

Dirty Practices for Clean Energy:

Indigenous Communities Gain no Benefits and Suffer Decades of Harms from the Salvajina Dam in Cauca, Colombia

CORNELL INTERNATIONAL HUMAN
RIGHTS CLINIC: POLICY ADVOCACY

NOMADESC: THE ASSOCIATION FOR
SOCIAL RESEARCH AND ACTION

JUNE 2019



Cornell Law School

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Asociación para la Investigación
y la Acción Social

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*Dirty Practices for Clean Energy: Indigenous Communities Gain no Benefits and Suffer Decades
of Harms from the Salvajina Dam in Cauca, Colombia*
A project of the International Human Rights Clinic: Policy Advocacy

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Executive Summary

The Indigenous Community of Cerro Tijeras is part of the Nasa indigenous people located in Southwest Colombia.¹ After years of resisting colonialism, the destruction of their land, and the erasure of their cultural practices, the Salvajina Dam has further jeopardized their way of life.² The government ordered the Salvajina Dam to be built in the 1980s to control the Cauca River's flow and improve agriculture. However, for the Cerro Tijeras indigenous community, whose land is in the surrounding area of the Salvajina Dam, its effects were detrimental.³ For decades, Cerro Tijeras has had to deal with the consequences of a major infrastructure project about which they were not consulted and provides virtually no positive effects for their community. The Salvajina Dam created a severe mobility issue for the ethnic groups surrounding it. The people of Cerro Tijeras, who once were able to use boats to cross the river year-round, are now at the mercy of the Salvajina Dam's changing water levels. EPSA, the current majority owner of the Salvajina Dam, has provided only one stop for its boat (*planchón*) to reach the Cerro Tijeras indigenous community and its schedule is extremely limited.⁴ The restricted schedule of the *planchones* along with the removal of roads and bridges to cross the reservoir has made mobility in the region extremely difficult.⁵

These mobility issues only exacerbate many of the government's shortcomings. The government failed to provide an adequate health system within the communities. There is no hospital or medical center within the Cerro Tijeras indigenous community and there are very few health posts.⁶ The health posts that do exist are grossly understaffed and lack sufficient resources to treat the community members properly.⁷ Thus, many community members seeking health treatment are forced to leave the community and journey, often by *chivas*, motorcycles, or walk, to the nearest hospital in the town of Suarez.⁸ It takes two hours in *chiva* to travel from the nearest *vereda* (village) of the *resguardo* to the town of Suarez. Suarez has a level 1 hospital, so it only provides first aid care. For more complex health treatments, the community members must travel to bigger towns as Santander de Quilichao or the city of Cali.

Further, the schools in Cerro Tijeras require many young children to walk for hours on the uneven, bumpy roads to receive an education.⁹ Primary school students are forced to receive instruction in one classroom that includes all the grades in the school. While at school, students do not have access to potable water, the electricity is not dependable, and they lack adequate resources in the classroom.¹⁰ As a general rule, they receive instruction in Spanish and not in their native language.

In response to all the negative effects of the Salvajina Dam and the lack of government attention to the area, the Cerro Tijeras indigenous community commenced legal action.¹¹ The T-462A/14 Constitutional Court decision ruled in favor of the Cerro Tijeras indigenous community, finding that several human rights violations had been committed against them.¹² Specifically, the Court found varying levels of responsibility between the government and EPSA for the violation of communities' rights to prior consultation, education, health, and free movement.¹³ The Court enumerated steps that several government ministries and departments as well as EPSA must follow to comply with Colombian law and general human rights standards. The Court further ordered that these steps be taken within a specified period of time (ranging between 48 hours to a year depending on the order).¹⁴

As of the date of the publication of this report, the entities found responsible for committing these human rights violations have done very little to rectify those human rights violations. EPSA is the only party that has made any progress in attempting to implement the decision by arranging for talks with the community about environmental responsibility and mobility.¹⁵ To date, however, much of what the communities have discussed with EPSA has not been implemented.¹⁶ Moreover, EPSA's talks with the community did not include conversations about improvements with respect to the poor health services or education issues the community faces.¹⁷ According to the communities, the government has yet to take steps toward completing the orders of the T-462A/14 sentence.¹⁸

Years after the T-462A/14 decision, very little has changed for the Cerro Tijeras indigenous community. To date, many children are still forced to travel many hours to arrive to schools.¹⁹ These conditions have led to high dropout rates throughout the community.²⁰ Those that do make the trek to attend school arrive to schools that do not have the supplies or infrastructure to provide them with an adequate education. The buildings themselves are old and inside, there are often not enough desks and chairs, and if there are, they are in shabby conditions.²¹ The schools continue without access to potable water and consistent electricity.²²

The few health posts that do exist continue without being fully stocked or adequately staffed to treat the sick or injured.²³ There is still no major hospital in the Cerro Tijeras' territory.²⁴ The ongoing mobility issues in the area have exacerbated these problems. The roads leading out of the communities remain in poor conditions and the *planchones* necessary to traverse the reservoir still run on very limited schedules.²⁵ Even in medical emergencies, an ambulance is not likely to come to the Cerro Tijeras' territory as they are reserved only for pregnant women or small children.²⁶ Currently, besides walking, the other method of getting to

Suarez is using a *Chiva* (old-style bus).²⁷ The *Chiva* is often over packed and traverses uneven, bumpy dirt roads for many hours.²⁸ Still, the *Chiva* also takes a very long time to get the members out of the communities and, like the *planchones*, also runs on a very restricted schedule.²⁹

Further, the community's cultural traditions have been diminished as a result of the construction of the Salvajina Dam. Certain plants that are used in rituals and health practices have virtually been eliminated because of the water contamination that resulted after the Salvajina Dam was built.³⁰ Now, community members are either forced to go without, or travel far in order to find the plants.³¹ Some practices have also been affected by the consistent lack of state consideration of the cultural particularities of the indigenous community of Cerro Tijeras and the NASA people.³² The people of Cerro Tijeras want to be able to use traditional medicines, along with occidental treatments in order to treat their diseases.³³ They also want to be able to integrate their traditions into the education system, but, with the demands of the national curriculum, they do not have the time.³⁴ Because of the importance of preserving what is left of their cultural practices, Cerro Tijeras desires both governmental recognition of their ways and aid in constructing cultural centers throughout Cerro Tijeras.³⁵

Thus, in light of the continued violations of Cerro Tijeras indigenous community's rights, the Colombian government and EPSA must abide by the Constitutional Court's ruling to implement an adequate prior consultation process with the community by way of an Environmental Management Plan that comprehensively documents the impact of the violations and the community's preferences about how to remedy them. Based on this proper consultation, the government and EPSA must provide suitable roads; modes of transportation; better educational infrastructure and resources; teachers who speak the community's Nasa Yuwe language; a hospital and other functioning health posts within Cerro Tijeras; doctors who are trained in indigenous traditional healthcare and respect such practices; and regular monitoring and reporting on environmental conditions that the Salvajina Dam has severely impacted.

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The Cornell International Human Rights Clinic: Policy Advocacy works on a wide array of human rights projects to affect positive policy change in favor of vulnerable and marginalized groups in societies around the world. Law students who participate in the clinic learn lawyering skills such as interviewing, legal research, legal writing, and developing practical solutions to complex problems. Under the supervision of faculty, students conduct fact-finding, in the United States and abroad, and work in teams to conduct impact litigation or produce a policy report designed to affect legislation or other policies. More information about the Clinic can be found at:

<http://kalantry.lawschool.cornell.edu/international-human-rights-policy-advocacy-clinic/>

NOMADESC: THE ASSOCIATION FOR SOCIAL RESEARCH AND ACTION (NOMADESC)

is a human rights organization that provides legal advice, advocacy, education and research to various victims of human rights abuses in Colombia. More information about NOMADESC can be found here:

<https://nomadesc.com/>

Methodology

This report is the result of the work by the Cornell International Human Rights Clinic: Policy Advocacy from January 2018 to May 2018. Under the supervision of faculty, student research assistants investigated claims of human rights violations against the indigenous community of Cerro Tijeras. The authors and research assistants conducted desk research, interviews with members of the Cerro Tijeras indigenous community, and undertook a field visit to the region in the Municipality of Suarez, Department of Cauca, Colombia where Cerro Tijeras is located.

DESK RESEARCH

The authors and other student research assistants read scholarly articles, book chapters, news articles, legal cases, and other sources to gain greater knowledge about Colombian law, including the T-462A/14 decision by the Colombian Constitutional Court, Colombia's indigenous communities, and the Salvajina Dam. The students also watched videos of the indigenous communities affected by the Salvajina Dam, which included interviews with community members as well as footage of the affected areas. The student research assistants used satellite imaging to locate the boundaries of the Cerro Tijeras community and map out some the routes the community members are forced to traverse due to the presence of the Salvajina Dam.

INTERVIEWS WITH COMMUNITY MEMBERS

Cornell Law students and students from Pontificia Universidad Javeriana, Cali, under the supervision of instructors of the International Human Rights Clinic, interviewed community members on April 2, 3, and 4, 2018. Interviewees were informed of the clinic's research goals. Participants were also told that their participation in the interviews was voluntary.

FIELD VISIT ATTEMPT TO THE CERRO TIJERAS INDIGENOUS COMMUNITY

On April 5, 2018, Cornell research assistants and faculty, with the assistance of NOMADESC, conducted fieldwork in Colombia including interviewing various members of the Cerro Tijeras indigenous community as well as attempting to travel to the lands of this community. In order to arrive to the community from the municipality of Suarez, the group walked about thirty minutes to arrive at the point where the Chiva would pick them up.³⁶ The makeshift roads the Chiva uses are in extremely poor conditions as they are overrun with rocks, holes, and uneven leveling.³⁷ About an hour into the trip on the Chiva, a landslide prevented the Chiva from continuing any

further as the landslide blocked the only route to the community.³⁸ Without an alternative route to access the Cerro Tijeras indigenous community, the group was forced to return back to Suarez.³⁹ Unfortunately, situations like this arise relatively often and result in the community members being trapped in their homes for days or weeks at a time.⁴⁰

Glossary

Chiva

A kind of bus built on the platform of an old truck. Their seats are long wooden benches without doors at the ends and without safety belts. It is the only means of public transportation for members of the Cerro Tijeras indigenous community to leave their territory and reach the nearest town that has a hospital.

Cosmovision

The manner in which one interprets the world

Encomienda

A labor system used by the Spanish Crown in the Americas. The Spanish conquerors acquired vast extensions of land inhabited by indigenous communities that were forced to work without a wage

La Minga

Practice of several American Indigenous Peoples that consists on a meeting of the members of the community in order to take collective actions in the affairs of the community.

Nasa Yuwe

The ancestral language of the Nasa indigenous people in Cerro Tijeras

Planchón

A boat used to transport community members across the reservoir

Health Promoters

Health workers who travel from home to home and assess the welfare of the household and provide basic medical care and medications to those who are ill or injured in the community

Resguardo

An area of land run by indigenous authorities in Colombia that has some separate legal and socio-political autonomy from the government.⁴¹

Trocha

Incomplete rural roads

Tulpa

A gathering site comprised of three stones representing the family which are arranged around a hearth of fire

Vereda

A small settlement along a pathway

PART I

The Cerro Tijeras Community

Cerro Tijeras, an indigenous community of Nasa people living on one of Colombia's many *resguardos*, has faced and overcome a number of obstacles over the course of their fight to preserve their land, their history, and their way of life. Starting with colonialism in the fourteenth century, the Nasa people have engaged in a struggle to achieve recognition and respect from the Colombian government.

Today, Colombia's long-running internal armed conflict has threatened Cerro Tijeras's security, health, and communication with the rest of the country. In addition to coping with continuous armed conflict, members of Cerro Tijeras are further threatened by the Salvajina Dam, a hydroelectric power source meant to control flooding in the Valle de Cauca. The Salvajina Dam has destroyed the land they cherish, endangered the plants they use for traditional medicine, complicated the implementation of culturally-tailored education, and cut off crucial means of transportation. Now more than ever, the people of Cerro Tijeras are fighting for their rights.



Figure 1: The Salvajina Dam (2018)

CERRO TIJERAS AND THE NASA WAY OF LIFE

Demographics, Cosmovision, and Culture

The members of the Cerro Tijeras indigenous community are part of the Nasa Indigenous People.⁴² Though there are Nasa people across Colombia, the territory of this particular community is located in Southwest Colombia in the Suarez Municipality of the Cauca department. See Figure 2 for a map of the Department of Cauca. Cerro Tijeras occupies a part of the Cauca River Basin, which is the country's main sugar producing region.⁴³ Though the exact population of Cerro Tijeras is difficult to state with certainty, some sources estimate that the community has a population of around 6,000 inhabitants.⁴⁴ These inhabitants are divided into *veredas*, which are illustrated on the political map of Cerro Tijeras in Figure 3. Figure 4 offers a satellite image of Cerro Tijeras.

Though many Nasa people converted to Catholicism in the eighteenth century,⁴⁵ Nasa communities also believe in a particular *cosmovision* that emphasizes harmony with nature,⁴⁶ collective ownership of property,⁴⁷ veneration of ancestors,⁴⁸ and a duty to conserve and protect the earth.⁴⁹ This cosmovision is transcendental for the Cerro Tijeras indigenous community.⁵⁰ Their land is the foundation of their existence and Mother Nature is sacred.⁵¹ This way of relating to the world envisions natural elements like water, stones, wind, plants, the sun, and the stars as both “com[ing] from a greater spirit”⁵² and as having life.⁵³ As one community leader described it, “We are in favor of the environment, Mother Nature, equilibrium, and life.”⁵⁴

While Cerro Tijeras has embraced modernization, maintaining this cosmovision, the rituals it requires, and the land they cherish is vital to their continued existence, prosperity and livelihood.⁵⁵ For the Nasa people, their cosmovision shapes their entire way of life, including their views on education, healthcare, economic activity, familial and social relationships, and mobility. The Nasa community values the preservation of ancestral practices and rituals as a part of their cosmovision and daily life.⁵⁶ These rituals foster feelings of unity within the family and the community. The people of Cerro Tijeras rely on these rituals to select community leaders, make decisions, mark life events, and honor ancestors. For greater details about these rituals, see Box 1.

Because of this cosmovision and its emphasis on the community's territory, projects that disrupt these lands are particularly devastating for communities like Cerro Tijeras. Without their sacred lands, members of Cerro Tijeras are unable to access and use vital resources to conserving their way of life. As one community member explained “a community without land is nothing.”⁵⁷ Other community members have also explained that the community values

unity, sharing, and truth above commerce and economic productivity.⁵⁸ With land at the center of their community and their cosmovision, threats to indigenous lands like the Salvajina Dam not only cause environmental and health impacts, but also jeopardize the continued existence of Cerro Tijeras in its entirety. Simply put, “We ought to conserve this cosmovision because in the moment that we lose it, we cease to exist.”⁵⁹

The people of Cerro Tijeras believe that they can both abide by the government's laws and maintain a lifestyle that aligns with their cosmovision. As stated by one community leader, “[The government] have their beliefs and we have ours. We respect their beliefs, but ask that they respect ours too.”⁶⁰ Members of the Cerro Tijeras indigenous community are very proud and open about the way they live and emphasize the need to ensure that this cosmovision is passed on to younger generation. Elkin Arley Flor Belalcazar, a member of Cerro Tijeras explained, “It is important to first teach children our worldview, where we come from, our duties and rights, our relationship with the territory, and the importance of defending it.”⁶¹

BOX 1:

NASA PEOPLE'S RITUALS IN CERRO TIJERAS

Cerro Tijeras indigenous community members believe that it is important to teach their children to preserve ancestral practices and beliefs.⁶² Below are some descriptions of rituals that are important to Cerro Tijeras and their purposes. Continued practice of these rituals is complicated by government regulation, loss of territory, and isolation within the community.

LA MINGA: a gathering that fosters cohesion through conversation about daily activities, concerns, or other matters.⁶³ The only enduring form of *minga* in Cerro Tijeras is political, where community leaders and members gather in assemblies to discuss problems that affect the entire *resguardo*.⁶⁴ In recent years many of these *mingas* have concerns the problems that EPSA caused with the construction of the Salvajina. One community leader stressed the importance of retaining this ritual: “We have to cultivate more *la Minga* in our territory, which is the symbol of unity. We lose the essence of it because we have also lost the nucleus - if mom and dad lose the sight of the horizon, where does that leave the child?”⁶⁵

LA TULPA: a gathering site consisting of three sacred stones around the hearth of a fire, where families meet in the evening to share the highs and lows of their day.⁶⁶ The Tulpa is directly related to the *minga*. One community member described the ritual as allowing “the child [to] say[] how his or her day at school was and the parents talk about their day at

work--they plant their hardships and share their joys."⁶⁷

EL SAAKHELU: a week-long ritual celebration hosted in rotating *resguardos* each year.⁶⁸ In 2018, Cerro Tijeras hosted the Saakhelu.⁶⁹ The ritual centers on making offerings to the seeds as an act of thanksgiving and requesting another prosperous year.⁷⁰ This seed-offering ritual is accompanied by dances, music, local food and drinks like la chicha and el guarapo, and other offers.⁷¹

BIRTH RITUALS: The indigenous community also ritualizes the birth of any child by planting the newborn's umbilical cord in the ground.⁷² Pregnant women also traditionally bathe in waters mixed with special plants.⁷³ These rituals are undercut by occidental practices led by government-appointed doctors at hospitals who more readily cut the umbilical cord and immediately dispose of it or who have the mother take regular baths or showers as opposed to their traditional one.⁷⁴



Figure 2: Map of the Cauca Department ⁷⁵



Figure 3: Political Map of Cerro Tijeras⁷⁶



Figure 4: Satellite Images of Cerro Tijeras⁷⁷

Cerro Tijeras, Colonization, and Internal Armed Conflict: Never-Ending Struggle and Resistance

As one of the Colombia's largest, most organized indigenous group, the Nasa people have consistently played a significant role in preserving indigenous territories and practices and resisting violations of human rights.⁷⁸ Over centuries of Colombian history, the dangers posed by colonization and Colombia's internal armed conflict have forced the Nasa people and Cerro Tijeras specifically to respond to these threats and advocate for the protection of their human rights (See Box 2 for a description of key players in Colombia's indigenous peoples).

The Spanish Conquest of the sixteenth century had an undeniably negative impact on Colombia's indigenous communities.⁷⁹ At the start of the Spanish conquest, an estimated 10,000 indigenous people occupied Nasa territory.⁸⁰ Just one hundred years later, the population as estimated to be less than half of previous numbers after disease and warfare devastated indigenous communities in the area.⁸¹ It would take until the end of the nineteenth century for Colombia's indigenous populations to return to pre-colonial numbers.⁸²

In addition to the decimation the Nasa people, conquest by the Spanish also forced the Nasa people off of their sacred lands and into the mountainous terrain in Cauca.⁸³ The implementation of the *encomienda* system forced Colombia's indigenous populations into urban centers and emphasized a more exploitive form of agriculture and sharecropping rather than subsistence farming.⁸⁴ This economic structure and displacement from their sacred lands is undoubtedly inconsistent with the Nasa people's cosmovision, which one community member described as being "in favor of the environment, of mother nature, balance, and life."⁸⁵

Today, the community of Cerro Tijeras are still in danger of losing their culture and their lands as a result of the internal armed conflict of Colombia. Though geographically isolated, Cerro Tijeras has not been insulated from this conflict. For decades, Colombia has

experienced the “world’s oldest internal armed conflict,” which pits Colombian armed forces (sometime with the support of paramilitary groups) against two armed guerilla groups, the Revolutionary Armed Forces of Colombia (FARC) and the National Liberation Army (ELN).⁸⁶

For Cerro Tijeras, the armed conflict has meant bearing witness to an endless war and being caught in the crossfire. Because the Cauca region has historically been a hotbed of social mobilization, FARC commanders have vowed that this region will be the last they leave.⁸⁷ The importance of this region to FARC has led the group to install two mountaintop battalions very close to Cerro Tijeras, making it difficult for community members to find food or receive humanitarian aid.⁸⁸ In response to FARC’s presence in Cauca, the Colombian military has also established a base of its own close to Cerro Tijeras.⁸⁹

The presence of all the armed groups has thrust Cerro Tijeras into the middle of the armed conflict, with civilian indigenous groups bearing the brunt of the fighting and suffering. “FARC is killing and the military is not here to protect us,”⁹⁰ stated Manuel Cruz, a member of the indigenous guard.⁹¹ In December 2017, six people were found massacred in the streets of Cerro Tijeras.⁹² The perpetrators were never conclusively determined.⁹³ While a peace process is ongoing in Colombia, the Cerro Tijeras and other communities have not felt any impact from it.

Even when community members are not facing violence, Colombia’s internal armed conflict still negatively affects life in Cerro Tijeras. Because of this constant military and guerilla presence, members of Cerro Tijeras were trapped for twenty-two straight days in October of 2011.⁹⁴ This inability to move or communicate jeopardized the community’s access to water, healthcare, food, and communication with the rest of the country.⁹⁵ Furthermore, the presence of armed groups in Cerro Tijeras also compromises the community’s ability to educate its children. Recruitment efforts by these groups have pulled children in Cerro Tijeras away from school with promises of money and more opportunities.⁹⁶ School children in Cerro Tijeras must also wear uniforms to avoid forced recruitment by these armed groups.⁹⁷

Given these ongoing threats to Cerro Tijeras’s safety, health, education, mobility, and culture, members of Cerro Tijeras have suffered violations of their human rights and are accustomed to fighting back against the government entities, corporations, and armed groups that have harmed them. In addition to the ongoing conflict, Cerro Tijeras is now facing yet another threat in the form of the Salvajina Dam.

BOX 2:

KEY PLAYERS IN INDIGENOUS RESISTANCE AND PROTECTION

- **Regional Indigenous Council of Cauca (CRIC):** Founded in 1971, CRIC was vital in realizing indigenous peoples’ autonomy, especially with respect to establishing *resguardos*, strengthening cabildos, and defending indigenous practices. Today CRIC also fights against economic exploitation in rural areas.⁹⁸
- **Indigenous Guard:** Because Cauca experiences the most intense fighting and violence due to the Colombia’s internal armed conflict, indigenous communities in this region Cauca elect members to be part of the indigenous guard. This group of guards protects indigenous territory without the use of arms. Instead, members of the indigenous guards wear red and green uniforms and carry wooden staffs that serve as a symbol of their status.⁹⁹

THE SALVAJINA DAM’S ORIGINS: PRIORITIZING SUGARCANE PRODUCTION

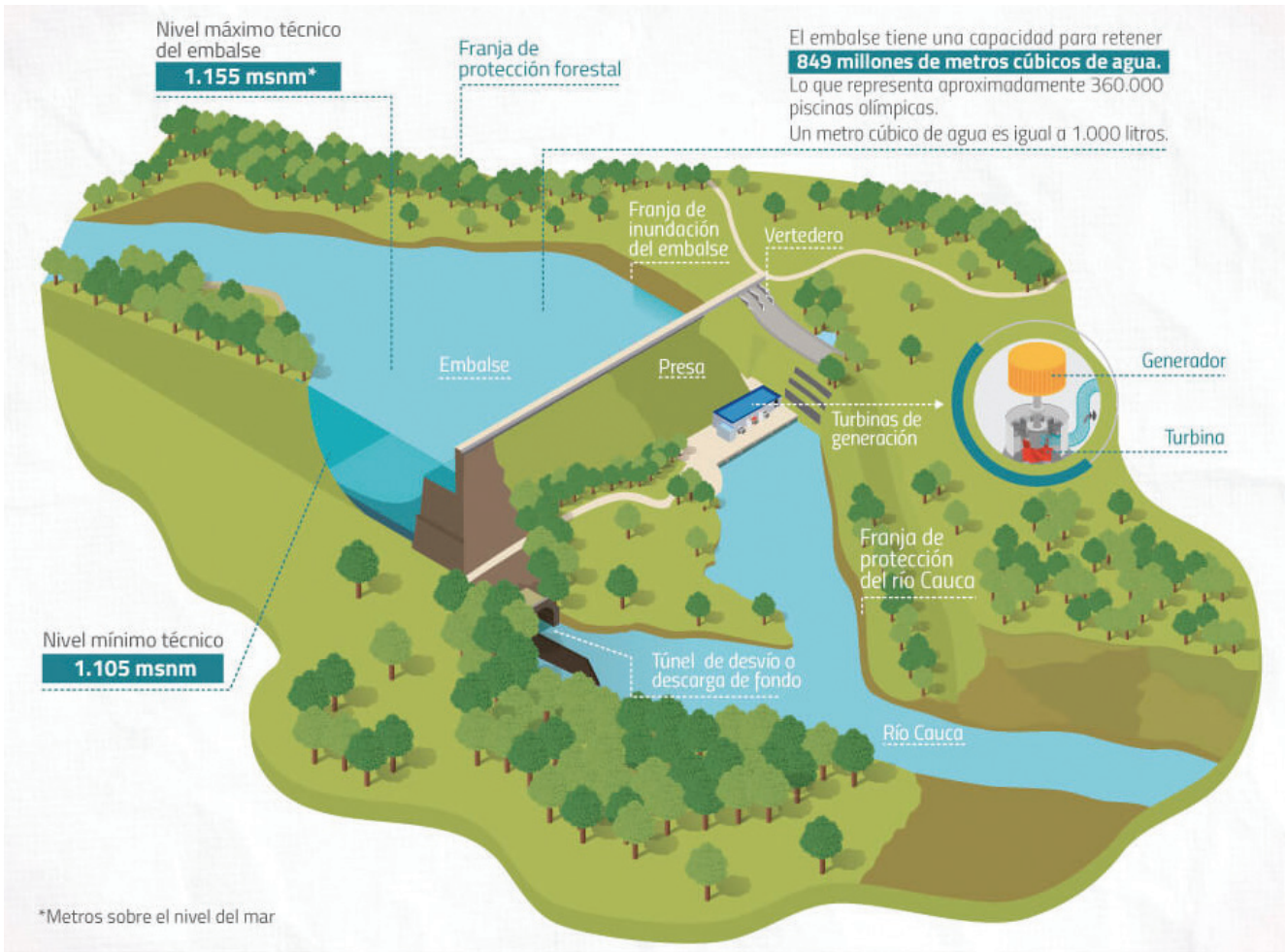


Figure 5: Illustration of the Salvajina Dam from the Celsia Website¹⁰⁰



Figure 6: The Salvajina Dam and the planchones (2018)

From the beginning of its construction, the Salvajina Dam was promoted by sugar elites in Colombia's Cauca region.¹⁰¹ Sugarcane growers, with support from the World Bank and the Colombian government, created the Regional Autonomous corporation of the Valle del Cauca (CVC), which modelled itself after the United States' Tennessee Valley Authority.¹⁰² The CVC was charged with generating electricity, implementing an irrigation plan, and designing engineering solutions to flooding in Cauca.¹⁰³ Though these goals seemed to respond to the demands of landowners in the Cauca area, the resulting solution, the Salvajina Dam, was destined to endanger the lives of many and wreak havoc on the environment it touches.¹⁰⁴

BOX 3:

SALVAJINA DAM FAST FACTS

- Construction started in 1980
- Construction completed in 1985
- Features a concrete face 161.85 yards high and 437.45 yards long
- The resulting reservoir is 16.15 miles long, with a capacity of 619,952 acre ft.
- Flooded 17,219.55 acre ft.
- Displaced an estimated 10,000 people

Between 1980 and 1985, the Colombian government contracted with the CVC to begin construction of the Salvajina Hydroelectric Power Plant Dam in Cauca.¹⁰⁵ This dam was one feature of a broader project of “productive modernization,” promoted by the World Bank in the 1980s.¹⁰⁶ Under a program called the “Lilienthal Plan,” the CVC was able to propose and construct projects like the Salvajina Dam, which catered to agricultural entrepreneurs’ requests to tame the “unruly” water features in the Cauca region.¹⁰⁷ Though the Lilienthal Plan did initially contemplate complimentary works like drainage channels, pumping stations, and dikes to accompany the construction of the Salvajina Dam, governance issues prevented the majority of these projects from being implemented.¹⁰⁸ Instead of creating a complete set of projects that would fulfill all aspects of the CVC’s mission, the purpose of the Salvajina Dam was reduced to optimizing the river’s carrying capacity and ensuring that Cauca’s sugarcane farms would continue to have an adequate water supply.¹⁰⁹

This emphasis on economic productivity and responding to sugarcane growers’ needs came at the expense of other, equally viable, and perhaps more long-term solutions. Sugarcane landowners opposed “soft” techniques of water regulation that lower income families, Afro-Colombian communities, and indigenous populations proposed.¹¹⁰ Sugarcane growers and the CVC officials consistently opposed wetland restoration projects by questioning their flood-control functions.¹¹¹ Similarly, they decried the high cost of relocating dikes off the riverbanks of the Cauca River because this approach would reduce the amount of land that could be dedicated to sugarcane production.¹¹² Sugarcane growers also opposed proposals to designate select tracts of land for temporary storage of occasional floodwaters because they view Cauca’s floodplains as “a big factory in which industrial agriculture and technology have changed the land’s natural characteristics to make it more productive.”¹¹³

Because of the CVC only considered a limited number of options and has primarily been concerned with sugarcane production, what will happen to the Salvajina Dam after it ceases to be profitable remains to be seen.¹¹⁴ At some point in the future, the Salvajina Dam will accumulate more and more sediment, causing its hydroelectric returns to gradually decline.¹¹⁵ Eventually this decline in output will make the Salvajina Dam economically unviable.¹¹⁶ Some predict that once the Salvajina Dam reaches this point it will be dismantled, though some people familiar with the situation like biologist Felipe Castiblanco expresses skepticism about the plan and the speed at which actions will be taken.¹¹⁷

Sugarcane producers credit the Salvajina Dam as realizing “the agrarian prosperity of Valle de Cauca, and further praise the CVC as “eminent,” a “pioneer,” and

displaying “outstanding intelligence” in its engineering ability.¹¹⁸ In stark contrast, Afro Colombian and indigenous communities in Cauca view the Salvajina Dam as a “turning point that led to their decline.”¹¹⁹ According to these communities, the control over the Cauca River that the CVC and the sugarcane industry sought to achieve through the Salvajina Dam had important negative impacts. For indigenous communities like Cerro Tijeras the Salvajina Dam’s ability to optimize sugar production is irrelevant. As Carlos Enrique Cobo Chandillo explained, “the indigenous do not think about silver or economic power.”¹²⁰

In the end, the CVC did not consult important actors before constructing the Salvajina Dam. The sugar industry represents one of Colombia’s most powerful and well-organized economic sectors and has exerted incredible influence over the CVC and its supervision of the Salvajina Dam.¹²¹ Though Law 99 mandates the inclusion of other actors on the CVC’s board, these opposing views have not yet been successful as sugarcane growers on the CVC’s board of directors have been able to use their influence to oppose plans that did not promote agricultural activities.¹²² As a result of this limited input, the Salvajina Dam does not incorporate local values, priorities, and interests and has not facilitated a discussion about the region’s broader development plan.¹²³ These institutional imbalances between the wealthy sugarcane producers and the indigenous communities near the Salvajina Dam have led to undeniable, potentially irreversible consequences for the indigenous community of Cerro Tijeras.

THE SALVAJINA DAM’S NEGATIVE CONSEQUENCES FOR CERRO TIJERAS

Immediately upon completion in 1985, the Salvajina Dam flooded 5,248 acres of land¹²⁴ and displaced 10,000 people in Cauca.¹²⁵ This abrupt change to the landscape created a rupture in the area’s aquatic system that not only implicated mobility within the territory, but also access to food, healthcare, and economic opportunities.¹²⁶ Because the Salvajina Dam flooded so much land without first removing the surrounding vegetation, many trees, plants, and underbrush are rotting and contaminating the water in the reservoir.¹²⁷ This contaminated water diminishes the area’s fish population, attracts insects, and complicates navigation across the reservoir.¹²⁸ Rotting plant matter also puts Cerro Tijeras’s access to potable water in danger and today many school in the community lack access to clean water.¹²⁹

In terms of mobility, the changes in water levels have transformed a one-day trip into a journey that now takes three days or even a week.¹³⁰ The Salvajina Dam also destroyed at least seven footbridges that connected the community and enabled safe passage over Cauca’s rivers.¹³¹ Because the Salvajina Dam has become such a large part

of Colombia's infrastructure, members of the community of Cerro Tijeras and the nearby indigenous communities must ask permission to the military personnel before going certain places.¹³² This inability to move freely about their community has put members of Cerro Tijeras at risk in times of health emergencies and has complicated educational services within the community.

The Salvajina Dam also exacerbates nationwide economic trends in some of the country's most vulnerable communities. The lack of mobility makes it difficult for indigenous communities near the Salvajina Dam like Cerro Tijeras to transport their produce along their customary routes, forcing them to improvise, scale back, or alter their plans.¹³³ The decline in coffee prices in 1989 made alternative economic activities like gold mining more viable options for indigenous and Afro-Colombian communities.¹³⁴ However, during this same time period, the Salvajina Dam began accumulating gold-rich silt at the bottom of its reservoir, effectively removing mining as an option.¹³⁵

In response to these negative consequences, thirty six villages from six indigenous communities united in protest against the CVC and the Salvajina Dam.¹³⁶ They claimed several of the Salvajina Dam's effects were not merely inconveniences, but instead human rights violations.¹³⁷ Their claims included: (1) Sale of land well below the market prices; (2) isolation of the communities due to the flooding of the roads;¹³⁸ (3) impact on economic activities such as fishing and the extraction of gold and other minerals; (4) decomposing waste that produces gases that affect the health of the local communities; and (5) heavy reliance on *planchones* for transportation, which have occasionally sank and caused the death of several people.¹³⁹ Together these communities demanded that the government address these human rights violations and return their living conditions to as they were before the construction of the Salvajina Dam.¹⁴⁰

In response to this mobilization, the national government, the regional administration, and the CVC signed an agreement on August 17, 1986 (the "1986 Agreement").¹⁴¹ The 1986 Agreement was meant to concretely state the government's commitments to restore and preserve the affected communities' rights to education, mobility, and health. The agreement also intended to mitigate the harsh environmental and mobility consequences the Salvajina dam caused within the Cauca region.¹⁴² In order to achieve these goals, the 1986 Agreement included concrete provisions concerning infrastructure, educational facilities, health outposts, and other public services.¹⁴³ The government, the regional administration and the CVC

agreed to develop infrastructure and projects including: communication routes; schools in each of the villages; a local hospital in Suarez and three other health posts; public services, including aqueducts and telephones; relocation of land for mining projects; and fishing and restoration plans.¹⁴⁴

In spite of this agreement, as of 2014, less than thirty percent of the 1986 Agreement's provisions have actually been implemented, leaving Cerro Tijeras and other nearby communities in increasingly unstable and undesirable conditions.¹⁴⁵ Today, much of what the national government, the regional administration, and the CVC, which as of 1994 was restructured to become the Pacific Energy Company (EPSA),¹⁴⁶ promised in the 1986 Agreement has gone unfulfilled.¹⁴⁷

Constitutional Court Decision of 2014 (Sentencia T-462A)

BACKGROUND TO THE CONSTITUTIONAL COURT DECISION

The Nasa community in Cerro Tijeras, along with other indigenous communities, brought legal action before the Colombian judiciary demanding protection of their fundamental rights to education, health, mobility, and prior consultation.¹⁴⁸ By 2014, after a series of actions decided by the lower courts, the Constitutional Court of Colombia agreed to review the case.¹⁴⁹ The Constitutional Court of Colombia, established under the 1991 Constitution, is the highest judicial body responsible for upholding and interpreting the Colombian Constitution.¹⁵⁰

The indigenous community of Cerro Tijeras claimed that the construction of the Salvajina Dam substantially altered and disrupted their way of life and cultural values.¹⁵¹ These rights are guaranteed by the 1991 Constitution and the 1986 Agreement between the community, the corporation that initially built the Salvajina Dam (the CVC), the Colombian national government, and the regional administration.¹⁵²

To ensure compliance with these commitments, the national government issued the Decree 3000 in September 1986, which created the Supervision and Evaluation Commission of the Integral Development Plan of the Salvajina Region.¹⁵³ In 1994, under Decree 1275, the CVC was restructured into Empresa Energía del Pacífico (EPSA),¹⁵⁴ which has owned the Salvajina reservoir since 1996, and as of 1999, carries out income-generating projects such as housing investments and employment opportunities.¹⁵⁵ Since 2001, the Environmental Authority and the Ministry of the Environment have also developed activities to monitor and control the Salvajina Dam.¹⁵⁶

CONSTITUTIONAL COURT FINDS IN FAVOR OF CERRO TIJERAS

The Constitutional Court analyzed the conditions of the indigenous communities and ruled in its 2014 Decision that EPSA and the Colombian national government had violated the Cerro Tijeras indigenous community's fundamental rights to (1) prior consultation, (2) education, (3) health, and (4) free movement.¹⁵⁷ Below we discuss the findings of the Constitutional Court.

Prior Consultation

Prior consultation is a right that imposes a duty to engage in a mandatory act of a dialogue between ethnic or indigenous communities and the entities that are looking to use the communities' land for a project (typically involving significant profits and exploitation of resources).¹⁵⁸ The purposes of prior consultation are to give indigenous communities full knowledge of the activities on their land, how these activities may affect their land, and the ability to have meaningful participation on the effects the potential activities will have on the land and the community's way of life.¹⁵⁹ Inclusivity in State and private activities that affect their lands is necessary for indigenous communities whose way of life can be completely disrupted given their cultural ties to the land.¹⁶⁰ Consultation requires more than just notification that a project is planned, it requires that the views of the community have an impact on the final decisions adopted concerning the use of the land.¹⁶¹ The responsibility of providing a forum for prior consultation falls on both the entities carrying out the proposed project and the Ministry of the Interior.¹⁶²

The right of indigenous communities to prior consultation is set forth in the 1991 Colombian Constitution and is anchored in Article 2 of the UN Charter, which partly serves to ensure democratic participation in decisions that affect the livelihood of a State's inhabitants.¹⁶³ Specifically, the Ministry of the Interior is responsible for the manner in which the specific stages are executed, and the representatives of each of the projects are in charge of actively participating in the process and providing the resources needed for each stage.¹⁶⁴ Here, the Court held that the lack of prior consultation with the communities concerning the Environmental Management Plan (EMP) violated their fundamental rights.¹⁶⁵

Importantly, the Court notes that at the national and international level, the right to prior consultation did *not* exist between 1980 and 1985, when the CVC built the Salvajina Dam.¹⁶⁶ In other words, there was no express State obligation for the CVC to consult with the communities. However, in light of ILO Convention 107, the "Indigenous and Tribal Populations Convention," which specifically guarantees free consent in case of displacement from their ancestral lands, the Court found that even *after* the completion of the Salvajina Dam, the right to prior consultation is still enforceable pursuant to the EMP.¹⁶⁷ This finding comes in light of the EPSA having been ordered to create an EMP years earlier and having made virtually no efforts in that endeavor.¹⁶⁸ Specifically, the Court emphasizes the unreasonable amount of time the CVC first, and now EPSA, have taken to make any progress in this area, given that at the time of the decision it had been almost ten years since the EPSA had been ordered to consult with the affected actors and create the EMP.¹⁶⁹

The Court notes that Law 99 of 1993 “defines the EMP as the set of activities that are aimed at preventing, mitigating, correcting or compensating the environmental impacts and effects caused by the development of a project, work or activity.”¹⁷⁰ On November 22, 2004, by Order No. 1168, the Ministry of the Environment obligated EPSA to create an EMP, which was intended to ensure proper compliance and operation of the Salvajina Dam.¹⁷¹ Most importantly, the EMP served as the medium through which to ensure prior consultation with the affected communities in the Cauca region.¹⁷²

Specifically, the Court mentions three actions, all of which were in 2006 that the EPSA should have taken: (1) identify the affected communities; (2) assess the impacts on the environment and socio-economics of the affected area; (3) present an Environmental Management Plan with a prior consultation that is future-focused on remedial measures and active restoration of the violated fundamental rights.¹⁷³ The Court emphasized that proper prior consultation is effectuated through true and adequate dialogue in which concrete solutions are proposed and implemented with the free and informed consent of the affected communities and through continual agreement from them.¹⁷⁴

The Court does note that the corporation did initiate a process of preliminary identification of the affected indigenous communities in October 2006—twenty years after the 1986 Agreement—which detailed active measures of restoration.¹⁷⁵ Nevertheless, as of the Court’s decision in 2014, the EPSA had not substantially accomplished very much in terms of the identification process, let alone completed it.¹⁷⁶ Today, over twelve years have passed while the process remains in this liminal stage.

Education

The right to education is defined as the guarantee that pertains to individuals reaching their full potential which education helps to attain. Moreover, it is the duty of the state to provide education to all people in the country.¹⁷⁷ With respect to this right, the Court noted that this right was being violated through (1) the lack of infrastructure and supplies available to foster an educative environment, and (2) the distance and inadequacy of the roads children use in traveling to school.¹⁷⁸

With respect to infrastructure and supplies, the Court found that the conditions of the school buildings and educational centers in this indigenous community created an environment that was not conducive to proper education. The teachers lacked sufficient supplies necessary to give their students a quality education. Schools were noted to have few desks and the ones that were available were of poor quality.¹⁷⁹ Moreover, the Court specifically identified one school—the Mixed Rural School of San Jose—where some of the classrooms were under years of

unfinished construction, the kitchen and food area floors were cracked, and the bathrooms were not operational.¹⁸⁰ Furthermore, in regards to the long distance between the schools and the children’s homes, the children are forced to trek through unsafe areas for hours at a time, leaving them vulnerable to encounters with dangerous groups or treacherous natural conditions and making them more likely to drop out of school altogether.¹⁸¹ For instance, children stated that they had to walk for an hour through uneven, muddy roads.¹⁸²

Health

The right to health requires that the entire Colombian population have health facilities and services available to them.¹⁸³ With respect to health, the Court found that the indigenous communities did not have adequate medical centers on their lands. The nearest hospital was several hours away and necessitated healthcare resources in the community’s territory.¹⁸⁴ It was noted that many areas did not have health posts and those that did lacked sufficient personnel and resources to run a suitable health system.¹⁸⁵ Thus, the communities’ members were required to trek to Suarez or further outside of Cerro Tijeras in order to receive adequate treatment.¹⁸⁶ Getting to Suarez by *planchón* depends on the distance of the community members from the Salvajina Dam’s pier, but usually takes about nine hours from the pier because of the *planchones’* limited schedule.¹⁸⁷ Otherwise, there are limited methods of transportation and people are often forced to walk all the way to Suarez.¹⁸⁸ These conditions manifested in a lack of availability and accessibility to health posts that are capable of dealing with medical afflictions.¹⁸⁹

Right to Free Movement

The right to free movement is characterized by a person’s broad right to freedom, meaning that a person has the right to move and transition from one place to another freely.¹⁹⁰ The Court found that the government, along with the CVC, were in violation of this fundamental right because the latter broke its obligations with respect to movement.¹⁹¹ The CVC previously committed to building pedestrian bridges and connecting paths.¹⁹² At the time of the decision, the bridges and additional paths were either not in adequate condition, or not built at all.¹⁹³ The roads available in the communities were in very poor condition and they presented risks to those who travelled on them.¹⁹⁴ Moreover, the Court found that the CVC and EPSA, as the current owner of the Salvajina Dam, violated the communities’ free movement because it limited the use of the river transport service’s barges to get across the Salvajina Dam.¹⁹⁵

THE COURT'S ORDERS

The Court underscored that the corporations CVC and EPSA's lack of compliance with this Agreement and the Environmental Management Plan (EMP), has led to violations of the indigenous communities' fundamental rights to free movement, health, and education.¹⁹⁶ Four years later, however, the decision has only partially been implemented by EPSA.¹⁹⁷ The national government still fails to recognize the culture, cosmovision, and specific legal rights of the Nasa community in Cerro Tijeras.

"[...] [D]ue to the construction of the Salvajina Hydroelectric Plant on the initiative of the Regional Autonomous Corporation of Valle del Cauca (CVC), several indigenous communities were affected, since they were displaced for the execution of the works; with this displacement serious affectations to their subsistence were generated, because they were isolated, their daily activities changed substantially and they continue without basic services necessary in the matter of health and education, among others."¹⁹⁸

In light of the its findings, the Court set forth eight enumerated orders, primarily intended to expedite and concretize active remedial steps to ensure the right to prior consultation, education, health, and freedom of movement.¹⁹⁹

First, the Court reversed the ruling of the lower courts, which had denied relief to the indigenous communities filing suit. The Court thereby granted the protection of the Cerro Tijeras indigenous community's fundamental rights to prior consultation, freedom of movement, health, and education.²⁰⁰

Second, the Court ordered EPSA to complete, within six months from notification of the Court's decision, its process of consultation with the communities, which started only formally in 2006. Specifically, the Court ordered that EPSA must complete the Environmental Management Plan and ensure genuine space for the participation by consulting the indigenous communities to obtain their free and informed consent. The EMP is the vehicle through which EPSA and the communities can assess the possibility of restoring (1) transportation through the reservoir; (2) infrastructure and passable roads; and (3) other methods agreeable to the community to solve issues with freedom of movement, education, and health.²⁰¹ To ensure compliance, the Court further ordered EPSA to submit a detailed report, specifying the meetings and resolutions reached with the community of Cerro Tijeras.²⁰²

Third, the Court ordered the Ministry of Environment and Sustainable Development, the CVC, the Ministry of the Interior, and the mayors of Suarez and Morales in the Cauca region to permanently join in the consultation process and to assess the tangible impact that the construction and operation of the Salvajina Dam has had on these areas. Moreover, within forty-eight hours of notification of the decision, these entities were required to initiate necessary measures to incorporate an infrastructure plan for the construction of roads to ensure free movement.²⁰³

Fourth, the Court ordered, that within a year of the ruling, EPSA, the Ministry of Environment and Sustainable Development, the CVC, the Ministry of the Interior, the mayors of the municipalities of Suarez and Morales of the Department of Cauca and the Governor of the appointed department must create an assessment plan for the construction of a marginal highway that includes timetable be prepared with deference to budgetary restraints.²⁰⁴

Fifth, the Court ordered that in order to improve the health and education systems in the communities, the statewide departments of the Ministries of Health and National Education should work with the local Secretariats of Education and Health of the Government of the Department of Cauca. These two departments were ordered to begin to modify the educational facilities in the communities, in a period not exceeding six months, so that the facilities have sufficient supplies and are have adequate conditions for classes to be held. Further, they were ordered to ensure the uninterrupted function of the health posts in the communities.²⁰⁵

Sixth, the Court ordered that several other governmental bodies help facilitate and ensure the development and compliance of the EMP. The Court ordered the Ombudsman's Office to "advise and accompany" the communities in the process of prior consultation with EPSA through visits to the communities and to prepare a report on the progress and culmination of the consultation.²⁰⁶

Seventh, the Court also called upon Delegate Attorney for Indigenous Affairs, Attorney General of the Nation to oversee the EMP and noted that the Seventh Chamber of Review of the Constitutional Court would itself monitor the fulfillment of the orders.²⁰⁷

Eighth, the Court stated that it would strictly monitor compliance with all of its orders.²⁰⁸

Incomplete Implementation of Sentencia T-462A

INADEQUATE PROGRESS BY THE COMPANY EPSA

On October 15, 2014, three months after the Constitutional Court decision, Celsia, the parent company of the corporation EPSA, approved a corporate policy on human rights.²⁰⁹ This policy states an explicit commitment “to respect and promote Human Rights . . . in keeping with the Universal Declaration of Human Rights and in accordance with the regulatory systems applicable in the countries where we conduct business activities.”²¹⁰

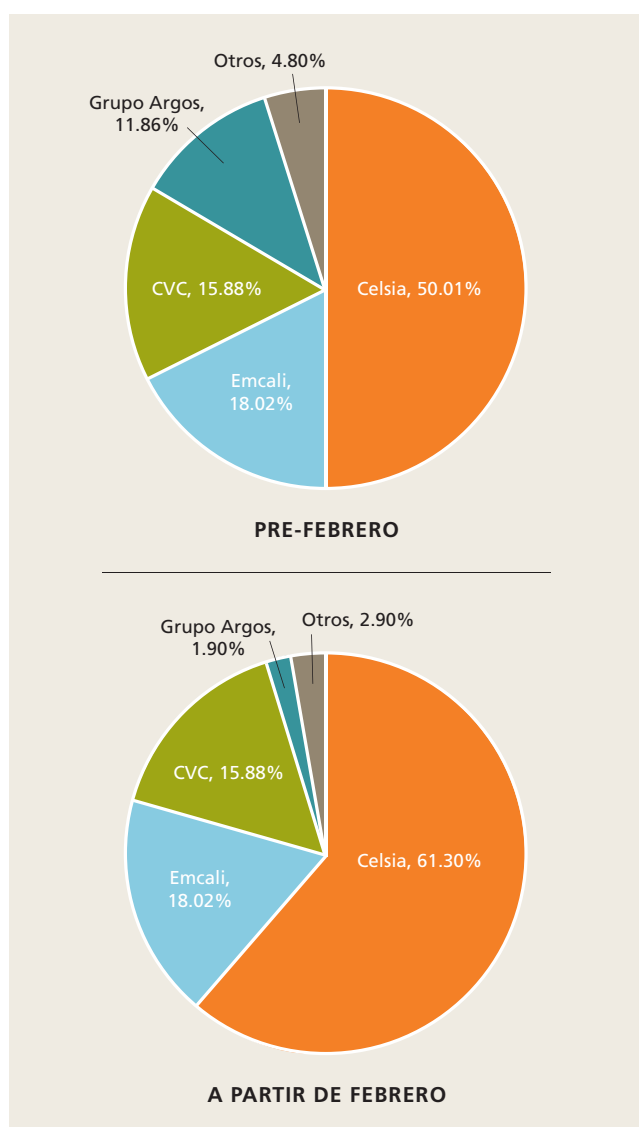


Figure 7: Corporate structure of Celsia and EPSA



Figure 8: Grupo Argos's participation in Celsia

Following the 2014 decision and in keeping with this policy, EPSA had meetings with the Cerro Tijeras indigenous community which involved a variety of issues including the areas and routes that needed improvement, with respect to movement and transportation, and EPSA noted their plan of action to address these problems.²¹¹ EPSA subsequently hired a surveyor to identify the problematic routes.²¹² The Cerro Tijeras indigenous community then confirmed that these routes contributed to the mobility issues in their community.²¹³ EPSA also reached out to various Colombian government entities including the mayors of Suarez and Morales, the governor of Cauca, as well as indigenous authorities asking for their presence in helping to complete the mandates of the 2014 decision.²¹⁴

In September 2016, EPSA, along with the government, came to an agreement with the Cerro Tijeras indigenous community with respect to what would be included in the draft for the EMP entitled “Prior Consultation Document concerning the formulation of Agreements and Protocolization” (the 2016 Agreement).²¹⁵ The 2016 Agreement between EPSA and the Cerro Tijeras indigenous community, is split into several dimensions including physical, biotic, socioeconomic and cultural.²¹⁶ The 2016 Agreement outlines a plan for the management of the effects of the Salvajina Dam on the surrounding area including waste and bioproduct management, native plant regrowth, and other environmental impact control measures.²¹⁷ Some of the measures include creating plant nurseries and carrying out regular inspections of the water quality.²¹⁸ Moreover, EPSA agreed to improve transportation in the communities by improving the roads and river transportation, as well as establish a fish farm in the Salvajina Dam area among other remedies.²¹⁹

According to Celsia's website, the consultation process is in the follow-up phase before the Ministry of the

Interior.²²⁰ The EPSA claims that the next step after the final consultation occurs would be to present the EMP to the Environmental Authority where they can carry out the EMP through an administrative act.²²¹ Celsia claims that only then can the company begin to implement the EMP and the 2016 Agreement.²²²

Despite EPSA's steps towards agreement and consultation with the community, there are still significant shortcomings with respect to their obligations under the Constitutional Court decision. As discussed above in Part II, the Court ordered EPSA to address mobility issues in an EMP and to construct a highway within one year of the decision. In 2013, pre-dating the Constitutional Court decision, EPSA did pay for the construction of a road that would border the southernmost towns; other towns also got access to one better-quality road about a year ago but still do not have reliable daily access on this road.²²³ EPSA did not construct these two roads itself, however, but rather funded the projects and then left them to a contractor to complete.²²⁴ Moreover, according to a biologist who has studied the impact of the Salvajina Dam and has worked closely with the Cerro Tijeras indigenous community, the communities are not satisfied with the agreements with EPSA, especially as it pertains to road infrastructure.²²⁵ Depending on where EPSA surveys and constructs the roads, some people think that the roads will benefit them by giving them ready access to transport their crops and goods to the market, and others claim that a misplaced or roughly constructed road will damage their land if constructed on top of their crops.²²⁶

Therefore, a close level of consultation is necessary to ensure the least possible disruption to the greatest number of members of the community. In addition to the almost complete lack of access to suitable roads, the Cerro Tijeras indigenous community's primary mode of transportation is a single ferry (*planchón*) EPSA only gave that to the community after the community vociferously and repeatedly petitioned for a mode of transportation.²²⁷ Relatedly, while EPSA did build some bridges over the Inguito River more than thirty years ago, they have not maintained or repaired them, leaving them unfit for use.²²⁸ Ultimately, as one group leader in the community put it:

"We are working to finalize the Environmental Management Plan (PMA), but knowing that there is a court decision in our favor, we can say that the corporation has made some attempts and made a few small advances, but if one is truly conscientious that they have a huge debt to pay, one ought to pay it much earlier. The little that the corporation has done is because of the pressure we have put on them and because of the court decision. As for the state, that is more

delicate because I would say that the state has moved an eyelash—I would say that the state, instead of trying to cure everything, wants to add even more debt than there already is . . . if there is a court decision, it should be a matter of immediate implementation."²²⁹

GOVERNMENT INADEQUACIES

The Constitutional Court decision should be read in light of international law, which binds Colombia because Colombia is a monist State, which means that international law determines the content of domestic law within the country.²³⁰ Indeed, Colombia's Constitution of 1991 provides that "[i]nternational treaties and agreements ratified by Congress that recognize human rights and prohibit their limitation in states of emergency have domestic priority."²³¹ In other words, where Colombia has signed or ratified an international treaty, this treaty is immediately implemented in Colombia and can preempt Colombian law.²³²

One relevant international treaty here is the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social, and Cultural Rights ("Protocol of San Salvador"), which Colombia ratified on October 22, 1997.²³³ The Protocol is a multilateral treaty that obligates the State parties to uphold certain rights, including the rights to health, a healthy environment, and education.²³⁴ In terms of education, for example, the Protocol states that the right to education entails ideological pluralism, full participation in society, and fundamental freedoms.²³⁵ With respect to the environment, the Protocol states that "The States Parties shall promote the protection, preservation, and improvement of the environment."²³⁶ These provisions obligate the Colombian government on a fundamental level of international law, and the Colombian Constitution of 1991 reinforces the obligations on a domestic law level. Thus, as a monist State, Colombia voluntarily obligates itself under a dual international-domestic legal framework.

Moreover, an act of commission or omission is always imputable to the State where it is undertaken by state agents, regardless of the level of government at which those State agents operate.²³⁷ With respect to education, health, prior consultation, and mobility, the Colombian government also obligated itself to fulfill certain promises to the Nasa Indigenous Community in Cerro Tijeras when it signed the 1986 Agreement with the community. The 2014 Constitutional Court decision also legally obligates the government to comply with its fundamental obligations and promises it made in the 1986 Agreement. In the 1986 Agreement, the National Government promised to support the CVC's public works.²³⁸ They also promised to (1) supervise the implementation of

the 1986 Agreement; (2) analyze and support plans for development or services; (3) propose means of legal character to change the poor conditions experienced by the community; and (4) maintain communication with the Communities and relevant authorities implementing plans for the Communities.²³⁹ The Constitutional Court underscored these unfulfilled promises and legally bound the government to follow through on them.

To date, the Cerro Tijeras indigenous community argues that the national government continues to infringe on their rights to prior consultation, education, health, and mobility. Specifically, while EPSA has at least met with the communities after the 2014 Decision to consult on plans to build more roads and infrastructure, the government has failed to initiate any meetings or provide support to the community.²⁴⁰ The communities assert that despite the orders contained in the 2014 Decision, the government has not followed through in completing the orders in order to help restore the rights of the community and respect their way of life, cultural values, and cosmovision.²⁴¹

PART IV

Human Rights Violations Persist After the 2014 Decision

The 2014 Decision of the Constitutional Court of Colombia guaranteed numerous rights and protections to the Cerro Tiejras and other communities impacted by the Salvajina Dam. However, the government and the company have not carried out their obligations under the decision and the Court has failed to enforce it. Below we contextualize the 2014 Decision in the international human rights law, to which Colombia is bound. We describe how the current situation of the Cerro Tiejras communities falls short of the government's obligation in regard to education, health, and movement.

EDUCATION

A framework for governmental human rights responsibility with respect to education is elucidated through a "4-As" framework²⁴² under the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Colombia is a party to the ICESCR and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), and so it must comply these treaties that recognize the right to education.²⁴³ In order for a government to be compliant with its obligations, the public education the state offers must be available, accessible, acceptable, and adaptable.²⁴⁴

The community's cosmovision directly influences their educational vision as well. As one community authority described it, "for our culture, school and university are not merely four walls. It is everything that we have in nature. We go outside of the four school walls, and we go to the rivers, the mountains, and the sacred sites. The idea is that students know about what the community has and that they learn to recognize it."²⁴⁵

BOX 4:

RIGHT TO EDUCATION

International Covenant on Economic, Social, and Cultural Rights (ICESCR) - Universal System of Protection of the Human Rights.

ARTICLE 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development

of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

[...]

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) – Inter-American System of Protection of the Human Rights.

ARTICLE 13

Right to Education

1. Everyone has the right to education.

2. The States Parties to this Protocol agree that education should be directed towards the full development of the human personality and human dignity and should strengthen respect for human rights, ideological pluralism, fundamental freedoms, justice and peace. They further agree that education ought to enable everyone to participate effectively in a democratic and pluralistic society and achieve a decent existence and should foster understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups and promote activities for the maintenance of peace.

3. The States Parties to this Protocol recognize that in order to achieve the full exercise of the right to education:

- a. Primary education should be compulsory and accessible to all without cost;
- b. Secondary education in its different forms, including technical and vocational secondary education, should be made generally available and accessible to all by every appropriate means, and in particular, by the progressive introduction of free education;
- c. Higher education should be made equally accessible to all, on the basis of individual capacity, by every appropriate means, and in particular, by the progressive introduction of free education;
- d. Basic education should be encouraged or intensified as far as possible for those persons who have not received or completed the whole cycle of primary instruction; [...]

Availability

In this framework, availability is defined as the ability for children to get free, government subsidized education with acceptable infrastructure and competent teachers who can adequately teach.²⁴⁶ A potential violation of educational availability occurs, for example when there is not installed infrastructure, or the schools lack of space to accommodate the students or the necessary number of teachers.²⁴⁷

In Cerro Tijeras, schools are divided into primary (elementary) school and secondary school (middle school and high school).²⁴⁸ Students' parents built these schools without help or limited funding from the local or national government.²⁴⁹ While the schools have access to electricity, it is not reliable and will go out for extended periods of time when there is bad weather.²⁵⁰ Even without electricity, however, classes are still held.²⁵¹ The schools do not have access to drinking water in either the primary or secondary school.²⁵² Schools do have bathrooms, but the majority are in bad condition.²⁵³ The bathrooms do not have finished floors and the plumbing is lacking in some of the facilities.²⁵⁴ None of the schools in the territory have air conditioning or heat.²⁵⁵

The primary schools contain pre-kindergarten through fifth grade and, often, many of the grades are forced to be taught together.²⁵⁶ Because all the grades in primary school are taught in the same room, teachers often struggle to provide adequate instruction and attention to all of the students.²⁵⁷

Secondary school, which is comprised of grades six through eleven, are taught separately in kiosks built by the students' parents.²⁵⁸ The kiosks have two rooms—one is the library and the other is a classroom made of wood.²⁵⁹ The roofs of the kiosks are made of wooden boards.²⁶⁰ Jose Olmedo Baicue, a teacher at La Institución Educativa Agroambiental Agua Clara (La Institución), a secondary

school located in Cerro Tijeras, describes the school as “pretty abandoned and in very poor condition.”²⁶¹ The children wish to have better chairs as their current chairs are deteriorating, have nails sticking out of them, and often come apart.²⁶² Similarly, the desks are not in good shape and the school is forced to repeatedly repair them.²⁶³ Children are also left without enough books available in the library to supplement their education. The local indigenous government association allots some money for the schools' books, but it is not sufficient to provide all the books required for a comprehensive curriculum.²⁶⁴ The bathrooms at the schools are located outside of the kiosks and do not have sinks and the parents are forced to provide soap for the students to use to maintain hygiene.²⁶⁵ While the secondary schools do have computers, they are old and their internet connection is very slow.²⁶⁶ Students at the schools want more computers because they are often forced to share a computer as there are not enough for each student.²⁶⁷

Accessibility

Accessibility is characterized by an educational system that does not discriminate and is accessible to all students including marginalized groups.²⁶⁸ Accessibility is considered to be lacking if a school refuses to register some groups (e.g. undocumented immigrants), a school lacks of physical accessibility (e.g. the school is not within a safe and reasonable convenient geographic location), or there is a lack of economic accessibility (e.g. when states do not cover all the expenses related to primary education such as uniforms, transportation, school supplies, et. al.)

While many of the communities have primary schools that are relatively close to the children's homes, children attending secondary school are often forced to walk between one to three hours²⁶⁹ through deteriorating roads and possibly the wilderness depending on the location of the homes.²⁷⁰ Because school starts at 8:00 am, some students are forced to leave their homes at 5:00 am in order to arrive in time for their classes.²⁷¹ The same children must walk two hours back home after leaving classes at 2:20 or 3:10 pm for primary school and secondary school respectively.²⁷² There is currently no transportation for the children to use at the schools and thus these long walks have deterred students from completing their education.

For students in Cerro Tijeras, costs for school supplies pose another barrier to accessibility. Parents must buy school supplies for their children as well as a uniform.²⁷³ These costs can place an economic strain on parents, particularly those with several children in school.²⁷⁴

Acceptability

Acceptability is ensured when the educational content is pertinent, does not discriminate and is culturally suitable

and of sufficient caliber. Further, acceptability requires that the facility is safe and teachers conduct themselves in an appropriate manner.²⁷⁵ A violation may occur when, for instance, the school's curriculum and texts must conform to certain government principles that exclude the cultural specificities of the students.²⁷⁶

The integration of culture in the classroom setting is of the utmost importance to the indigenous community of Cerro Tijeras.²⁷⁷ However, the government requires that schools in Cerro Tijeras adhere to a national curriculum that does not leave sufficient time to teach the community's cosmovision during school,²⁷⁸ and sometimes the national curriculum conflicts with this cosmovision. For example, schools are forced to teach that only biological things have life, however, in the Nasa culture, rocks also have life.²⁷⁹ In order to fully integrate their culture into education, the Cerro Tijeras indigenous community believes in using a traditional cultural desing, like the *torpa* or *fogon*, instead of the traditional western classroom setup which the government defines.²⁸⁰ Through their traditional design, dialogue, which is very important to the culture, could be used in order to motivate the students to learn the Nasa culture.²⁸¹

One unifying thread of the community's culture is their utmost commitment to the preservation and instruction of their proper language, Nasa Yuwe. There are only approximately thirty-five to forty community members who speak Nasa Yuwe.²⁸² While some community members learn the language at their homes because parents and other relatives have taught it to them since birth,²⁸³ the community also wants that their children need to be educated in Nasa Yuwe at school.²⁸⁴ It can take up to three or five years to properly teach the language.²⁸⁵ Currently, approximately four teachers within the entire *resguardo* speak Nasa Yuwe.²⁸⁶ The remaining teachers are appointed by the national government and are not members of the community, meaning that they are not trained in the language or in related Nasa cultural practices.²⁸⁷ When children do learn Nasa Yuwe at school, it is only for about an hour a day or up to two hours per week.²⁸⁸

Ultimately, preserving a sense of cultural pride contributes directly to the children's willingness and ability to adequately learn the language.²⁸⁹ Even when the community has made the specific request to the national government to better preserve the language through the printing and dissemination of a book on Nasa Yuwe, the government has failed to subsidize the project.²⁹⁰ As such, diversions from the Nasa way of life, through both the national government's overt influences and inaction, can serve to dismantle a fundamental layer of existence for the Cerro Tijeras indigenous community.²⁹¹

Currently teachers in Cerro Tijeras' schools are from outside of the Nasa people.²⁹² The schools have only three

or four bilingual Spanish-Nasa Yuwe teachers and across the Cerro Tijeras territory.²⁹³ Ultimately, the community wants more teachers that are either of the Nasa culture or equipped with knowledge of the culture.²⁹⁴ Moreover, the indigenous community not only seeks respect for their traditions from the national government, but also practical assistance in the form of better school buildings and the development of cultural centers throughout Cerro Tijeras.²⁹⁵ Within these centers, community members can teach each other traditional practices such as weaving and other artisanal works.²⁹⁶ These centers can also better focus on preserving the Nasa Yuwe language and their rituals, which are passed along from generation to generation primarily through oral tradition.²⁹⁷

Adaptability

Adaptability is satisfied when the education system advances with the changes in society and aids in challenging inequalities, can evolve to suit local conditions,²⁹⁸ and it is able to accommodate cultural diversity.

In Cerro Tijeras, children between the ages of thirteen and fourteen drop out of school very often.²⁹⁹ Of the roughly 100 children who enter primary school, only sixty percent reach secondary school.³⁰⁰ Only two percent make it to public university.³⁰¹ The internal armed conflict and the presence of other delinquent groups have affected adolescents in Cerro Tijeras by recruiting them with false promises of money, food, and other opportunities.³⁰² In 2017, only six students graduated and just one student went to college.³⁰³ Attending college is a challenge for indigenous young people because of the costs associated with tuition and housing.³⁰⁴ Moreover, many students who finish secondary school must work in order to support themselves and their families.³⁰⁵

HEALTH

The indigenous community of Cerro Tijeras roots healthcare to their land and cosmovision. The community's deep-seated connection to their land is manifested in that they rely on specific plants such as la ortiga and la pacunga³⁰⁶ and organic products for medicinal purposes. Moreover, their cultural value for deference to the wisdom of their elders informs their reliance on these elders to diagnose illnesses and assess proper care for community members. For more culturally-specific malaises such as Mal de Ojo (evil eye)³⁰⁷ and El Susto (shock),³⁰⁸ community members rely on eight elders throughout Cerro Tijeras³⁰⁹ to diagnose the ailment and treat it with plant-based medicine.³¹⁰

BOX 5:

RIGHT TO HEALTH

International Covenant on Economic, Social, and Cultural Rights (ICESCR) - Universal System of Protection of the Human Rights.

ARTICLE 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

- (a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;
 - (b) The improvement of all aspects of environmental and industrial hygiene;
 - (c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;
 - (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.
- Article 13

Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador) – Inter-American System of Protection of the Human Rights

ARTICLE 10

Right to Health

1. Everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well-being.

2. In order to ensure the exercise of the right to health, the States Parties agree to recognize health as a public good and, particularly, to adopt the following measures to ensure that right:

- a. Primary health care, that is, essential health care made available to all individuals and families in the community;
- b. Extension of the benefits of health services to all individuals subject to the State's jurisdiction;
- c. Universal immunization against the principal infectious diseases;
- d. Prevention and treatment of endemic, occupational and other diseases;

e. Education of the population on the prevention and treatment of health problems, and

f. Satisfaction of the health needs of the highest risk groups and of those whose poverty makes them the most vulnerable.

In addition to their traditional healthcare, the community of Cerro Tijeras also recognizes the necessity of western medicine. Community members acknowledge that complex diseases, such as cancer, diabetes, and coronary disease, require more progressive treatment.³¹¹ While they recognize that they have ancestral remedies that could replace vaccines almost entirely, they comply with obligatory vaccinations, which they administer to their children four times a year.³¹²

This hybrid approach to healthcare—combining indigenous practices and occidental medicine³¹³—reflects the community's distinctive blend of tradition and pragmatism. Nevertheless, the national government has not respected their consultation process within Cerro Tijeras and the traditional medicinal practices they prefer.³¹⁴ As such, the Cerro Tijeras indigenous community demands from the government the ability to freely practice its traditional forms of medicine, while still having access to hospitals that are well-supplied with trained medical professionals and equipment.³¹⁵ Moreover, they would like for doctors to be permitted to prescribe not only occidental medicines, but also traditional medicines.³¹⁶

Within the community, primary medical-care personnel are called health "*promotores*." *Promotores* are members of the communities that are affiliated with the local *Empresas Promotoras de Salud Indígena* (EPSI).³¹⁷ They act as proxies between the community and the EPSI. There are approximately seven health *promotores* for the total thirty-seven *veredas* in Cerro Tijeras.³¹⁸ Without access to many roads or other accessible modes of transportation, *promotores* often travel by foot to each and every house within their designated *veredas* in the community's territory.³¹⁹ At each house, they assess a comprehensive array of health and social welfare-related matters including, but not limited to, sanitation, personal hygiene, access to potable water, the conditions of the kitchen within the home, the building materials out of which the home is constructed, whether the children attend school, and the health conditions of each family member within the home.³²⁰ *Promotores* also tend to illnesses within the community if, for example, a child gets sick at school, a *promotor* can come to a nearby health post to treat him or her.³²¹ Otherwise, it is not uncommon for a teacher within the school to leave the other children behind and transport the sick or injured child either by foot or motorcycle to the nearest health post.³²²

Currently, the entire Cerro Tijeras region only has one hospital within reach, which is located in Suarez.³²³ This hospital is 15 miles of distance from the most distant part of the Cerro Tijeras indigenous community. This means that there is only one functioning hospital to treat the more than 4,000 people living in Cerro Tijeras.³²⁴ Within the hospital, the emergency room only has three beds and the more general hospitalization area has four.³²⁵



Figure 9: Waiting Area Outside the Emergency Room at the Hospital in Suarez

As a result, community members describe traveling hours to the hospital in Suarez, only to stand in a long line, with no guarantee of treatment due to the lack of space and personnel.³²⁶ Indeed, one Suarez hospital employee attests to the great demand for emergency services.³²⁷ Many people have to return to their towns without medical care because they have no place to stay near the hospital.³²⁸ For pregnant women in Cerro Tijeras, the return home is not a viable option, which requires many women to travel to the hospital in Suarez up to a month in advance of their expected delivery date in order to ensure that they can receive medical attention when they go into labor.³²⁹ Otherwise, these women risk going into labor without ready access to an ambulance or medical center.³³⁰ Nonetheless, even for those who do get treatment at the hospital, it is not always adequate healthcare.³³¹ There was a case where several young girls from Cerro Tijeras were discharged from the hospital in Suarez, only to pass away the next day.³³²

Apart from the hospital, there are only about five smaller health posts throughout the entire community's territory,³³³ and they do not function consistently and are not well-supplied.³³⁴ The lack of sufficient health posts also impacts the elders' ability to properly treat patients. The eight elders instead have to travel to individual homes or rely on communal spaces, which are often not adequate places to provide medical care.³³⁵

When community members do receive treatment at the hospital, government-appointed doctors from outside of the community attend to them.³³⁶ These doctors readily

prescribe occidental medicines and pills, but completely ignore patients requests for plant-based medicine more in line with their traditional methods of healthcare.³³⁷ Community members' take issue with this practice, because in their view western medicine is merely curative and not preventative and doctors do not adequately measure dosages on a person-by-person basis.³³⁸

Moreover, the construction of the Salvajina Dam has harmed the indigenous communities' sources of traditional medicine because "the plants that [they] use are affected by the water contamination after the construction."³³⁹ Indeed, elders have told community members that when the Salvajina Dam did not exist, they had access to many plants that they could use in their rituals and as a source of traditional medicine, but that because of the construction of the Salvajina Dam, it is more difficult to locate the same plants and sometimes they have to travel long distances to other territories to find them.³⁴⁰

The inundation from the Salvajina Dam has also damaged crops that the community used to nourish themselves, leaving children to eat packaged goods instead of organic products.³⁴¹ Moreover, the Salvajina Dam has changed the climate to such an extent that certain crops no longer survive.³⁴² Where before, a narrower river existed, the lake's wider body creates something akin to a mirror, which then reflects the sun more within close range and elevates temperatures.³⁴³ At night, the converse happens, and the lake absorbs cold and creates a layer of fog over nearby crops and plants.³⁴⁴ For the coffee plant, especially, this colder weather causes the plant to become more susceptible to diseases that cause its leaves to fall off or for its fruit to remain unripened.³⁴⁵ The same is true about the fish that the community used to rely on as fresh-catch.³⁴⁶ The Salvajina Dam's wall interrupted the natural ecosystem for many local fish—including the *Bagre*, the *Bocachico*, and the *Sábalo*—causing them to die out.³⁴⁷ This diminution in local fish has also led to less fishing, which forces community members to purchase canned fish instead of purchasing it fresh from local vendors.³⁴⁸ As such, one of the community's requests to the national government is guaranteed access to healthier food and organic crops as well as specialists in organic vegetation who can teach the community how to eat healthier food.³⁴⁹

Moreover, while the majority of community members rely on the *planchón* as their primary mode of transportation, when it comes to emergency medical services, a near complete lack of ambulances and suitable roads³⁵⁰ has proved fatal for members of Cerro Tijeras.³⁵¹ A pregnant woman who went into labor in the middle of the night could not get access to an ambulance and miscarried.³⁵² A five-year old child with a respiratory illness also could not get to the hospital in time and died before receiving medical attention.³⁵³ Plenty more children, adolescents, and adults have died as a result of the complete lack of ambulances, poor cellular service to

reliably call the one functioning ambulance, and lack of proximity to hospitals that offer emergency care.³⁵⁴

The Cerro Tijeras indigenous community feels that the current health system is poor and that the government has not complied with its duties to the community.³⁵⁵ Thus, the community is asking for a health model that better ties traditional health practices with occidental healthcare. This can be accomplished in several ways. First, providing health posts with both proper staff and resources is necessary in order for the people in Cerro Tijeras to get access to healthcare.³⁵⁶ In particular, the community wants eight health posts with permanent and qualified staff, meaning both community elders and western medical professionals.³⁵⁷ The posts also need to be stocked with more medications to treat the community.³⁵⁸

Second, the construction of a health center within the community could help reduce some of the problems associated with the current healthcare system.³⁵⁹ In the medical center they envision, the elders would be able to evaluate their patients and create traditional medicinal options for them.³⁶⁰ The elders would also be able to send them to hospitals when they determine that traditional medicines would not be enough.³⁶¹ Health Policy coordinator for Cerro Tijeras, Meraldino Caviche Ulchar, believes that the village of Amparo would be a good location for this medical center because it is most accessible to everyone in Cerro Tijeras.³⁶²

Third, Cerro Tijeras wants a laboratory where their traditional medicines can be produced and bottled.³⁶³ The province of Altamira would be the ideal location due to some advances that have already been made in that area.³⁶⁴ The community is asking for government funding to aid in cultivating the plants necessary for these medicines.³⁶⁵

Fourth, the community would like for there to be ambulances dedicated to serving the Cerro Tijeras indigenous community.³⁶⁶ In addition, the government must provide alternative forms of transportation so that the community can get to the hospitals in Cali and/or Popayan,³⁶⁷ if a more specialized treatment is needed.

MOVEMENT

The construction of the Salvajina Dam severely impacted mobility throughout the Cerro Tijeras region. Before the Salvajina Dam, the river was easier to cross because it was narrower and there were wide bridges crossing it.³⁶⁸ Once EPSA built the Salvajina Dam, however, these bridges were destroyed, and the only ones that EPSA has since added are across the Inguito River, not the Cauca River. They are in poor condition and never properly maintained.³⁶⁹ With an almost complete lack of navigable roads as well, the community is left to walk long distances by foot or to rely on fluvial transportation.³⁷⁰

BOX 6:

RIGHT TO MOVEMENT

International Covenant on Economic, Social, and Cultural Rights (ICESCR) - Universal System of Protection of the Human Rights.

ARTICLE 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.[...]

3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.[...]

American Convention on Human – Inter-American System of Protection of the Human Rights

ARTICLE 22

Freedom of Movement and Residence

1. Every person lawfully in the territory of a State Party has the right to move about in it, and to reside in it subject to the provisions of the law.[...]

2. Every person has the right to leave any country freely, including his own.

3. The exercise of the foregoing rights may be restricted only pursuant to a law to the extent necessary in a democratic society to prevent crime or to protect national security, public safety, public order, public morals, public health, or the rights or freedoms of others.[...]

After the construction of the Salvajina Dam, the communities were only able to secure access to free fluvial transportation after pleading with EPSA, who originally did not want to give the communities anything.³⁷¹ After a hard-fought battle, EPSA did eventually provide them a free barge, called a *planchón*, which has a maximum capacity of roughly 200 people,³⁷² to transport community members across the reservoir.³⁷³ The *planchón* only makes one round trip daily—one for departure and one returning.³⁷⁴ On weekdays, the *planchón* leaves at 7:00 am and arrives at the pier in Suarez at about 4:00 pm.³⁷⁵ This rigid schedule does not always align with community members' schedules and, often, community members have to invest three days to complete their tasks.³⁷⁶ School teachers also rely on the *planchón* to get to their school to teach, but due to the strict schedule, often have to end the school day earlier or before finishing a class to be able to ensure transport back to their home in a different *vereda*.³⁷⁷ Moreover, people sometimes have to pay to stay near the

port³⁷⁸ if they miss the *planchón* entirely.³⁷⁹ On Sundays, the *planchón* gets very full and people often decide not to use it because it can be dangerous with all of the added weight.³⁸⁰ Although the community has solicited EPSA to change the schedule for the *planchón* to better suit the community's needs, EPSA has failed to make any adjustments.³⁸¹



Figure 10: Private boat that can be used to cross the reservoir

The only other water-based method of transportation is to pay for private boats which can be quite costly.³⁸² Some children use *planchones* or private boats to get to school, but because of the inflexible schedule, children frequently arrive late to school.³⁸³ When the reservoir dries out, some children cross the riverbed on foot; when the river gets too full from the Salvajina Dam's waters, it becomes impossible to cross and children miss school.³⁸⁴ In the reservoir, many people, including children, have drowned and it is common for canoes to capsize in the muddy bottom of the river.³⁸⁵

Indeed, during extremely dry seasons when the reservoir water levels are lower, the small boats cannot safely run.³⁸⁶ People are then left to carry out their daily tasks and jobs by foot on unfinished, rural roads called *trochas*, which extend the duration of the journey significantly.³⁸⁷

Top to bottom: The Inguito River at four different water levels due to climate changes caused by the Salvajina Dam. The topmost is high tide, which is when the *planchón* can reach Puerto Huevo. The second is mid-level tide, where the *planchón* can only reach as far as Santa Barbara, where people then take private boats to Puerto Huevo. The third is low tide, when neither the *planchón* nor private boats can transport people, leaving community members to walk on rugged roads for up to four hours to reach Barbara.³⁸⁸ The bottommost picture is the River Inguito at lowest tide.³⁸⁹





Figure 11: *Chiva* driving through a dirt road to get to the Cerro Tijeras region

The *Chiva* is the only bus that goes to the Cerro Tijeras indigenous community.³⁹⁰ It departs from Suarez and transports people to different *veredas*,³⁹¹ with a final stop in Altamira.³⁹² The *Chiva* is an old model bus that has long benches across the width of the bus where people sit if there is room.³⁹³ If there is no room, some people sit or lay on the top of the *Chiva*, without any protection.³⁹⁴ The *Chiva* is open on all sides as it does not have doors or glass windows.³⁹⁵ The *Chiva* leaves every morning at 3:45 am from Altamira and does not arrive in Suarez until 6:00 am, from there the *Chiva* arrives to Santander at approximately 7:00 am.³⁹⁶ The *Chiva* returns to Suarez at 2:00 pm and to Altamira between 6:00 and 6:30 pm.³⁹⁷ The *Chiva* to Altamira costs \$16,000 Colombian pesos and to Santander \$8,000 Colombian pesos.³⁹⁸ Still, the *Chivas* can only enter the community through roads constructed

by the community and currently comes only once a day.³⁹⁹ The makeshift roads are not the best to travel on and the *chivas* often are overweight.⁴⁰⁰ The roads are not paved and are quite narrow and uneven with rocks and holes throughout.⁴⁰¹ These conditions make it so that the *Chiva* is constantly rocking and requires it to go slowly on curves because of the narrowness of the road.⁴⁰² In fact, the *Chiva* usually must come to a full stop if another car is coming down the road in order to allow it to pass through.⁴⁰³ "I do not feel safe on the *Chiva*" said Leonilde Camayo Guetio, a member of the Cerro Tijeras authority.⁴⁰⁴ There have been a lot of accidents on the *Chiva* due to the conditions of the road and weight of the vehicle.⁴⁰⁵



Figure 12: Mudslide preventing the *Chiva* from entering the Cerro Tijeras region (April 5, 2018)

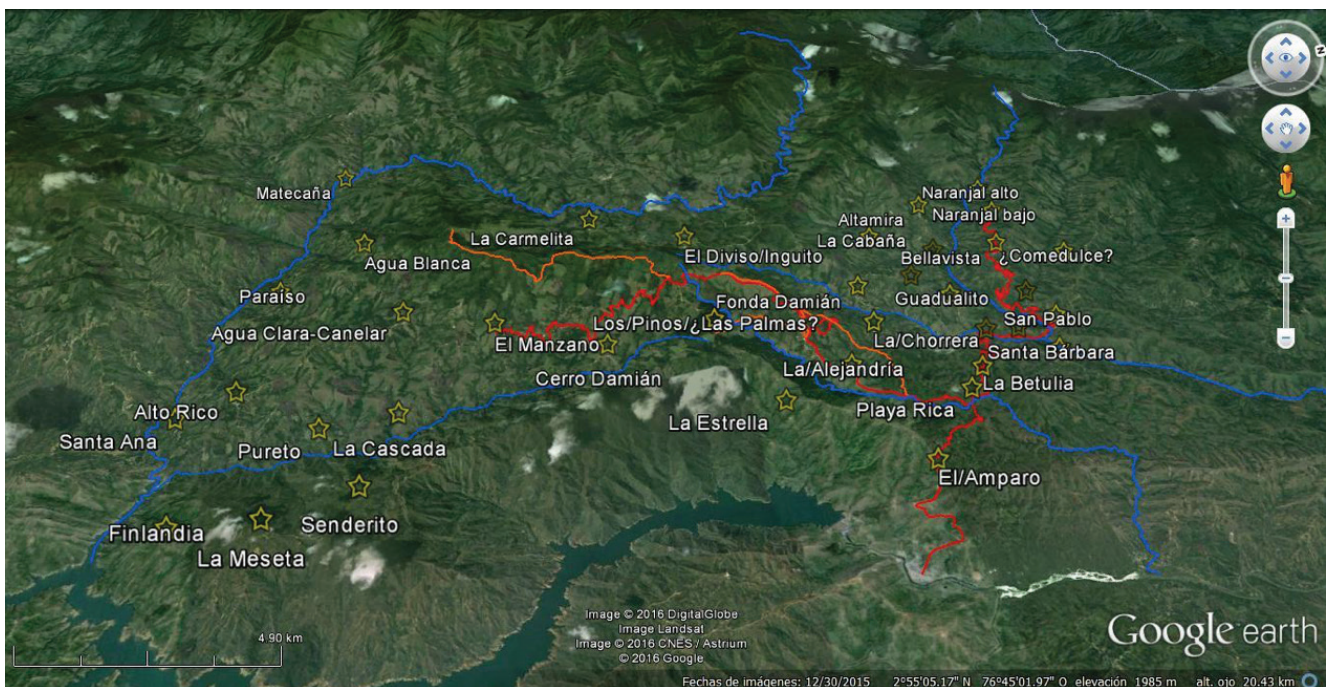


Figure 13: map of the region from Google earth⁴⁰⁵

Concluding Remarks and Recommendations

More than four years after the Colombian Constitutional Court decision that held that the government and EPSA violated Cerro Tijeras' human rights by constructing the Salvajina Dam, the community is still actively fighting for its fundamental rights. Without complete and immediate implementation of Sentencia T-462A/14, the Nasa people of Cerro Tijeras will remain without adequate access to education, health, communication, transportation, and the resources they need to preserve their culture and their way of life. This is a fundamental violation of human rights under international law and Colombia's own 1991 Constitution. In order to comply with their respective obligations under domestic and international law, the Colombian government and EPSA must take a more active and fast-paced approach toward implementing this decision.

The Court ordered EPSA to complete, within six months from notification of the Court's decision, its process of consultation with the community. Specifically, the Court ordered that EPSA must complete the consultation and drafting of the Environmental Management Plan and ensure genuine space for the participation of the indigenous communities to give free and informed consent about mobility, health, education, and other cultural preferences. Governmental ministries and the Ombudsman's Office are also legally obligated to oversee and ensure completion of the EMP. Although EPSA and the government did sign an agreement in September of 2016 with the Cerro Tijeras indigenous community, this exceeded the court-ordered six-month period by over a year and is still not fully completed. Moreover, the EMP is merely the vehicle through which to ensure proper consultation; it does not represent actual implementation of better roads and modes of transportation or educational and health facilities.

Thus, EPSA, as successor to the CVC, should also implement its promises from the 1986 Agreement, as also recognized in the 2014 decision, and its 2016 agreement with the community to address specific education and health-related issues in Cerro Tijeras. Specifically, as noted in Part II, the Court ordered that the statewide departments of the Ministries of Health and National Education should work with the local Secretariats of Education and Health of the Government of the Department of Cauca. These two departments were ordered to begin to modify the educational facilities in the communities, in a period not exceeding six months, so that the facilities have sufficient supplies and have adequate

conditions for classes to be held. Further, they were ordered to ensure the uninterrupted function of the health posts in the communities.

EPSA and the Colombian government have also delayed this six-month period by more than three years. Thus, these governmental ministries and the corporation must fulfill the court's orders as expeditiously as possible. Fulfillment of the orders would include incorporating the community's curricular suggestions into the Environmental Management Plan, providing more books and supplies, and constructing school buildings to improve upon the existing dilapidated structures in Cerro Tijeras and that also better facilitate the Nasa view of proper education (i.e. a circular layout in the classroom⁴⁰⁷ and more land outside the school building to teach the children about nature⁴⁰⁸). With respect to health, the government ought to ensure that health posts are open and running consistently. These posts should be supplied with both the traditional medicinal plants that the community relies on as well as occidental equipment and medicine. Most importantly, the government should ensure that the doctors they send to the community are either respectful of the community's traditional practices or even trained in them to be able to properly treat each individual Nasa patient. Additionally, EPSA must continue to build roads and the marginal highway that the court also ordered them to construct. EPSA should also ensure that the community members can travel on these new roads, by providing more ambulances for emergency health services and another planchón or mode of fluvial transportation that would also satisfy the court's orders and the community's fundamental needs. Indeed, mobility is directly linked to the availability, accessibility, acceptability, and adaptability of the fundamental rights to health and education.

Currently members of Cerro Tijeras are pursuing implementation of the Constitutional Court's decision through a petition to the Inter American Commission of Human Rights. Because EPSA does bear responsibility for addressing these violations of human rights, the community may also choose to pursue remedies available to them through corporate responsibility mechanisms. These potential avenues for progress and implementation include EU Regulations,⁴⁰⁹ the United Nations Global Compact,⁴¹⁰ and National Contact Points set up through the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises.⁴¹¹

Ultimately, the Colombian government and EPSA are legally obligated under international law, domestic law, and the 2014 decision, to remedy the harms that they caused to the Cerro Tijeras indigenous community by constructing the Salvajina Dam. The 2014 decision and this report have detailed the concrete actions these

parties must take to properly comply with their legal obligations. Moreover, this report has shown that the Nasa people preserve a distinct way of life that defines their human dignity according to their culture. As such, their human rights are inextricably linked to their culture and cosmovision. In order to properly comply with their legal obligations, the government and EPSA should also account for this cosmovision by respecting it and implementing it as much as possible in all its interactions with the Cerro Tijeras indigenous community.

Endnotes

- 1 Renata Moreno-Quintero & Theresa Selfa, *Making Space for the Cauca River in Colombia: Inequalities and Environmental Citizenship*, in WATER JUSTICE, 137.
- 2 Corte Constitucional [C.C.] [Constitutional Court], julio 4, 2014, Sentencia T-462A/14, (p. 61–63) (Colom.) [hereinafter Sentencia T-462A/14]. See Páez, *ENCYCLOPEDIA WORLD CULTURES*, <https://www.encyclopedia.com/people/science-and-technology/microbiology-biographies/paez> (last visited May 20, 2018) [https://perma.cc/6EVU-NGTF].
- 3 See Sentencia T-462A/14, at 41.
- 4 Affidavit Eyder Flor Vivas, at line 13. During the dry season, sometimes the planchón is not even able to reach its final destination in Suarez. See Affidavit of Felipe Castiblanco, at line 17.
- 5 See Sentencia T-462A/14, at 56.
- 6 See Affidavit of Elkin Arley Flor Belalcazar, at line 23.
- 7 Sentencia T-462A/14, at 57. Affidavit of Jose Leandro Guetio Chocue, at line 51. See also Affidavit of Elkin Arley Flor Belalcazar, at line 24 (confirming that these poor health post conditions are still the reality today).
- 8 Sentencia T-462A/14, at 62.
- 9 *Id.* at 59–60.
- 10 Affidavit Hector Zambrano line, at 16; Affidavit Jose Leandro Guetio line, at 32; Affidavit of Manuel Belalcazar Baltazar line, at line 15; Affidavit of Rueben Cuetia, at lines 5, 7; Affidavit of Jose Olmedo Baicue, at line 5.
- 11 Sentencia T-462A/14, at 8.
- 12 *Id.* at 61–63.
- 13 *Id.*
- 14 *Id.*
- 15 *Central hidroeléctrica Salvajina* [Hydroelectric Power Station Salvajina], CELSIA, <http://www.celsia.com/es/centrales-hidro-electricas/salvajina> (last visited Apr. 20, 2018) [https://perma.cc/RLZ9-LAUJ].
- 16 *Id.*
- 17 Anexo 4-Acta de reunión de consulta previa en la etapa de formulación de acuerdos y protocolización [Annexation 4- Prior Consultation Document concerning the formulation of Agreements and Protocolization], Sept. 22, 2016.
- 18 Affidavit of Jose Leandro Guetio Chocue, at line 16.
- 19 Affidavit of Hector Zambrano, at line 26; Affidavit Rueben Cuetia, at line 14; Affidavit Jose Olmedo Baicue, at line 13.
- 20 Affidavit of Jose Olmedo Baicue, at lines 4, 14.
- 21 *Id.* at line 5.
- 22 Affidavit of Hector Zambrano, at line 16; Affidavit of Jose Leandro Guetio, at line 32; Affidavit of Manuel Belalcazar Baltazar, at line 15; Affidavit of Rueben Cuetia, at lines 5, 7; Affidavit of Jose Olmedo Baicue, at line 5.
- 23 Sentencia T-462A/14, at 57; Affidavit of Jose Leandro Guetio Chocue, at line 51. See also Affidavit of Elkin Arley Flor Belalcazar, at line 24 (confirming that these poor health post conditions are still present today).
- 24 See Affidavit of Elkin Arley Flor Belalcazar, at line 23.
- 25 See Affidavit of Olga del Carmen Araujo Casanova, at line 4.
- 26 Affidavit of Meraldino Caviche Ulchar, at line 15.
- 27 Affidavit of Eyder Flor Vivas, at line 14.
- 28 See Affidavit of Leonilde Camayo Guetio, at line 32; Affidavit of Claire Halleland, at line 8.
- 29 Affidavit of Leonilde Camayo Guetio, at line 33.
- 30 Affidavit of Jose Leandro Soscue Puyo, Promotor Cultural, at line 22.
- 31 *Id.* at line 22.
- 32 See, e.g., Affidavit of Carlos Enrique Cobo Chandillo, at line 11.
- 33 See, e.g., Affidavit of Hector Zambrano Solarte, at line 34.
- 34 *Id.* at line 23.
- 35 See Affidavit of Elkin Arley Flor Belalcazar, at line 27.
- 36 Affidavit of Claire Halleland, at line 2.
- 37 *Id.* at line 8.
- 38 *Id.* at line 9.
- 39 *Id.*
- 40 *Id.* at line 11.
- 41 *Pueblos indígenas* [Indigenous Peoples], MINISTERIO DE SALUD Y PROTECCION SOCIAL, <https://www.minsalud.gov.co/proteccion-social/promocion-social/Paginas/Pueblos-indigenas.aspx> (last visited May 20, 2018) [https://perma.cc/MQ52-GY8U].
- 42 AMNESTY INTERNATIONAL, *COLOMBIA: RESTORING THE LAND, SECURING THE PEACE: INDIGENOUS AND AFRO-DESCENDANT TERRITORIAL RIGHTS* (Nov. 2015), https://www.amnestyusa.org/files/colombia_land_-_briefing_eng.pdf [https://perma.cc/5XV2-EHCD].
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- 44 Camila Ramirez, *Cerro Tijeras en medio del fuego cruzado* [Cerro Tijeras in the middle of the crossfire], EL TRUBIÓN (Nov. 7, 2011), <https://elturbion.com/?p=2052> [https://perma.cc/KM3A-B4SF].
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- 46 Jonathan Watts, *Battle for the mother land: indigenous people of Colombia fighting for their lands*, THE GUARDIAN (Oct. 208, 2017, 19:05 EDT), <https://www.theguardian.com/environment/2017/oct/28/nasa-colombia-cauca-valley-battle-mother-land> [https://perma.cc/3YSG-P5SE].
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- 48 Robin Oisín Llewellyn, *Behind the headlines: Colombia's Nasa people*, LE MONDE DIPLOMATIQUE (Dec. 7, 2015), <https://>

mondediplo.com/outsidein/behind-the-headlines-colombia-s-nasa-people [https://perma.cc/5S6B-YCAE]; see also Affidavit of Carlos Enrique Cobo Chandillo, at line 17.

49 See Affidavit of Carlos Enrique Cobo Chandillo, at line 5.

50 See *id.*

51 See *id.* at line 11.

52 See *id.*

53 See Affidavit of Hector Zambrano Solarte, at line 22.

54 See Affidavit of Carlos Enrique Cobo Chandillo, at line 32.

55 SOUTH WORLD, *supra* note 47.

56 See Affidavit of Carlos Enrique Cobo Chandillo, at line 13; see also Affidavit of Elkin Arley Flor Belalcazar, at line 19.

57 See Affidavit of Elkin Arley Flor Belalcazar, at line 28.

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59 *Id.* at line 11.

60 *Id.*

61 See Affidavit of Elkin Arley Flor Belalcazar, at line 28.

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64 See *id.* at line 16.

65 *Id.*

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67 Affidavit of Carlos Enrique Cobo Chandillo, at line 17.

68 *Id.* at line 19.

69 *Id.*

70 *Id.*

71 *id.*

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75 See E-mail from Felipe Castiblanco Alvarez to Sital Kalantry, April 13, 2018 at 5:06 AM.

76 See E-mail from Felipe Castiblanco Alvarez to Sital Kalantry, April 13, 2018 at 5:06 AM.

77 Google Earth Pro. 2018. *Cerro Tijeras* 2.9544°N, 76.6954°W. 3D map, Water bodies layer, viewed 5 April 2018. <<https://earth.google.com/web/@2.94382598,-76.7127947,1369.30029745a,5218.37753204d,35y,-106.73460263h,45.01815112t,-0r>>.

78 SOUTH WORLD, *supra* note 47.

79 *Id.*

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81 *Id.*

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83 COLOMBIA: A COUNTRY STUDY 84 (Rex A. Hudson ed., 2010).

84 *Id.* at 144.

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86 UNITED NATIONS, *Struggle for survival: Colombia's indigenous people face threat of extinction*, <http://www.un.org/en/events/ten-stories/08/colombia.shtml> [https://perma.cc/JMN9-7XKM].

87 See Alessandro Rampietti, *Colombia's Nasa caught by endless war*, AL JAZEERA (July 29, 2012), <https://www.aljazeera.com/indepth/features/2012/07/20127299180563876.html> [https://perma.cc/2HDA-S3NF].

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89 See *Indigenous Colombians expel army from base in Cauca*, BBC NEWS (July 18, 2012), <http://www.bbc.com/news/world-latin-america-18879601> [https://perma.cc/VRV4-8ZVB].

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91 See Rampietti, *supra* note 87.

92 See *Crisis humanitarian en territorio ancestral de Cerro Tijeras, Norte del Cauca* [Humanitarian crisis in ancestral land of Cerro Tijeras, Norte del Cauca], COLOMBIA INFORMA (Dec. 13, 2017), <http://www.colombiainforma.info/crisis-humanitaria-en-territorio-ancestral-de-cerro-tijeras-norte-del-cauca/> [https://perma.cc/P268-QNYW].

93 See *id.*

94 See Ramirez, *supra* note 44.

95 *Id.*

96 See Affidavit of Hector Zambrano Solarte, at line 26.

97 See Affidavit of Alonso Hilario Guetio Camayo, at line 32.

98 Jasmin Hristov, *Social Class and Ethnicity/ Race in the Dynamics of Indigenous Peasant Movements: The Case of the CRIC in Colombia*, 36 LATIN AM. PERSP. 41, 47–48 (2009); see also *Objetivos—Finalidades* [Obectives—Purposes], Consejo Regional Indigena Del Cauca (CRIC) (July 28, 2009), <http://www.cric-colombia.org/portal/universidad-autonoma-indigena-intercultural-uaii/objetivos-finalidades/> [https://perma.cc/39EE-2JR8].

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100 CELSIA, *supra* note 15.

101 Moreno-Quintero & Selfa, *supra* note 1, at 138.

102 *Id.*

103 *Id.*

104 *Id.* at 137–39.

105 Sentencia T-462A/14, at 41.

106 Alhena Calcedo Fernández, *Vida campesina y modelo de desarrollo: configuraciones de despojo/privilegio en el norte del Cauca* [Peasant Life and Development Model: Configurations of Dispossession/Privilege in Northern Cauca], 53 REV. COLOMB. ANTROPOL. 59, 60 (2017); *see also* Sentencia T-462A/14, at 41.

107 Moreno-Quintero & Selfa, *supra* note 1, at 138.

108 *Id.* According to Moreno-Quintero and Selfa, only sixty percent of the dikes, twenty percent of the drainage channels and six out of twenty-seven planned pumping stations were ever built. *Id.*

109 *Id.* at 138–40.

110 *Id.* at 135, 138, 145.

111 *Id.* at 140.

112 *Id.* at 138.

113 *Id.* at 138–39.

114 *See* Affidavit of Felipe Castiblanco, at lines 41–42.

115 *See id.*, at lines 41–42.

116 *See id.*

117 *See id.*

118 Moreno-Quintero & Selfa, *supra* note 1, at 141.

119 *Id.*

120 Affidavit of Carlos Enrique Cobo Chandillo, at line 7.

121 Moreno-Quintero & Selfa, *supra* note 1, at 144.

122 *Id.*

123 *Id.* at 143–44.

124 *La Salvajina: The Social and Ecological Impact of a Dam*, PBI COLOMBIA (Nov. 29, 2016), <https://pbicolombia.org/2016/11/29/la-salvajina-the-social-and-ecological-impact-of-a-dam/> [<https://perma.cc/7PEG-VM6R>].

125 Michael M. Cernea, *Hydropower Dams and Social Impacts: A Sociological Perspective*, WORLD BANK, 22 (1997), <http://documents.worldbank.org/curated/en/446311468761673943/pdf/multi-page.pdf> [<https://perma.cc/TTL9-27YS>].

126 Affidavit of Felipe Castiblanco, at lines 4–5

127 *Id.* at line 7.

128 *Id.*

129 Affidavit Hector Zambrano, at line 16; Affidavit Jose Leandro Guetio, at line 32; Affidavit Manuel Belalcazar Baltazar, at line 15; Affidavit Rueben Cuetia, at line 5.

130 *Represas: entra la inundación y el desplazamiento* [Dams: between flood and displacement], ECO PORTAL (Aug. 5, 2007), <https://www.ecoport.net/temas-especiales/energias/represas-entre-la-inundacion-y-el-desplazamiento/> [<https://perma.cc/TX2V-YAZB>].

131 1986 Agreement. According to the 1986 Agreement, the following foot bridges were destroyed and were to be replaced by the government: Quebrada Aguialimpia-Tamboral, Marilopita, Pan de azucar, Piedragrande, Minadala, Bocana-La Bodega, and Agua sucia-arayanal.

132 ECO PORTAL, *supra* note 130.

133 BETTINA NG'WENO, TURF WARS: TERRITORY AND CITIZENSHIP IN THE CONTEMPORARY STATE 34 (2007).

134 *Id.* at 35 (2007).

135 *Id.*

136 *See* Sentencia T-462A/14, at 43.

137 *Id.*

138 *Id.*

139 *Id.* at 5.

140 *Id.* at 43.

141 *See id.*

142 *See id.* at 41.

143 *Id.*

144 *See id.*

145 *Id.*

146 *Id.* In early 2010, Celsia—an electrical company under parent company, Grupo Argos—acquired EPSA. *See About Celsia: History*, CELSIA, <http://www.celsia.com/en/about-celsia/history/pager/24400/page/4> (Last visited May 21, 2018) [<https://perma.cc/G9ZP-EVSB>]. Through EPSA, Celsia operates in Colombia in the departments of Valle del Cauca, Cauca, and Tolima with sixteen hydroelectric power plants. *See About Us: Our Company*, CELSIA, <http://www.celsia.com/en/Sub-Menu-Top-en-US/About-Celsia/About-Us> (Last visited May 21, 2018) [<https://perma.cc/8NF5-UK3H>].

147 Sentencia T-462A/14, at 43.

148 *Id.* at 4.

149 *Id.* at 9, 12, 8 (The First Chamber of Criminal Decision in the Tutela Ward of the Superior Court of the Judicial District of Popayan denied the Indigenous communities protection for their human rights in a January 2013 decision. A challenge to the decision was granted on January 31, 2013, and in March of 2013, the Criminal Cassation Chamber of the Supreme Court of Justice affirmed the prior decision. Then June 2013, the Seventh Ward of Tutelage Review ordered several tests to be carried out).

150 CONSTITUCION POLITICA DE COLOMBIA art. 241.

151 Sentencia T-462A/14, at 12.

152 *See id.* at 46.

153 *See id.* at 41.

- 154 *See id.*
- 155 *See id.* at 41–42.
- 156 *See id.* at 42.
- 157 *Id.* . 61–63.
- 158 Corte Constitucional [C.C.] [Constitutional Court], enero 17, 2017, Sentencia T-007/17, (p. 2) (Colom.); *Prior Consultation*, AGENCIA NACIONAL DE MINERIA (2010), https://www.anm.gov.co/sites/default/files/DocumentosAnm/prior_consultation.pdf [<https://perma.cc/QN8S-BREW>]. See also: David Cordero-Heredia, *The Right to Prior Consultation in the Construction of the Plurinational State of Ecuador*, 50 R.J.T. n.s. 191, 248 (2016)
- 159 Corte Constitucional [C.C.] [Constitutional Court], enero 17, 2017, Sentencia T-007/17, (p. 1) (Colom.).
- 160 *See* Sentencia T-462A/14, at 19.
- 161 Corte Constitucional [C.C.] [Constitutional Court], enero 17, 2017, Sentencia T-007/17, (p. 2) (Colom.).
- 162 AGENCIA NACIONAL DE MINERIA, *supra* note 158.
- 163 CONSTITUCION POLITICA DE COLOMBIA [C.P.] art. 330; Sentencia T-462A/14, at 19.
- 164 AGENCIA NACIONAL DE MINERIA, *supra* note 158.
- 165 Sentencia T-462A/14, at 61–62.
- 166 *Id.* at 51.
- 167 *Id.* at 57.
- 168 *Id.*
- 169 *Id.* at 51.
- 170 *Id.*
- 171 *See id.* at 42.
- 172 *See, e.g., id*
- 173 *Id.* at 51–52.
- 174 *Id.* at 25.
- 175 *Id.* at 3.
- 176 *Id.*
- 177 *Id.* at 57.
- 178 *Id.* at 59.
- 179 *Id.*
- 180 *Id.*
- 181 *Id.* at 59, 62.
- 182 *Id.* at 59–60.
- 183 *Id.* at 57.
- 184 *Id.*
- 185 *Id.*; Affidavit of Jose Leandro Guetio Chocue, at line 51. *See also* Affidavit of Elkin Arley Flor Belalcazar, at line 24 (confirming that these poor health post conditions are still the reality today).
- 186 *Id.* at 62.
- 187 Affidavit Eyder Flor Vivas, at line 13; *see* Affidavit of Felipe Castiblanco, at line 17.
- 188 *Cf.* Affidavit of Elkin Arley Flor Belalcazar, at line 23 (stating that the hospital is small, lacks sufficient doctors and nurses, and does not offer any kind of surgery); *see* Affidavit of Felipe Castiblanco, at lines 18–19.
- 189 Sentencia T-462A/14, at. 57.
- 190 *Id.* at 53.
- 191 *Id.* at 56.
- 192 *Id.* at 62.
- 193 *Id.*
- 194 *Id.* at 54.
- 195 *Id.* at 62.
- 196 *Id.* at 61–62.
- 197 Anexo 4-Acta de reunión de consulta previa en la etapa de formulación de acuerdos y protocolización [Annexation 4- Prior Consultation Document concerning the formulation of Agreements and Protocolization], Sept. 22, 2016.
- 198 Sentencia T-462A/14, at 61.
- 199 *Id.* at 63–65.
- 200 *Id.* at 63.
- 201 *Id.* at 64.
- 202 *Id.* at 63–64.
- 203 *Id.* at 64.
- 204 *Id.*
- 205 *Id.*
- 206 *Id.*
- 207 *Id.* at 64–65.
- 208 *Id.* at 65.
- 209 CELSIA, HUMAN RIGHTS POLICY (Approved Oct. 15, 2014), <http://www.celsia.com/Portals/0/contenidos-celsia/nuestra-empresa/policias/human-rights-policy.pdf>.
- 210 *Id.*
- 211 EPSA Reunion sobre transporte fluvial en el marco del cumplimiento a la Sentencia T462A [EPSA Meeting about fluvial transport in light of carrying out the T462 Sentence]
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base y su participacion en estos, 23 Julio 2015 [EPSA Meeting with the PI of Cerro Tijeras to resolve doubts about the survey of the routes and paths, in addition to the presentation of the methodology of the baseline studies and their participation in these, July 23, 2015] in *Registro del Proceso del la Sentencia T/462 A de 2014, Tomo V.*?

214 EPSA letter to Senor Ruben Dario Devia Mora, Alcalde Municipal de Suarez [Municipal Mayor of Suarez]; EPSA letter to Ortega Naraez, Gobernador del Cauca [Governor of Cauca]; EPSA letter to Guido Saul Cordoba, Alcalde Municipal de Morales [Municipal Mayor of Morales]; EPSA letter to Jose Saul Guetio (governor of Parcialidad Indígena de Cerro Tijeras Suarez - Cauca).

215 Anexo 4-Acta de reunión de consulta previa en la etapa de formulación de acuerdos y protocolización [Annexation 4- Prior Consultation Document concerning the formulation of Agreements and Protocolization], Sept. 22, 2016.

216 *Id.* at 17, 28, 30.

217 *Id.* at 29.

218 *Id.* at 29, 31.

219 CELSIA, *supra* note 15.

220 *Id.*

221 *Id.*

222 *Id.*

223 *See* Affidavit of Felipe Castiblanco, at line 21.

224 *See id.*

225 *See id.* at line 27.

226 *See id.*

227 *See id.* at line 15.

228 *See id.* at line 16.

229 Affidavit of Carlos Enrique Cobo Chandillo, at line 28.

230 *See* William Marion Gibson, *International Law and Colombian Constitutionalism: A Note on Monism*, 36 AM. J. INT'L L. 614, 614 (1942).

231 CONSTITUCIÓN POLÍTICA DE COLOMBIA [C.P.] art. 93.

232 *See* Gibson, *supra* note 230, at 614, 619.

233 SIGNATORIES AND RATIFICATIONS, A-52: ADDITIONAL PROTOCOL TO THE AMERICAN CONVENTION ON HUMAN RIGHTS IN THE AREA OF ECONOMIC, SOCIAL, AND CULTURAL RIGHTS "PROTOCOL OF SAN SALVADOR," (Nov. 11, 1988), <http://www.oas.org/juridico/english/sigs/a-52.html> [https://perma.cc/J7FU-AVAE].

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235 *See id.* art. 13.

236 *Id.* art. 11.

237 Petition to Inter-American Commission (citing Tara Melish at 95).

238 *See* 1986 Agreement, at 6.

239 *See generally* 1986 Agreement.

240 *See, e.g.*, Affidavit of Hector Zambrano Solarte, at line 76.

241 Affidavit of Jose Leandro Guetio Chocue, at line 16.

242 Katarina Tomaševski, *Human Rights Obligations: Making Education Available, Accessible, Acceptable and Adaptable*, 3 RIGHT EDUC. PRIMERS 1, 13 (2001), http://www.right-to-education.org/sites/right-to-education.org/files/resource-attachments/Tomas-evski_Primer%203.pdf [https://perma.cc/28D8-P42H].

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244 Tomaševski, *supra* note 242, at 1, 13.

245 Affidavit of Elkin Arley Flor Belalcazar, at line 36.

246 *Availability*, RIGHT EDUC. PROJECT (2008), <http://r2e.gn.apc.org/node/227> [https://perma.cc/VB2S-L7HX].

247 *Id.*

248 Affidavit of Hector Zambrano, at line 5.

249 Affidavit of Alonso Hilario Guetio Camayo, at lines 8–9, 32.

250 Affidavit of Jose Olmedo Baicue, at line 5; Affidavit of Ruben Cuetia, at line 7.

251 *See* Affidavit of Alonso Hilario Guetio Camayo, at line 32.

252 Affidavit of Hector Zambrano, at line 16; Affidavit of Jose Leandro Guetio, at line 32; Affidavit of Manuel Belalcazar Baltazar, at line 15; Affidavit of Rueben Cuetia, at line 5.

253 Affidavit of Ruben Cuetia, at line 4;

254 Affidavit of Hector Zambrano, at line 14.

255 Affidavit of Jose Olmedo Baicue, at line 5.

256 Affidavit of Manuel Belalcazar Baltazar, at line 14; Affidavit of Hector Zambrano, at line 20.

257 Affidavit of Alonse Hilario Guetio Camayo, at line 8–9 ; Affidavit of Hector Zambrano, at line 20.

258 Affidavit of Jose Olmedo Baicue line 4.

259 *Id.*

260 *Id.*

261 Affidavit of Jose Olmedo Baicue, at line 4.

262 *Id.* at line 38.

263 *Id.* at line 5.

264 *Id.* at line 5, 41.

265 *Id.* at line 7.

266 Affidavit of Hector Zambrano, at lines 17–18; Affidavit of Jose Leandro Guetio, at line 26.

267 Affidavit Jose Olmedo Baicue, at line 41.

268 *Accessibility*, RIGHT EDUC. PROJECT (2008), <http://r2e.gn.apc.org/node/228> [https://perma.cc/VK32-PAAX].

269 *Id.*

270 Affidavit of Hector Zambrano, at line 26; Affidavit of Rueben Cuetia, at line 14; Affidavit of Jose Olmedo Baicue, at line 13.

271 Affidavit of Jose Olmedo Baicue, at line 12, 27.

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- 273 *Id.* at line 23.
- 274 *Id.* at lines 38–39.
- 275 *Acceptability*, RIGHT EDUC. PROJECT (2008), <http://r2e.gn.apc.org/node/229> [<http://r2e.gn.apc.org/node/229>].
- 276 *Id.*
- 277 Affidavit of Jose Olmedo Baicue, at line 2.
- 278 Affidavit of Rueben Cuetia, at line 10; Affidavit of Hector Zambrano, at line 24.
- 279 Affidavit of Hector Zambrano, at line 24.
- 280 Affidavit of Jose Olmedo Baicue, at line 32; Affidavit of Rueben Cuetia, at line 16; *see* Alonso Hilario Guetio Camayo, at line 28.
- 281 Affidavit of Jose Olmedo Baicue, at line 16.
- 282 *See id.* at line 9.
- 283 *Cf. id.* (stating that he is bilingual in Spanish and Nasa Yuwe since birth).
- 284 *See, e.g. id.* at lines 19–20.
- 285 Affidavit of Jose Leandro Soscue Puyo, Cultural Promoter, at line 3.
- 286 *See* Affidavit of Jose Olmedo Baicu, at line 9.
- 287 *See* Affidavit of Elkin Arley Flor Belalcazar, at line 32.
- 288 *See id.* at line 35.
- 289 *See* Affidavit of Jose Olmedo Baicu, at line 20.
- 290 *See id.* at line 31.
- 291 *Cf.* Affidavit of Carlos Enrique Cobo Chandillo, at line 8 (stating that “What the state ought to do is, in terms of education, respect the indigenous way of handling things. Because what the indigenous handles is first of all that the child not abandon their territory. This is because we know that in the moment the child leaves, the territory starts losing its roots. Because the teachings that the national government has outside of our lands is very different from what we have.”)
- 292 Affidavit of Rueben Cuetia, at line 19.
- 293 Affidavit of Jose Olmedo Baicue, at line 9; *see* Affidavit of Alonso Hilario Guetio Camayo at line 20.
- 294 Affidavit of Rueben Cuetia, at line 19.
- 295 *See* Affidavit of Elkin Arley Flor Belalcazar, at line 27.
- 296 *See id.*
- 297 *Cf.* Heriberto Galeano Trilleras, et. al, *supra* note 66 at 10.
- 298 *Adaptability*, RIGHT EDUC. PROJECT (2008), <http://r2e.gn.apc.org/node/230> [<http://r2e.gn.apc.org/node/230>].
- 299 Affidavit of Jose Olmedo Baicue, at line 14
- 300 Affidavit of Marino Quiguanas Cuetia, at line 20.
- 301 *Id.*
- 302 Affidavit of Rueben Cuetia, at line 16; Affidavit of Hector Zambrano, at line 29.
- 303 Affidavit of Jose Olmedo Baicue, at line 28; *see* Affidavit of Alonso Hilario Guetio Camayo, at line 18.
- 304 Affidavit of Jose Olmedo Baicue, at line 28.
- 305 *Id.*
- 306 *See* Notes from Interview of Promotor de Salud.
- 307 *See* Affidavit of Hector Zambrano Solarte, at line 35.
- 308 *See* Affidavit of Elkin Arley Flor Belalcazar, at line 18; *see also* Notes from Interview of Promotor de Salud.
- 309 *See* Affidavit of Elkin Arley Flor Belalcazar, at line 18.
- 310 *See* Affidavit of Hector Zambrano Solarte, at line 35.
- 311 *See* Notes from Interview of Promotor de Salud.
- 312 *See* Affidavit of Hector Zambrano Solarte, at line 36.
- 313 *See id.* at line 34.
- 314 *See, e.g., id.* at line 37.
- 315 *See, e.g., id.* at line 34.
- 316 Affidavit of Meraldino Caviche Ulchar, at line 10.
- 317 *Id.* at line 5; *Entidades Promotoras de salud - EPS - conforme a la Ley 100 de 1993*, ACTUALICESE, <https://actualicese.com/2016/10/10/entidades-promotoras-de-salud-eps-conforme-a-la-ley-100-de-1993/> (last visited Apr. 20, 2018) [<https://perma.cc/62FZ-XXF7>].
- 318 Affidavit of Elkin Arley Flor Belalcazar, at line 24; *see also* Notes from Interview of Promotor de Salud.
- 319 *See* Affidavit of Elkin Arley Flor Belalcazar, at line 24; *see also* Notes from Interview of Promotor de Salud.
- 320 *See* Notes from Interview of Promotor de Salud.
- 321 *See id.*
- 322 *See id.*
- 323 *See* Affidavit of Elkin Arley Flor Belalcazar, at line 23
- 324 Affidavit of Elkin Arley Flor Belalcazar, at line 3.
- 325 Interview of Beatriz Suaza, Employee at Hospital de Municipio Suarez (Apr. 5, 2018), at 1(a)–(b).
- 326 *Cf.* Affidavit of Elkin Arley Flor Belalcazar, at line 23 (stating that the hospital is small, lacks sufficient doctors and nurses, and does not offer any kind of surgery).
- 327 Interview of Beatriz Suaza, Employee at Hospital de Municipio Suarez (Apr. 5, 2018), at 1(i).
- 328 *See* Notes from Interview with Promotor de Salud.
- 329 *See id.*
- 330 *See id.*
- 331 Affidavit of Leonilde Camayo Guetio, at line 5.
- 332 Affidavit of Meraldino Caviche Ulchar, at line 14.
- 333 *See id.* at line 3.
- 334 *See, e.g.,* Affidavit of Jose Leandro Guetio Chocue, at line 51. *See also* Affidavit of Elkin Arley Flor Belalcazar, at line 24

(explaining that in the vereda of Alta Mira, for example, there is one health post that consists of one small house with a single bed and one promotor of health).

335 See Affidavit of Elkin Arley Flor Belalcazar, at line 18.

336 See, e.g., Notes from Interview with Promotor de Salud.

337 See Affidavit of Hector Zambrano Solarte, at lines 34–37.

338 See *id.* at line 39; Affidavit of Eyder Flor Vivas, at line 6.

339 Affidavit of Jose Leandro Soscue Puyo, Promotor Cultural, at line 22.

340 See Affidavit of Elkin Arley Flor Belalcazar, at line 20; see Affidavit Eyder Flor Vivas at line 10; see Affidavit of Leonilde Camayo Guetio, at line 19.

341 See Affidavit of Hector Zambrano Solarte, at lines 40–41. Cf. Affidavit of Felipe Castiblanco, at line 13 (describing how the dam has killed-off many of the local fish, leaving people to eat canned fish instead of fresh catch).

342 See Affidavit of Felipe Castiblanco, at lines 11, 14.

343 See *id.* at line 9.

344 See *id.* at line 9.

345 See *id.* at line 11.

346 See *id.* at line 12.

347 See *id.*

348 See *id.*, at line 13.

349 See Affidavit of Carlos Enrique Cobo Chandillo, at line 25.

350 See Interview of Beatriz Suaza, Employee at Hospital de Municipio Suarez (Apr. 5, 2018), at 1(j)–(l). See also Affidavit of Meraldino Caviche Ulchar, at line 15 (stating that ambulances are really only reserved for pregnant women and children).

351 See, e.g., Affidavit of Elkin Arley Flor Belalcazar, at line 25.

352 See Affidavit of Felipe Castiblanco, at line 22.

353 See Notes from Interview of Promotor de Salud.

354 See Affidavit of Elkin Arley Flor Belalcazar, at line 25.

355 Affidavit of Meraldino Caviche Ulchar, at line 2.

356 *Id.* at line 26.

357 Affidavit of Eyder Flor Vivas, at line 6.

358 Affidavit of Meraldino Caviche Ulchar, at line 3.

359 Affidavit of Leonilde Camayo Guetio, at line 7.

360 *Id.* at line 15.

361 Affidavit of Meraldino Caviche Ulchar, at line 24.

362 *Id.* at line 23.

363 *Id.* at line 27.

364 *Id.* at line 28.

365 *Id.* at line 27.

366 Affidavit of Eyder Flor Vivas, at line 6; Affidavit of Leonilde Camayo Guetio, at line 15.

367 Affidavit of Eyder Flor Vivas, at line 17.

368 See Affidavit of Felipe Castiblanco, at line 16.

369 See *id.*

370 See *id.*

371 See *id.* at line 15.

372 See Affidavit of Olga del Carmen Araujo Casanova, at line 9.

373 See Affidavit of Felipe Castiblanco, at line 15.

374 See Affidavit of Olga del Carmen Araujo Casanova, at line 4.

375 Affidavit of Eyder Flor Vivas, at line 13. During the dry season, sometimes the planchón is not even able to reach its final destination in Suarez. See Affidavit of Felipe Castiblanco, at line 17.

376 Affidavit of Eyder Flor Vivas, at line 13.

377 See Affidavit of Olga del Carmen Araujo Casanova, at line 6.

378 The Cerro Tijeras indigenous community only has access to one port. See Affidavit of Eyder Flor Vivas, at line 13.

379 Affidavit of Elkin Arley Flor Belalcazar at line 11.

380 *Id.* at line 12. See also Affidavit of Olga del Carmen Araujo Casanova, at line 9 (explaining that on certain days (i.e. market days) the planchón readily fills up with people and makes the trip quite dangerous).

381 See Affidavit of Olga del Carmen Araujo Casanova, at line 4.

382 Affidavit of Elkin Arley Flor Belalcazar, at line 13.

383 *Id.* at line 15.

384 Affidavit of Elkin Arley Flor Belalcazar, at line 16.

385 *Id.* at line 17. See also Affidavit of Olga del Carmen Araujo Casanova, at line 10.

386 See Affidavit of Felipe Castiblanco, at line 18.

387 See *id.* at lines 18–19.

388 See E-mail from Felipe Castiblanco to Sital Kalantry, April 13, 2018 at 5:06 AM.

389 See E-mail from Felipe Castiblanco to Sital Kalantry, April 24, 2018 at 12:12 AM. Castiblanco, a biologist who consults with the Cerro Tijeras indigenous community took this photograph on April 23, 2018. He describes in his e-mail that this is the lowest water level he has ever seen in the river since he started working with the community in 2016.

390 Affidavit of Eyder Flor Vivas, at line 14.

391 For some veredas, such as Matecaña, for example, it is impossible to arrive by Chiva. See Affidavit of Olga del Carmen Araujo Casanova, at line 14.

392 See *id.* at line 12.

393 Affidavit of Paula Daniela Cala, at line 6.

394 *Id.*

395 *Id.*

396 Affidavit of Leonilde Camayo Guetio, at line 33.

397 *Id.*

398 *Id.*

399 Affidavit of Eyder Flor Vivas, at line 1, 14.

400 *See* Affidavit of Leonilde Camayo Guetio, at line 32.

401 Affidavit of Paula Daniela Cala, at line 8.

402 *Id.*

403 *Id.*

404 Affidavit of Leonilde Camayo Guetio, at line 32.

405 *See id.* at line 32.

406 Google Earth Pro. 2018. *Cerro Tijeras* 2.9544"N, 76.6954"W. 3D map, Water bodies layer, viewed 5 April 2018. <<https://earth.google.com/web/@2.94382598,-76.7127947,1369.30029745a,5218.37753204d,35y,-106.73460263h,45.01815112t,-0r>>.

407 *See* Affidavit of Jose Olmedo Baicue, at line 32; Affidavit of Rueben Cuetia, at line 16; *see* Affidavit of Alonso Hilario Guetio Camayo, at line 28.

408 *See* Affidavit of Jose Leandro Guetio Chocue, at line 10.

409 *See* Council Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters Article 4, Regulation 1215/2912.

410 *See About the UN Global Compact*, UN GLOBAL COMPACT, <https://www.unglobalcompact.org/about/faq> (last visited May. 23, 2018) [<https://perma.cc/M933-ZYBQ>]; *see also* Maria Ligia Mantilla Jaimes, *Responsibilidad Social Empresarial y Población Indígena Colombiana*, 20 SERIE DOCUMENTOS DE INVESTIGACIÓN EN DERECHO 1, 54 (2012).

411 *See* VÉRONIQUE VAN DER PLANCKE ET AL., INT'L FED'N OF HUMAN RIGHTS [FIDH], CORPORATE ACCOUNTABILITY FOR HUMAN RIGHTS ABUSES: A GUIDE FOR VICTIMS AND NGOs ON RECOURSE MECHANISMS 385 (Antoine Bernard ed., 3d ed. 2016), <https://www.fidh.org/en/issues/globalisation-human-rights/business-and-human-rights/updated-version-corporate-accountability-for-human-rights-abuses-a> [<https://perma.cc/5T62-MM5L>].

