

PAZ Y SEGURIDAD

# THE ETHNIC CHAPTER, CONFINED TO PAPER

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Black and indigenous communities were the last to be included into the Peace Agreement. Their delegates continued fighting for the inclusion of a series of safeguards even when the end of negotiations was announced.



They had to recur to the international community, especially the United States, to be heard by negotiators and their proposals be included in the document that would aim to end 50 years of war.



Five years after the start of the implementation, the progress made has been little. The greater part of what has been done is in the form of generic policies that are far from addressing the needs of the indigenous and black communities.

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In collaboration with



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“At breakfast, one can guess what lunch will be,” the saying goes. This phrase exemplifies the implementation of the set of safeguards that the native peoples were able to include, at the last minute, in the pact that put an end to more than 50 years of confrontation between the Colombian State and the once oldest guerrilla group in the continent.

By breakfast, we mean the peace dialogues that the government of then President Juan Manuel Santos (2010-2018) and the extinct FARC guerrilla held in Havana, Cuba, between November 2012 and August 2016. Since it was announced that a negotiating table would be established to discuss a six-point agenda whose aim was to build a stable and lasting peace, Afro and indigenous people asked to be allowed to participate in it.

Despite their insistence, their words were not heard, contrary to the Gender Sub-Commission, which was created to guarantee that the rights of women and members of the LGBTI community were harmoniously included in the Peace Agreement. In the face of these refusals, ethnic communities responded with more insistence and various advocacy actions, such as the creation of the Ethnic Peace Commission to join efforts and even ask for support abroad, especially before the U.S. Congress.

Their insistence paid off: between June 26 and 27 of 2016, the negotiators of the national government and the extinct FARC received a delegation of ten representatives of the black communities, ten from the indigenous communities and two from the Rrom communities<sup>1</sup>.

By that time, five of the six points of the future Peace Agreement had already been agreed upon in the discussions in Cuba. The ethnic delegates had little room for maneuver and returned to Havana only in August. For that reason, of the 310 pages that make up the peace treaty with FARC, only four give life to the Ethnic Chapter. On the 24th of that month, when it was announced to the world that “everything was agreed”, the Afro and indigenous representatives were still fighting for their rights. They finally succeeded by having them inscribed in the document as Point 6.2 of the *Final Agreement for the Termination of the Conflict and the Construction of a Stable and Lasting Peace*.

Its guiding principle recognizes that ethnic communities “have suffered historical conditions of injustice as a result of colonialism, enslavement, exclusion and the dispossession of their lands, territories and resources; they have also been seriously affected by the armed conflict”. Feliciano Valencia, an indigenous member of the Nasa people and senator of the Republic for the Indigenous and Social Alliance Movement (MAIS), explains that the Ethnic Chapter contemplates four safeguards that prevent the implementation of the Havana agreements from being detrimental to the rights of ethnic peoples. For this reason, any so-called post-conflict policy must preserve the following: First, the primary and not subsidiary nature of a free and informed previous hearing. Second, the right to cultural objection as a guarantee of non-repetition. Third, a transversal ethnic, gender, women, family, and generational approach. And fourth, the guarantee of non-regression.

Such was the so called “breakfast” of the Ethnic Chapter and, for the last five years, “lunch” has been served. And as the old saying suggests, its implementation has been just as its negotiation: full of delays, non-compliances, and refusals.

<sup>1</sup> Read more in: <https://verdadabierta.com/el-largo-camino-pa-ra-que-las-comunidades-etnicas-llegaran-la-habana/>

1

## NEW SCENARIO, OLD HABITS

Just as the ethnic communities were heard only at the end of the peace dialogues, the same happened with the construction of the Implementation Framework Plan (PMI, for its acronym in Spanish), which is the roadmap for translating the layouts of the Peace Agreement into public policies.

“Point 6.1 had four months for its implementation, that is related to the development of the PMI. However, the government went on with their systematic exclusion of ethnic peoples: we did not begin the process construction, even though the safeguards of the Ethnic Chapter established it,” explains Helmer Quiñones, coordinator of the advisory team of the Special High-Level Instance with Ethnic Peoples (IEANPE).

To rectify this shortcoming, the communities resorted to their most powerful tool: protest.

“We did end up participating at the end (once more) of the PMI, between the months of September and Decem-

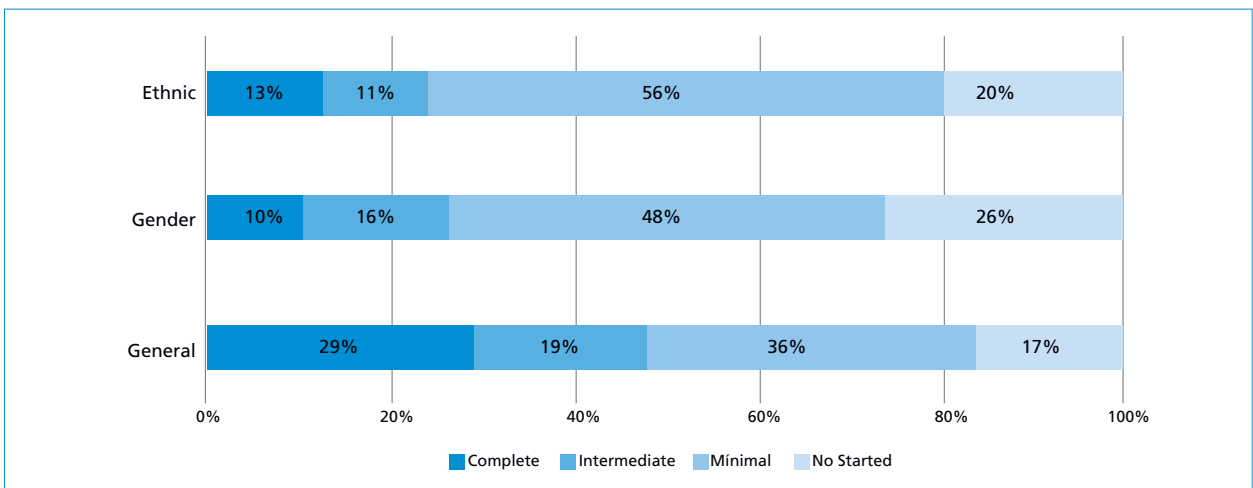
ber of 2017. But only as a result of the indigenous and Afro-descendant *minga* that blocked the Pan-American Highway and forced the government to make us participate in the process,” recalls Quiñones.

Only by the de facto ways, the four pages of the Ethnic Chapter became 80 provisions and 97 indicators, distributed in 27 pillars throughout the six points of the Peace Agreement. Delays have been constant in their implementation.

According to the most recent report of the Kroc Institute of the University of Notre Dame, which monitors the level of implementation of post-conflict policies, until last June, most of the ethnic points were below minimum (Figure 1).

As a result of this, Richard Moreno, coordinator of the Afro-Colombian Peace Council (Conpa) and member of the Chocó Interethnic Solidarity Forum (Fisch), affirms

**Figure 1**  
Implementation of cross-cutting approach by June 2021



that ethnic peoples have a bittersweet feeling about the Peace Agreement.

“We had high hopes and desired that the Ethnic Chapter would serve to move forward in what, historically, our communities have suffered in terms of unsatisfied basic needs. In our overall assessment, implementation is around eight percent. And the advances have not focused in the most transcendental points that we need,” he laments.

Charo Mina, a member of the Black Communities Process (PCN), which brings together dozens of Afro-Descen-

dant organizations, agrees with Moreno, and highlights that the few advances have been in small infrastructure projects.

“This is very problematic because it means that what has been done is not related to the priorities established by the Ethnic Chapter, regarding territorial rights, but is actually related to the commitments of the national government with the territorial entities, which are not our priorities as ethnic peoples. There is no land titling or expansion of the collective territories, nor opportunities for the displaced to return to them,” Mina points out.

## 2

## LAND, THE MAIN DEBT

Different Afro-descendant and indigenous organizations agree that there are huge failures in the integral rural reform subject. They even state that the national government is inflating the number of hectares allocated through the nascent Land Fund. Camilo Niño, president of the Technical Secretariat of the National Commission of Indigenous Territories (CNTI), states they found out about this when the National Land Agency (ANT) notified them that they had been awarded 245.000 hectares from the Land Fund, as a result of the Peace Agreement's implementation.

"Upon review, we found that the 245.000 hectares actually were part of processes that predate the Peace Agreement. For example, we have a reservation that had requested its extension 42 years ago, and others that corresponded to different judicial processes but that were included here as if they were a result the Peace Agreement," he explains.

Niño emphatically affirms that this land granting is not possible because the requirements defined for that purpose have not been met.

"Processes known as FISO (Registration Form for Management Subjects) and, then an indigenous RESO (Registry of Management Subjects) had to be constructed first, the latter to differentiate the farmer community from the indigenous one. To date, there is no ethnic FISO, nor an ethnic sub-account in the Land Fund. That's why we're still wondering where these lands came from, if the differential directives that the decree law considers do not exist", he argues.

In this regard, Mina, of the PCN, asks that the State must respect the safeguard that established that those land claim processes carried out by ethnic communities

before the signing of the Peace Agreement were not to be included as part of the implementation.

"The government has shown collective land titling that does not correspond with the commitments of the Agreement, but to commitments made before it. This means that the new commitments are not being fulfilled," she insists.

Another of the debts that they hope the Peace Agreement will help to settle is the need 200 community councils have of around one million hectares for which the councils are requesting collective titling.

"There are community councils that have lost land space and have never achieved a collective land titling. For instance, "los cuarenta" [lit. the 40] in northern Cauca, because different administrations have refused to recognize the presence of an Afro-descendant community in those territories", mentions Mina.

779 indigenous reserves are in a similar situation throughout the country, that have acquired land through their own means, thanks to the General System of Participation, but that land has not been annexed to their collective titles. In the offices of the ANT there are 1,014 requests for expansion, constitution, and regulation<sup>2</sup>.

Regarding this, Niño, of the CNTI, explains that the indigenous peoples' intent is not that the State buys and adjudicates millions of hectares to them, since "we already possess and use many areas, and that they require only their formalization". However, he does recognize that some indigenous reserves do require adjudication.

<sup>2</sup> Read more in: <https://verdadabierta.com/estamos-pidiendo-la-formalizacion-de-8-millones-de-hectareas/>

### 3

## AND THE GUARDS?

Ethnic Chapter's four pages mentions few matters with namely precision; one is dedicated to the collective mechanisms for the protection of native peoples. It states: "The strengthening of the ethnic peoples' own security systems, both recognized nationally and internationally as the Indigenous Guard and the Guardia Cimarrona [Lit. Maroon Guard], will be guaranteed".

Armando Valbuena, secretary of the IEANPE —an entity created by the Peace Agreement to follow up on the implementation of the ethnic provisions—, asserts that this is still a debt to them due to the lack of political will of the national government and, also, the few resources given.

"The National Protection Unit has supported some of the main processes of collective protection with its own resources, but the unit isn't sanctioned by a state policy so they cannot exert any control over any territory. We [the IEANPE] are present in 30 municipalities of the Pacific, but we do not have the resources needed for the mobilization of the guards. We need simple things like communication devices in regions without connectivity, which is why we ask for radio transceivers. This is a long process that has not been accepted", he says.

The situation of the Guardia Cimarrona is worse because it has no legal recognition. "There is a discrepancy with the national government in the recognition of this

Guard as a mechanism of the self-government system of black people in Colombia, and it has been very difficult to reach an agreement," says Mina. She continues:

"The national government is discriminating the Guardia Cimarrona. The Guard does not need a law to be recognized since it is already recognized for being part of the struggle process. This is part of the discriminatory actions of the government. There is no political will to recognize the Afro-descendant people."

In another account, Edwin Mauricio Capaz, one of the spokespeople of the Regional Indigenous Council of Cauca (Cric), says that the Guard has not received sufficient logistic equipment for the contexts of violence it faces:

They have given us boots, radios, and vests. And they are useful things for daily use, we do not belittle what has been given. But boots and vests that come every year are not enough concerning the adverse dynamics must face in our territories, which deserve greater efforts on their part. Perhaps they would be enough in other contexts.

Between 2016 and 2020, 175 indigenous community members were killed only in the northern part of Cauca<sup>3</sup>.

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3 Read more in: <https://verdadabierta.com/la-dolorosa-e-incesante-cuenta-de-cobro-a-los-nasa/>



## 4

## INTEGRAL SYSTEM, A DIFFERENT STORY

In the implementation of the Special Jurisdiction for Peace (JEP, for its acronym in Spanish), the Commission for the Clarification of the Truth (CEV, for its acronym in Spanish), and the Unit for the Search for Disappeared People (UBPD, for its acronym in Spanish), ethnic communities were considered, unlike in other measures of the Peace Agreement. These three entities give life to the Integral System of Truth, Justice, Reparation and Non-Repetition.

In this regard, Helmer Quiñones, from IEANPE, states that this case shows how the correct implementation of the safeguards of the Ethnic Chapter changes the destiny of the native peoples. He says:

The selection mechanism did receive the message of how important the implementation of an ethnic and racial approach was. That is why they chose carefully and Patricia Tobón and Ángela Salazar joined the Commission. We also had the possibility of seeing eight ethnic magistrates (of a total of 38), and we had an equal referent in the Search Unit where, with its director, we designed a more sophisticated consultation mechanism. We had ways of dialogue that allowed the National Search Plan to have specific chapters for Afros and indigenous people.

For Marino Córdoba, president of the Association of Displaced Afro-Colombians (Afrodes), even though the Integral System has received the national government's strong opposition, it is the only component that, so far, is yielding concrete results for ethnic communities.

“Although to hear that reality hurts, for us it is important to understand the ways in which the conflict affected, through a differential perspective. We've seen advances in terms of participation, in the writing of reports, in how we've presented our points of view. We have been heard and we are represented. The only thing we can highlight from this whole peace process, even with their limitations, is the Integral System”, he specifies.

Regarding the indigenous communities, Senator Valencia points out that the work of the three entities created to repair the victims of the armed conflict may result in

the recognition of a specific truth about the conflict told by the voices of the indigenous communities. This is because, although the armed conflict has deeply affected many social sectors and rural communities, its impacts on the indigenous communities have a particular sense, as they transcend individuality and have permeated their collective subject.

## 5

## THE MAGNIFYING GLASS OF CONTROL ENTITIES

The Attorney General's Office and the Comptroller General's Office have closely monitored the implementation of the Ethnic Chapter. In different reports they have questioned the delay in its implementation and have asked for a speedy settlement of the debts with the ethnic peoples. In its *Third Report to Congress on the State of Progress of the Implementation of the Peace Agreement*, presented last August, the Public Prosecutor's Office concluded that the application of the Ethnic Chapter, five years after the signing of the Peace Agreement, is at a very low level.

"The peoples continue to suffer historical conditions of injustice and inequity, and continue to be seriously affected by the dynamics of the reconfiguration of the internal armed conflict and the intensification of violence in the territories," it states.

One of its main criticisms was directed towards the management of the Land Fund, since the ethnic sub-account is not yet regulated and has no funds allocated. And in line with the denunciations made by CNTI and PCN spokespersons, the report points out that the creation of three indigenous reserves and the expansion of two others are not indeed related to the Peace Agreement, as was reported by the ANT.

In this regard, Emilio Archila, senior presidential advisor for Stabilization and Consolidation, explains that the goals achieved during the government of President Iván Duque (2018-2022) are more than satisfactory, as they have managed to introduce 1.2 million hectares to the land bank in the last three years, when the goal for the next 15 years was three million. Also, of the 7 million hectares that were to be delivered to farmers without land, or with very little, more than one million have already been granted.

"There is both a political and a legal discussion that has to do with land formalization. In the reading made by the Attorney General's Office, the lands that come from previous processes should not be counted in the process, and neither should those that are uncultivated. But our vision is that we need farmers with land", emphasizes Archila.

The delays of the Integral National Program for the Substitution of Illicit Crops (PNIS) were also highlighted because the program does not have an ethnic approach and only until December of last year, a consultation with the indigenous communities was agreed for its execution. However, the national government "expressed its will to implement the program in territories that have not been formalized as reservations, which would mean there is no need for a consultation with the communities that inhabit these spaces".

Another element pointed out by the Attorney General's Office is that the prior, free, and informed consultation "has not been effectively carried out in the communities, so there is a high risk of regression in this aspect." And it also questions the fact that a budget allocation for the IEANPE was made only until March of last year, a budget needed so that it could fulfill its mandate to act as consultant, representative and interlocutor on issues related to the Ethnic Chapter. The main criticism of the Comptroller's Office is that five years after the signing of the Peace Agreement, there is no indicator to measure the budgetary investment to comply with the implementation of the Ethnic Chapter.

In its analysis, the entity agrees on several points with the Procurator General's Office. But it presents hard findings on issues related to the land, the most sensitive being the one for ethnic communities, due to their

needs and cosmogony. It established that, up to March the 31<sup>st</sup> of this year, none of the National Plans for Integral Rural Reform had effectively incorporated the ethnic approach.

“The participation of ethnic peoples in the design and implementation of the National Plans has not been guaranteed, since in addition to the lack of a strategy for the attention of these communities, in some cases (like water and irrigation) the absence of an ethnic differential approach has been justified in the universal nature of public service. And, although in the remaining

cases it is mentioned in the text of the Plan, it is only pointed out as a differentiating criterion”, he detailed.

All these debts, in addition to the resurgence of violence in the reservations and in the community councils, perpetuated by new and old armed groups that dispute the territories that were controlled by the former FARC, show that the Ethnic Chapter is confined to the four pages of the Peace Agreement. Nevertheless, the Afro and indigenous communities have asked their leaders to continue fighting for the implementation of the Ethnic Chapter, because they do not lose hope of living in peace.

## ABOUT THE AUTHOR

*VerdadAbierta.com* is digital native medium dedicated to journalistic research of events related to human rights in an ample thematic framework. It was created in 2008 and is integrated by a team of journalists specialized in covering the Colombian armed conflict and peace processes. Since the 31<sup>st</sup> of January 2019, they're under the tutelage of the Verdad Abierta foundation.

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## ABOUT THIS PROJECT

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The formalization and widening of collective ethnic territories have not gone forth as planned. Neither have the remaining rural reform policies, nor the National Integral Program for the Substitution of Illicit Crops. However, diverse armed actors are present in indigenous and black communities' territories, prancing along them like they own the land.

Forced displacements, confinements, threats, and the murders and massacres of communal and ethnic authorities have become rampant with each year that passes. Meanwhile, the national government implements the Ethnic Chapter through their own perspective, choosing to distance themselves with what was agreed on the Agreement.



In the middle of this difficult path, ethnic communities have had better luck when relying on the Integral System of Truth, Justice, Reparation and Non-repetition. There, their right to previous consultation was upheld and, therefore, the Special Jurisdiction for Peace, the Commission for the Clarification of the Truth, and the Unit for the Search for Disappeared People created protocols with a differential approach, and included members of the ethnic communities in key positions so that they would advocate for the fulfillment of the Ethnic Chapter in those institutions.