

Annex 2 – Case of Alto Andágueda

Almost six years after the issuance of Decree Law 4633 within the framework of Law 1448, only 5 judicial sentences have been issued which restore territorial rights to indigenous peoples. The first sentence for ethnic restitution was granted to the Embera Katío indigenous territory (*resguardo*) known as Tahami in the Alto Andágueda region. The Supreme Court of Antioquia specialised in land restitution issued Sentence 007 of September 23, 2014, the first sentence in the process for the restitution of territorial rights to ethnic peoples. This case represented an important decision that is without doubt emblematic, since the court decided to protect the effective enjoyment of territorial rights, and threw out the oppositions filed by mining companies, thereby maintaining the orders of the precautionary measures granted by a Judge in Quibdó, and complying with agreements for the return of the indigenous people to their lands.

In the current process of transitional justice, the Tahami territory in Alto Andágueda was the first indigenous case ordering the restitution of territorial rights via a precautionary measure from September 4, 2013 granted by the first civil circuit court in Quibdó specialised in land restitution. This protection included a series of necessary measures such as the suspension of the study and processing of mining title requests that overlapped with the indigenous territory borders, the suspension of the concession contracts and the recovery of the areas of the territory that had been exploited by the mining companies. Sentence 007 of 2014 in favour of the Emberá People from Alto Andágueda, ordered 32 measures linked to 38 institutions at the national and regional level, ordered the suspension of all the mining titles and those that were still being processed and did not accept the oppositions presented by the companies Continental Gold Limited Sucursal Colombia, Exploraciones Chocó Colombia S.A.S and Anglogold Ashanti and, by the National Mining Agency and the Public Ministry. Six years after the issuance of Decree Law 4633 of 2011 on Indigenous Victims, the Alto Andágueda case shows the shortcomings of the policy for the restitution of territorial rights. After 3 years since the issuance of this sentence, there is no significant progress in compliance with the orders issued by the land restitution judge, since compliance with the orders does not exceed 16%, showing structural failures in the response of the institutions. Three follow-up hearings have been held to date by the Superior Court of Antioquia Specialised in Land Restitution on the level of compliance with the orders. At each hearing the high level of non-compliance by the responsible institutions has been demonstrated. At the territorial level, the breach is much greater: both the municipality of Bagadó and the Chocó Governor's Office show the highest level of non-compliance.