



## **AKUBADAURA COMMUNITY OF JURISTS<sup>1</sup>**

### **Akubadaura Submission to the United Nations Periodic Review of Colombia Third Cycle**

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### **Report on Colombia**

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<sup>1</sup> The Akubadaura Community of Jurists, created in 2012, is a non-profit entity that is articulated with Indigenous Peoples' initiatives in national and international fora, and is made up of lawyers and leaders from different Indigenous Peoples who, with the support of expertise in other areas, defend, engage, promote and protect human rights and the collective rights of Indigenous Peoples.

*This submission highlights concerns about indigenous peoples' rights in Colombia in relation to its previous Universal Periodic Review (UPR) in which Colombia received 9 recommendations<sup>2</sup>. The submission focuses on the Nukak indigenous people, a case which evidences the State's failure to comply with the recommendations on indigenous peoples in the last UPR.*

## **A. INTRODUCTION**

1. The Nukak: "the last people of nomadic tradition to be officially contacted in Colombia"<sup>3</sup> live in Guaviare department, and have a population of less than 600<sup>4</sup> people. The Nukak's Reserve covers an area of 954,480<sup>5</sup> hectares, where they hunt, fish and gather fruit.
2. The people are at serious risk of physical and cultural extinction, which is due in large part on the disproportionate impact on them of the armed conflict, and its underlying and related factors. In 2009, the Constitutional Court ("the Court") ordered the drafting and implementation of safeguarding plans for 34 indigenous peoples, including the Nukak.<sup>6</sup> After the Court found that its orders had not been complied with, it issued Order 173 of 2012<sup>7</sup>, regarding the specific situation of the Nukak and Jiw peoples in Guaviare, and made specific orders for the protection of their rights.<sup>8</sup> Subsequently, it issued Order 565 of

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<sup>2</sup> All the recommendations made during the second cycle were accepted.

<sup>3</sup> Mahecha Dany R, y Franky Carlos Eduardo. 2011. LOS NÜKAK: El último pueblo de tradición nómada contactado oficialmente en Colombia. IWGIA

<sup>4</sup> There is no consolidated and unified number provided by the State for the Nukak population. The document Nukak Safeguarding Plan by the Ministry of Interior establishes that: "In the censuses undertaken during the project a total of 581 people were registered of which 54.39% are men and 45.61% are women; 64.54% of the population are children and the largest subset within this population, 20.14%, are children aged between five and nine years old; 43.89% are economically active, within the parameters established by the majority Colombian society, 28.23% of women in this population group are of child bearing age, 1.03% are aged over fifty years old and only 0.86% are elderly. The population is very young. 79.17% are under the age of thirty, and children make up 55.08%, life expectancy is less than fifty years of age and fertility rates are less than 4% per year."

<sup>5</sup> Resolution 136 of 1993, and Res 0057 of 1997. The Nukak territory is situated in an area of natural forest.

<sup>6</sup> The third order contained in Order 004 of 2009, establishes an obligation for the national Government to formulate and commence "implementing ethnic safeguarding plans in the face of the armed conflict and forced displacement for each of the peoples identified in the present case. The legitimate authorities of indigenous peoples must effectively participate in the fulfillment of this order."

<sup>7</sup> Order 173 of 2012: Adoption of urgent precautionary measures of protection for the fundamental rights of the Jiw or Guayabero and Nukak indigenous peoples[1] of Meta and Guaviare departments, in the context of the unconstitutional state of affairs declared by Sentence T-025 of 2005 and the orders emitted in Order 004 of 2009.

<sup>8</sup> Amongst the orders of the Constitutional Court in Order 173 pertaining to the Nukak people are: the design, adoption and implementation of an Urgent Provisional Plan of Reaction and Contingency for the Jiw and Nukak peoples; research and documentation campaign by the Registrar's Office, ethno-educational projects for the Jiw and Nukak peoples, Actions for organizational strengthening for the purpose of dialogue with the State and the management of the Nukak Indigenous People's Budget, and actions to aid inter-institutional coordination.

2016<sup>9</sup> which established a Technical Roundtable to evaluate compliance with the instructions in Order 173.

3. Forced recruitment of young people, direct threats, confrontations between armed actors in their territory, anti-personnel mines, drug trafficking, amongst others, have forced the Nukak people to leave the jungle, become sedentary and join the misery of settlements outside their territory. They are the victims of forced displacement on a massive scale; currently 60% of the Nukak are in 12 settlements outside their Reserve,<sup>10</sup> where they receive food aid that does not meet their alimentary and cultural traditions.
4. The displaced population lives in a state of poverty, begging, malnutrition, prostitution, forced labor, in addition to the conditions identified by the Constitutional Court in Order 173.<sup>11</sup> They also suffer discrimination and stigmatization.<sup>12</sup>

## **B. SITUATION OF THE NUKAK PEOPLE**

5. The Nukak people are greatly affected by being dispossessed of their land and by other violations of their territorial rights<sup>13</sup> in the context of the armed conflict and its underlying and related factors.

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<sup>9</sup> In the above mentioned Order, the Court stated that: “Four years after the issuance of specific orders regarding these two indigenous peoples, the Special Chamber warns of the need to undertake a detailed evaluation of compliance with them, because according to the information alleged by the relevant authorities, the organisms of control and other actors in the follow-up process, **despite the urgency of the measures required, the risks and impacts these peoples are exposed to and submitted to continue to exist, and on the contrary, have been exacerbated**”. Constitutional Court Order 565 of 2016. Mp Luis Ernesto Vargas Silva.

<sup>10</sup> Zimmerman y Latam. 2016. Semana sostenible. Los Nukak Makú: un pueblo nómada a punto de desaparecer. Septiembre 12. Available at <http://sostenibilidad.semana.com/medio-ambiente/articulo/los-nukak-maku-un-pueblo-nomada-a-punto-de-desaparecer/36648>

<sup>11</sup> For the Court, the forced displacement of the Jiw and Nukak ethnic groups of Meta and Guaviare departments yields the following direct effects: **(i) high levels of mortality and illness. (ii) low food security, (iii) high loss of cultural identity.** The Court also identified indirect effects: **(i) continuous reduction of the population, (ii) loss of cultural heritage.**

<sup>12</sup> “The Nukak do not have a concept of private property and therefore consider that they can take any food or object they find along the way. This situation has, of course, generated frequent disputes with farmers, who complain that the natives damage their crops, eat the fruit, fell the trees and even take their clothes”. El Tiempo 2005. “The Nukak will become extinct if the FARC do not let them return to the forest” 17 May. <http://www.eltiempo.com/archivo/documento/CMS-15768515>.

<sup>13</sup> In response, the Constitutional Court stated that “the legal situation of the Nukak territory requires immediate attention, because their borders are constantly being transgressed and this enables the invading settlers to plant illicit crops inside the territory. It also makes the recuperation and protection of the ancestral territory necessary, where there are a variety of animal and plant resources that enable them to ensure their physical and cultural survival”. Order 173 of 2012.

6. Guaviare is one of the departments most affected by illicit crops, as evidenced by UNODC monitoring. “22% of the territory has been permanently affected by coca cultivation during the last 10 years. (...) Most of the crops are located in these zones, 79% of the national total, and a greater percentage, 80% of the national total, are located in the departments of Nariño, Putumayo, **Guaviare**, Caquetá, Cauca, Meta and North Santander.<sup>14</sup>
7. Part of the Nukak’s land is currently occupied by coca farmers. This warrants urgent action by the national Government to resettle the farmers and offer them sustainable solutions outside the indigenous territory.
8. Deforestation is another factor threatening the Nukak’s survival, and Guaviare is the department most affected by it.<sup>15</sup> The consequences of this phenomenon is forced displacement, and the transformation under duress of their culture and means of subsistence.
9. The laying of anti-personnel mines has made it impossible for the Nukak to move freely around their territory, or access the grounds where they hunt, gather, and perform other activities fundamental to their physical and cultural survival.
10. In addition to these threats, are 3 requests for mining titles within the Nukak Reserve, which cover an area of 3023 hectares of registered land. There is also an overlap of 13,339 hectares between the Nukak Reserve and the Farmer Reservation Zone.<sup>16</sup>
11. The State’s structural failures in protecting<sup>17</sup> the rights of indigenous peoples are more evident in the Nukak people. In fact the Court identified that one of

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<sup>14</sup> UNODC. 2017. Monitoreo de territorios afectados por cultivos ilícitos 2016 , pg 33

<sup>15</sup> Of the three deforestation nuclei identified in the department, two have a direct impact on the Nukak peoples’ territory: “The second nucleus includes Calamar and El Retorno municipalities and puts the Nukak Natural Unique Area (ANU) at risk, which is important to the country as a whole due to its natural and cultural richness. The third critical zone in the department is Northeast of San Jose del Guaviare, in the Caño Mosco, Caño Negro, Caño Blanco hamlets and the indigenous Nukak Makú reserve, an indigenous people that at this time has less than 1,000 inhabitants.” <http://sostenibilidad.semana.com/medio-ambiente/articulo/guaviare-deforestacion-lallevan-a-cabo-mafias-que-talan-los-arboles/38131>

<sup>16</sup> “It was found that around 13,239.72 hectares belonging to 7 hamlets which are: Las Golondrinas, Moscú, Horizontes, San Luis de los Aires, Guayabales, Caño Blanco Tres and Los Gualandayes, all of them part of the Municipality of San Jose del Guaviare, overlap with the Nukak Reserve. This statement is supported by mapping information of PBOT of San Jose del Guaviare elaborated in 2001” Ministry of Interior. 2017. Nukak Safeguarding Plan. Order 004 of 2009, pg 31.

<sup>17</sup> Recommendation made by Egypt: “Continue to develop and expand programmes for the protection of indigenous peoples”, and New Zealand: “Take all necessary measures to ensure the full and sustainable protection of indigenous peoples and peoples of African descent, in terms of both physical security and land rights”

the indirect causes of the Nukak's problems is the lack of institutional coordination.<sup>18</sup> The State's<sup>19</sup> neglect<sup>20</sup> and harmful actions make it jointly responsible for the humanitarian crisis, and the physical and cultural disappearance of these indigenous people.

## **Nukak People in the Post-Agreement Context**

12. The Ethnic Chapter in the Final Agreement for the cessation of the conflict and building a Stable and Lasting Peace establishes, as well as the general safeguards, a special agreement with specific obligations with regards to the Nukak people. In particular, the Final Agreement refers to this indigenous people's priority with respect to mine clearance. It also sets out the development of a program for the settlement, return, devolution and restitution of the Nukak people's territories.<sup>21</sup>
13. After the signature of Peace Agreement between the government and the FARC-EP, some sectors of the guerrilla group expressed their disagreement and refusal to comply with the Agreement, particularly in Guaviare where Front 1<sup>22</sup> remains in the area with more than 400 combatants. In a recent statement, the dissidents addressed public opinion and the inhabitants of Southeastern departments in the country,<sup>23</sup> and reiterated their position and their presence in the area. This exacerbates the humanitarian crisis affecting the Nukak<sup>24</sup> people and impedes their possibilities of return, of their territory being restituted, of mine clearance and of the reinstatement of their territorial rights.<sup>25</sup>
14. Specifically, the context of the Peace Agreement's implementation should signify a transformation of the relationship State-indigenous peoples/society-

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<sup>18</sup> Corte Constitucional de Colombia. Order 173 of 2012.

<sup>19</sup> Conduct that, through omission or action, compounds the sedentarization of the Nukak people, for example.

<sup>20</sup> Recommendation made by Senegal. "Continue its actions in favour of the improvement of conditions of life of indigenous peoples"

<sup>21</sup> Recommendation made by Mexico "Protect the right to property of the land of the indigenous and traditional peasant communities to prevent the dispossession of land suitable for agriculture in the present context of economic and social development"

<sup>22</sup> Operates in **Vaupés, Southern Guaviare and Guainía**

<sup>23</sup> The statement warns the inhabitants of Guaviare, Meta, Vaupes, Vichada, Caqueta and Amazonas that, "the war continues, the military actions being taken are to remind all of those who are making a profit in these departments that you too are part of this war and therefore your duty is to collaborate with this cause". El Espectador Redacción Política. 2017. Amenaza de disidencia de las Farc a medios de comunicación. 18 May 2017 <http://www.elespectador.com/noticias/politica/amenaza-de-disdencia-de-las-farc-medios-de-comunicacion-articulo-694387> On 9 July 2017 an attack with explosives against an army patrol in San Jose del Guaviare by alleged FARC dissidents was reported.

<sup>24</sup> Recommendation made by Republic of Korea: "Introduce stronger measures to protect indigenous peoples and AfroColombians from attacks by armed groups and take measures to guarantee their rights"

<sup>25</sup> Caracol, 2017. Por orden público posponen retorno de comunidades indígenas en Guaviare. 15 March [http://caracol.com.co/radio/2017/03/15/regional/1489585433\\_656434.html](http://caracol.com.co/radio/2017/03/15/regional/1489585433_656434.html)

indigenous peoples. The fact that they are a nomadic people, that many of their population do not speak Spanish, that their organizational structure is not centralized, and their obvious risk of extinction, amongst others, presuppose a differential, articulated, systematic institutional intervention, with a clear do no harm focus, that enables their physical and cultural integrity to be preserved, and the protection and safeguarding of their rights.

15. Fulfilling the terms of the Ethnic Chapter is fundamental to transforming this relationship, however, under the Fast Track<sup>26</sup> process, the national Government has only consulted 5 of the measures<sup>27</sup> with indigenous peoples in the context of the MPC.<sup>28</sup> For example, the decree law on PNIS<sup>29</sup> crop substitution which directly affects indigenous peoples, was expedited by the national Government without prior consultation,<sup>30</sup> which is particularly serious in the case of the Nukak people.
16. In spite of the evident impact of illicit crops on the Nukak people, the National Government<sup>31</sup> has initiated procedural agreements for crop substitution with farmers, which has increased the occupation of recognized territories of ethnic peoples by some coca growers. These substitution agreements are devoid of ethnic or indigenous focuses, and have not guaranteed the participation of the Nukak people.

## **RECOMENDATIONS**

We recommend that the National Government:

- Effectively and urgently complies with the terms of the special agreement pertaining to the Nukak people which is contained in the Ethnic Chapter of the Final Peace Agreement. Mine-clearance activities in ethnic territories; and the program for the settlement, return, devolution and restitution of the Nukak people's territories must be agreed through concertation and must guarantee the participation of this indigenous people.

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<sup>26</sup> The Fast Track is an expedited legislative process, a mechanism contemplated in Legislative Act 1 of 2016, which establishes that the Congress can approve legislation pertaining to the implementation of the Final Peace Agreement with few debates and without the need of block voting.

<sup>27</sup> Recommendation made by Peru: "Maximize, through consultation mechanisms, the participation of indigenous peoples in the determination of the public policies that affect them"

<sup>28</sup> Mesa Permanente de Concertación con los Pueblos y Comunidades indígenas, created by Decree 1397 of 1996.

<sup>29</sup> Programa Nacional Integral de Sustitución de Cultivos Ilícitos (**PNIS**), created by Decree 896 of 2017.

<sup>30</sup> According to Convention 169 of the ILO, governments must "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is being given to legislative or administrative measures which may affect them directly;" Art 6.

<sup>31</sup> Through the Dirección para la Sustitución de Cultivos de Uso Ilícito ascribed to the Alta Consejería para el Pos Conflicto.

- Adopts urgent measures to stop the physical and cultural extinction of the Nukak people and safeguard their survival, in compliance with the Nukak Safeguarding Plan, Order 173 of 2012, Decree law 4633 of 2011, and Convention 169 of the ILO, granting sufficient and specific resources to do so.
- Guarantees the right to prior, free and informed consultation of the PNIS and other measures to implement the Peace Agreements.
- Guarantees coordinated, integrated and systematic action by State entities to protect the rights of the Nukak people, from a do no harm premise that guarantees structural responses to the situation.
- Reviews and adapts institutional capacity and formulates a public policy in coordination and concerted agreement with the indigenous peoples of Guaviare and national indigenous peoples' organizations with regards to peoples in first contact and voluntary isolation.
- Promotes, in coordination with indigenous authorities and organizations, actions to raise awareness and provide training in order to end the existing stigmatization of Guaviare's indigenous peoples.
- Suspends applications for mining permits and works, projects or activities that constitute a threat to the physical and cultural survival of the Nukak people.
- Recognizes and strengthens the Nukak organization and self government, specially the Council of Traditional Authorities: Mauromunu.

