5 Rural land policy and natural resources management

This chapter analyses land management in Colombia, with a particular focus on rural, ethnic and environmental issues. It starts by examining the issue of assigning and distributing formal land ownership, followed by an analysis of land use and territorial development planning in rural areas. Then, it explains the land framework of Indigenous and ethnic groups, as well as prior consultation protocols with Indigenous and ethnic groups for projects developed in their territories and that affect them. The last section considers how land can be mobilised to promote nature conservation efforts and associated economic opportunities that include the most socially vulnerable groups.

Assessments and recommendations

Main messages

The National Development Plan (PND) and the Integral Rural Reform (IRR) contain important diagnostics and pathways for tenure security and the reduction of conflicts in the countryside. Land restitution and distribution policies are fundamental to addressing the high levels of rural poverty, violence and deforestation in the country. The policy of adjudication of untitled public lands (*baldíos)* is a key instrument that has to be accompanied by the facilitation of land formalisation.

However, land distribution, restitution and formalisation policies and, in general, the implementation of the pillar of access to land in the RRI face important challenges to advance at greater speed. There is a pressing need to improve levels of information on the status and quality of lands, and efforts to solve conflicts arising from informal occupation. For example, the government does not know the share of its untitled public land (*baldíos*) and its occupation status, which is meant to be distributed in the land adjudication process. Because of that, the constitution of the Land Fund has remained incomplete. The Multipurpose Cadastre *Catastro Multipropósito* can be a powerful tool to provide the right information on land parcels and thus contribute to land formalisation and distribution processes, but its implementation needs to be strengthened.

Moreover, spatial planning instruments in rural areas lack co-ordinated policy action and consistent and widespread adoption. There is a variety of spatial planning instruments at different scales, such as Areas of Interest for Rural, Economic and Social Development (Zidres), Peasant Reserve Zones (ZRCs) and areas of environmental interest, but without a public policy to promote an integrated vision of development. The IRR and Development Programs with a Territorial Approach (PDETs), for instance, are loosely connected to programmes of land formalisation and distribution. Moreover, most areas that could have these types of instruments and zonings still do not have them. Co-ordination is needed to address fragmentation and duplication of spatial planning instruments in rural areas, while greater efforts must be made to implement these instruments where there are deemed necessary. These efforts are important to enable land that has been distributed, returned and formalised to be put to its best use, be it agricultural, environmental or community-oriented.

Unresolved issues in land constitution for ethnic groups and lack of clarity on territorial autonomy perpetuate socio-territorial conflicts. Colombia, as a multi-ethnic, multicultural social state of law, is committed to protecting Indigenous, Roma and Afro-Colombian communities (Constitution 1991). While the programmes that allow registered Indigenous reserves to execute their own resources (e.g. in education, healthcare and sanitation) are an important step towards autonomy, the issue of Indigenous Territorial Entities is yet to be fully addressed in the legal framework. Moreover, the process of constituting and enlarging Indigenous reserves and Afro-Colombian territories is considered to be opaque and slow. The relocation of occupants of ancestral lands and the lack of binding agreements to settle land claims definitively are structural problems affecting land constitution processes.

Enhancing environment conservation and its income-generating potential requires continuous efforts on law enforcement and stronger involvement of local communities in land use management. Deforestation, illegal mining and timber extraction create socio-territorial conflicts and push Colombia away from climate change mitigation efforts. Still, 99% of Indigenous lands in Colombia capture more carbon than they emit. The government could seek to leverage traditional land management practices of Indigenous groups and Afro-Colombians to preserve biodiversity, water resources and soil quality. Such practices can be associated with income generation opportunities to alleviate poverty levels and foster Indigenous development. Importantly, 71% of protected natural areas in Colombia have links to ethnic group territories, and these relations could be fruitful. Notably, programmes of payment for

ecosystem services (PES) can generate economic opportunities in rural areas, while ensuring an adequate level of environmental protection. Raising the amount of payment received in exchange for ecosystem services may generate stronger incentives for nature conservation.

Recommendations

- ***Strengthen policies of land distribution, restitution and formalisation*** by (Presidency, National Planning Department [DNP], Ministry of Agriculture and Rural Development [MADR] and National Land Agency [ANT]):
  - Prioritising financial and human resources to solve information gaps related to land by accelerating the implementation of the *Catastro Multipropósito*, strengthening the National Geographic Institute (IGAC) and improving the technical assistance to municipalities in the cadastre updating process. The government can consider transforming the cadastre into a permanent state policy, with dedicated budgetary allocation.
  - Ensuring that rural women and socially vulnerable groups lie at the forefront of the land distribution policy (in line with the peace agreement), continuing efforts to register requests of victims of the conflict in the land restitution policy and facilitating conditions for beneficiaries to register the land to support land formalisation (e.g. campaigns to inform about benefits of land formalisation or providing registry free of cost).
  - Improving co-ordination efforts across the different agencies and ministries in charge of spatial planning instruments to enabling the most adequate use of rural lands, according to their location and characteristics. Spatial planning instruments, such as ZRCs, Zidres or Plans for Productive and Social Management of Rural Property (POSPR), can be better co-ordinated to promote an integrated view of territorial development. This needs to be accompanied by:
    - Aligning priorities and investment choices across the different spatial planning instruments.
    - Setting minimum guidelines for land use plans, e.g. by establishing clear priorities or creating co-ordinated plans, such as urban-rural plans.
    - Ensuring that the definition of the agricultural frontier informs the design and implementation of environmental and agricultural instruments and policies.
    - Concluding the action plan for implementation of the Environmental Zoning Plan.
- ***Clarify the level of autonomy and land constitution for ethnic groups***, to boost social cohesion and regional development (Presidency, Ministry of Interior, ANT and other competent entities). This involves:
  - Increasing transparency in the constitution's administrative process and expansion of Indigenous reserves and Afro-Colombian territories to improve trust in the government and reduce social unrest. This can be done by:
    - Consolidating the Unified System of Information of Indigenous Territories with improved information on land, supported by the efforts of the *Catastro Multipropósito.*
    - Strengthening the National Land Agency open data portal, for it to function as a single (government-wide) record of the number of constituted reserves.
    - Reducing entry barriers by publishing a single list of documents that are necessary to file reserve constitution or expansion requests.
    - Co-ordinating the administrative process of reserve creation or expansion among the different government agencies from the beginning, instead of leaving most of the concertation efforts to the high-level committee at the end of the process.

  - Better communicating the stages of the administrative process of reserve creation or expansion to the interested parties, notifying them when the process goes to a different authority and for what purposes.
  - Delineating a clear and agile procedure to issue provisory protection of ancestral lands, under the terms of Decree 2333/2014.
  - Recognising ancestral lands and envisioning models of access and use of these lands by Indigenous and Afro-Colombian communities, as in the example of Decree 1500/2018.
- Strengthening consensual decision-making in land claims by establishing binding multi-ethnic dialogue tables to solve disputes. To this end, parties need to sign agreements to define the steps and object of negotiation and negotiations require clear mandates, with fewer possibilities of leaving the table without an agreement. This can reinforce existing dialogue mechanisms (e.g. the Table for the Resolution of Conflicts over the Use and Ownership of the Land).
- Concluding the new national protocol on the right of prior consultation, in order to better include Indigenous and other ethnic groups in regional development and further enable them to set their own priorities for development. To this end, the government should:
  - Propose the protocol to be enacted as a decree, based on a solid participatory process in which different concerns and multiple points of view are considered.
  - Include in the decree a basic methodological route for consultation with ethnic communities, with minimum procedures, stages, timeframes, formats and acceptable outcomes, while allowing for some flexibility. Ample information sharing should be embedded in each stage.
  - Grant the option for communities to adhere to the basic consultation protocol set in the previous point or to present their own protocol (community-specific).
  - Discuss widely whether or not direct, indirect and cumulative impacts will be included.
- Concluding the elaboration and approval of the special programme of access to land by Roma communities, as mandated by Article 17 of Decree 902/2017.

- ***Improve law enforcement and involvement of local communities in land use management*** to fight deforestation and promote environmental restoration (Presidency, Ministry of Interior, ANT, Ministry of Environment among other competent entities). This involves:
  - Allocating permanent funding and sufficient human resources dedicated to law enforcement in protected areas and their buffer zones.
  - Strengthening the support for peasants to access land and technical assistance to develop sustainable land practices and engage in conservation and restoration activities.
  - Supporting subnational governments in adapting their PES programmes into the national framework.
  - Better co-ordinating the process of signing Nature Conservation Contracts among different agencies and ministries.
  - Securing land rights of Indigenous and Afro-Colombian communities to allow them to participate in nature conservation and restoration efforts while unlocking new income sources.
  - Continuing to support Community Ecotourism Contracts, by investing in capacity development and knowledge-sharing.

- Including Indigenous groups and ethnic communities in the management and monitoring of protected areas, for instance through Shared Management Plans in which participation goes beyond the design stage or through joint governance bodies.
- Continuing supporting the commitment to the Escazú Agreement, by incorporating its provisions into the national framework of access to information, environmental justice and protection of environmental human rights defenders.

Introduction

The unequal distribution of rural land is a persistent historic factor and one of the main determinants of the armed conflict in Colombia, particularly affecting rural communities (Berry, 2017[1]; Karl, 2017[2]; Nilsson and Taylor, 2016[3]; Ariza, 2022[4]). During the armed conflict, forced displacements were recurrent, which intensified rural-urban migration and facilitated practices of illegal land grabbing and informal acquisitions (McKay, 2018[5]). According to the Central Register of Victims (*Registro Único de Víctimas*), more than 8 million events of forced displacement have taken place in Colombia since the beginning of the armed conflict until the present day.[1] Because of that, vast portions of land were abandoned. Many were occupied again, mostly informally: it is estimated that 14% of the entire country's territory has changed hands illegally, which amounts to 8.3 million hectares of land (McKay, 2018, p. 9[5]). This issue affected mainly rural areas, especially the remote ones, where a variety of Indigenous and Afro-Colombian groups inhabit.

In 2011, the country enacted the Victims and Land Restitution Law (Law 1448) to promote, among other objectives, the restitution of lands to people that had been displaced due to violence in the countryside. Land restitution is one aspect of the integral reparation due to victims. Beyond recognising the conflict and its victims, which was an important step in the historic process, the law aims to provide victims of the conflict with land ownership and sufficient socio-economic conditions to stay on their land. For that, a Special Unit of Restitution was created within the Ministry of Agriculture to manage property records and a special jurisdiction judges cases of individual and collective land restitution.

With the peace agreement's signature in 2016, further promises of land distribution and tenure formalisation came along (ICG, 2021[6]). Indeed, the issue of land distribution and ownership is one of the pillars of the proposed Integral Rural Reform (*Reforma Rural Integral*, IRR), which is the first section of the peace agreement. However, this is a complex process that faces, among others, challenges in the land information and co-ordination. Moreover, given the informal nature of the historical change of landowners, the process of land distribution has been more challenging than initially anticipated.

Speeding up the land distribution and restitution processes is a priority action to attain sustainable peace and unlock all of the potential of rural areas in Colombia. It is widely recognised in the literature that promoting land allocation and tenure security is necessary to overcome the challenges left by decades of armed conflict (Ariza, 2021[7]). It is not only that land enables development in rural areas but also that it may help to contain the effects of the intensified rural-urban migration of victims of the conflict and contribute to greater social cohesion.

Furthermore, land is a key asset to unlocking place-based economic opportunities associated with environmental preservation and climate change mitigation in rural areas. While traditional sectors such as agriculture and mining depend on access to land to develop activities, this also holds true for sectors such as the bioeconomy, renewable energy, ecotourism and forest conservation. The green economy can be developed under varying arrangements of land ownership, including collective ownership, concessions and user rights, which indicates that tenure security can coexist with environmental preservation.

With that in mind, the next sections are structured as follows. First, the issue of assigning and distributing formal land ownership is given consideration, followed by an analysis of land use and territorial development planning in rural areas. Then, the following sections explain the land framework of Indigenous and ethnic groups, as well as prior consultation protocols with Indigenous and ethnic groups for projects developed in their territories and that affect them. The last section considers how land can be mobilised to promote nature conservation efforts and associated economic opportunities that include the most socially vulnerable groups.

Box 5.1. Historic of the armed conflict in Colombia until the peace agreement

The internal armed conflict began in the 1940s. A civil war between the Colombian Conservative Party and the Colombian Liberal Party took place during the period 1948-58. Battles were fought primarily in rural areas and provoked peasant violence throughout Colombia. Institutional chaos and the lack of security in rural areas during this period caused millions of people to abandon their homes, land and other assets. In 1958, Liberal and Conservative Party elites, together with religious and business leaders, negotiated a political system known as the National Front. The two parties agreed to hold elections but to alternate power regardless of the election results. This pact lasted until 1990. This period of stability allowed Colombian Conservative and Liberal elites to consolidate their power, while also strengthening the military and inhibiting political reforms.

In the 1960s, several left-wing guerrilla groups formed in response to this monopoly on power, promising to overthrow the government, introduce land access for smallholders and eliminate social injustices and repression inflicted on the rural population. These groups included the National Liberation Army (ELN, formed in 1962), the Revolutionary Armed Forces of Colombia (FARC, 1965) and the People's Liberation Army (EPL, 1967). Over time, FARC emerged as the most powerful of these groups, acquiring de facto control over large areas of land in rural areas.

Between 1974 and 1978, the economy slowed and inflation increased rapidly. The country's social unrest created the conditions for illegal activities such as coca cultivation. The government promoted a national security policy to counteract illegal armed groups and, in the late 1970s, armed self-defence groups created by drug dealers and local landlords in response to kidnappings by left-wing groups, cattle theft and extortions began to appear in different parts of the country. In the 1980s, peace negotiations between the government and guerrillas failed, FARC continued its territorial expansion and self-defence groups mutated into right-wing paramilitary groups. The government eventually strengthened the presence of the army in the regions affected by the armed conflict while also promoting investment in infrastructure works in these areas to break their geographic isolation and marginalisation.

Drug traffickers and guerrilla movements sometimes accommodated and sometimes clashed with each other. Accommodation occurred when drug traffickers seized land in areas dominated by guerrilla groups and paid the guerrillas a tax in exchange for protection. Conflict occurred when drug traffickers who owned large properties refused to co-operate with guerrillas and used their own paramilitary armies to fight the guerrillas. When several powerful drug traffickers had accumulated large areas of land to establish coca crops and build laboratories to process cocaine, their private armies allied with self-defence groups and the Colombian military against the leftist guerrillas.

The year 2013 was marked by peace negotiations between the government and FARC, and by a wave of countrywide farmer protests. The peace negotiations were concluded in 2016 with the signature of the peace agreement, whose first chapter contains an Integral Rural Reform (IRR), with interconnected programmes related to land, productivity and environmental protection.

Source: OECD (2015[8]), *OECD Review of Agricultural Policies: Colombia 2015*, https://doi.org/10.1787/9789264227644-en.

The state of land use and related environmental challenges

Historic land concentration and the path of distribution

Land in Colombia is highly concentrated among few landowners. A common metric of inequality in land distribution is the Gini coefficient, which measures the dispersion of land distribution from 0 to 1, where 1 corresponds to total concentration. In Latin America, the Gini coefficient for land is 0.79, while in Europe it is 0.57, in Africa 0.56 and in Asia 0.55 (Ariza, 2021, p. 2[7]). In 2018, the average Gini coefficient of land ownership in Colombia was 0.868 (UPRA, 2018[9]) This makes Colombia the country with the third highest coefficient of land concentration in Latin America, after Paraguay and Chile (Ariza, 2022[10])

Land concentration refers to both ownership and size. The structure of private rural property is predominantly of large and medium properties: 41% of the area of private property in the countryside is parcels larger than 200 hectares (ha) and the other 40% qualify as medium-sized property of between 20 and 200 ha. The remaining 7 million ha are distributed between small and micro properties (ILSA, 2015[11]). The 81.711% of owners or possessors of private rural land with agricultural use hold less than 10 hectares of land each (UPRA, 2018[9]).The structure of land ownership has remained the same over the 20th century, despite several attempts to implement land redistribution (McKay, 2018[5]). One of the most important policies in this regard is the *Ley de Reforma Agraria* (Law 160 of 1994), according to which the government would finance market transactions of land in favour of those with no or little access to land. This policy, however, did not include goals of tenure formalisation or regularisation. This problem has only gained magnitude in the country. As of 2015, the rate of land tenure informality ranged from 50% to 79%, depending on the source (McKay, 2018[5]; UPRA, 2020[12]). According to UPRA (2020[12]), the land tenure informality rate reached 52.7% in 2019. Starting in 2010, the government has given more attention to the issue of land tenure informality, by designing a pilot project and establishing the Rural Property Formalisation Program led by MADR, which supported rural population in their actions before the judges to formalise the right of ownership or the reorganisation of titles.

Another important area of progress is one of land restitution. Law 1448/2011 created a special procedure to give land back to the victims of the conflict, both individually and collectively regarded. Indigenous and ethnic groups are recognised as historic victims of this process, which entitles them to special land restitution processes, besides the existing policies of land rights recognition (see next section). Likewise, in 2012, the government issued Law 1561/2012, which establishes a special verbal process to grant property titles to the material possessor of a small economic entity.

Departing from this scenario, land restitution, distribution and formalisation gained a prominent role in the negotiations that led to the peace agreement signed in 2016. In the agreement, access to land is regarded as a prerequisite for the transformation of the countryside and one of the four pillars in the IRR (Chapter 3). Besides restitution, ensuring access to land and tenure security to the victims of the conflict and to rural workers and peasants is also fundamental in the process of peace building, given the country's history of forced displacements and high concentration of land (Box 5.1). As mentioned before in this review, the IRR establised a programme of diagnostic and prioritisation of investments with a territorial focus, (PDETs). Under this programme, 16 regions were defined, comprising 170 municipalities, among the most affected by the conflict and with the highest poverty rates, in which the provision of public goods and services will be scaled up.

Albeit its central role, the IRR has been the point of the peace agreement most lacking in implementation (Kroc Institute for International Peace Studies, 2021, p. 8[13]). To illustrate, of the 36 legal reforms reputed necessary to implement rural reform, only 15 had been enacted by the end of 2021 (National Congress, 2021[14]). The Land Plan of the Integral Rural Reform was one of the last to be approved. Moreover, the rate of land formalisation corresponds to only 29.7% of the annual rate that would be needed to meet the goal of formalising 7 million ha of land within 10 years (National Congress, 2021[14]).

Environmental challenges related to land

The country also faces significant environmental challenges related to land, notably deforestation and land degradation. The main drivers of deforestation are the expansion of the agricultural frontier, illicit crops, displacement of people and settlements, infrastructure building, mining, wood extraction and forest fires (OECD/ECLAC, 2014, p. 30[15]). Notably, more than half of forest loss in 2005-10 was due to conversion to pasture for livestock grazing (OECD/ECLAC, 2014, p. 30[15]). In addition, in 2015-19, deforestation was substantially higher, when compared to the period of 2010-14 (ICG, 2021, p. 7[6]).

Moreover, deforestation, extensive cattle farming and agriculture all contribute significantly to greenhouse gas (GHG) emissions in the country. In 2019, agriculture accounted for 28.7% of total GHG emissions in Colombia, compared with 9.5% of the OECD average (OECD, 2021[16]). At the same time, agricultural production is affected by climate change. The Comprehensive Climate Change Management Plan (*PIGCC Agropecuario*) states that agricultural production presents a high level of risk in the face of climate change in 497 municipalities of the country and, in 5 municipalities, very high levels are evident.

Ethnic groups are particularly vulnerable to the menaces of deforestation and climate change. In 2017, more than 15% of the deforestation occurred in ethnic territories, whose main causes are illegal mineral extraction, illegal timber extraction and expansion of the agricultural frontier (DNP, 2019, p. 848[17]). To illustrate, according to the DNP, the departments of Amazonas, Chocó, Guainía, San Andrés and Vaupés, which count with a proportion of ethnic minorities above the national average, are the most vulnerable ones to climate change (DNP, 2019, p. 848[17]). Migratory dynamics of ethnic minorities have led to the loss of traditional knowledge in terms of biodiversity conservation (DNP, 2019, p. 848[17]).

To address these social, economic and environmental challenges, the integrated view of rural well-being proposed in Chapter 3 is necessary, by considering land as a basis upon which to promote nature conservation and climate change mitigation efforts and to diversify the economy with a sustainable vision. As affirmed in the Sustainability Pact of the National Development Plan of 2018-22, which is an umbrella policy for environmental and sustainable economic development issues, the state must protect natural ecosystems while fostering economic growth. This point will be further developed in this chapter.

Promoting land tenure security in rural areas

The peace agreement states that a “genuine transformation of the countryside” must be promoted, by, among other things, legalising and democratising property and promoting broader ownership of land (Colombia, 2016[18]). Besides the land restitution policy of the Victims Law, this includes the formalisation of land records and distribution of untitled land to the most vulnerable communities and rural women. These policies can contribute to addressing rural poverty and include Indigenous peoples and ethnic groups in regional development, while also diminishing the grounds for illegal economic activities that are responsible for recent surges in deforestation rates and land-related conflicts.

The IRR (Chapter 1 of the 2016 peace agreement) contains different instruments to mobilise land as an asset. These instruments intend to help the government achieve the goal to title 7 million ha of land and give access to other 3 million ha within 12 years from signature, preferentially to the greatest possible number of men and women living in the countryside, and who have no or insufficient land. The main instruments to ensure access to land and promote land formalisation are the following:

- **Land Fund (*Fondo de Tierras*)**: This is a permanent fund set up in 2016 to distribute free land to the rural communities most affected by poverty, neglect and conflict. It will distribute 3 million ha of land within 12 years. It is the main mechanism to promote access to land.

- **Large-scale land titling**: The government will progressively title land occupied or held by the rural population, giving priority to title of 7 million ha of small- and medium-sized rural properties located in PDETs and Peasant Economic Zones (ZRCs) within 10 years.
- **Comprehensive purchase subsidy and special purchase credit**: The government will grant subsidies and create a subsidised special credit line for the purchase of land by the victimised rural population, associations of agricultural workers and members of communities under resettlement programmes.
- **General Cadastral Information System (Multipurpose Cadastre- *Catastro Multipropósito*)**: The government will create and maintain a comprehensive and multipurpose registry of rural property within 7 years. The registry will contain information about the property (size and characteristics) and about the owners, disaggregated by gender and ethnicity.
- **Environmental Zoning Plan (*Plan de Zonificación Ambiental)***: The government will delimit the agricultural frontier and delineate macro-areas that require proper environmental management within two years.
- **Peasant Reserve Zones (*Zonas de Reserva Campesina*)**: The government will delimit zones to promote access to land by peasants and provide support to agricultural initiatives that are based on environmental and food sustainability.
- **Land restitution**: The right of forcibly displaced individuals and groups to return and receive formal title to their lands under the Victims Law is to be assured. The measures to do so integrate Chapter 5 of the peace agreement but will be co-ordinated with policies defined in Chapter 1.

Most of these instruments were part of the legal framework before the IRR. The Land Fund derives from the National Agrarian Fund (Decree 902/2017) and ZRCs were first enacted in 1994 with Law 160 (*Ley de Reforma Agraria*). Together, they are aimed at reducing violence and poverty in the countryside. ZRCs and Environmental Zoning Plans will be discussed below. In the next subsections, the policies of the multipurpose land cadastre system and of land distribution, restitution and formalisation will be discussed.

*The ambitious General Cadastral Information System (*Catastro Multipropósito*)*

The *Catastro Multipropósito* is a national policy designed in 2019 to create a national land registry system with georeferenced parcel-by-parcel information on land occupation and formalisation status.[2] It is a pioneering project that has never been attempted in Latin America. It requires that every land parcel in the country is adequately delimited, registered and accounted for. The result would be a comprehensive, updated and reliable cadastre, consistent with the real estate registry system, digital and interoperable with other information systems.

The cadastre in itself is an information system. Nonetheless, given the great level of detail and the readability of information, it is intended to contribute towards the design and implementation of spatial planning and territorial development policies, as well as land distribution and formalisation efforts. By flagging contradictory or missing land ownership and occupation data, the cadastre could help to identify and address land use conflicts. In this vein, if used to inform land policies, it may favour higher formalisation rates and higher levels of tenure security.

The implementation of the cadastre is a very ambitious policy that requires resources and time with a great level of policy co-ordination. At the national level, standardised data measurement techniques were designed: for instance, a national methodology to calculate land area in square meters was composed for the first time. The description of measurements and boundaries of old land titles, however, is pending an update as of 2022. The model to implement this policy needs the right balance between central co-ordination and decentralisation of data collection by assisting municipalities to conduct georeferencing and digitalise information systems. Some municipalities with sufficient technical, operative and financial capacity can greatly contribute to advancing this policy locally.

The creation of the land management system (*Sistema de Administración de Tierras*) is one of the goals of the National Development Plan (PND) 2018-2022. The government expected to have 60% of the country's area updated in the cadastre system by the end of 2022, which ought to include 100% of the 170 PDET municipalities. The government is aiming for 100% coverage by 2025.

Nonetheless, despite ongoing efforts, the *Catastro Multipropósito* is lagging behind this goal. As of 2022, 25.6% of the country's area is registered. The main challenges are linked to financial and human resources, as well as the delays imposed by the COVID-19 pandemic. The slow pace of activities can also be attributed to the low-capacity levels and inadequacy of information systems in municipalities (see example in Chapter 3). Indeed, until the end of March 2021, 96.14% of the country's municipalities have not created their cadastral system or still have to update it (National Congress, 2021[14]).

If the 2025 goal of 100% of coverage is to be achieved, greater capacity of the institutions in charge of this policy and prioritisation to complete data collection is required. Colombia needs to continue investing in technical and human resources at all levels of government. A dedicated budget must be allocated to ensure that the cadastre system becomes a permanent, regularly updated state policy. As the process advances, the national geographic institute IGAC has to focus on validating and monitoring data entries and help co-ordinate groundwork in local entities. To this end, investing in the professionalisation of the IGAC would be cornerstone support to this policy. Moreover, public registry offices, which are responsible for registering land transactions, will have a fundamental role in facilitating the update of the information of the cadastre.

Mexico's experience in investing in technology to modernise land public registries stresses the relevance of the need for strong political commitment to allocate enough financial resources and human capital to advance this agenda (Box 5.2).

Box 5.2. Best practices in public registries and cadastres in Mexico

Protecting property rights is an indispensable condition for growth and prosperity since they generate an adequate environment for transactions and provide legal certainty. The adequate implementation of property rights, as well as the definition of its owners, can mean higher security levels, more trust and easy access to investment and credit, as well as to innovation and development. Therefore, an efficient system for protecting property rights will guarantee the economic return of investments, generating economic growth and contributing to social development.

An effective modernisation necessarily requires reforming the legal framework. Yet, the essential and most important element for public property registries and cadastre modernisation is highest-level leadership and political support which must translate, among other things, into the availability of financial resources.

Modernisation efforts further require a clear programme, with readily defined and achievable objectives and, at a second stage, the use of information and communication technology must be included as tools to reach such objectives. The involvement of the staff in charge of modernisation tasks is key to achieving a shared vision and creating a sense of belonging, which contributes to the irreversibility of the improvements to be implemented.

Source: Adapted from OECD (2012[19]), *Mejores prácticas registrales y catastrales en México (Best Practices in Public Registries and Cadastres in Mexico)*, OECD, Paris.

Land distribution, restitution and formalisation

There are three main policies to address the interconnected issues of land concentration, tenure informality and restitution of lands to the victims of the armed conflict. Land concentration is addressed by the policy of adjudication of *baldíos*, to which the constitution of the Land Fund contributes, alongside the social management of property. Tenure informality seeks to be remediated by policies of land tenure formalisation on a large scale. Through these policies, occupants of private property receive a clear title to the land, which they must register with the Public Registry. Last, there is a special administrative and judicial procedure to return land to victims of the armed conflict, with a specific process to address collective claims, such as the ones from ethnic communities (Victims Law).

The Land Fund draws from a large pool of untitled public land (*baldíos*). Untitled public land is all land which, located within the territorial limits, lack any other owner and is therefore property of the state (Article 675 of the Colombian Civil Code). An unknown share of state lands is still classified as *baldíos*. They are public assets of the Nation and can be transferred to rural inhabitants in a situation of vulnerability, under the terms of Law 160 of 1994 and its modifying Decree 902/2017. As such, untitled public land can legally become the property of informal occupants.

Moreover, the government's policy under the peace agreement is to distribute untitled lands to peasants and private companies to develop productive activities, under the paradigm of social management of property (Resolutions 128 and 129 of 2017). In doing so, the government expects to reduce the number of untitled lands whilst supporting new economic activities. Land distribution, which is one of the main goals of the IRR, would go hand in hand with economic development. This is why this policy connects to the instruments of territorial ordering developed since 2016, with the creation of ZRCs and Zidres (Section below).

Since the Land Fund was created in 2016, the government managed to include 1.4 million ha of land as possibly available for adjudication. However, in large part, the government still has to define which lands are in condition to be actually transferred (PGN, 2021). For instance, areas that are occupied, located in zones of environmental preservation or lands claimed by Indigenous or Afro-Colombian populations have restrictions. As of 2020, the National Land Agency (ANT) did not know the occupation status of 82% of all the lands included in the Land Fund, mostly because the inventory of *baldíos* has not been concluded yet (PGN, 2021, p. §4[20]).

The second set of policies is the land tenure formalisation policy. Within the peace agreement, it was established that the state will carry out massive formalisation of small- and medium-sized rural property, in order to guarantee the rights of legitimate owners and possessors of land. Against dispossession of any kind, the national government will progressively formalise all land occupied or possessed by small farmers and peasants. Under the peace agreement, progressive access to land must be given in particular to women and socially vulnerable groups. To this end, the government has carried out normative reforms and structured administrative processes to facilitate the formalisation of private property and the titling of rural land.

Besides clearing titles, formalisation policies can translate into direct support for peasants and small farmers to register land. That is so because adjudications only become formal when the land is registered and it is the recipients of the land who must take this final step of land registration. However, many do not conclude the process of land transfer before the Public Registry and Instruments Office, either due to a lack of knowledge or financial resources (Duarte and Castaño, 2020[21]). The government needs to provide support to these recipients, which are peasants and victims of the conflict, to ensure that they formalise land, after receiving it. Specific policies should be implemented to facilitate land formalisation, for instance by signing partnerships with the public registry offices to make land registries of beneficiaries of state policies free of cost (Articles 4, 5 and 6 of Decree 902/2017).

A third set of policies relates to the imperative of reallocating victims of the conflict. According to the Victims and Land Restitution Law of 2011, all those who were displaced by the conflict have the right to return to the lands that they previously owned or occupied (Law 1448). The problem is that, since then, many lands have been informally occupied by other people. Occupants are entitled to compensation as long as they prove that they are buyers or occupants that acted in good faith. The process of land reclamation has been more disputed than initially anticipated and has generated social conflicts in some municipalities (ICG, 2021, p. 4[6]). In fact, to solve social conflicts that can emerge from land restitution processes, the Special Administrative Unit for the Management of Restitution of Dispossessed Lands (UAEGRTD) established a mechanism of social dialogue to consolidate dialogue scenarios around the restitution procedure in its different stages.

Table 5.1. The Land Fund: Progress so far (2021)

Description	Progress
Created in 2016 as a pillar of the Integral Rural Reform Main goals: • Distribute 3 million ha of land in 12 years • Formalise 7 million ha of land in 10 years 1 million hectares have entered the Fund.	• Half of the land in the fund is located in PDET municipalities • The occupation status of 82% of land in the fund is unknown • 18% of the 1 million hectares have been hander over and only 1.5% have been transferred to peasants without or with insufficient land • The formalisation rate is at 30% of what it should be to achieve the goal

Source: PGN (2021[20]), *Informe sobre el estado de avance de la implementación de las estrategias de acceso a tierras y uso del suelo rural contempladas en el Acuerdo de Paz*, https://www.procuraduria.gov.co/portal/media/file/Informe%20sobre%20Acceso%20y%20Uso%20de%20la%20Tierra%20Def%2007_01_2021.pdf; National Congress (2021[14]), *¿En que va la paz 5 anos despues de la firma del Acuerdo Final?*.

There is a special jurisdiction to promote victims' relocation, in a process that combines judicial and administrative stages. The process starts with the victim filing an administrative request of registry to the Land Restitution Unit (*Unidad de Restitución de Tierras*, URT), an entity attached to MADR. Once registered, the property's demand subsequently moves to the judiciary, to be decided by the specialised sector. This process is better explained in Box 5.3.

Box 5.3. Land restitution to victims of the armed conflict

The Victims and Land Restitution Law of 2011 adopted a restorative approach focused on the victims of the armed conflict. Under this law, the state took on the responsibility of providing reparations, including the restitution of properties, independently from the prosecution of those responsible for the victimising event.

According to the law, dispossessions presumably take place if the property had been affected by any legal transactions, whenever: i) violent events had taken place at the property or in neighbouring properties; ii) there is a high level of concentration of land ownership in the area; iii) one of the parties of the legal transactions has been extradited; or iv) the price paid to acquire the property was less than 50% of the true value of the property or legal transactions. Dispossession is also presumed to have taken place if the property began to be occupied by third parties between 1991 and 2011 (Law 1448).

The law created a special land restitution process divided into three stages: administrative, judicial and post-failure. The Land Restitution Unit (URT) is responsible for leading the administrative stage: gathering evidence, documenting the context of dispossession and submitting the lawsuit for land restitution. The victims' testimonial suffices to initiate the restitution process. Additionally, this unit is responsible for legally representing the victims in the judicial proceedings, which is the second stage. Then, the land restitution jurisdiction is responsible for assessing the evidence submitted by the URT,

requesting additional evidence and deciding upon the fundamental right to restitution. In the post-failure stage, restitution materialises and the land judge issues a sentence. The URT is in charge of the implementation of the productive project for the beneficiary.

The Victims and Land Restitution Law of 2011 aimed at resolving the shortcomings of the previous reparation mechanism, Justice and Peace. By means of clear evidentiary rules, an agency in charge of gathering the information (URT) and a jurisdiction specialising in restitution, a consistent system was created that may serve as a model for other restitution experiences.

Source: Adapted from González, L. et al. (2021[22]), "Who owns what in Macondo? The flexibilization of the rules of evidence in land restitution in Colombia", https://doi.org/10.1093/ijtj/ijaa029.

Historically, the pressure for rural land was resolved through marginal reforms, through the adjudication of *baldíos*. Land has been distributed without altering the structure of land ownership, which is of large- and medium-sized properties in the hands of few landowners. According to the General Attorney's Office (*Procuradoría General de la Nación*), these reforms have paid insufficient attention to environmental aspects, with insufficient regulation of land use and little support for the productive reconversion of degraded lands (PGN, 2021, p. §60[20]).

Today, the IRR focuses on the adjudication of untitled public lands (*baldíos*) but also foresees the need to promote land tenure formalisation, alongside the ongoing victims' restitution process. Put together, these policies offer a comprehensive answer to the interconnected challenges of land concentration, displacements and land tenure informality.

Nonetheless, the slow implementation of the IRR of the 2016 peace agreement is a testimony to the complicated nature of the attempted reforms. Outside of the judicial procedure of victims' restitution, addressing land conflicts through administrative land distribution has had limited reach. Moreover, the implementation of the *Catastro Multipropósito*, which is supposed to clarify land ownership status, is lagging.

In all, the main challenges to increasing access to land and promoting tenure security are the slow pace of land distribution and the persistence of land tenure informality. Only 17.8% of the total number of hectares entered into the Land Fund have been effectively handed over and only 1.5% have been handed over to peasants without land or with insufficient land (National Congress, 2021, p. 23[14]). In addition, only 29.74% of the amount of necessary land is being formalised per year in order to meet the goal of 7 million ha formalised in 10 years (National Congress, 2021, p. 23[14]). Interestingly, this progress refers mainly to privately owned land that was in a situation of informality, on which the respective title deeds have been granted, thus reducing land tenure informality.

The new government that took office in August 2022 has accelerated the land distribution and resitituion process. By November 2022, it had tittled additional 681 372 ha to peasants, Indginous and Afro-colombian communities. It had also established ambituous strategies to increase land distribution, for example though an historic agreement to buy land to private cattle ranchers.

If the implementation of policies of land distribution, restitution and formalisation occurs in a timely and effective manner, these policies have the potential to address the most pressing challenges of land insecurity and informality in Colombia. Yet, this policy in isolation won't attain lasting outcomes for rrual development. They must be coupled with efforts to regulate land use, protect the environment and provide infraestructure and services along with support to the productive reconversion of land. In this sense, spatial planning across different policy purposes – environmental, agricultural and ethnic diversity – can contribute to more efficient land allocation policies, as will be discussed in the following section.

Towards an integrated approach to territorial development

There is a hierarchy of territorial development and spatial plans at the national, regional (*departamento*), metropolitan and municipal levels (Table 5.2). These planning tools cover the whole territory within a given jurisdiction, i.e. both urban and rural areas, but can have differentiated focus and visions for each of them. Development plans contain a strategic vision and an investment plan to be achieved during each administration and therefore last four years. Land use plans express zoning regulations and specific land use criteria within a 12-year framework. Land use plans may create Rural Planning Units (*Unidades de Planificación Rural*, UPR), which are rural areas with differentiated objectives and land use criteria.

At the local scale, zoning is more detailed and plans tend to be finer-grained. The different terminologies of municipal land use plans –Territorial Management Plan (POT), or Territorial Management Scheme (EOT) – refer to population thresholds (Article 9 of Law 388 of 1997). Many municipal land use plans are outdated and lack disaster risk management tools (RIMISP, 2020, p. 19[23]). Overall, the implementation of local land use plans is lagging, due to the low level of administrative capacities (RIMISP, 2020, p. 36[23]).

Table 5.2. Basic planning instruments of land use and territorial development

Land use planning (12 years)	Level of government	Territorial development (4 years)
Constitution of 1991, National laws (such as LOOT) and Rural Agricultural Planning Unit (UPRA) guidelines	National	National Development Plan (DNP)
Land Use Department Plan (POD)	Departmental	Department Development Plan (DPP)
Strategic Metropolitan Land Use Plan (PEMOT)	Metropolitan	Integrated Metropolitan Development Plan (PIDM)
Land Use Plans (POT/PBOT/EOT and UPR)	Municipal	Municipal Development Plan (PDM)

Source: Adapted from UPRA (2018[9]), *Análisis de distribución de la propiedad rural en Colombia. Resultados 2018*, https://www.upra.gov.co/en/Publicaciones/Distribucion_2018.pdf

Starting in 2022, regions will become a new level of territorial planning in the country. Despite the fact that regions are foreseen as territorial entities since the 1991 Constitution; only with the Law of Regions (2019) can Administrative Planning Regions (RAP) be converted into Regional Territorial Entities (*Regiones Entidad Territorial*, RET). This way, a new layer of territorial planning will arise, which will require its own budgetary allocation, regulations and distribution of responsibilities. New land use and territorial development plans will have to be designed for this new territorial level.

These instruments, which are by nature broad and comprehensive, reflect a strategic vision for territorial development at each level of government. However, there is no public policy that integrates all of these land use planning instruments, as to promote an integrated vision of territorial development (RIMISP, 2020, p. 19[23]). This is done, albeit at a limited scope, through joint projects and alliances promoted by associative territorial entities (RIMISP, 2020, p. 84[23]).

In addition to this hierarchical system, there are planning instruments associated with specific objectives of rural development. The main ones are the Peasant Reserve Zones (*Zonas de Reserva Campesina*, ZRC), Areas of Interest for Rural, Economic and Social Development (*Zonas de Interés de Desarrollo Rural, Económico y Social*, Zidres), *Hojas de Ruta* from PDET and the Plan for Productive and Social Management of Rural Property (*Planes de ordenamiento social de la propiedad rural*, POSPR) (Table 5.3).

ZRCs are geographical areas that can serve to foment and consolidate the peasant economy (Article 80 of Law 160 of 1994). This involves sustainable agricultural production in combination with land distribution policies and environmental preservation. Importantly, where such zones exist, they can impede the advancement of the agricultural frontier (Humboldt Institute, 2017[24]).

Despite existing in the legal framework since 1994, only seven ZRCs have been created so far, of which only one was approved in the last ten years (PGN, 2021, p. §64[20]). In 2018, the National Land Agency (ANT) created the ZRC of the region of Montes de María 2, which encompasses the municipalities of Córdoba, Guamo, San Juan de Nepomuceno and Zambrano (Agreement 57). As of 2021, 20 other constitution requests awaited processing before the ANT (PGN, 2021, p. §64[20]). According to the ANT, the problem is that the information received at the time of solicitation has since become obsolete and needs to be updated. Lack of co-ordination between the relevant public entities has been mentioned as another challenge to the constitution of these zones (Humboldt Institute, 2017[24]).

Zidres are geographical areas suitable for agricultural development purposes. According to the Rural Agricultural Planning Unit (UPRA), 7 million ha of land are suitable to be zoned as Zidres. Yet currently there is only 1 Zidres in the country, in the municipality of Puerto López, Meta (OECD questionnaire, 2021). Productive projects approved within a Zidres are considered of public interest and enjoy special conditions and subsidies. Small farmers already using the land will have to become project associates to receive the same benefits.

POSPRs are a tool through which institutional action is organised in targeted areas for the development of programmes, projects and actions aimed at promoting equitable distribution, access to land and the security of rural property, promoting its use in compliance with its social and ecological function (Resolution 129 of 2017). The ANT enacts such plans in the zones of priority of the Catastro *Multipropósito*, in order to support the implementation of the IRR. In municipalities that have a POSPR, a policy of land formalisation and distribution based on the *Catastro Multipropósito* must be implemented. According to the General Attorney's Office (*Procuraduría General de la Nación*), the difficulties in the elaboration of the POSPR, among them the risk of intervening in areas plagued by the armed conflict, have slowed down efforts of land formalisation (PGN, 2021, p. §54[20]).

Table 5.3. Planning instruments for rural development

Zoning	Planning tool	Scale/Coverage	Objective	Entity in charge
Development Programs with a Territorial Approach (PDETs)	*Hoja de Ruta* of PDETs	One for each of the 16 subregions of PDETs	Diagnostic of socio-economic characteristics and strategy to prioritise sectoral investments with a territorial focus	Agency for Territorial Renovation (ART)
Zones of priority in the Cadastre System	Plan for Social Management of Rural Property (POSPR)	Municipal	Target policies of land formalisation, distribution and security	National Land Agency (Resolution 0129 of May 26 2017)
Areas of Interest for Rural, Economic and Social Development (Zidres)	Comprehensive Rural Development Plan (PDRI)	Municipal or inter-municipal	Diagnostic of areas with productive potential and plan for agricultural productivity	Rural Agricultural Planning Unit (Law 1776 of 2016)
Peasant Reserve Zones (ZRCs)	Sustainable Development Plan of the ZRC	Municipalities within a ZRC	Diagnostic of natural resources and land characteristics and strategy of land and environmental management	National Land Agency

Different national bodies (ANT, ART and UPRA) are in charge of elaborating on each of these plans, which contain long and detailed diagnostics of different territorial scales (Table 5.3). Despite being called "plans" with associated "zones", they do not have spatial planning functions. Instead, they serve as labels to target area-based policy interventions. Their horizon of action is highly varied and their capacity to be translated into action is limited.

These plans are connected to programmes of land formalisation and distribution, agricultural development and food security. While the POSPR is strongly connected to land formalisation programmes, for the other plans the link is less clear. According to the National Planning Department (DNP), between 2012 and 2020,

468 plans, programmes and projects were designed or implemented in rural territories. In addition, there are over 15 national entities with plans, programmes and projects with direct impact on the territory and 10 national entities whose actions have an impact on rural development (DNP, 2022[25]).

What is more, most of these instruments have experienced low implementation levels. Since its inception, only 1 Zidres has been created across the entire 7 million ha suitable for that instrument in the country. Despite that, yet another instrument is being envisioned for the same purpose of economic development, called Economic Development Zones (ZDEs). Only seven ZRCs have been created since 1994. Out of the 41 municipalities that have a POSPR, the policy of land formalisation and distribution within the Catastro *Multipropósito* has been developed and implemented in only one (PGN, 2021, p. §49[20]).

In all, without strictly regulating spatial and territorial development, these instruments add up to the existing plethora of municipal, metropolitan and departmental plans (Table 5.3). After all, they share a similar purpose: promoting territorial development and facilitating land distribution for productive purposes. As noted elsewhere, departments and municipalities already have several planning instruments that are seldom interconnected and have different implementation schedules (OECD, 2019[26]). The government has recognised that the various rural development plans, programmes and projects lead to duplication of functions, dispersion of resources and lack of inter-sectoral articulation (DNP, 2022[25]). Planning should be a facilitator, orienting budgetary allocation and investment choices, not an obstacle to action.

To overcome fragmentation, the different planning authorities must invest in policy co-ordination. As land delivers a variety of services which at present are the focus of different agencies and ministries, consistency in implementation requires co-ordination and integration across different agencies and activities (OECD, 2017, p. 71[27]). Plans with clear and feasible priorities can support the delivery of public services and infrastructure that bring better outcomes to rural dwellers, in the places most in need. The National Development Plan 2018-2022 and the IRR state that the government has to prioritise the areas most afflicted by the armed conflict and rural poverty.

To that effect, co-ordinating implementation efforts may foster an integrated approach to territorial development. So far, the ability to co-ordinate implementation efforts and monitor and evaluate policy results has been limited in Colombia, especially at the subnational level (OECD, 2019[28]). Insufficient financial and human resources constitute a barrier for that to occur. With more solid and widespread co-ordination efforts across policy sectors, the need for instruments that are designed in a piecemeal, ad hoc manner for specific zones, as happens today with ZRCs, Zidres and POSPRs, might even be superseded. This point will be further developed in Chapter 6.

The land rights framework of ethnic communities

Indigenous peoples and other ethnic communities have unique assets and knowledge that can help address global challenges such as climate change and loss of biodiversity and develop stronger local and regional economies based on biological resources and cultural diversity (OECD, 2019, p. 25[29]). In order to promote a more equitable and sustainable pattern of regional economic development, the government must improve Indigenous land tenure and create opportunities for Indigenous peoples to develop economic activities and benefit from projects that affect them (OECD, 2019, p. 33[29]).

Colombia, as a multicultural and multi-ethnic social state of law, is committed to the special protection of ethnic and cultural diversity (Article 7 of the Constitution of 1991). The three ethnic groups accounted for in the population census are: Indigenous; Afro-Colombian, Black, Raizal, Palenquera and Roma communities (DANE, 2019[30]).

According to data from the 2018 National Census on Population and Housing, the Indigenous peoples represent 4.3% of the national population, Afro-Colombian groups for 6.75% of the total and Roma communities for 0.01% (DANE, 2019[30]). There is no consensus around the official number of Indigenous

peoples in Colombia: while government data refers to 87 recognised peoples, the National Indigenous Organization of Colombia (ONIC) mentions the existence of 102 Indigenous peoples, including self-identified ones (Medina and Cárdenas, 2020[31]).

Indigenous communities organised in reserves and Afro-Colombian Community Councils (*Consejos Comunitarios*) are granted perpetual collective ownership of their lands. Indigenous reserve lands and Afro-Colombian territories cannot be sold or transferred to third parties. The ANT is responsible for constituting, amplifying and modifying Indigenous reserves and Afro-Colombian territories.

According to 2022 data from the ANT, there are 798 constituted Indigenous reserves in the country, representing 25% of the national territory (Table 5.4). The Indigenous reserves are mostly located in the departments of Amazonas, Cauca, Guainía, La Guajira, Magdalena, Tolima, Vaupés and Vichada, but small communities and reserves are present across the entire territory (Pérez, Yepes and Gómez, 2021[32]). The majority of requests to constitute Afro-Colombian lands are historically concentrated in the Pacific region. Until 2020, 196 territories of Afro-Colombian communities had been recognised in the country (Medina and Cárdenas, 2020[31]).

The national government has the obligation to create a special programme of access to land by Roma communities in Colombia (Article 17 of Decree 902/2017). A draft of the programme has been prepared but not yet approved. In its draft version, the programme guarantees Roma communities the right to the collective ownership of land, to be obtained through adjudication of *baldíos* and direct purchase of public lands. This process ought to be co-ordinated and promoted by the ANT.[3]

Table 5.4. Lands owned by ethnic groups in Colombia, 2020

Type of collective ownership	Number of collective territories	Area (ha)	Share of national territory (%)	Share of national population (%)
Afro-Colombian communities	196	5.389.118	4.7	6.75
Indigenous Reserves	798	28.701.905	25	4.3

Source: DANE (2019[30]), *Resultados del Censo Nacional de Población y Vivienda: Comunidades Negras, Afrocolombianas, Raizales y Palenqueras*, https://www.dane.gov.co/files/investigaciones/boletines/grupos-etnicos/informe-resultados-comunidades-narp-cnpv2018.pdf; ANT, (2022[33]) *Datos Abiertos, Resguardos Indigenas*, National Land Agency, https://data-agenciadetierras.opendata.arcgis.com/maps/f84afb113d3b4512be65305fd09aa7ee

Indigenous peoples: Clarifying territorial autonomy

The Constitution of 1991 stated for the first time that Indigenous territories are territorial entities like departments, municipalities and districts. As such, they have the same degree of autonomy to govern their territories, with their own authorities and administrative and fiscal powers as these other public entities (Articles 286 and 287 of the Constitution). This means that, under the Colombian Constitution, Indigenous territories are autonomous entities. Importantly, the autonomy of Indigenous peoples means territorial autonomy, that is, it only exists in reference to a specific territory (Semper, 2006[34]).

Moreover, according to the principle of ethnic autonomy, Indigenous communities can perform certain functions within their territories independently, such as education and healthcare (Constitution of 1991). Indigenous peoples have the right to exercise special jurisdiction within their territories (Article 246). There are special elements of autonomy in regard to language, education and culture too (Articles 68 §5 and 70 §2). In all, the legal framework makes it possible that Indigenous peoples to manage local matters within their territories.

The forms of exercising this autonomy, however, are heterogeneous and face important limitations. First of all, the constitution says that the configuration of Indigenous Territorial Entities was pending regulation in the Organic Law on Territorial Planning (Article 329). However, 20 years later, when such a law was

enacted (Law 1454/2011), it remained silent on this matter. This legislative omission is one of the factors slowing down the progress of Indigenous rights and has become one of the main claims of the Indigenous movement.

While Indigenous Territorial Entities are not regulated, the question of what constitutes Indigenous autonomy and how can it be exercised has become central in the public debate. The only official instrument to constitute Indigenous lands is reserve creation. Reserves (*resguardos*) are community lands collectively owned by Indigenous communities. This fact could lead to the interpretation that reserves are the Indigenous territories where Indigenous Territorial Entities exert their autonomy. These concepts, however, do not coincide, although a clear differentiation has been largely absent. In an unclear redaction, the Constitutional Court has ruled that: "reserves are something more than simply land but something less than Indigenous territory" (Ruling T606/2011).[4]

In all, prevails the understanding that, while Indigenous Territorial Entities as such lack a specific legal framework, reserves are the territories where Indigenous peoples can exercise the autonomy granted by the constitution (Semper, 2006[34]). For instance, it is widely accepted that Indigenous peoples can create special jurisdictions within reserves, in the form of Article 246 of the constitution.

In this sense, the Constitutional Court has ruled that the state should maximise Indigenous autonomy in the domains where it is constitutionally ensured (Semper, 2006[34]). There have been advances in the past years that point toward a concretisation of autonomy in some domains. For instance, the reserves and their governing entities can create Life Plans (*Planes de Vida*), a strategic planning instrument to regulate their territory. Another area of progress is Indigenous education, with many reserves having bilingual teachers and special curricula.

Furthermore, the government has enacted a policy to allow Indigenous reserves to receive and execute resources directly, which constitutes an important step towards greater fiscal and budgetary autonomy (Decrees 1953/2014 and 632/2018, as allowed by Transitory Article 56 of the constitution). Under the current system, local governments receive national resources and then transfer them to Indigenous reserves.

Through Decree 1953 of 2014, Indigenous communities can receive and execute resources from the general system of participation, in order to implement their own policies in the sectors of healthcare, education, water and sanitation. Indigenous communities within constituted reserves that are willing to participate must require authorisation from the Ministry of Interior. In 2020, 41 constituted reserves had been endorsed for the direct execution of resources (DNP, 2020, pp. 31-32[35]).[5]

Decree 632 of 2018 allows Indigenous communities in the departments of Amazonas, Guainía and Vaupés to execute and administer state resources without intermediaries. This decree sought to address the gap of "non-municipalised areas", within which no formal local governments existed (OECD, 2019c, p. 27).

These policies can effectively improve the fiscal management powers of Indigenous groups. To ensure its enlarging, the government should facilitate the submission of accreditation requests by willing Indigenous communities. Importantly, they will need adequate capacities to practice their extended fiscal management rights, once endorsed (OECD, 2019, p. 55[36]). In Canada, for instance, the government has capacity development programmes to assist Indigenous peoples in consolidating their fiscal management systems (OECD, 2019[29]).

Notwithstanding, these policies do not replace the need to be clear about the extent of Indigenous autonomy. Indeed, the autonomy of Indigenous communities could go beyond resource allocation and translate into the ability to design and implement their own policies, including land use planning and territorial development. So far, however, the government has adopted a piecemeal and reluctant approach to reforms, having recognised limited self-management powers for Indigenous communities.

Land rights of Afro-Colombian communities

The ethnic group of Blacks, Afro-Colombian, Raizals and Palenque populations (henceforth Afro-Colombian communities) is med up of 4.67 million people, which represent 6.75% of the Colombian population (DANE, 2019[30]).Law 70 of 1993 defines Afro-descendant communities on the basis of culture, history, livelihoods and geography. This law recognises Afro-Colombian communities as an ethnic group entitled to special protection of their culture and ethnic diversity. Yet, autonomy to execute resources in health, education and sanitation is not fully regulated (e.g. Chapters IV, V and VI of Law 70 of 1993 have not been fully developed).

Law 70 of 1993 established that Afro-Colombian populations have the right to the collective ownership of historically occupied lands in accordance with their traditional practices of production. The lands are those identified as untitled public lands (*baldíos*) located in the Pacific Basin and riparian lands alongside the rivers of the Pacific Basin. Although the law explicitly recognises Afro-Colombians land rights in the Pacific region, collective ownership can also be granted elsewhere in the country, for areas "with similar characteristics".[6] As happens for Indigenous lands, the lands of Afro-Colombian territories cannot be sold, transferred or given as collateral.

The ANT is responsible for adjudicating lands for Afro-Colombian communities. Most land adjudications took place between 1995 and 2003, and 196 territories have been constituted so far. As of 2017, 271 requests of titling were pending, most of them in the Caribe region (Arango, 2017[37])

The holders of the collective land rights are Community Councils (*Consejos Comunitarios*) (Article 5 of Law 70/1993). According to Decree 1745 of 1995, community councils are the maximum administrative authority within the territory. They exert the functions to protect land rights, preserve cultural identity and natural resources, choose legal representation and compose internal conflicts. They can delimit and assign areas within the territory. They do not have, however, attribution to implement their own policies or execute public resources.

The Constitution of 1991 does not expressly mention the right to self-governance of Afro-Colombian communities and there is no equivalent to the autonomy level of Indigenous Territorial Entities. In this sense, the autonomy of Afro-Colombian communities is more limited than that of Indigenous groups, at least in the law.

Protecting ethnic communities and their lands

Securing lands for ethnic communities is a means to promote ethnic and cultural diversity, protect biodiversity, endorse climate change mitigation efforts and foster a more equitable and inclusive regional development (OECD, 2019[29]). According to the Constitution, Laws 160/1994 and 70/1993, the Colombian state can transfer the ownership of *baldíos* to Indigenous and Afro-Colombian communities that historically occupy their ancestral lands, including areas from where they might have been forcibly displaced. Furthermore, they can receive ownership of the lands that are necessary for their economic and cultural development.

The figure of Indigenous reserves has existed in Colombia since colonial times. In 1821, all reserves were dismantled but, in 1890, a new law reinstituted them into existence (Semper, 2006[34]). The majority of efforts to formalise Indigenous reserves were concentrated between the 1960s and 1980s (Arango, 2017[37]). According to the open data of the National Land Agency (ANT), by June 2022, there were 812 registered Indigenous reserves in Colombia, including colonial reserves and modern ones (ANT, 2022[33]).

The ANT, which inherited the attributions of the extinct bodies INCORA and INCODER, is responsible for the constitution of Indigenous reserves and Afro-Colombian territories. Indigenous reserves may also be enlarged or restructured. Enlarging of reserves can occur if the constituted area is not sufficient for Indigenous cultural and economic development or does not include the totality of traditional lands (Article 1

of Decree 2164/1995). Restructuring (*saneamiento*) of reserves may take place for colonial reserves with clear titles.

Several processes of demarcation, enlarging and restructuring are underway in the ANT. To allocate ancestral lands to Indigenous and Afro-Colombian communities, the ANT favours the mechanisms of adjudication of untitled public lands (*baldíos*) or acquisition of unoccupied private lands. Yet, due to the high technical complexity and the existence of land conflicts, it is not uncommon that such processes take decades to be completed. Indeed, the major impediment to the effectiveness of Indigenous rights in Latin America is the absence or slow pace of policies and procedures of land demarcation (OECD, 2019, p. 224[29]; Gilbert,, 2016[38]).

There is a shared perception in the Indigenous and Afro-Colombian movement that the process of land constitution is slow and opaque. To these groups, the recognition of land rights represents not only a fundamental right enshrined in their cultural identity and world view but also the hope of greater protection against dispossession and displacement.[7] According to Indigenous leaders, the process goes back and forth between several different government agencies, which multiplies bottlenecks. The different steps of the process are not clearly communicated to the interested parties.[8] While the process prolongs over time, the situation of their lands perishes, with the perpetuation of illegal practices such as deforestation, timber extraction and mining.

In addition, one major caveat of the current policy is the fact that the ANT does not constitute or amplify reserves in areas occupied by other social groups or where land use conflicts exist. Actually, the ANT carves out the disputed lands from the territorial limits of reserves, alleging that reallocation measures are expensive and that occupants are social actors with legitimate claims over rural lands (Medina and Cárdenas, 2020[31]). If, on the one hand, ethnic communities do not receive the territories that correspond to their ancestral occupation, on the other, the right to ancestral lands does not cease to exist, which perpetuates social conflicts in rural areas.

One paradigmatic example of the recognition of ancestral lands is Decree 1500/2018. This decree redefined the ancestral lands of the Arhuaco, Kankuamo, Kogui and Wiwa Peoples of Sierra Nevada, in the system of sacred spaces Línea Negra. The four Indigenous peoples have the right to access these sacred spaces, which will receive special protection for their cultural and spiritual value. Any measures adopted by the government in relation to these areas must take the Indigenous perspective into consideration. According to the National Commission of Indigenous Territories (CNTI), this example should be replicated for other Indigenous peoples.[9]

This issue of ancestral land rights has often been addressed in the judiciary, either as part of the victims' restitution jurisdiction or in the Constitutional Court. While judicial orders mandating territorial allocations corroborate the state's duty to protect ethnic communities, administratively they perpetuate problems, since the ANT needs to follow a separate path to fulfil judicial claims, while the ongoing procedures lag. Although this shows the challenging context of recognition of ethnic lands, individuals and communities will always have the right to claim their rights in the judiciary, which means that policy-wise court orders have to be streamlined into the administrative procedures, not resisted.

Given this scenario and considering the need for speedier recognition of Indigenous claims over their ancestral lands, the government enacted Decree 2333/2014. Under this decree, the government can issue a resolution of provisory protection of occupied ancestral lands. Although technical visits are foreseen, the procedure is simplified and is to be concluded in a matter of months, instead of years. The resolution of provisory protection is inscribed in the land registry books, which makes the status of ancestral lands known to all and prevents undue adjudications. Since 2014, more than 180 requests for provisory protection were presented but none have been granted so far.[10]

Besides the slow pace and inadequate limits of the constitution of new reserves, historically Indigenous lands have been disproportionally concentrated in areas with the highest rates of violence and

displacement. Data shows that almost 50% of Indigenous lands are located in the 150 municipalities most heavily affected by the armed conflict (Arango, 2017[37]). Government data confirms that 59% of forced displacements have occurred in lands of ethnic groups (National Congress, 2021[14]).

In light of this, the state must ensure adequate protection of ethnic lands and their population (OECD, 2019, p. 225[29]). The Ethnic Chapter of the peace agreement constitutes a landmark for such claims. First of all, it recognises that the historical process of colonisation, violence and dispossession have disproportionally victimised Indigenous peoples. This recognition entitles Indigenous communities to collective reparation under the Victims Law. Second, there are mechanisms for the legal protection and security of land and territories possessed or owned ancestrally or traditionally by Indigenous groups.

Yet, protection also means guaranteeing the physical safety of Indigenous leaders. It is estimated that between 2017 and 2019 alone, i.e. after the peace agreement was signed, around 75 Indigenous leaders were assassinated in the country (ICG, 2020, p. 14[39]). Plans of protection and institutional channels do exist but their implementation levels can be considered low, so much so that a "protection crisis" is said to be in place (WOLA, 2021[40]). The government needs to adopt precautionary measures, strengthen monitoring of threats and attacks and invest in investigation efforts (WOLA, 2021[40]).

To this effect, one important measure that was recently adopted is the ratification of the Escazú Agreement. Colombia signed the regional agreement in 2019. While the law of ratification failed to be approved in the National Congress in the subsequent years, it was finally approved in the second semester of 2022. The Escazú Agreement is the first legally binding instrument in the world to include provisions on environmental human rights defenders and is also the first environmental agreement adopted in Latin America and the Caribbean (Box 5.4).

Box 5.4 The Escazú Agreement: A landmark for the protection of environmental defenders

The Escazú Agreement, which was negotiated by countries in Latin America and the Caribbean, entered into force on 22 April 2021. This agreement enshrines the right of every person of present and future generations to live in a healthy environment and their right to sustainable development. It is the region's first environmental treaty as well as the world's first agreement with provisions on human rights defenders in environmental matters, an issue of particular importance in the region due to risks for advocates and activists.

The agreement guarantees the right to access environmental information and participate in environmental decision-making, thereby promoting access to information and access to justice. While recognising the right to a healthy environment, the agreement requires states to prevent and investigate attacks against those who protect and defend environmental rights. The agreement acknowledges the significance of the work carried out by environmental human rights defenders and obliges states to establish guidelines on appropriate and effective measures to ensure their safety.

The signing and ratification process has been slow. To date, 24 countries have signed it, of which 13 have also ratified it: Antigua and Barbuda, Argentina, Bolivia, Colombia (in 2022), Ecuador, Guyana, Mexico, Nicaragua, Panama, Saint Vincent and the Grenadines, Saint Kitts and Nevis, Saint Lucia and Uruguay. Countries that have not ratified the agreement include Chile and Costa Rica, which served as negotiation co-chairs.

Source: Adapted from IISD (2021[41]), "Escazu Agreement takes effect, enshrining right to sustainable development", https://sdg.iisd.org/news/escazu-agreement-takes-effect-enshrining-right-to-sustainable-development (accesed on June 2022); Universal Rights Group (2021[42]), "The Escazú Agreement: A landmark regional treaty for environmental defenders", https://www.universal-rights.org/contemporary-and-emerging-human-rights-issues/the-escazu-agreement-a-landmark-regional-treaty-for-environmental-defenders/. (accesed on June 2022).

Managing land conflicts in a transparent and effective manner

The Colombian countryside is a historical locus of socio-territorial conflicts. Forced displacements due to armed conflict, land mines, unlawful occupation of untitled public lands (*baldíos*) and illegal activities of natural resource extraction have caused and perpetuated conflicts. Knowingly, the land registry system is not accurate or updated. For instance, *baldíos* records disappeared on closing down INCORA and the ANT up to 2021 does not know the occupation status of 82% of *baldíos*, since there is no general inventory. Concerning land disputes per se, some relevant causes include: unclear land titles and ill-defined territorial limits; coincident land claims of ethnic groups; and inconsistent policies regarding ancestral lands of ethnic groups that are occupied by other social groups (Medina and Cárdenas, 2020[31]).

As mentioned elsewhere, the policy of updating and consolidating land registries can greatly contribute to solving ongoing and diminishing future socio-territorial conflicts. Since 2016, due to the peace agreement, the Catastro *Multipropósito* gained new momentum, with efforts being localised in municipalities most affected by the armed conflict. In parallel, other policies of the land registry have been put in place. In 2015, a unified system of information on Indigenous territories was created, as a result of the policy enacted in Decree 2333/2014 (see section above). It is unclear, however, how these parallel efforts contribute to or are co-ordinated with the consolidation of the Catastro *Multipropósito*.

The process of constitution and enlarging of Indigenous reserves and Afro-Colombian territories is considered to be opaque, slow and inadequate. Bearing in mind the financial and human resources limitations, there are nonetheless incremental and even systemic changes that could be promoted. For that to happen, first there must be a consensus among the ANT and the other ministries and agencies involved that the administrative process needs to become more linear and transparent, and the vision of land supply more positive in terms of finding solutions to provide land. Avoiding a discourse that “there is not enough land” in the country will ease interaction among ethnic groups. Likewise, procedural overture, to share information and allow the participation of the interested parties, will foster trust, a common understanding of the challenges ahead and increase social legitimacy.

Regarding incremental changes, the government could direct stronger efforts to:

- Consolidate the unified system of information of Indigenous territories with the *Catastro Multipropósito*, alongside efforts to conclude the protocol of prior consultation for data collection and technical visits in Indigenous territories.
- Amplify the open data portal of the ANT, to function as a single (government-wide) record of the number of constituted reserves, ongoing requests and requests awaiting admission, as well the length of processes and involved agencies.
- Reduce entry barriers by making easily accessible a single list of the documents needed to file reserve constitution or enlarging requests.
- Co-ordinate the administrative process of reserve creation or enlarging among the different government agencies from the beginning, instead of leaving most of the concertation efforts to the high-level committee at the end of the process.
- Better communicate the stages of the administrative process of reserve creation or enlarging with the interested parties, notifying them when the process goes to a different authority and for what purposes.
- Delineate a clear and agile procedure to issue provisory protection of ancestral lands, under the terms of Decree 2333/2014.
- Strengthen technical assistance for agriculture development in ethnic territories and support the elaboration of land use plans. The sustainable management of allocated lands can lead to a more efficient pattern of occupation and development, and reduce requests for enlarging of territories.

To manage socio-territorial conflicts in a more effective manner, two structural problems have to be addressed: the reallocation of occupants of ancestral lands and the lack of binding agreements to settle land claims. Today, the government rarely reallocates occupants, due to the high financial and political costs of doing so. This perpetuates conflicts among social groups in rural areas. Concerning land claims, requests for ancestral lands can coexist with requests for land for economic and cultural development, without a clear prioritisation between them and no obligation of forfeiting. This way, land claims are never "closed" in definitive, which makes it difficult for the government to securely allocate lands to other social groups with legitimate claims, such as small farmers and peasants.

Reallocation of occupants is traditionally undertaken by paying cash compensation to occupants or providing them with land in a different location. The cost of compensation however tends to be high and the reallocation is not always regarded as satisfactory, for instance in the case of ethnic groups with competing land claims. In some countries, such as Brazil, the government has the power to expropriate land in favour of ethnic groups, which reduces the financial cost while augmenting enforceability. In a context of uncertain land titles and multiple competing claims, however, this strategy might increase conflicts, instead of reducing them.

Given that the government can use the policy of adjudication of *baldíos* to solve disputes, the cost of adjudicating *baldíos* is considerably lower than the cost of purchasing lands from private actors. For that to happen, the government needs a more accurate record system of *baldíos* and interested parties must be willing to accept land in different locations. For instance, small farmers that occupy ethnic lands informally can receive *baldíos* in other areas, since they do not have the same right to ancestral lands. Importantly, the delimitation of the agricultural frontier and the spatial development plans of rural areas can facilitate the identification of suitable areas.

The most significant direction to be taken would be to strengthen consensual decision-making. Currently, the National Land Agency (ANT) has mechanisms of inter-agency co-ordination and multi-ethnic dialogue tables, for example the Table for the Resolution of Conflicts over the Use and Ownership of the Land. They are very promising since they can bring together competing parties to reach concerted solutions that have higher social acceptability and therefore are easier to implement. However, as they are designed now, social dialogue is an optional, voluntary mechanism that does not necessarily need to achieve a solution. As such, high expectations are created around solving the conflict but long-lasting negotiations lead to participation fatigue and cause some actors to leave the table to continue pursuing other strategies, such as judicial litigation.

Multi-ethnic negotiations could become a structured institution with attribution to solve land claims definitively. For that to happen, parties must sign pre-negotiation agreements to define the steps and object of negotiation. The negotiation process must have a clear mandate, in which parties are committed to reaching a joint solution. The possibilities to leave the negotiation table must be very limited, if not non-existent. The results of the negotiation process must be binding to the parties. For instance, negotiations can result in the recognition of ancestral lands, with the condition that ongoing requests of reserve enlarging are relinquished. Occupants may agree to be reallocated to a different area and abandon competing claims. Possible outcomes may include but are not be limited to self-governance powers, financial compensations, the definition of special sites of protection and protocols of prior consultation. In all, the range of possibilities is quite ample, as the example of modern treaty-making in Canada shows (Box 5.5).

Negotiations could effectively address long-lasting socio-territorial conflicts but they cannot be mistaken for a "quick fix". A successful negotiation takes time to be successfully completed. The experience of Canada shows that consultation processes must be broad enough so that affected parties do not feel excluded. As a consequence, strategies to circumvent obstacles and avoid negotiation fatigue must be envisioned. Furthermore, the government would need to capacitate civil servants as negotiators, dedicate

itself to keeping the negotiation table open and create an independent and ongoing monitoring mechanism, to ensure that the agreement is adequately implemented (Box 5.5).

Box 5.5. Modern treaty-making in Canada

Under the 1975 Comprehensive Land Claims Policy, the government and Indigenous communities can sign agreements to recognise Indigenous land rights not comprised by historic treaties. They are based on Indigenous peoples' traditional uses and occupation of lands and can include: land ownership; land, water, heritage, environment and wildlife management; financial compensation; self-governance powers; economic development strategies; and resource-sharing schemes. Since 1975, partners have signed 26 comprehensive land claims and four self-government agreements. Of the 26 signed agreements, 18 included provisions related to self-government.

Key lessons of modern treaty-making in Canada are the following:

- *Sign a pre-engagement agreement*: The rules and procedures of negotiation must be clearly defined, from the composition of the negotiators' team to the meeting schedule. Having a timeframe helps to set expectations, while the joint deliberation about the rules of negotiation renders the process more legitimate.
- *Provide financial assistance to Indigenous negotiators*: Keeping a high-skilled group of negotiators working intensely for what can be long periods of time is costly, and so is producing maps, deeds and other evidence. It is important to address the power imbalance inherent in negotiating with the government. Starting in 2018, the Government of Canada replaced all loans for comprehensive claims negotiations with contribution funding. In 2019, the Government further invested $1.4 billion to forgive all outstanding comprehensive land claim negotiation loans, and reimburse those that have already repaid their loans following the conclusion of their comprehensive land claim settlement agreement.
- *Legitimate parties capable of decision-making*: The parties sitting at the table must assume responsibility for what they negotiate. The government must honour the commitments made, and the Indigenous leadership must be considered legitimate by their respective group.
- *Broad consultation process*: Indigenous negotiators and leaders must consult broadly and regularly with the Indigenous population concerned by the agreement. This contributes to greater ownership of the agreement and can facilitate implementation.
- *Compensation for past wrongs*: Treaty-making can be used to address past wrongs. It can encompass land restitution but, if not possible, financial compensation can be agreed upon.
- *Well-defined implementation plan*: The agreement must contain not only obligations but also the timeframe and means of implementing them. Treaties that set obligations but remain vague about how they can be fulfilled can fall into an implementation vacuum.

Policy innovations have been made in this area to be more flexible and respectful of community priorities. For example, a key policy innovation was the creation of Recognition of Rights Discussion Tables. At these tables, Canada and Indigenous groups can explore new ideas and ways to reach agreements that will recognize the rights of Indigenous groups and advance their vision of self-determination for the benefit of their communities and all Canadians. These discussions are community-driven and respond to the unique rights, needs and interests of First Nations, Inuit and Métis groups where existing federal policies have not been able to do so.

Source: Adapted from Crown-Indigenous Relations and Northern Affairs Canada (2021[43]) Government of Canada (2021), *Grants to reimburse treaty negotiation loans to indigenous groups who have settled a comprehensive land claim*, https://www.rcaanc-cirnac.gc.ca/eng/1604958267840/1604958306918 (accesed on November 2022).; OECD (2020[44]), *Linking Indigenous Communities with Regional Development in Canada*, https://doi.org/10.1787/fa0f60c6-en; Crown-Indigenous Relations and Northern Affairs Canada (2015[45]), *Comprehensive Claims*, https://www.rcaanc-cirnac.gc.ca/eng/1100100030577/1551196153650 (accesed on November 2022).

Prior consultation of ethnic communities in regional development

Prior consultation is a right guaranteed in Convention 169 of the International Labour Organization (ILO), which was ratified by Colombia. The main objective of prior consultation is to enable ethnic communities to set their own priorities for development (ILO, 2008[46]). More than sequential ad hoc consultations, it is a process in which the participation of ethnic communities in regional development is substantially augmented. The goal of participation is to promote projects, works and activities that improve the well-being of these communities in rural areas.

In Colombia, this principle is already embedded in various planning instances. For instance, at the national level, Indigenous and Afro-Colombian groups are consulted in the elaboration of National Development Plans. At the local level, Indigenous authorities and community councils can establish their own development plans, such as Life Plans (*Planes de Vida*). Importantly, the implementation of PDETs must include a special mechanism of consultation, in order to incorporate the ethnic and cultural perspectives in the territorial-based approach (Colombia, 2016[18]). The consultation concerning development projects that affect these groups is therefore another instance under a broader framework of participation.

As expressed in the Presidential Directive 10 of 2013, the Colombian state must guarantee ethnic communities' participation and access to information on projects, works or activities that are intended to be carried out in their territory and that affect them directly. Development projects have cumulative social, economic and environmental impacts that can harm Indigenous peoples' livelihoods, social reproduction and conservation goals. By identifying the impacts generated on their collective practices as well as measures to mitigate, correct or compensate for these impacts, ethnic communities can take an informed decision about what type of development is compatible with their ethnic, cultural, social and economic integrity.

The consent of ethnic communities is required specifically in the following three cases: when communities face a survival risk as a result of a project; when there is toxic waste release; and when the project requires relocating communities from their territories (Presidential Directive 10, 2013). For all other cases where ethnic communities might be directly affected by projects, they have the right to be consulted but their decision does not bind the authority in the final decision.

Under ILO Convention 169, each affected ethnic community has the right to a separate consultation process. Despite this provision, Presidential Directive 10 indicates that public entities, notably the Directorate of Prior Consultation of the Ministry of Interior, which was created in 2019,[11] must seek to undertake a single, integrated prior consultation process on all aspects of the project (Presidency of the Republic, 2013, §10).

An alternative that has emerged to this is the elaboration of specific consultation protocols for the different Indigenous peoples. The Office of the United Nations High Commissioner for Human Rights has been working to support this alternative. From this process, several autonomous protocols have emerged, such as those of: the Arhuaco people of Sierra Nevada de Santa Marta; the Resguardo Nasa de Cerro Tijeras; and the Black People of the Cuencas de los Ríos Mayorquín, Raposo y Anchicayá (Mendoza, 2020[47]). The government, on its part, considers that this initiative would lead to an undesirable disaggregation of the processes and therefore is not in favour (Oxfam, 2018, p. 24[48]). It is said that differential treatment

would already be guaranteed by the pre-consultation state, in which the guidelines to be followed in the process are defined together with the affected ethnic communities (Oxfam, 2018, p. 24[48]).

In any case, in the past years, the government has been in discussions with Indigenous and Afro-Colombian leaders and representatives in order to consolidate regulation of the right to prior consultation in the country. In 2018, the Constitutional Court mandated that free, prior and informed consultation become a state policy (Constitutional Ruling 1232/2018). Up to the beginning of 2022, such a regulation has not been enacted. In parallel, a protocol is being designed for the implementation of the land registry policy in Indigenous territories (*Catastro Multipropósito*).

Moving forward on national regulation, there are a few points to be considered:

- Given the need to protect minorities' rights, the regulation should be enacted as a decree, instead of a law (*ley estatutaria*), as has been attempted so far. The non-approval of the national legislative power shows that matters of minority rights cannot await majority agreement. A solid participatory process would guarantee that different concerns are aired and multiple points of view are considered.
- The norm must contain the methodological route for consultation with ethnic communities, with basic procedures, stages, timeframes, formats and acceptable outcomes. If the regulation is too open, every new development project will require that a consultation process is designed from scratch, which could engender excessive delays and participation fatigue. At the same time, the protocol must have some flexibility, as to allow for culturally appropriate engagement.
- The government must respect the choice of ethnic communities to either adhere to the basic consultation protocol or present their own protocol.[12] Community-specific protocols may have been elaborated and approved in advance by *Cabildos* or *Consejos Comunitarios*. If they have not been elaborated, the government should grant them sufficient time to do so, given the complex nature of such deliberations. A time limit could be imposed, to prevent community-specific protocols being used as a tool to delay the public debate around development projects.
- Information sharing must be a pillar of the consultation process. The communities should have access to all of the materials and documents necessary to form their own understanding of the project and with enough time in advance.
- A full assessment of direct, indirect and cumulative impacts must be considered in the regulation.

The experience of the ILO (2008[46]) on the implementation of prior consultation protocols around the world brings important elements for further consideration:

> *"Mechanisms for consultation should, where possible, work through existing structures for purposes of longevity, sustainability and legitimacy;*
>
> *Adapt working methodologies to the structure and capacity of indigenous partner organisations and communities;*
>
> *Sustained capacity building required to operationalize consultation processes;*
>
> *Operational tools should be adaptable to local circumstances."*

In conclusion, the duty of prior consultation, which is a fundamental right of ethnic communities in Colombia, requires that governments treat consultation as a participatory process, beyond a procedural task. Clear protocols, information sharing, space for negotiation and sufficient time and resources to do so must be part of this process. The consultation process must be meaningful and respectful of ethnic and cultural diversity.

Sustainable land management practices for rural well-being

Land and natural resources can activate opportunities that promote rural well-being, considering the multiple dimensions of the economy, society and environment (OECD, 2016[49]). Good land use management helps to protect the environment, avoid land conflicts and promote legal economic activities. Rural areas in Colombia are rich in natural assets, which must be used as tools to foster development, not be depleted. For that reason, environmental preservation is a necessary condition for rural well-being. Fighting deforestation can help meet climate change goals, such as the objective to be carbon neutral by 2050, which was announced by the national government in 2021 (WRI, 2021[50]).

The main land use of the majority of Indigenous lands is forest conservation or agroforestry, which shows the great ecological importance of reserves (Arango, 2017[37]). A study calculated that without tenure security over Indigenous lands and forests, GHG emissions in Colombia would have been as much as 10-15% higher (Arango, 2017[37]). Only 3% of all land on Indigenous reserves is used for cattle raising and agriculture (Arango, 2017[37]). Some Indigenous communities develop mining activities (Pérez, Yepes and Gómez, 2021[32]).

The rural economy is highly focused on agriculture (Chapter 3). To benefit from opportunities in the green economy, the country needs to shift from this main focus to a more diverse array of sustainable activities such as agroforestry, climate-smart agriculture, bioeconomy and ecotourism. For this reason, access to land must be followed by policies that can support such sustainable economic activities.

Box 5.6. Areas of climate action for rural policies

According to the OECD Rural Agenda for Climate Action approved in 2021 by the OECD Working Party of Rural Policy, the following areas of action can support the transition to an environmentally sustainable, net-zero emission economy in rural regions:

1. Strengthen the evidence base by collecting and consolidating regional and local data assessing opportunities and challenges related to climate change. Develop indicators capable of informing policy making and facilitating communication. Foster partnerships of local and regional actors with national policy, making sure their views are considered.
2. “Just Transition”: Involve rural regions in the development and implementation of effective transition strategies. Sufficient enabling conditions to adapt and build resilience to climate change are necessary, i.e. knowledge, institutional capacity, good governance, data, digital infrastructure and funding. Facilitate the attraction of private investment for innovative climate solutions, where public funding is not sufficient.
3. Build on the competitive advantage of rural regions in producing renewable energy and establishing local innovation ecosystems. Assure that local communities benefit from meaningful co-ownership or benefit-sharing agreements with private investors.
4. Support the sustainable management of natural capital, sustainable land management practices and value creation from restoring, preserving and enhancing ecosystems for rural development. Establish integrated spatial and land use planning across functional territories to minimise urban sprawl and biodiversity loss and increase sustainable development patterns with high carbon sequestration and socio-economic development potentials, such as agroforestry, climate-smart agriculture, ecotourism and sustainable forestry.

   Critically the process requires: inclusion of local rural voices (e.g. traditional Indigenous knowledge); investment in nature-based solutions (e.g. flood and drought risk management);

and innovative market mechanisms such as certification and payment for ecosystem services (PES) schemes.

5. Support the shift to a circular economy and bioeconomy to minimise environmental pressures and promote resource efficiency to offer opportunities for new rural business models and create new markets. This includes exploring rural-urban linkages and supporting the engagement and buy-in of local communities in the process.
6. Decarbonising transport: Accelerate the transition to sustainable and innovative mobility options whilst connecting the required physical and digital infrastructure (e.g. renewable energy generation, green hydrogen production and fast Internet connection).

Source: OECD (2021[51]), *OECD Rural Agenda for Climate Action*, https://www.oecd.org/regional/rural-development/Rural-Agenda-for-Climate-Action.pdf.

The Sustainability Pact, established in the National Development Plan (PND) 2018-2022, considers the sustainability agenda as transversal to development. The pact has four lines of action: sustainability and climate change mitigation; biodiversity and natural wealth; disaster risk management and prevention; and modern environmental institutions, social appropriation of biodiversity and management of socio-environmental conflicts.

The Sustainability Pact consolidates the evolution of public environmental policy over the last 15 years, which includes, among others, the Green Growth Policy and policies, strategies and plans on circular economy, air, water resources, seas and coasts, soil, biodiversity, climate change, disaster risk management, green business and environmental education (DNP, 2019[17]).

Regarding the agricultural sector, in 2021, the government enacted the Comprehensive Climate Change Management Plan (*PIGCC Agropecuario*). The objective of the agricultural PIGCC is to identify, articulate and guide the implementation of measures to mitigate the generation of GHGs and reduce the vulnerability of this sector to climate change. Some of the measures of the PIGCC are listed as follows:

- Generate information related to climate change and risk management useful for decision-making in the agricultural sector at the national, regional, departmental, and municipal levels.
- Adopt practices to increase carbon capture and storage and reduce land degradation.
- Increase the biological diversity of agricultural production systems to reduce GHG emissions, reduce their vulnerability to climate change and improve preparedness against disaster risk.
- Structure financial, market and agricultural risk transfer instruments taking into account equitable access for women and men.

As this recent example demonstrates, there are several plans and policies in place that can support sustainable economic diversification, with the goal of balancing preservation and productivity, while keeping in mind climate change mitigation efforts and resiliency against climate-related shocks and disasters. The task ahead is to translate these plans and policies into practice, which requires integrated implementation efforts and sufficient funding. This is what will be discussed in the following sections.

Delimitation of the agricultural frontier

In the Sustainability Pact of PND 2018-2022, defining, closing and consolidating the agricultural frontier appears as one of the main strategies to fight deforestation. It is also one of the pillars of the peace agreement IRR. The agricultural frontier is the rural land boundary that separates rural areas used for farming, livestock raising and fishing, from protected areas, where such productive activities are prohibited by law (Resolution 261/2018- MADR) (ICG, 2021[6]). It is a key concept that connects land security, productivity and environmental preservation.

Besides fighting deforestation, the delimitation of the agricultural frontier can help to address rural land use conflicts. According to UPRA (2018[52]), the most common rural land use conflicts are related to livestock and agricultural activities, which exert pressure on strategic ecosystems and type A forest reserve areas of Law 2 of 1959. Many of these activities are conducted in areas that are not suitable for cultivation or that should be protected. Data from the government shows that 21% of rice farms are located in areas that are not suited for cultivation, while 19% of milk production units are located outside of the agricultural frontier (DNP, 2022[25]).

The government had made the compromise to delimit the agricultural frontier in the peace agreement, which was achieved in 2018. By so doing, the government intends to increase productivity in the areas within the frontier and secure the preservation of areas outside it. It consists of an area of 39.6 million ha, representing 34.7% of the national territory, in which agricultural activities can be carried out sustainably without restrictions (UPRA, 2021[53]). The use is conditioned in about 37% of the total area of the agricultural frontier, due to environmental and ethnocultural considerations (UPRA, 2021[53]).

Importantly, the Environmental Zoning Plan, another compromise that derives from the peace agreement, will indicate buffer zones of the agricultural frontier, with the objective of enclosing its limits. It consists of an indicative planning instrument with macro-zones of different levels of environmental protection in the 170 municipalities and 16 PDET sub-regions. Another objective of the Environmental Zoning Plan is to guide environmentally sustainable land use alternatives for the communities living in the buffer zones. The plan was approved in December 2021 (Resolution 1608/2021, Ministry of Environment and Sustainable Development) and, currently, its action plan for implementation is in the process of elaboration.[13]

The task ahead is to ensure the agricultural frontier is followed and respected. Indeed, several planning instruments will have to take into consideration their limits. For instance, ZRCs consist of areas dedicated to small- and medium-scale farming that should mainly fall within the agricultural frontier, stabilising it. The National Environmental Restoration Strategy (*Estrategia Nacional de Restauración*) will prioritise protected areas that are strategic to the closing of the agricultural frontier. It will articulate nature restoration efforts with sustainable activities in the green economy and PES, in what is called “productive restoration”.

The fight against deforestation

Colombia has signed the 2021 Glasgow Leaders’ Declaration on Forests and Land Use, which is committed to ending forest loss and land degradation by 2030 (Forest Declaration Platform, 2022[54]). The Sustainability Pact has the objective to implement multi-sectoral initiatives to control deforestation, preserve ecosystems and prevent their degradation. The strategies delineated to meet this objective include data systematisation, law enforcement efforts, environmental strategic evaluations, nature recuperation plans and zero deforestation agreements to be signed with agricultural producers, among others.

In 2020, Colombia approved the National Policy for Deforestation Control and Sustainable Management of Forests (CONPES Document 4021). The main objective of this policy is to implement cross-sectoral strategies to control deforestation and promote forest management in a sustainable manner, by fostering community development and the green economy, especially in areas of high deforestation. The strategic axes are the development of sustainable productive alternatives, cross-sectoral management, legality and territorial control and monitoring and follow-up.

In 2021, the Environmental Crimes Law was enacted. It created new environmental crimes such as conducting or financing deforestation, conducting or financing illegal appropriation of untitled public lands (*baldíos*), ecocide and wildlife trafficking. The law established specific aggravating circumstances for some crimes, making the penalties more severe. To support prosecution and investigation, a Specialized Directorate for Crimes against Natural Resources and the Environment was created.

Moreover, as anticipated in the Sustainability Pact, the government created the National Council to Fight Environmental Crimes and Deforestation (*Consejo Nacional de Lucha Contra la Deforestación*, Conaldef). The council has the role to propose policies, programmes and plans to fight deforestation, as well as to co-ordinate institutional actions in this direction (KPMG, 2020, p. 65[55]). The council is also responsible for liaising with foreign governments to obtain international assistance.

The government is prioritising the fight against deforestation in the 16 sub-regions and 170 municipalities of the PDET. These areas concentrated 84% of all deforestation that took place in the country in 2017 and 25% of them experience land use disputes (DNP, 2019[56]). In 2021, the government carried out 68 police operations and 228 captures associated with deforestation, mining and crimes against natural resources, which represented an increase of 30% compared to 2020 (MADS, 2021[57]). Besides fighting deforestation, these initiatives also included restoration efforts. To illustrate, in the Artemisa military operation, which extended for 13 phases, 22 628 ha of degraded forest were recovered (MADS, 2021[57]).

In addition, there have been ongoing efforts to restore mining sites and promote the adequate recovery of degraded natural ecosystems. It is worth mentioning as an example the restoration project at Istmina (Chocó), which intervenes in 372 ha affected by mining. Following a judicial order from the Constitutional Court (T-622/2016), which granted legal personhood rights to the Atrato River, the government is investing in reforestation, environmental education and community participation strategies: 517 583 native trees will be planted (Codechocó, 2022[58]).

To improve information systems and data collection, the government has been investing in technology and human resources, as the example of the Forest and Carbon Monitoring System of the Institute of Hydrology, Meteorology and Environmental Studies (Ideam) shows. Moreover, under the policy of Catastro *Multipropósito*, priority will be given to registering untitled public lands located in areas of high deforestation.

Funding is another key element to support the control of deforestation. For that, the government has relied mostly on international co-operation. The Heritage Colombia programme, created in 2017, with support from the World Wildlife Fund (WWF), the Wildlife Conservation Society and other international actors, consists of a permanent fund to protect national parks and increase the amount of land in the conservation system (WWF, 2017[59]).

While funding can protect national parks, there are few resources available to relieve the pressure on buffer zones near these protected areas (Instiglio, 2021[60]). It is in the buffer zones that unsustainable practices such as deforestation and illegal mining often occur. Noting this gap, the government and international partners are building a strategy to mobilise private capital into innovative and impact-driven businesses located in the buffer areas, as to support practices of nature conservation and sustainable management of land (Instiglio, 2021[60]). Currently, the government is assessing financial instruments for biodiversity protection and working on the design of a compensation mechanism for low-income municipalities that will help to consolidate protected areas, as per Action 4.15 of CONPES Document 4050.

Payment for ecosystem services (PES): Opportunity in nature conservation

The Sustainability Pact recognises that promoting nature conservation and environmental restoration are strategic to reduce deforestation, alongside efforts to promote land distribution and formalisation and to prevent land use conflicts. To that effect, the main strategies advanced in the pact consist of creating fiscal incentives and compensation mechanisms to support conservation strategies and strengthening the national programme of PES (DNP, 2019, p. 482[17]).

PES are a growing opportunity in the context of policy responses to climate change and environmental degradation. Ecosystem services can be grouped into four categories: provisioning services (products such as food and fresh water); regulating services (benefits from the regulation of the ecosystem such as air quality and pollination); cultural services (non-material benefits such as recreation and aesthetic

experiences); and supporting services (e.g. photosynthesis and nutrient recycling) (UNDP, 2019[61]). The basic principle is that people benefit from natural ecosystems and therefore must contribute to their conservation. Funding can come from users or beneficiaries, such as individuals and non-governmental organisations (NGOs), or from the government, as part of a wider conservation policy.

In Colombia, a national law of PES was enacted in 2017 (Law 870), years after the first PES programmes had been implemented by private actors and government authorities. The law presents requirements for the design and implementation of publicly-funded PES programmes but does not institute a national program. CONPES Document 3886 also helps to establish the guidelines for PES programmes and related actions.

According to the law, publicly-funded PES programmes must target conflict-ridden municipalities or areas where illicit crops are grown (Article 8 of Law 870 of 2017). Government payments must range between USD 106 and USD 159 per hectare per year for forest conservation, and USD 53 and USD 105 per hectare per year for forest restoration. This payment range has been considered low, suggesting that PES schemes will not suffice to support landowners and occupants in dedicating fully to conservation-related activities (Cañón, 2019, p. 64[62]).

Yet another PES programme was created in 2021. Through Nature Conservation Contracts, peasants living on public land can generate income by committing to the preservation or recuperation of forests. The programme focuses on buffer areas of national parks and protected forest areas. Beneficiaries are families living within the protected areas and those under the National Programme of Crop Substitution (*Programa Nacional Integral de Sustitución de Cultivos Ilícitos*, PNIS) or that want to discontinue illegal cultivations.

The process of granting a Nature Conservation Contract has several stages, including a technical site visit from the ANT and consultation with MADS in what regards the limits of the agricultural frontier. In 2021, the ANT conducted over 2 000 technical visits and transferred another 549 processes to MADS (OECD Questionnaire, 2021).

After the administrative process, two different agreements must be signed, with two different public authorities (OECD Questionnaire, 2021).

- First, the ANT must grant a Use Rights Contract, which allows the beneficiary to continue living on the public land for the next 10 years. The conditions of use for each property subject to Use Rights Contract vary, depending on the level of exploitation and the potential uses allowed in the Municipal Land Management Plans, if applicable, or the uses permitted in forest reserve zones.
- Second, the Ministry of Environment and Sustainable Development must sign a Voluntary Conservation Agreement, opening up the possibility to access payment for forest conservation and recuperation.

The government had promised that 5 495 contracts would be granted in 2021 and more 4 101 in 2022. According to data from October 2021, only 131 contracts had been concluded and registered (OECD Questionnaire, 2021). This number is considerably lower than the amount promised, which suggests that implementation is lagging. Moreover, co-ordination efforts might be slowing down the programme. Since both the ANT and the Ministry of Environment and Sustainable Development must sign two different agreements with beneficiaries, if this process is not well co-ordinated, the efficiency of the programme might be hampered.

The country already has more than 15 different PES programmes (Cañón, 2019, p. 63[62]). Most of them were created before the 2017 law and have not yet adapted to the new provisions. According to the National Planning Department, only 65 000 ha of land in the whole country are used for PES programmes (DNP, 2019, p. 482[17]). The goal is to have at least 1 000 000 ha enrolled in PES programmes by 2030, which would represent 0.87% of the country's area (Cañón, 2019, p. 64[62]).

For that to happen, the different PES programmes must be harmonised with the national framework. Furthermore, it is necessary to accelerate the implementation of Nature Conservation Contracts if the government goals are to be met. Co-ordination efforts and inaccurate land registries seem to be challenges for implementation. It has been noticed that while the flexibility of having several programmes can translate into well-targeted programmes, the lack of a single framework can hamper efforts to compare programmes and measure their effectiveness (Cañón, 2019, p. 63[62]). For that reason, monitoring and evaluation measures must be put in place.

Ethnic communities as nature stewards and economic actors

Opportunities in environmental stewardship

Indigenous peoples and Afro-Colombian populations have an important yet often neglected role as nature's stewards, contributing to environmental preservation and biodiversity. In Colombia, as much as 99% of Indigenous lands absorb more carbon than they emit, and they do so at a rate that is more than twice the one of non-Indigenous lands (Forest Declaration Platform, 2022[54]).

The government must recognise and actively support this role. First and foremost, this must be done by securing land rights, promoting tenure security and respecting prior consultation protocols. Furthermore, Indigenous and ethnic groups must have meaningful opportunities to actively engage in climate change mitigation efforts (Forest Declaration Platform, 2022[54]). To that effect, there must be continuous support for the creation of income-generating opportunities in natural resource stewardship for Indigenous and Afro-Colombian groups and individuals.

The National System of Natural Parks includes 59 protected areas and 3 National Districts of Integrated Management. Out of this total, 29 areas overlap with Indigenous reserves and 11 with Afro-Colombian territories or uses. This means that 71% of the 62 protected areas in Colombia are linked to ethnic groups (PNNC, 2021, p. 91[63]). Given these dynamics, the government has designed instruments to include these communities in the conservation of protected areas, recouping the benefits of such practices.

Notably, some areas have Joint Management Plans (*Planes de Manejo Conjunto*), which are elaborated together with Indigenous or Afro-Colombian communities. There is also a programme of *Contracts* of Community Ecotourism (*Contratos de Ecoturismo Comunitario*) that can generate important economic opportunities for ethnic communities (see the section below).

Joint Management Plans can serve to integrate Indigenous perspectives into conservation practices. The majority of the existing plans do not culminate with shared authority over environmental matters but refer to the participatory design of nature conservation policies. Nonetheless, greater involvement of ethnic communities in this matter is an area with recent progress, as shown in the case of the Sanquianga National Park (Box 5.7). Moreover, the national parks authority of Colombia (PNNC) has signed several protocols of prior consultation with Indigenous or Afro-Colombian communities. These protocols can effectively delineate the steps of the participatory process of the elaboration of management plans (PNNC, 2021[63]).

Box 5.7. Sanquianga National Park

Sanquianga National Park is an exceptional case in the relationship between the national parks authority (PNNC) and the Black communities of the Colombian Pacific. This protected area is inhabited by more than 6 000 people, who have historically occupied this territory. In 1977, when the park was created, the communities that already inhabited the area were not consulted or informed about the constitution of the national park.

The communities never realised their territorial aspirations, since the normative framework of that time did not recognise the rights of the ethnic communities over these territories. Later on, their occupation was considered incompatible with the existence of the natural park (Article 6 of Law 70/1993).

From this point onwards, a process of relationship building began. A co-ordination body called Mixed Team (*Equipo Mixto*) was formed, composed of representatives of each of the six community councils within the park and the protected area team. This body constitutes a space for joint construction and concerted decision-making. As a result of the joint work, 12 agreements of use and management of natural resources have been signed. These agreements were last updated in 2016, as part of the process of joint elaboration of the management plan, which had begun in 2014 and was concluded in 2018.

Currently, the Mixed Team is one of the strengths of Sanquianga's park management. It has led to the emergence of new leadership, the return of some leaders, joint monitoring activities and the consolidation of the relationship between the *Parques Nacionales Naturales de Colombia* (PNNC), as an expression of shared environmental governance.

Source: Adapted from PNNC (2021[63]), *Informe de Gestión – Vigencia 2020*, https://www.parquesnacionales.gov.co/portal/wp-content/uploads/2013/08/informe-de-gestion-2020.pdf.

A direction for further progress could be the self-management or joint management of conservation areas, whereby ethnic communities participate not only in the elaboration of Management Plans but also have powers to conduct everyday management and regulatory activities. That is, they are directly concerned with the implementation of plans. The current legal framework of special Indigenous jurisdictions seems to be supportive of this type of arrangement (Article 246 of the Constitution). Under this logic, Indigenous authorities could have the power to monitor environmental behaviour and impose fines.

In conclusion, the state should make continuous investments in strengthening the inclusion and leadership of Indigenous peoples in conservation and natural resource management. The scope of management of natural parks can be enlarged to involve Indigenous peoples directly in these activities. Box 5.8 provides relevant examples from countries where Indigenous peoples have decision-making and regulatory powers in the execution of policies for the protection and sustainable use of water, land, forests and fisheries.

Box 5.8. Joint management of conservation areas

Joint management involves Indigenous communities and public governments formally sharing the regulatory powers over the environment and natural resources. The most common instruments are agreements, memoranda of understanding and dedicated institutions, such as boards of governance or councils. These instruments can encompass a whole nature conservation area or refer to specific resources, e.g. a river basin.

In Australia, Gurig National Park became the first jointly managed national park in 1981 and since then further co-management arrangements have been adopted in other national parks.

In Canada, one example of a joint institutions are the resource co-management boards of the Mackenzie Valley, Northwest Territories, as part of the Gwich'in, Sahtu and Tlicho comprehensive land claim agreements. The boards, composed of Indigenous representatives and government authorities, issue and manage land use permits and water licenses and conduct environmental assessments of large projects in the Mackenzie Valley.

In Sweden, the Laponia World Heritage site has a shared management model between the government and the Sámi Indigenous people. Sámi representatives hold the majority on the board of directors of the organisation and the management structure has been adapted to traditional Sámi organisational practices and knowledge. Another example is the county of Finnmark in Norway, where the management of land and natural resources is overseen by a board of directors with 50% of Indigenous representation. Responsibilities include overseeing property development, hunting licenses and outdoor recreation, so as to enhance Sámi culture, reindeer husbandry, commercial activity and social life.

Source: Adapted from OECD (2019[29]), *Linking Indigenous Communities with Regional Development*, https://doi.org/10.1787/3203C082-en.

Mobilising the potential of environmental conservation together with ethnic communities

The starting point for realising growth opportunities is place-based economic development strategies that enable ethnic communities to identify areas of competitive advantage and co-ordinate actions to realise their potential (OECD, 2019, p. 137[29]). Ethnic groups have cultural assets and traditional land management practices that place them in a unique position to contribute to a more inclusive and sustainable pattern of regional development. For that to become effective, the uniqueness of local contexts and the particular challenges faced by remote populations must be taken into account.

In what relates to land, two broad areas can be considered for place-based economic development. One is related to the national system of protected areas, in the form of services of biology research, environmental stewardship, monitoring of environmental infractions or crimes and promotion of ecotourism. This is an important area of opportunity, since 71% of the natural parks in the country overlap or contains ethnic territories (PNNC, 2021[63]). The other one is related to natural resource extraction, such as fishing, timber and mining. These activities can be compatible with ethnic territories, if respectful of the environment and local cultural practices. Furthermore, they have to be undertaken by ethnic communities sustainably or, if carried out by third parties, communities must be consulted and benefit-sharing agreements must be put in place (OECD, 2019[29]). The illegal extraction of natural resources must be vigorously countered.

To give consideration to the case of mining, the government can constitute exploitation zones in Indigenous or Afro-Colombian territories. The so-called Indigenous Mining Zones or Afro-Colombian Mining Zones are areas where mining activities can be authorised. If a third party requests to exploit sub-surface resources, the ethnic communities are given the right of preference to do so (Pérez, Yepes and Gómez, 2021[32]). If they opt not to exercise this right, then the authorisation to exploit can be given to the interested third party. In this case, the royalties generated from the activity should be directed to the execution of works and services that directly benefit the ethnic communities settled in the area (Decree 710 of 1990).

According to the constitution, the exploitation of natural resources in ethnic territories shall be carried out without detriment to their cultural, social and economic integrity (Article 330). Anytime that exploitation is to be authorised or that legislative measures that directly affect the ethnic groups are being envisaged, a process of prior consultation must be in place (Law 21 of 1991). The Constitutional Court has ruled that the prior consultation process must ensure that the community has full knowledge of the projects intended to exploit natural resources in their territory and is able to evaluate freely and without interference the benefits and disadvantages of the projects (Ruling 39/1997). Furthermore, the community must have active and effective participation in the decision taken by the public authority, which, as far as possible, should be agreed upon or concerted.

As of 2017, there were 25 Indigenous Mining Zones and 43 Afro-Colombian Mining Zones in the country (Pérez, Yepes and Gómez, 2021[32]). In these zones, there are titles granted to Indigenous and Afro-Colombian communities. Data from 2014 indicates that 577 titles have been granted to Indigenous

communities, which confirms the existence of mining activities carried out by ethnic groups (Pérez, Yepes and Gómez, 2021[32]). As for Afro-Colombian communities, they hold 196 titles. At the same time, hundreds of mining titles overlap with the boundaries of Indigenous and Afro-Colombian territories, irrespectively of being located in mining zones (Pérez, Yepes and Gómez, 2021[32]). This shows that either the right of preference is not adequately respected or that mining activities are authorised without the protocol of prior consultation.

Concerning opportunities associated with protected areas, the Community Ecotourism Contracts programme is a good example. This programme has a lot of potential to generate economic development and promote a more equal distribution of the benefits of conservation. Since 2008, the government has signed contracts with community organisations in 9 different protected areas, from which a total of 80 families have benefitted (PNNC, 2020[64]). The community organisations lead ecotourism activities inside the protected areas, which has generated revenues and helped to disseminate ecological practices and values. Challenges identified for the future include the formalisation and capacitation of tourism guides from ethnic communities, the generation of viable business models for community organisations and more frequent exchanges of knowledge and best practices among community organisations (PNNC, 2020[64]).

Other areas of opportunity around protected areas are hiring Indigenous and Afro-Colombian individuals or families as conservation agents under PES programmes or as park rangers, managers of natural reserves and researchers (Box 5.9). These policies can successfully translate into economic opportunities for ethnic communities that are aligned with their cultural values and vocation as nature's stewards.

Box 5.9. Indigenous park rangers in Australia

The Australian government's Indigenous Protected Areas (IPA) programme enables land and sea country to be managed according to the wishes of the Traditional Owners. IPAs are voluntary arrangements through which Indigenous communities dedicate their lands or sea country to be set aside formally for conservation purposes. These areas are then recognised by the Australian government as part of the National Reserve System. There are currently 75 dedicated IPAs which contribute over 65 million ha, or more than 44%, of the National Reserve System. These IPAs deliver important Indigenous land management, cultural, social and economic and employment outcomes.

These outcomes are shared and in many cases strengthened by the government's funding for Indigenous rangers. The Indigenous ranger funding supports 118 ranger groups across Australia and, together with IPAs, the 2 programmes employ over 2 900 Indigenous Australians to work on land and sea country. Ranger groups protect, conserve and manage environmental and cultural values. Projects can include but are not limited to activities such as the management of threatened species, invasive weeds and feral animal control, biosecurity activities, fire management, management of coastal and marine systems, visitor and information management, community engagement and education.

Source: OECD (2019[29]), *Linking Indigenous Communities with Regional Development*, https://doi.org/10.1787/3203C082-en.

Final considerations

Land lies at the core of rural development in Colombia. Through delimitation of the agricultural frontier and conservation efforts, protected areas can meet their environmental purposes and economic activities can take place in suitable areas. By recognising and protecting Indigenous, Roma and Afro-Colombian territories, ethnic and cultural diversity is promoted and these ethnic communities can exercise fiscal management and administrative powers. Small farmers and peasants too need land to develop sustainable

agricultural practices, as recognised and continuously addressed in the land restitution process. Mapping, identifying and allocating land in a transparent and committed manner can greatly contribute to fulfilling these objectives.

Besides land registry and distribution, the management of land and natural resources is fundamental to further promoting well-being and peace in the countryside. Land use and development plans contribute to a more adequate and rational use of land. This in turn can reduce the pressure over land and the consequent land-enlarging requests, therefore also diminishing the intensity of socio-territorial conflicts. Consistent environmental monitoring efforts can help to fight illegal extractive purposes that detract land from its intended purposes. The protection of environmental and human rights leaders must also figure high in the list of action priorities.

The message for Colombia moving forward is that there can be sufficient land for everyone. For that, the planned uses must be observed, illegal activities must be combatted, and multiculturality and ethnic diversity must be promoted. Under a participatory process of regional development, ethnic communities can exercise their right of prior consultation in regard to development projects that directly affect them. Rural areas in Colombia have the potential to become areas where environmental conservation, agricultural production, ethnic autonomy and opportunities for sustainable economic development coexist and flourish.

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Notes

[1] Information obtained from the website of the *Registro Único de Víctimas*, which records the annual number of victimising events due to the armed conflict. The number does not reflect the total number of persons, since a same person may have reported more than one victimising event along the years (https://www.unidadvictimas.gov.co/en/node/37394).

[2] CONPES Document 3958 *Strategy for the Implementation of the Multipurpose Cadastre Public Policy*, 2019.

[3] The term “Roma communities” encompasses the “Pueblo Rrom-Gitano”.

[4] In the original: “*Como dentro de la juridicidad occidental, es un contrasentido que la tierra sea sujeto del derecho, entonces, hay que inferir que la Constitución le otorga “derechos” es al territorio del resguardo como una entidad que en su identidad no solo expresa parte de nuestra nacionalidad colombiana, sino que es un concepto que también se ubica en el terreno de la cultura. En consecuencia, los resguardos son algo mas que simple “tierra” y algo menos que “Territorio indígena”; es decir, que no son términos iguales en la conceptualización constitucional, aunque, en una ley de ordenamiento territorial, geográficamente podrían coincidir. Pero, actualmente, todavía no se puede decir que un resguardo es una Entidad Territorial.”* (T606/2011 of Colombian Constitutional Court).

[5] According to DNP (2020[35]), the communities are: Arhuaco de la Sierra, Asociación de resguardos indígenas PACANDÉ (ARIP), Asociación de resguardos Pijaos del Tolima (ARPIT), Cabildo indígena de Rio Páez de Corinto, Cristiniania, Iroka, Kanjuano, Muellamuez, Totoró and Zenú San Andrés de Sotavento. Note that *cabildos* and associations represent several reserves, hence the total number of 41 reserves.

[6] For a critique of the Pacific-centrism in the constitution of Afro-Colombian land rights, see Restrepo (2005[65]).

[7] Information obtained from interviews conducted by the OECD in October 2021.

[8] According to interviews conducted in February 2022 in Colombia.

[9] According to document provided by the CNTI to the OECD in February 2022, entitled “*Aproximaciones en Materia Territorial Indigena para la OCDE*”.

[10] According to interviews conducted in February 2022 in Colombia.

[11] Decree 2353 of December 26 of 2019.

[12] The Constitutional Court has recognised the need to respect community-specific protocols and procedures in relation to Free Prior and Informed Consent in the case of the Embera Chamí people in Caldas (Case T-530/2016).

[13] For a more detailed analysis of the process of elaboration of the Environmental Zoning Plan, see Ministerio de Ambiente y Desarrollo Sostenible (2018[66]).