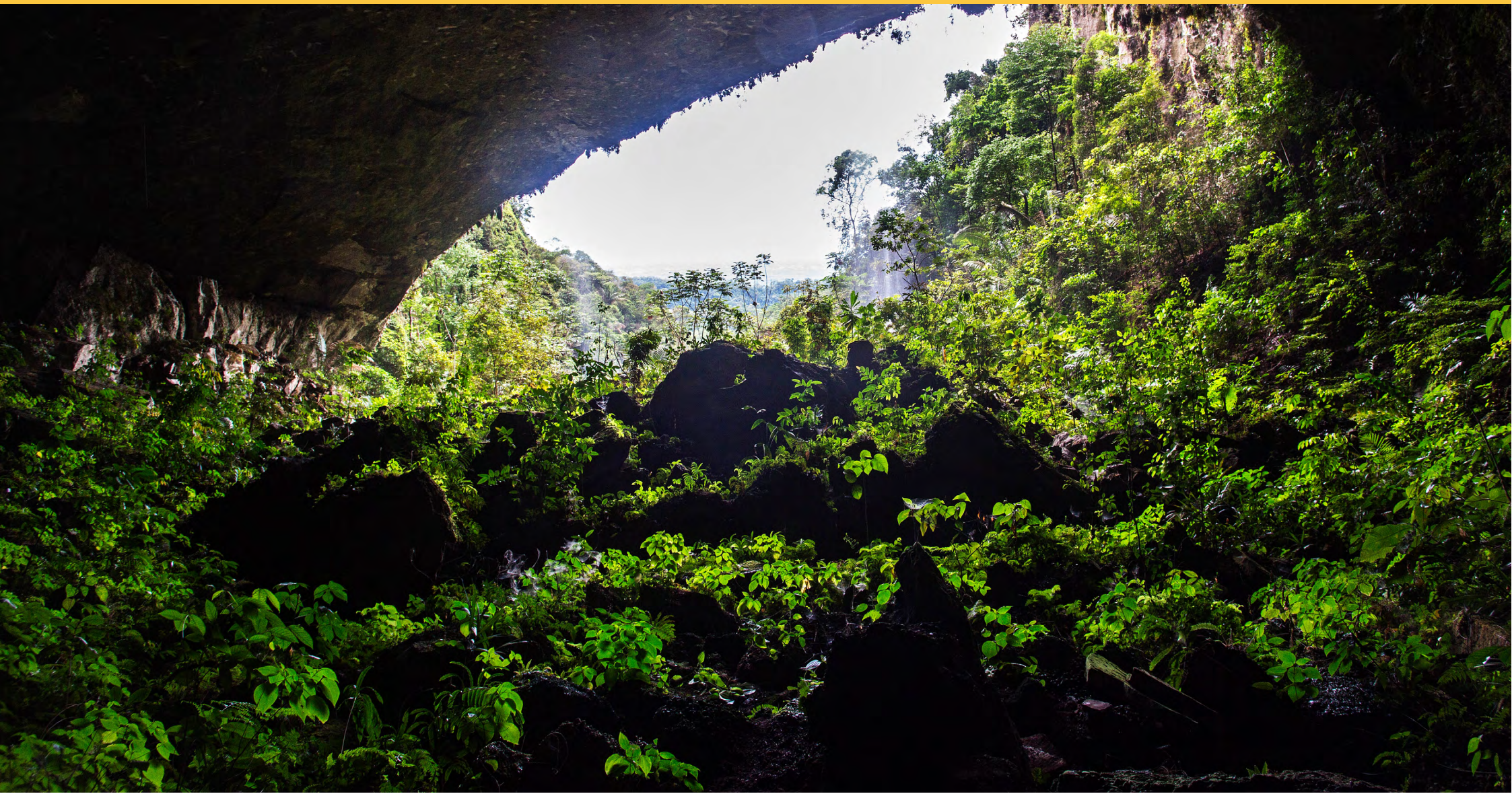
Indigenous Land Titling Guide

Reserve Establishment and Expansion Processes in Colombia

the Amazon Conservation Team
Colombia



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Overview

As its title indicates, this handbook is intended for the indigenous communities of Colombia, with the objective of illustrating, in a practical and detailed manner, the processes established in Decree 1075 of 2015 and its Title 7 for the establishment, expansion, restructuring and internal consolidation[1] of indigenous reserves and other complementary regulations.

It serves as an input to provide indigenous communities with guidance on the main aspects and elements they must take into account for these processes in order to ensure better interaction with the relevant authorities, with the objective of achieving the legalization of their ancestral and traditional territories.

In this regard, there are important documents, studies and texts about indigenous lands in Latin America and Colombia. Our focus is on complementing this information with the lessons learned in our work hand-in-hand with the indigenous communities of Putumayo, Caquetá, Amazonas, the Sierra Nevada de Santa Marta and Antioquia, whom we have assisted in groundbreaking processes for reserve establishment and expansion.

The above is part of the mission of the Amazon Conservation Team, a not-for-profit organization that seeks the conservation of tropical rainforests and the strengthening of local communities. Our interest is to support these communities to ensure the protection, conservation and recovery of their ancestral and traditional territories as the foundation for the primary governance of the indigenous peoples.

Through this handbook, we wish to share the experience we have gained in recent years in the legalization of indigenous territories, with special thanks to the Acacia Conservation Fund, which encouraged and supported us in documenting these lessons learned and in generating reflections on the assertion of indigenous territorial rights in Colombia through specific processes led by the communities that we have had the opportunity to assist.

[1] Here, we translate the Colombian legal term saneamiento with respect to indigenous reserves. This process entails the removal of separate land claims and possessions within a declared indigenous reserve territory, given that the reserve status takes precedence over these other statuses.

Acronyms

ACT	Amazon Conservation Team
AICO	Autoridades Tradicionales Indígenas de Colombia (Traditional Indigenous Authorities of Colombia)
ANT	Agencia Nacional de Tierras (National Lands Agency)
CP	Constitución Política (Political Constitution)
CIT	Confederación Indígena Tairona (Tairona Indigenous Confederation)
CNTI	Comisión Nacional de Territorios Indígenas (National Commission of Indigenous Territories)
DNP	Departamento Nacional de Planeación (National Planning Department)
ESJTT	Estudio Socioeconómico, Jurídico y de Tenencia de la Tierra (Socio-Economic, Legal and Land-Holding Study)
FNA	Fondo Nacional Agrario (National Agrarian Fund)
IGAC	Instituto GeográficoAgustín Codazzi (Geographic Institute)
INCODER	Instituto Colombiano de Desarrollo Rural (Colombian Rural Development Institute) (Liquidated)
INCORA	Instituto Colombiano de Reforma Agraria (Colombian Agrarian Reform Institute) (Liquidated)
MPC	Mesa Permanente de Concertación (Permanent Consensus-Building Roundtable)
OIT	Organización Internacional del Trabajo (International Labor Organization –ILO)
ONIC	Organización Nacional Indígena de Colombia (National Indigenous Organization of Colombia)
OPIAC	Organización de Pueblos Indígenas de la Amazonia Colombiana (Organization of Indigenous Peoples of the Colombian Amazon)
ORIP	Oficina de Registro de Instrumentos Públicos (Public Instrument Registration Office)

1. Context:
Indigenous Reserve / Collective Property

In Colombia, the establishment of collective properties for indigenous communities is the result of a long process of insisting on the recognition of rights from the State. In Colombia, a legal framework is in place that recognizes collective ownership of property by indigenous people, with all its legal effects.

The Political Constitution of 1991 not only ratified the nature of reserves as being inalienable, unseizable and imprescriptible, but it also assigned them the status of areas recognized in perpetuity as territories, with the option of operating as so-called "indigenous territorial entities", in accordance with that set forth in Articles 63, 286, 329 and 330.

Colombian national law defines an indigenous reserve as "a legal and socio-political institution of a special nature, consisting of one or more indigenous communities, who based on their collective ownership title enjoy the guarantees of private property, possess their territory, and have an autonomous internal organization to rule the territory, which is protected by the indigenous jurisdiction and its own legal system" (Decree 1071 of 2015).

In Colombia, the collective ownership of a reserve is a **fundamental right** of indigenous groups that is protected by the Colombian Political Constitution, which establishes the principle of ethnic and cultural diversity and the right of indigenous communities to establish reserves.

2. Permanent Features of Colombian Indigenous Reserves[2]

A

Legal recognition: Legal recognition, for one indigenous community or a group of indigenous communities, of the right of ownership over a territorial area that is clearly defined in terms of location and boundaries.

B

Collective ownership: The reserve lands are recognized as owned by the community or group of communities. The granting of areas for indigenous communities and peoples to inhabit that have the status of territories is a concept introduced into national legislation by ILO Convention 169, and which has been confirmed in a reiterative and categorical manner by the Political Constitution[3].

C

Removal from the free trade regime: The reserve lands have the status of being inalienable, unseizable, and imprescriptible. Reserve lands exist in perpetuity, with no time limits.

D

The entire community has the right to use the reserve lands: All members of the community or group of communities who are collective landowners have the right to use the land and the natural resources it holds, in accordance with their standard practices and customs.

E

Autonomy: The community or group of communities who are collective landowners can decide on their own form of government. Additionally, they may obtain - if in the future they decide to do so - the status of an indigenous territorial entity, capable of possessing and managing an autonomous regime with broad jurisdiction over their own internal and external affairs.

F

Full recognition of rights: The communities and groups of communities have full recognition with the status of legal persons, including rights and obligations.

[2] Roldan, 2014.
[3] ILO Convention 169 of 1989, art. 13.

3. Variable Features of Colombian Indigenous Reserves[4]

A

Reserve size: An important characteristic of reserves in Colombia is the great variety of sizes. There are major reserves (of over one million hectares), large reserves (between 100,000 and one million hectares), medium-sized reserves (between 10,000 and 100,000 hectares), small reserves (between 1,000 and 10,000 hectares), and very small reserves (of less than 1,000 hectares).

B

Nature and abundance of natural resources: There are reserves with abundant natural resources, whereas others have been decimated by over-use and their small size. They are also located in varying ecosystems.

C

Characteristics of the population that holds title over their domain: Reserves can have high, medium and low demographic density; reserves may hold one, two or more ethnic groups; some reserves have a low level of influence from western cultural patterns, whereas in others such influence is high; etc.

[4] Roldan, 2014.

D

Type of internal governance adopted by the community: Some reserves are governed by the system of cabildos (i.e., a community with a traditional governance system or association of such communities); others are governed by traditional authorities such as chiefs and councils of elders; some have assigned their traditional authorities the status and name of cabildo; some have maintained their cabildos or traditional authorities, but have additionally created associations of cabildos or traditional authorities (second-level bodies) to which certain functions have been delegated, etc.

E

Reserves of colonial origin: In terms of the period in history in which the reserve category was legally created, and the legal regime that supports this creation, some reserves have maintained their original titles as reserves of colonial origin, whereas others lost such title and have requested substitute titles after Law 89 of 1890.

F

Forms of land tenure, use and administration: The families or groups of families that make up the community or group of communities have different forms of tenure and use of the land, depending on the economy of the reserve communities; the type of land and the abundance of resources of the reserve; the size of the lands available; and, especially, the values and culture of its members.

It is important for the community to identify the features of reserves that have already been established, or of the territory to be established, expanded or internally consolidated.

4. Legal Framework For Territorial Recognition

The legal framework that regulates the establishment of reserves and the legalization of territories is relatively recent, being created only fifty years ago.[5] The following are the most relevant laws related to the assignment of territorial rights and the process for such assignment.

- Law 135 of 1961: Social Agrarian Reform Law
- Decree 2117 of 1969 on reserves and allocation of lands
- Political Constitution of Colombia of 1991
- Law 21 of 1991, approving ILO Convention 169 of 1989 on indigenous and tribal peoples
- Law 160 of 1994, on Agrarian Reform and Small Farmer Rural Development
- Decree 2164 of 1994: Allocation and Titling of Lands to Indigenous Communities
- Decree 1071 of 2015: Unified Regulatory Decree for the Administrative, Agricultural, Fishing and Rural Sectors

[5] As noted earlier, the State recognized the validity of the titles of indigenous reserves as constituting full ownership over the land, during Colombia's so-called Republican period.

Of the above laws, the ones that continue to be in force are the Political Constitution of 1991, Law 21 of 1991, and Law 160 of 1994, as substantive laws; and Decree 1071 of 2015, which incorporated Decree 2164 of 1994 under its Title 7, "Allocating and Titling of Lands to Indigenous Communities to Establish, Restructure, Expand and Internally Consolidate Indigenous Reserves in the National Territory"[6].

The first step the community should take when filing a request to the State for territorial legalization is to **become familiar with its rights and obligations.**

The laws address the following:

- The nature of the rights of ownership of the indigenous communities over the land.
- The government's responsibility in terms of recognizing and protecting the rights of ownership and possession of indigenous peoples over the land and the territory.
- Purposes to be fulfilled through indigenous territorial ownership over the land.
- The right of indigenous communities to make use of the natural resources in their territories.
- Due respect for the types of allocation among the members of each indigenous community and their rights over the land.
- Commitment of the state to provide assistance to the indigenous communities for the proper use of the land.
- Special recognition of the territorial rights of indigenous people who are in isolation or in initial contact.

[6] This handbook does not make reference to Decree 2334 of 2014 and other relevant legislation, because the shared lessons are based on the processes for the establishment and expansion of reserves. As of the date of the writing of this guide, the first declaration had not yet been approved.

Below, we will refer to certain relevant articles included in the above laws as well as complementary provisions that communities should take into consideration.

Article 63 of The Political Constitution.

Public use properties, national parks, ethnic group community lands, reserve lands, the archaeological heritage of the nation, and other properties provided for by law, are inalienable, imprescriptible and unseizable.

Article 13 of Law 21 of 1991 (ILO Convention 169)

… Governments shall respect the special importance, for the cultures and spiritual values of the referenced peoples, of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship.

The use of the term "lands" in Articles 15 and 16 shall include the concept of territories, which covers the total environment of the areas that the referenced peoples occupy or otherwise use.

Article 14 of Law 21 of 1991 (ILO Convention 169)

1. The rights of ownership and possession of the referenced peoples over the lands that they traditionally occupy shall be recognized. In addition, measures shall be taken in appropriate cases to safeguard the right of the referenced peoples to use lands not exclusively occupied by them, but to which they have traditionally had access for their subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and practitioners of shifting cultivation in this respect.

2. Governments shall take steps as necessary to identify the lands that the referenced peoples traditionally occupy, and to ensure effective protection of their rights of ownership and possession.

3. Proper processes shall be established within the national legal system to resolve land claims by the referenced peoples.

Article 12, Section 18 of Law 160 of 1994

One of the responsibilities assigned to the acting national agrarian reform body is to "study the indigenous communities" need for lands and to establish, expand, internally consolidate and restructure the reserves for the benefit of the respective collective owners".

Article 31, Paragraph A of Law 160 of 1994

The acting national agrarian reform body may acquire, through purchase or expropriation, lands or *mejoras*[7] or establishments of right-of-use on private property or public properties, "for indigenous and Afro-Colombian communities and other ethnic minorities that do not have them, or when the established areas are insufficient . . ."

Article 69 of Law 160 of 1994

No awards of unallocated lands[8] shall be made where indigenous communities are established that which constitutes their habitat, except exclusively and to be used for the establishment of indigenous reserves".

Article 85 of Law 160 of 1994

". . .The Institute shall study the land requirements of the indigenous communities, for the purpose of providing them necessary areas to facilitate their proper settlement and development. . ." It adds that "to this effect, it shall establish or expand reserves and shall proceed to internally consolidate those that are occupied by people who do not belong to the respective group". It continues that "similarly, it shall restructure and expand reserves of colonial origin, subject to prior clarification of the legal validity of the respective titles, with lands held by members of the group with individual or collective titles, and properties that were acquired or granted to the community by INCORA or other entities".

Legal Decree of 4633 de 2011[9]

In Articles 17 and 71, it establishes the responsibilities of the State with respect to guaranteeing for peoples in isolation and initial contact their right to maintain their isolation and to live freely in accordance with their culture, in their ancestral territories, without being subject to interference or dispossession.

In the case of peoples in initial contact, it establishes that "the policies, programs or private or public programs that are promoted or performed for them for any purpose shall abide by what is set forth in Article 193 of this decree."

Decree 1397 of 1996 on the National Commission of Indigenous Territories

"It shall prioritize titling of reserves for indigenous communities or peoples who have not been contacted, or who live in voluntary isolation or in initial contact, with the objective of guaranteeing their legal protection and effectively protecting the collective territory and their human rights".

Article 7 of Decree 622 of 1976 on Overlap with National Parks

"The declaration of a national natural park is not incompatible with the establishment of an indigenous reserve . . ."

[7] The Colombian Civil Code, in Article 685, defines "occupation" as follows: "By occupation, we mean that ownership is acquired of objects that do not belong to anyone, and whose acquisition is not prohibited by national or international law." With respect to "improvements" (mejoras), Article 966 of the Code states: "Only those measures that have increased the sale value of the object in question will be understood as useful improvements."

[8] Terra nullius is a Western construct; for indigenous communities, it may refer to their traditional and ancestral territories.

[9] Whereby provisions are enacted for assistance, comprehensive reparations and restitution of territorial rights to victims who belong to indigenous communities and peoples.

5. Government Entities Responsible for the Territorial Legalization Process

Competent Entity

Since Law 135 of 1961 was enacted, the body that is legally competent to recognize land rights for indigenous communities is exclusively the entity that is legally authorized to manage agrarian reform matters (initially the Instituto Colombiano de la Reforma Agraria [INCORA], and later the Instituto Colombiano de Desarrollo Rural [INCODER]).[10]

At present, the competent authority is the National Lands Agency (Agencia Nacional de Tierras / ANT), as provided for in Article 1 of Decree 2363 of 2015 and in Article 4, which defines its responsibilities, in particular those related to indigenous communities.

> "25. To reach agreements with ethnic communities, through their respective representative bodies, on their respective assistance plans.
>
> 26. To implement assistance plans for ethnic communities through collective titling programs; the establishment, expansion, internal consolidation and restructuring of indigenous reserves; and acquisitions, expropriations and *mejoras.*
>
> 27. To undertake the agrarian processes of establishing boundaries and clarifying the lands of the ethnic communities."

According to Articles 26 and 27 of the decree, the Ethnic Affairs Directorate and the Ethnic Affairs Sub-Directorate of the ANT are the offices responsible for carrying out activities related to collective titling, establishment, expansion, internal consolidation, and restructuring of indigenous reserves, as well as acquiring and expropriating lands and *mejoras* in order to provide lands to the ethnic communities.

Section 8 provides details on the stages of the processes. The roles of the different areas of the entity are described for each stage of the process.

The entity responsible for promoting, guiding and making decisions regarding the indigenous territorial legalization process in Colombia is the **National Lands Agency (ANT).**

[8] Decree 1300 of 2003, whereby the Colombian Rural Development Institute (Instituto Colombiano de Desarrollo Rural / INCODER) was established.

Entities that Participate in the Process

Other public entities that fulfill other objectives also intervene in the process. The following are those that participate according to that set forth in Decree 1071 of 2015, under Title 7.

Ministry of the Interior: It issues an opinion on whether the establishment of a reserve is viable or not, based on the file that contains the socioeconomic study and other procedures carried out by the ANT to this effect (Article 2.14.7.3.6.). It also intervenes to issue an opinion on assigning the status of indigenous to a group, if any doubts arise in this regard.

Agrarian Office of the Administrative Attorney General: must be notified of the ruling ordering the ANT to perform a visit to the concerned indigenous community (Article 2.14.1.3.4).

Public Instrument Registration Office (ORIP): This is the local office that records the lands with the legal status of reserve. The registrar may open a "real estate registration record for the established or restructured reserve" and may cancel any "previous registration records of the real estate properties included in the area with the legal status of reserve" (Article 2.14.7.3.8.).

Ministry of the Environment and Sustainable Development: In reserve expansion, restructuring or internal consolidation processes, the Ministry is responsible for issuing an "express opinion on verification and fulfillment of the ecological function of the reserve property ...." (Article 2.14.7.3.5.).

Other entities: Article 2.14.1.3.1 indicates that eventually the Ministry of the Interior or other public entities may submit to the ANT a request to carry out the processes for the establishment, expansion, restructuring or internal consolidation of reserves.

The Ministry Of The Interior participates in the process of establishing a reserve by issuing a **preliminary opinion; the Ministry of the Environment and Sustainable Development** participates in the process of expansion, restructuring or internally consolidation of reserves through the **certificate of the ecological function of the property.**

6. Government Bodies that Oversee the Territorial Legalization Process

Occasionally, the requests filed by the communities are not addressed in a timely manner by the competent authorities, and in this case, the community may appeal to a control body, depending on the reasons that lead to such inattention:

National Administrative Attorney General (Procuraduría): This oversight body has a Deputy Office for the Protection of Human Rights and Ethnic Affairs, which has the following duties:

- To promote and protect the rights of ethnic groups.
- To intervene before public authorities associated with the defense of the legal order, of the public good, of guarantees and of the fundamental, social, economic, cultural and collective rights of ethnic groups.
- To oversee compliance with the regulations and legal rulings related to the protection of the rights of ethnic groups.
- To supervise the public entities that assist ethnic groups, and to ensure they comply with constitutional and legal provisions that require the protection of their rights.
- To monitor cases reported to the Attorney General's office to ensure that members of the ethnic groups receive timely assistance from the authorities in charge.

Office of the Ombudsman (Defensoría del Pueblo): This oversight body has a deputy office for Indigenous and Ethnic Affairs, whose duties include the following:

- Acting as a mediator in the internal and intra-ethnic disputes of communities and for peoples who require it.
- Monitoring the agreements made between ethnic groups and the State, in order to verify compliance.
- Performing periodic visits of assistance to ethnic groups who live in areas with critical human rights situations.
- Providing advice to the various ethnic groups, organizations, government entities and internal departments regarding the matters within its competence.

The Procuraduría General de la Nación (the administrative attorney general's office), together with the **Defensoría del Pueblo** (the Office of the Ombudsman) and the **Personerías Municipales** (local administrative attorney general's offices) form part of what is called **Ministerio Público** (the public ministry), and are responsible for overseeing the protection of the rights of all citizens, including the rights of indigenous communities.

National Comptroller's Office (Contraloría General de la República): The National Comptroller's Office, acting in representation of the community, oversees the fiscal and financial management of private parties or entities that manage public funds or assets. In this framework, it reviews the results achieved by government entities to establish whether they have acquired, managed and/or used public resources as required by law, subject to the principles of economy, efficiency, effectiveness, equity and environmental sustainability.

For example, during its audit of the ANT in 2016[11], it made the following recommendations, which are of particular relevance to the process of legalization of reserves:

- "Prepare a checklist of the documents that the official file must contain for the process of acquiring properties for ethnic communities, to serve the purposes of documentation audits"
- Train civil servants of the ANT's Ethnic Affairs Office in the proper maintenance of official files, as prescribed in Decree 1071 of 2015 and abiding with the regulations of the National General Archive (Decree 1080 of 2015)"

The Official Document File of a process for the establishment, expansion, restructuring or internal consolidation of an indigenous reserve **is of key importance for the territorial legalization process.** It is the duty of the assigned public official to assure its maintenance.

[11] Contraloría General de la República. 2017. Report on the Financial Audit of the National Lands Agency (ANT) 2016.

7. Government Bodies that Protect Collective Property Rights

The Colombian State is divided in two parts: the branches of public power, and the bodies of the State (e.g., the bodies listed above). The branches of public power include the legal branch, which consists of the Constitutional Court, the Supreme Court of Justice, and the Council of State, among others.

The Constitutional Court is the body responsible for protecting the integrity and supremacy of the Political Constitution, and its duties include reviewing legal rulings related to constitutional rights.

In this context, it has issued rulings for the defense of indigenous territorial rights.

"The right of collective ownership over indigenous territories is of crucial importance for the culture and spiritual values of the aboriginal peoples. Of particular importance is the special relationship of the indigenous communities with the territories in which they live, not only because they are their primary means of subsistence, but also because they are key elements of the worldviews and religions of the aboriginal peoples. The fundamental right of collective ownership of the ethnic groups implicitly implies, given the constitutional protection of ethnic and cultural diversity, a right to the establishment of reserves in the name of indigenous communities"[12].

The first step every community must take in the process of establishing, expanding, restructuring or internally consolidating a reserve is acquiring knowledge of the features of the indigenous reserve; the current legal framework for territorial legalization; the competent authority and the other entities that participate in the process; the bodies that oversee and protect the right to territory; and the importance of the official document file.

[12] Constitutional Court. Ruling T-188 of 1993. Magistrate writing for the court: Eduardo Cifuentes Muñoz.

8. National Commission on Indigenous Territories

This body, which was created through Decree 1397 of 1996, deserves a separate description. The Commission was created as a result of the struggle and demands of indigenous peoples. It provides a space for discussions between the indigenous peoples and the national government, with the aim of reaching agreements on issues related to guaranteeing indigenous territorial rights.

The functions of the National Commission on Indigenous Territories include the following:

- To receive consolidated information on the performance of INCORA with regard to indigenous reserves during the 1980-1996 period.
- To receive and update information on the needs of indigenous communities for the establishment, expansion, restructuring and internal consolidation of indigenous reserves; and to receive and update information on open requests and the status of processes underway.
- To reach agreements on activity programming, on an annual basis, with regard to the legalization of the indigenous territories.
- To prepare an estimate of annual costs of the activities programmed to perform the socioeconomic studies, acquire properties and *mejoras*, carry out institutional reforms, technical requirements and title registration, etc.; and to indicate the budgets required for each fiscal year.
- To study agrarian legislation on indigenous reserves and recommend changes to overcome obstacles in order to complete the territorial processes.
- To monitor fulfillment of the programming of the ANT for the establishment, expansion, internal consolidation and restructuring of indigenous reserves.

The following are the members of the National Commission on Indigenous Territories:

Indigenous Peoples

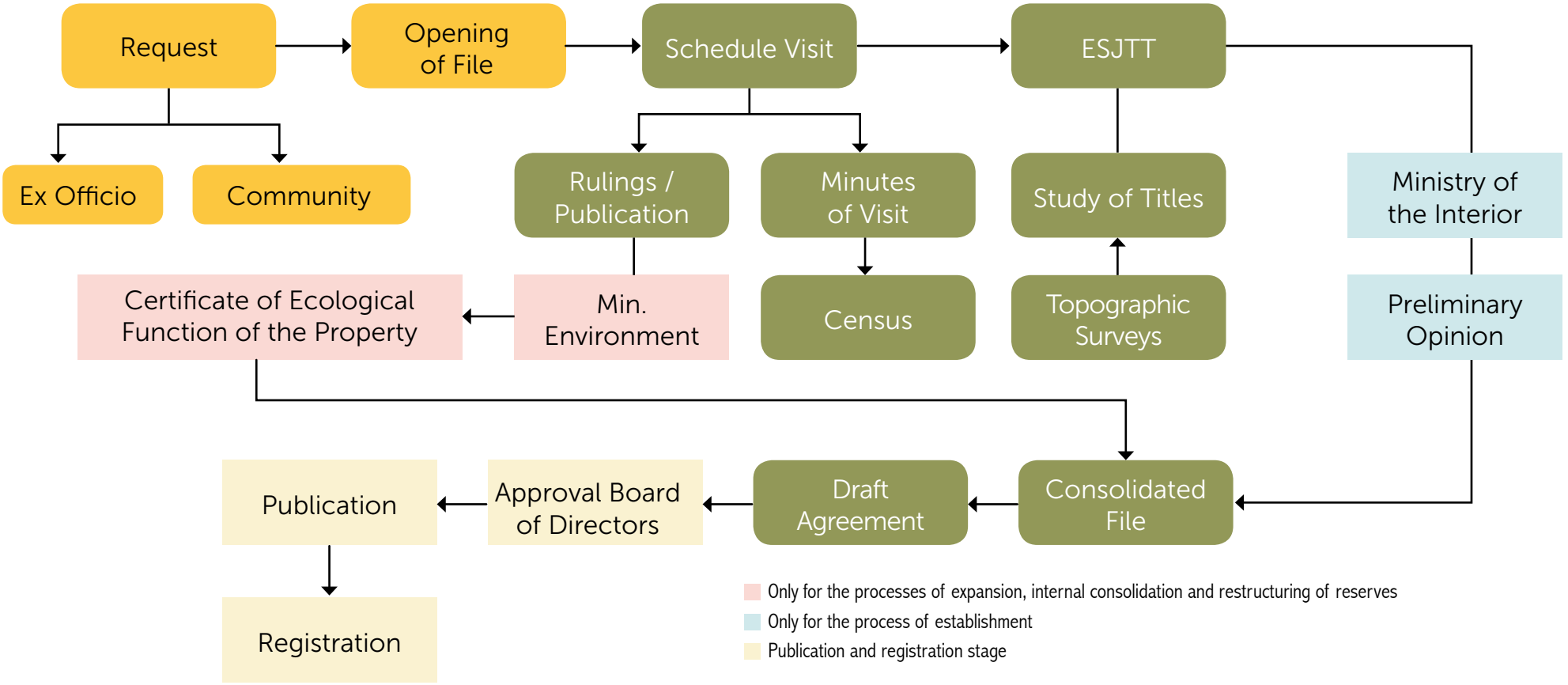
- ONIC: National Indigenous Organization of Colombia
- OPIAC: Organization of Indigenous Peoples of the Colombian Amazon
- CIT: Tairona Indigenous Federation
- North, Mid-East, West, Orinoco and Amazon macro-regions
- AICO: Pacha Mama Traditional Indigenous Authorities of Colombia
- Senior Councils of Traditional Indigenous Organizations
- Senators and former constituent assembly

National Government

- Vice-Minister of Agriculture
- Director of the National Lands Agency (ANT)
- Head of the Planning Office of the National Lands Agency (ANT)
- Director of Ethnic Affairs of the National Lands Agency (ANT)
- Delegate of the Ministry of the Interior
- Head of Agricultural Development of the National Planning Department (DNP)
- General Budget Director of the Finance Ministry

9. Stages in the Process of Territorial Legalization, Establishment and Expansion

One of the greatest challenges for indigenous communities that intend to establish, expand and/or seek internal consolidation of their reserve is to understand each of the stages of the process contained in Decree 1071 of 2015, which incorporated Decree 2164 of 1994 under its Title 7, "Allocating and Titling of Lands for Indigenous Communities for the Establishment, Restructuring, Expansion and Internal Consolidation of Indigenous Reserves in the National Territory".



In order to make each stage of the process understandable, as set forth in Title 7 of Decree 1071/2015 for the Establishment, Restructuring, Expansion, and Internal Consolidation of Indigenous Reserves in the National Territory, a description of the stages and activities that should be carried out is provided below by means of questions and answers.

9.1 Initation of the Process

How does the process for establishment, expansion, restructuring or internal consolidation of an indigenous reserve begin?

The process can be initiated by the ANT on its own initiative, or at the request of any public entity, the interested community itself, or an indigenous organization.

If the application to initiate the process is filed by the community, what aspects should it consider?

It is essential that the indigenous community first identify the basic information related to the claimed territory.

- Specify the type of process that it intends to seek - Establishment, Expansion, Internal Consolidation or Restructuring - to the authorities of the cabildo and comuneros.

Creation

The indigenous community possesses its lands without a title deed or does not possess all or part of its ancestral territories.

Expansion

The reserve is already established. However, it is insufficient for the development of the community or for the fulfillment of the property's social and ecological function, or when at the time of establishment of the reserve, not all the lands traditionally occupied by the community or constituting its habitat were included.

Restructuring

It applies when the reserve was founded in Colombia's colonial or Republican era. In this case, after verifying the validity of the respective titles, the ANT shall proceed with the specified process.

Rectification

The reserve is already established. However, at the time of its establishment, privately owned property or *mejoras* by individuals who certified their titles were excluded. It may occur that the community has acquired these properties or *mejoras* with their own resources or through INCORA, INCODER or the ANT.

The community may identify the need for internal consolidation and expansion at the same time in its application.

- Prepare a basic map (social cartography) of the lands claimed, identifying, if possible, access roads and other relevant information.
- Identify the number of families that make up the community.

Other information, not mandatory within the application process, that is important to consider.

- After completing the three previous steps, it is advisable that the community verify whether there is already an application filed with the competent entity or whether it is the first time it is going to be filed.

  Why? Sometimes applications have already been filed and a file has been opened by the competent entity. In this case, the community should request information about the status of the process so as not to repeat stages that may have already been completed.

- Property and *mejoras* to property by the indigenous community: Sometimes, the community has acquired properties or *mejoras* with its own resources or those of third parties that it wishes to incorporate in the respective process. For this, it is key to have the documents proving these purchases: deeds of sale, records of property registration numbers, private instruments of sale, out-of-court statements that certify occupation, delivery certificates by INCORA, INCODER or ANT, or concessions that, in some cases, comuneros[13] wish to voluntarily make to facilitate the intended process.
- Taxes: The property tax must be paid for privately owned properties in the name of the community that are not part of the reserve and that it intends to include in case of establishment, expansion, or internal consolidation. It is necessary for the community to verify whether it is up-to-date with said payment, and if not, what funds it will use to settle the balances owed. Some establishment or expansion processes are delayed for this reason.
- The community may have studies, documents, social cartography, plans, topographic surveys, and other instruments that may be relevant to the process. While it is not mandatory to have this information, it may be relevant to provide it, when available, to the professionals responsible for conducting the process.

[13] Comuneros, in this context, are persons belonging to populations other than the requesting indigenous group who live within the lands sought to be given reserve status.

After the community has reviewed all the information of the territorial claim, what is the next step?

Once the community has a clear territorial claim, it must prepare a formal written application for establishment, expansion, internal consolidation or restructuring, through its own cabildo or other traditional authorities or indigenous organizations.

The formal application must include the following information:

- Basic information of the land required
- Its location
- Access roads
- A sketch or social map of the land required
- Number of families that make up the community
- Address to receive communications and notices

Where should the application be filed?

The application should be filed at the offices of the ANT in Bogotá or at the regional liaison offices: the Territorial Management Units. The community representative that delivers the application at the ANT office should submit the original and a copy and verify that both documents have proof of filing.

What is filing and what should I do with the copy of the filed application?

It is the process by which the entities, in this case the ANT, assign a consecutive number to the received communications, recording the date and time of receipt of the attached documents, for the purpose of formalizing the process and complying with the term of expiration set forth by the law. This term is effective beginning the business day following the date of filing of the document.

A copy of the application filed should be kept by the community's representative because it is the supporting document that will enable him to follow up on the ANT's response to the application. It is important that the community have a folder to keep all the papers and supporting documents related to the process.

Can other entities complete the application on behalf of the indigenous community?

Regarding the application, as already stated, a state institution other than the ANT (for example, the Ministry of the Interior) can file it when, on its own initiative or at the request of third parties, it decides to request actions related to the allocation of land to an indigenous community. This power is also expressed in the mandates that the government has received from the judicial branch to carry out these processes, as has occurred in many cases.

Finally, when the ANT becomes aware of the need to legalize the territory occupied by an indigenous community, it must initiate the respective process on its own initiative by mandate of the law.

Nowadays, this priority is established by the National Commission on Indigenous Territories, previously referenced, whose function, among others, is "to coordinate the annual schedule for the establishment, expansion, restructuring, internal consolidation, and transformation of indigenous reserves as required."

After the application has been filed, does the process commence?

Once the application has been received, or at the time of initiating the process on its own initiative, the ANT opens the file. It contains all the relevant administrative processes and all the documentation provided by the parties for the process.

The file is of paramount importance because it contains the entire process for both the establishment of the reserve and all the amendments and adjustments that are made thereto in terms of land allocation.

This means that each file must be retained indefinitely as proof of the administrative acts related to the reserve and as a reference and custodian of all the processes following its establishment, such as restructuring, expansion, or internal consolidation.

The ANT is responsible for maintaining the file.

Does the opening of a file mean that the process begins immediately?

To date, there are many applications from indigenous communities that have not initiated for different reasons. However, it is important to know that there are two bodies that negotiate with the national government: the National Commission on Indigenous Territories and the Permanent Negotiation Roundtable. Between delegates of indigenous organizations and participants of the government, these bodies agree on the prioritization and scheduling of actions related to the establishment, expansion, restructuring, and internal consolidation of indigenous reserves.

However, in the event of an urgent case, the ANT must prioritize it within its annual schedule.

9.2 Scheduling and Making a Visit

What is required for scheduling a visit?

Based on the agreed-upon annual schedule and the required budgetary availability, the next step is for the ANT to order a visit, appoint the professionals responsible for it[14], and conduct the Socio-Economic, Legal and Land Tenure Study (Spanish acronym: ESJTT) through a decree signed by the Director or his delegate.

Notification of this decree must be made to the Judicial, Environmental and Agricultural Attorney and to the applicant. Also, the posting of a formal notice for a term of 10 days at the town hall(s) in the location of the claimed territory will be provided.

In case of a process for expansion, restructuring, or internal consolidation of reserves, the decree that mandates the visit will also be communicated to the Ministry of Environment, Housing and Sustainable Development, requesting an express statement on the verification and certification of fulfillment of the reserve property's ecological function.

Both the decree and the notice will be added to the file.

[12] The ESJTT is conducted by the competent entity; however, in recent years, engagement and cooperation of third parties, such as non-governmental organizations, private companies or individuals, have been used to conduct the ESJTT in coordination with and under the supervision of ANT.

What activities are carried out in the visit?

During the visit, the delegated professionals draft a detailed description of the community, territory, productive activities, relevant cultural aspects, the families of the reserve, other reserve occupants, possible boundaries, the existence of conflicts, property information, and other information that will be considered in the ESJTT.

During the visit, the professionals responsible will generate a record of visit stating the following:

- Location of the plot.
- Approximate area.
- General boundaries.
- Number of indigenous inhabitants and indigenous communities, and the ethnic group(s) to which they belong (censuses).
- Number of tenant farmers settled, if any, with the occupied area and *mejoras* owned.

The Record of Visit duly signed by ANT delegates and community members will be added to the file.

Generally, censuses are taken during the visit in the form determined by the ANT for this purpose. This information is key because it will be included in the ESJTT under the category of social and population aspects (demographic information).

Are the censuses the same as those taken by the Colombian National Statistics Department or those submitted to the Ministry of the Interior?

It is important to point out that, unlike the census information reported by DANE (the Colombian National Statistics Department) and that submitted to the Ministry of the Interior, this census addresses the socioeconomic, legal, and land tenure status of the indigenous community. It is an acknowledgment of the population that is grouped in the community filing the application or populations related to the reserve, which enables the determination of the land requirement with respect to the territorial claim.

The census is completed in printed forms, which the professionals assigned to the visit must subsequently digitize.

Therefore, it is important that during the technical visit, the community is properly organized in order to implement this process, which can be time-consuming.

The physical forms of the censuses should also be added to the file.

9.3 Socioeconomic, Legal, and Land Tenure Study (ESJTT)

Why and when should this study be conducted?

An ESJTT is a fundamental part of the file; based on it, the ANT Board of Directors will make the final decision on indigenous territorial claims.

The study will be carried out if it has not been previously conducted. The ANT will conduct socioeconomic, legal, and land tenure studies when it must carry out the processes for the establishment and restructuring of indigenous reserves.

With respect to the processes for territorial expansion or internal consolidation of reserves, where necessary, studies will be updated or supplemented.

What does a Socioeconomic, Legal and Land Tenure Study contain?

A Socioeconomic, Legal, and Land Tenure Study should cover, among others, the following items:

- Physical description of the plot of land proposed for the establishment or expansion of the reserve.
- Agroecological conditions and land use, taking into account cultural particularities.
- Ethnohistorical background.
- Demographic description, determining the program's target population (analysis of censuses).
- Sociocultural description.
- Socioeconomic aspects.
- Land tenure status (forms, distribution, and types of tenure).
- Area delimitation and land plan.
- Legal status study (ownership, documents conferring rights).
- Report on the economic exploitation of land (according to uses, customs and culture).
- In the case of processes for expansion, restructuring, or internal consolidation of an already established reserve, a report on fulfillment of the reserve property's social function, indicating productive and specific methods used.
- Land availability to carry out the required program.
- Determination of areas of exploitation, common use, cultural use, and environmental management, according to uses and customs.
- Profile of programs or projects to improve quality of life and socioeconomic development.
- Quantified determination of the community's land needs.
- Relevant conclusions and recommendations.

How are the aspects or items contained in the ESJTT organized?

The previously listed items are incorporated into a written document organized according to the following structure:

- Overview.
- Chapter 1: Physical Description.
- Chapter 2: Ethnohistorical Aspects.
- Chapter 3: Government and Political Organization.
- Chapter 4: Sociocultural Aspects.
- Chapter 5: Social and Demographic Aspects.
- Chapter 6: Economic Aspects.
- Chapter 7: Legal Aspects.
- Chapter 8: Profile of Programs and Projects.
- Relevant Conclusions and Recommendations.

The rigorous elaboration of each chapter is essential. However, we will examine Chapter 7: Legal Aspects, given the weight of the two components that it comprises: the Title Search, and the delimitation of the plot(s) of land claimed for establishment, expansion and internal consolidation, known as topographic surveys and the technical correction of boundaries.

The Socioeconomic, Legal, and Land Tenure Study must be incorporated into the file.

What is a title search and who should conduct it?

Title search is an analysis performed by an attorney regarding the legal status of a property in order to determine, in each case, if it is eligible to be incorporated within the claim for establishment, expansion, or internal consolidation.

At the time of conducting the title search of properties, all the legal circumstances related to the property or to the *mejora* must be analyzed.

For this, the property certificate (record of property registration number) including or covering the legal status thereof in the last ten (10) years is reviewed first. This certificate is a public document; that is, anyone can request it. In addition, the documents that are recorded in the certificate are reviewed to determine whether the property is eligible.

What properties and *mejoras* can be considered eligible within the territorial claim?

Rural properties that do not have any ownership limitation, encumbrance, or legal claim, and that have been reviewed by the attorney in charge of the Title Search are eligible.

Mejoras that have a certificate of occupation by the community or a comunero who wishes to assign them to facilitate the process and/or unallocated land of ancestral and traditional occupation can also be considered.

Generally, the following land is included:

- Rural land and *mejoras* by the National Agricultural Fund delivered to communities.
- Rural properties or *mejoras* delivered or transferred to the community by INCORA, INCODER, the ANT, and other entities or organizations.
- Rural properties acquired by the community.
- Lands and *mejoras* owned by the community or its members (ancestral occupation) collectively or individually.
- Rural properties or *mejoras* delivered by other public or private entities, those owned collectively or individually by the community, and those that were ceded by its members.

What happens if the territorial claim does not have available or sufficient land?

In these cases, for the establishment, expansion, and internal consolidation of reserves, it will be necessary to carry out programs for land acquisition and private property *mejoras*. For this, the ANT, during the opportunities for negotiation, will schedule and prioritize the acquisition of necessary properties and *mejoras* in the respective annual scheduling projects.

What is a topographic survey, what equipment is used, and who should conduct it?

It is a procedure performed at a site to define the boundaries, surface elements, and location of a plot by obtaining coordinates or points from natural or anthropic elements where there are changes in the direction of a boundary, such as fences, rivers, streams, and roads, among others, which together shape the property.

To carry out the topographic survey or the georeferenced physical identification of each point bordering the property or plot of land, specialized global positioning system (GPS) equipment must be used and the technical parameters of the ANT and IGAC must be met.

This process is carried out by surveying technicians, surveying engineers, and/or specialized professionals, and the result is a graphic representation: a plan of the property or land surface.

Is a topographic survey carried out on all rural properties and *mejoras* of the territorial claim? Should the community assist in this procedure?

As mentioned, the objective of capturing information at a site (taking points) is to determine the real geometry of the property or land area, complying with the technical parameters of the ANT and IGAC. Boundaries of the property or plot of land must be identified by covering the entire perimeter thereof.

Thus, after conducting the title search and defining the viability of rural properties and *mejoras* that are incorporated in the claim, it is necessary to spatially individuate each property along with the onsite collection of data. For this, the following is needed:

- If institutional property cartography exists, it will be used at the office to locate the preliminary information and, once onsite, it will be used as a reference. In any case, it cannot be used to identify boundaries that, at the time of collecting data, the community or its neighbors do not identify.
- The processes of onsite data collection must be accompanied by community members who know and can identify the possible boundaries of rural properties and/or *mejoras.*
- Neighboring residents must be present to enable the spatial individuation of the rural property and/or *mejoras;* these who will also sign a certificate of adjacency once the data have been gathered..

[15] In Colombia, corregimiento and vereda are types of municipal rural subdivision.

Does the onsite survey on site conclude this part of the process?

No, it does not. Once the field survey has been done and the certificates of adjacency have been signed, the surveying team must analyze the information at the office to create the respective plan and the technical correction of boundaries.

As a result of this activity, it will deliver the surveying report will be produced. It will include, among others, the following items:

- General location data such as department, municipality, corregimiento or vereda[15], property, georeferenced area, and dates of work
- Coordinate system
- Characteristics of equipment
- General physical description of the area
- Chart of coordinates
- Chart of areas
- Plan of the topographic survey in the template defined by the ANT
- Information on the resulting property in Shape format
- Chart of borders and neighbors
- Photographic file
- Certificates of adjacency duly signed by the professional, a representative of the community, and the neighboring resident
- Other supporting documents.

Part of this information is incorporated into the ESJTT within the annexes thereto and, therefore, in the file.

Why it is important to know this technical and specialized information?

The indigenous community is not responsible for these components. However, it provides relevant information to both the attorneys responsible for the title search and the surveying team that will enable their completion. It is also important to understand why the processes may demand more time than expected.

In some processes, the communities have hired professionals who do not take these parameters into account, creating false expectations and providing incomplete information that is not considered in the territorial claim, which ends up delaying the process even more.

What happens if the area of the rural property contained in the legal title does not match the area obtained by the onsite surveying team?

In this case, an additional procedure that is referred to as Area Clarification must be performed, and the entity in charge of this procedure is IGAC. Otherwise, at the time of registering the agreement of the ANT Board of Directors approving establishment, expansion, or internal consolidation with ORIP, the document may be returned because of this inconsistency.

9.4 Opinions of the Ministry of the Interior's and Ministry of Environment and Sustainable Development

In what cases does the Ministry of the Interior's prior opinion apply?

The Ministry of the Interior's opinion applies when the reserve establishment process is being conducted.

Once the previous stages have been completed and the ESJTT has been consolidated, it will be sent to the Ministry of the Interior so that, within a period of 30 days, it expresses an opinion regarding establishment of the reserve. If, after this term has expired, an opinion has not been expressed, it will be understood that the opinion is affirmative/positive.

The opinion expressed by the Ministry of the Interior must be incorporated into the file.

In what cases does the Ministry of Environment and Sustainable Development's opinion apply?

With respect to processes for expansion, internal consolidation or restructuring of reserves, the Ministry of Environment and Sustainable Development certifies the property's ecological function. For this purpose, it applies four conceptual categories:

- Biodiversity and ecosystems
- Territory and autonomy
- Traditional uses and knowledge
- Territorial planning

The Ministry's Office of Education and Participation is responsible for expressing said opinion when indigenous territories do not overlap protected areas. Otherwise, the National Parks Unit will express it. The Ministry has a term of no more than thirty calendar days after the visit has been made to issue a certificate.

Unfortunately, the Ministry of the Environment does not have the human resources to itself conduct the visits. Therefore, according to some legal treatise writers, the legal concept of administrative silence (tacit acceptance) would apply.

Once an opinion has been expressed, it will be added to the file.

9.5 Final Stage: Approval, Publication And Registration

Submitting the file to the ant board of directors

After completing all the previous stages have been fulfilled, is the file submitted for consideration of the ANT board of directors?

No, it is not. Once the file is consolidated, the ANT's Ethnic Affairs Section prepares the draft agreement for the analysis and decision of the Board of Directors. However, there is an additional internal step, which is to send the file with all its annexes and the draft agreement to the legal office of ANT, which then approves the file or returns it to the Ethnic Affairs Section with remarks for correction.

The complete file and the draft agreement are then conveyed internally to be considered for inclusion in the agenda of meetings of the ANT Board of Directors.

Who are the members of the ANT board of directors and what are their functions?

The ANT Board of Directors is to consist of 11 members, in accordance with the following list:

- The Minister of Agriculture and Rural Development, who chairs the Board and can only delegate his participation to the Deputy Minister of Rural Development.
- The Minister of the Interior.
- The Minister of Justice and Law.
- The Minister of the Environment and Sustainable Development.
- A delegate of the President of the Republic.
- The Director of the National Planning Department.
- The Director of the Agustín Codazzi Geographical Institute (IGAC)
- A delegate of the indigenous communities.
- A delegate of the Afro-Colombian communities.
- A delegate of the campesino (peasant) communities.
- A delegate of the agricultural associations.

The Superintendent of Notaries and Registration and the Director of the Rural Land Planning, Land Adaptation, and Agricultural Use Unit (Spanish acronym: UPRA) also participate as permanent invitees, with the right to speak but not to vote.

The other members of the Board may delegate their participation to officers at the management level.

One of the functions of the Board of Directors is to approve the establishment, expansion, internal consolidation, or restructuring of indigenous reserves.

When is the territorial legalization process approved?

This process may be approved upon fulfillment of all legal provisions in a session of the Board of Directors convened to study and approve draft agreements for establishment, expansion, internal consolidation, or restructuring submitted by the Ethnic Affairs Section.

Within 30 days, it will issue the agreement for establishment, expansion, or restructuring of the reserve, as the case may be, signed by the Chairman and the Secretary of the Board of Directors.

Does the agreement approved by the board of directors process for establishment, expansion, internal consolidation, or restructuring?

No, it does not. Publication, notification and registration still must be carried out.

After signing of the agreement that establishes, restructures, or expands the reserve, the agreement will be published in the Diario Oficial (official gazette); the interested communities will be notified; and once it becomes final, the agreement's registration with the Public Instruments Registry Office in the location of the lands with the legal status of reserve will be mandated.

The registrar of public instruments will open a record of property registration number for the established or restructured reserve and cancel previous registrations of properties.

What effects does the completion of stages of the proceeding have on the community?

The agreement duly published, notified, and registered with ORIP constitutes the title deed and certifies collective property ownership for the reserve.

Does the indigenous community have duties and obligations once territorial legalization is formalized?

Yes, it does. Some relevant obligations are as follows:

- In the event that individuals other than the members of the reserve settle inside of it, the reserve authorities or civil and police authorities must be informed so that they can take the appropriate measures.

  This is important because, as of the effective date of the agreement, the occupation and additions or *mejoras* by third parties will not be recognized and they will not have the right to request any compensation.

- Land Distribution and Allocation. As provided in Article 85 (Paragraph 2) of Law 160/1994, the cabildo or traditional authority will prepare a table of land allocations in the reserve that have been made or will be made to the families of the parcel, which may be subject to revision and regulation by the ANT in order to achieve equitable distribution of land.

- Easements. As provided in Articles 2.14.7.5.3 and 2.14.7.5.4 of Decree 1071/2015, the reserve is subject to current provisions regulating, among others, right of way, aqueducts, irrigation or drainage channels and other easements necessary for proper use of adjacent properties and with regard to infrastructure works of public interest. Reciprocally, lands of the Nation and those adjacent to the reserve will be subject to essential easements for the benefit and development of the expanded reserve.

- Public property. Lands that are established, expanded, or restructured as a reserve do not include rivers or waters that run through natural beds which, as provided for in Article 677 of the Civil Code, are public property owned by the Nation. The exception is waterways that originate and end within the same property: their ownership, use, and enjoyment belong to the owners of said river courses, and pass to the owners' heirs and other successors.

  It also does not include a thirty-meter wide strip parallel to the line of the permanent bed of rivers and lakes, which, in accordance with Article 83(d) of Decree 2811/1974, is the inalienable and imprescriptible property of the State.

- Social and ecological function. In alignment with the provisions of Article 58 of the Constitution, lands granted the legal status of reserve are subject to fulfillment of the property's social and ecological function, in accordance with the uses, customs and culture of the indigenous community.

  This means that indigenous communities holding the reserve's collective ownership must observe the fulfillment of responsibilities imposed on landowners in general by the Constitution and other laws for the defense of the environment, ecosystems and natural resources.

Should reserves pay the property tax and legal surtaxes for the properties incorporated in the expanded, established, or internally consolidated plot of land?

No, they should not. According to Article 184 of Law 223/1995, at the expense of the National Budget, the Nation will annually transfer to the municipalities with indigenous reserves the amounts equivalent to the sums that municipalities cease to collect for the unified property tax, according to the respective municipal treasurer's certificate, or which the municipalities have not collected for this tax and legal surtaxes.

The Agustín Codazzi Geographical Institute (IGAC) will prepare the real estate census for indigenous reserves within one year of the effective date of this decree, solely for the purposes of the Nation's compensation to the municipalities.

Considerations and Recommendations

1. The reserve's collective ownership is a fundamental right of indigenous groups that protects, through the Constitution, the principle of ethnic and cultural diversity and the right to establish reserves for indigenous communities.
2. It is important that the community identifies the characteristics of their already established reserve or the territory they wish to establish or expand. This information can help clarify the community's territorial claims and/or expectations, simplifying and guiding the process from the beginning.
3. It is essential that the community or its representatives clearly know the rights and duties they have in the context of the process. It is not enough to demand territorial recognition: it is necessary to understand each stage of the process, which will enable a balanced and informed dialog with the competent entity.
4. It is fundamental that the community representatives maintain an organized physical file where they keep applications, documents, communications, and other information related to the territorial application or claim. Information and its proper management is key to avoiding duplication of actions, and having supporting documents is helpful when making requests to competent entities and in keeping comuneros informed of the status of the process.
5. No specific term exists for Colombia's relevant institutions to complete the processes. Some have been processed in a single year, others have taken up to 10 years, and there are even emblematic cases whose processing has lasted more than 20 years. Many processes carry an inactive status for multiple reasons.
6. The aforementioned is due to various factors such as change in the institutions in charge of the processes; depletion of unallocated land in some regions of the country; the high cost of land; conflict; and the State's acquired commitments with the communities that have not been adjusted to the actual capacity to fulfill them. In other cases, some claims of communities distort the concept of indigenous territoriality or ignore the rights of other ethnic groups.
7. Coordinated work among the community, the competent entity, and other institutions that assist in the process is key to pursuing the territorial claims of indigenous communities.
8. Access to land is differentiated in various regions of the country. For example, the Amazon region cannot be compared with the Andean area: the Amazon region stands out because of the size of allocations and the particular characteristics of the processes. Large reserves titled in the Amazon region cannot minimize the problems of access to land of other communities located in areas of the country where there is a large concentration of indigenous populations.
9. Territorial recognition involves not only the obligations of the State, but also of the beneficiary indigenous communities that must be considered.

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