

## **Evaluation of Decree Law 4633/2011 Six Months after Its Enactment and One Year after the Enactment of Law 1448/2011<sup>1</sup>**

National Indigenous Organization of Colombia (ONIC)

The legal framework for the comprehensive reparation, attention, protection, and restitution of the territorial rights of indigenous peoples and communities, as well as that of the victims of the Colombian armed conflict, is an important step towards national reconciliation and long-sought peace. Its enactment merits support and celebration.

However, this important effort has not been successful in deterring discriminatory practices against indigenous peoples because the Colombian state lacks political, social, and economic will. Six months after the enactment of Decree Law 4633 of 2011 and one year after Law 1448, there still have not been efforts to minimize the physical and cultural extermination of indigenous peoples as a result of the armed conflict. One can understand the disapproval in this evaluation when one remembers that indigenous peoples were not invited to the debate on the legislation for Law 107/10 in the House of Representatives.

We recognize the ordeal that the National Government and indigenous peoples have undertaken in order to consult, compromise, and issue Decree Law 4633 of 2011. However, it is necessary to reiterate that Law 1448 of 2011 would not have been legally possible without the support of Article 205 written by the National Working Group for Agreements with Indigenous Peoples. Without Article 205, Law 1448 would have become one of the many laws and regulations declared unconstitutional for violating the fundamental right to previous consultation.

It is our historic responsibility to remind the Colombian Congress that indigenous victims were ignored by Legal Project 107/10, despite Colombia's status as a pluriethnic state, Constitutional Court decisions such as Order 004 of 2009, and the recommendations of international organizations.

Colombia's victims—many of whom are indigenous—were successful in resuscitating the legislation that was almost pulled by lawmakers for lack of previous consultation, thanks to the solidarity of indigenous peoples and their organizations.

Today, despite some setbacks, we can affirm that Decree Law 4633 of 2011 is an important legal instrument. It builds a strong foundation for ensuring the reparation and respect of indigenous peoples' rights in Colombia. It has the potential to transform the discriminatory culture against indigenous peoples in our country and reestablish equilibrium and harmony. It worries us that, six months after the Decree Law was enacted, it has not been implemented. It has not had a real or symbolic impact on the situation of indigenous peoples.

We will present a short outline identifying the most concerning obstacles for the implementation of Decree Law 4633 of 2011. These obstacles were identified during dialogues between the National Working Group for Agreements with Indigenous Peoples and the Colombian Government.

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<sup>1</sup> Translation by the Washington Office on Latin America (WOLA)

We are concerned by the insufficient budget for the implementation of Decree Law 4633, the inefficiency of government institutions, the slow pace at which measures of the Decree Law are being adopted, and the State's ignorance of the scope and content of the Decree Law. We also analyze the situation of indigenous peoples in 2012, considering the impact of public policies. We also provide some recommendations on how to move forward.

## 1. Budget for Implementation of Decree Law 4633

Despite the proposal to consult and create a specific chapter for indigenous peoples in CONPES established in Articles 19 and 175 of Law 1448 of 2011, this fundamental aspect of Decree Law 4633 was not included in the final version because it was not approved by the Legal Office of the Presidency (*Oficina Jurídica de Presidencia*).

This omission greatly limits the effectiveness of Decree Law 4633 of 2011, since the largest obstacle throughout the process has been the lack of a sufficient and accessible budget. This budget should guarantee the implementation of reparations, attention, protection, and the restitution of the territorial rights of the indigenous victims of the armed conflict.

An analysis of CONPES Document 3726 of May 2012 demonstrates the worrisome economic insecurity on which the Decree Law, especially since CONPES 3626 is supposed to deal with the formulation of Law 1448 of 2011 and not the implementing measures. It is evident that the principles used to disburse the budget do not abide by the principles established in Decree 4633 of 2011<sup>2</sup>—this generates distrust in the guarantees established by the previous consultation.

The budget for collective measures constitutes .72% of the 54.903 billion Colombian Pesos (COP) destined for Law 1448 of 2011, without distinction for the Afro-Colombian, *Raizales*, Black, and Rom peoples. That means that the National Government is destining less than .5% of the budget of Law 1448 to efforts aimed at ending the genocide and cultural extermination of indigenous peoples in Colombia. Beyond the dimensions of the budget, the guidelines that should guarantee that the measures for indigenous peoples will be implemented have not been consulted.

## 2. Institutional Inefficiencies

Decree Law 4633 of 2011 creates a set of institutions that complement those created by Law 1448 of 2011. The objective of this is to guarantee the effective implementation of measures from an intercultural and differential perspective.

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<sup>2</sup> CONPES 2736 establishes that “Differential disbursement should develop the following principles 1) **Equality**, which permits affirmative measures that guarantee the rights of ethnic groups. 2) **Diversity**, which respects differences and guarantees the collective and individual rights of ethnic groups. 3) **Interculturalism**, which corresponds to human rights and individual rights. 4) **Integrity**, which implies the complementing of individual rights within a collective subject. 5) **Participation**, which implies the necessary guarantees for effective and true participation by means of observing the rulings on prior consultation, its corresponding phases, and the creation of the mechanisms for conferencing, in addition to the spaces created by Law 1448 of 2011 *and its corresponding decrees*” (**Emphasis added**). The principles of regarding reparation, attention, protection, and the restitution of the territorial rights of indigenous peoples can be consulted in Articles 4-40 of Decree Law 4633 of 2011.

In spite of this, the State has had six months to consolidate strong, coherent, articulated institutions with clear objectives and goals, but it has only offered us fragile, scattered, fragmented institutions that are slow to make decisions. This is evidenced in the reports, meetings, and dialogues that we have had with the National Government.

The lack of communication between the newly-created institutions is clear. It is impossible to foster dialogues and rationally appoint positions. This phenomenon is evident at the central level in Bogota and is felt in the regions where the Decree Law is widely unknown.

Institutions refer to the Decree Law as a regulation of Law 1448 of 2011, without regard to its process, importance, contents, and specific aspects.

The level of confusion that indigenous victims face because of the lack of clear and coherent institutions is disturbing.

### **3. Implementation of Measures**

According to the referenced CONPES document, the 2012 objectives for collective reparations include 11 reparation plans, with an estimated 417 plans to be developed by 2021. These reparation plans do not differentiate between ethnic groups.

It is obvious that the goals set for 2012 are unachievable, as the deadlines to date have not been met. For example, the criteria for humanitarian aid for indigenous victims should have been reached by March 9, the framework for healthcare for indigenous victims by April 9, and the contingency plan for territorial protection under INCODR by June 9. To date, there has not even been an initial proposal for any of these.

### **4. Dissemination and Diffusion of the Decree Law amongst Its Beneficiaries**

One of the primary aspects of the Decree Law is the dissemination and diffusion of information to indigenous peoples. That implies the creation of an effective strategy to guarantee that its beneficiaries understand the Decree Law's contents in their own language and take ownership of and exercise their rights.

However, given the institutional weakness of the State and the financial insecurity of the Decree Law, the obligation to disseminate and diffuse the law has been ignored. This means that many victims are unaware of their rights and the mechanisms for the reparation, attention, protection, and restitution of territorial rights. We have received reports from several regions stating that indigenous victims are circumscribed by Law 1448 of 2011, thereby affirming that the Decree Law is only a regulatory mechanism for some sectors of indigenous peoples.

The confusion related to the policy is not only limited to the indigenous peoples who do not speak much Spanish, but it includes territorial and Bogota-based entities that are unaware of the Decree Law's existence, contents, reach, and importance.

## **5. Current Situation of Indigenous Peoples**

In 2012, human rights violations and violations of International Humanitarian Law (IHL) reflect the rates of the previous years. This means that there are no indications that the humanitarian crisis is getting better. Between January and May 2012, there have been 24 assassinations of indigenous peoples, including leaders, authorities, children, and the massacres of communities.

The ONIC's Registry has documented 14 mass displacements of indigenous peoples between January and May of 2012. 2,967 indigenous people and 680 indigenous families were forcibly displaced as a result of combat between the armed forces and guerrilla groups, paramilitary attacks, bombings, anti-personnel landmines, restrictions to free movement, stigmatization, and the presence of armed groups.

Similarly, in the same time period, food insecurity has resulted in the death of 28 minors due to respiratory illnesses, diarrhea, or lack of effective medical attention.

The ONIC's Human Rights Council has reported three events of forced disappearances in Nariño—these have critically affected the Awá peoples, since four (4) of the five (5) victims belonged to the Awá.

These violations continue to occur despite the enactment of Decree Law 4633 of 2011, the development of the Guarantees Program created under the auspices of the Constitutional Court Order 004 of 2009, Ethnic Safeguard Plans, protective measures provided by the IACHR, and the recommendations of international organizations.

### **Final Reflections:**

The experience of the last six months demonstrates the challenges to implementing the Decree Law: a lack of political, economic, and social will.

That is why we affirm the need to implement the regulations through a sufficient and available budget, institutional efficiency, and effective political will.

Reconciliation and peace in Colombia cannot be measured in articles promulgated within a constitutional system. Reconciliation and peace in Colombia should be obtained on economic, political and social terms that outline the path to transformation, equilibrium, and the reestablishment of indigenous people in Colombia.

Six months after the enactment of Decree Law 4633 of 2011, the discourse cannot be limited to the regulations on paper because that only generates new scenarios of conflict. The victims need more than a legal instrument for reparations. They need action.

After this evaluation, one question remains. When will the Colombian State recognize the need to stop the genocide of indigenous peoples?

**National Indigenous Organization of Colombia, ONIC  
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