



**Responsible Land Governance:  
Towards an Evidence Based Approach**  
ANNUAL WORLD BANK CONFERENCE ON LAND AND POVERTY  
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**ACCESS TO LAND AS A MEASURE FOR THE COMPREHENSIVE REPARATION OF  
INDIGENOUS PEOPLES VICTIMS OF THE ARMED CONFLICT IN COLOMBIA: THE CASE  
OF THE YUPKA PEOPLE IN CESAR, COLOMBIA"**

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## Summary

The internal armed conflict in Colombia has not just perpetuated the land problems experienced by indigenous people; it has also resulted in serious consequences with regard to their ability to survive, by putting their culture, environment and identity at risk, which are specific to each indigenous people. Thus, these violations of their fundamental rights have had severe implications for the collective land rights of each of these peoples.

The Serranía del Perijá mountain range is located in the northern area of Colombia, in the border with Venezuela. The Yukpa people, victims of the internal armed conflict, have traditionally inhabited this area. The Land Restitution Unit (LRU) of Colombia initially conducted three characterization/ diagnostic studies on land and ethnic rights. In 2016, USAID's Land and Rural Development Program (LRDP) supported three additional studies and issued a series of recommendations on how to improve the methodology. These three studies included all of the Yukpa community, which became the first indigenous people to complete the administrative phase of the restitution process. These characterization studies are to serve as the main input for transitional justice to make decisions regarding ethnic community patients.

## Keywords:

Indigenous peoples, ethnic territories, armed conflict, ethnic restitution, victims.



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### INTRODUCTION.

The Land Restitution Unit of Colombia (LRU), in compliance with its mission of being "a key actor in the revitalization of participatory spaces for ethnic groups, so that they may exercise their right to land restitution", began a series of preliminary studies in 2013 in order to assess the level of impact of the internal armed conflict on the Yukpa reserves located in Serranía de Perijá, in the Colombian department of Cesar. As a result of these studies, the LRU concluded that said community required for land restitution measures to be implemented. As a consequence, the Land Restitution Unit initially conducted three characterization studies to determine the impact on the region. In 2016, USAID's Land and Rural Development Program (LRDP) supported three additional characterization studies for the same amount of reserves. Thus, the Yukpa people became the first indigenous people to complete the administrative phase of the restitution process, and to be prepared to initiate the judicial process.

In Colombia, there are about 102 different indigenous peoples. Most of them are made up of several communities, as a result of which there are 900 indigenous reserves and an indefinite number of ancestral territories awaiting to be declared indigenous reserves. In general, indigenous peoples have severely suffered the many consequences of the internal armed conflict, as will be detailed in this paper. Many of them have lost their lands, and many lands have been affected by the conflict, thus making them the object of land restitution.

According to Colombian law (specifically, law 1448 of 2011), the restitution procedure has an administrative phase, which is to be carried out by the Land Restitution Unit (LRU), who is to identify all information regarding the community and the impact it suffered. Subsequently, the LRU is to send the case to the specialized restitution judges, who, based on the situation described in the characterization document and the claims made by the affected indigenous communities, will issue a final ruling and orders to the State, or persons or companies who took over the claimed territory, or who are responsible for the impact caused on the community, in the context of the armed conflict.

In the face of so many cases (ethnic territories account for more than 30% of the total national territory) and the pervasiveness of the internal armed conflict, Colombian institutions have had to prioritize and select the most representative cases, or the claimants who have been victimized the worst. As a result,



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they had not been able to complete the administrative restitution process for any indigenous peoples, the Yukpa people being the first to complete said process in 2016.

This paper has the purpose of presenting the case of the aforementioned restitution of the Yupka people, who have been fully characterized by the Land Restitution Unit (LRU) with the support of USAID's Land and Rural Development Program. This paper consists of two parts: a first part, which presents the context of the internal armed conflict in Colombia, and its corresponding public policies; and a second part which describes what occurred with the Yupka peoples and the ways in which they were affected, and finishes by mentioning the challenges faced by Colombian institutions and the Colombian State in general in their mission to effectively enforce the land rights of indigenous communities.



## **1) ETHNIC TERRITORIES AND THE INTERNAL ARMED CONFLICT IN COLOMBIA**

Having spanned several decades, the internal armed conflict in Colombia is a complex one, which has changed over time and varies depending on the different regions of the country. Therefore, a general characterization would be inaccurate and would pose several difficulties in the process of establishing a historical account of what happened. Nevertheless, there are several objective and general facts that could help us understand the impact that the armed conflict had on ethnic groups. These facts will be a starting point for us to shed light on the many ways that indigenous peoples were affected by the conflict in Colombia, and the public policies that have been issued as a result in recent years. Following is a brief introduction to the Colombian armed conflict.

Firstly, it is important to mention that the source of the current conflict can be traced back to the end of partisan violence of the 1950s, which gave birth to leftist guerillas and the armed conflict in rural areas of Colombia in the 1960s and 1970s. Up until then, indigenous communities were not organized under western structures, but rather had their own internal and ancestral forms of organization, which were mainly made up of traditional authorities, indigenous guards and other similar institutions (Archila, 2001).

According to several authors (Villa & Houghton, 2004, p. 27), indigenous territories appeared during that time as a form of collective appropriation in which peoples, in the process of building their identity, recognized the land they occupied as territories in which all of their rights converged. Thus "indigenous reserves"<sup>1</sup> were created, which are recognized by the Colombian government and would later on become the basis for the currently existing reservations. But beyond that, this was the starting point for peoples' struggle for their collective right to land, given that these reserves did not entail the fulfillment of their right of ownership, but rather simply the recognition of the existence of a community in a given area.

In the 1970s, indigenous peoples began organizing along with campesino (peasant) movements, specifically under a movement called Asociación Nacional de Usuarios Campesinos (National Association of Peasant Users, or ANUC for its acronym in Spanish). Nevertheless, a severe rift took place between the two groups due to differences in their cultural identity and organizational objectives, which led to

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<sup>1</sup> It is worth clarifying that as early as the colonial era, the Spanish Crown had already recognized indigenous peoples' ownership of land, under the legal concept of "colonial reserves".



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indigenous groups creating their own organizations (CRIC, 1978) and undertaking a process to consolidate their struggle for their rights, one which was based on four main principles: land, identity, autonomy and self-governance.

In the 1980s, three phenomena took place simultaneously: the expansion of guerrillas, the birth of the first paramilitary groups (National Center for Historical Memory, 2013, p. 135) and the consolidation of the indigenous movement at the national and regional levels (Sanchez, 2010, p. 65). These events were taking place in different rural areas of the country but with similar characteristics. Ancestral indigenous territories have traditionally been located in jungle and mountain areas, places that are hard to access and thus strategic for the guerrillas and their subversive and military purposes.

These special areas of interest for the guerrillas and indigenous groups overlapping, these territories were also the first to be titled to indigenous groups under the legal figure currently known as "indigenous reservations", which for the first time recognized these communities their right to collective ownership and land titles. Hence, many areas titled during this period (Houghton, 2008, p. 90) were the main stage for the armed conflict. A clear example of this is the Páez indigenous reservation of Gaitania, located in the southern area of the department of Tolima, the exact birth place of the greatest guerilla of Colombia, the Revolutionary Armed Forces of Colombia (FARC) - notwithstanding the fact that they had no connections with this indigenous group.

Up until that moment, the armed conflict was considered to be a low-intensity conflict<sup>2</sup>, as it was only towards the end of the 1980s that the war intensified. This escalation was the result of a surge in paramilitary groups as a consequence of State policies that promoted and encouraged individuals to create the so-called "self-defense groups", which is a demonstrated fact (Inter-American Court of Human Rights, 2004) that brought about an international liability sentence against the Colombian government.

As of that moment, a new political transformation process initiated in Colombia (a new Political Constitution was created in 1991), as did new dynamics in the armed conflict; some guerrillas demobilized, but others kept growing, and mass violations of human rights worsened throughout the

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<sup>2</sup>According to the General Report on Historical Memory (National Center for Historical Memory, 2013, page 42), the Colombian conflict has been prolonged and has worsened. Additionally, upon analysis of the overall internal armed conflict from its birth onwards, this report concluded that although the different forms of violence that took place were of low intensity, they were frequent; they often times involved targeted killings, events which were overlooked by the media, but which were persistent. Similarly, other types of violence occurred consistently and chronically.



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country, as a result of the confrontations between armed actors, which affected civilian populations as well.

However, it was in 1996 that the worse humanitarian tragedy in the country took place (National Center for Historical Memory, 2013, p. 156). Different paramilitary groups united under a national structure which came to be known as Autodefensas Unidas de Colombia (United Self-Defense Forces of Colombia, or AUC for its acronym in Spanish), which, combined with the passiveness of the State (Inter-american Court of human rights, 2005) allowed for the takeover of towns, massacres and forced displacements by the AUC in traditional guerrilla-controlled areas. Historically, this was the most violent time in the history of Colombia.

The source of the conflict during this period (National Center for Historical Memory, 2016, p. 325) was the control over large areas of the country by forcefully displacing entire populations, with the purpose of changing the use of land, and switching from an ethnic or self-subsistence production model to a production model based on cattle ranching, the exploitation of natural resources, agro-industry or a mix thereof.

As a result of the internal armed conflict (National Center of Historical Memory, 2012), 218,094 persons died between 1958 and 2012, out of which 81% were civilians (177,307 persons). Also, between 1985 and 2012, 1,982 massacres took place, which took the lives of 11,751 people. Additionally, during that same period, 5,712,506 were registered, most of which were victims of forced displacement, 4,744,046 to be precise.

In 2011, the Colombian government took a radical turn in terms of their policies and vision regarding the armed conflict and its victims with the issuance of Law 1448 of 2011, also known as the "Land Restitution and Victims Law", which granted and reaffirmed rights for this population based on international standards of comprehensive reparation and land restitution<sup>3</sup>, taking into account that most of the victims of the conflict were victims of displacement.

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<sup>3</sup>According to the Inter-American Court of Human Rights, these are: Assistance, humanitarian emergency care, compensation, redress, non-repetition guarantees, symbolic measures of historical memory and satisfaction. (Inter-American Court of Human Rights, 2004)





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### 1.1. BACKGROUND AND DIFFERENTIAL IMPACT ON INDIGENOUS PEOPLE

Upon outlining a general overview of the armed conflict in very brief and concise terms, we proceed to discuss how it generated an impact specifically on indigenous communities. The center of historical memory has produced a comprehensive report on the conflict and within said document, in terms of figures, how Afro-Colombians and indigenous people have been abused:

*"The impact of the internal armed conflict over the indigenous population is alarming. According to UNHCR data, indigenous people represent 2.74% of the Colombian population, and 3.4% of the internally displaced population, for a total of 106,562 displaced individuals between 1997 and 2011. The United Nations Human Development Report notes that between 1996 and 2009, 1190 indigenous people were killed. These figures become more dramatic when you consider that, as stated by the ONIC, 102 indigenous communities are at risk of disappearing, of which 32 have less than 500 people "* (National Center for Historical Memory, 2013, p. 278)

Considering this background, the main question is the reason for the magnitude of the violation to human rights in the indigenous population, given that it is a minority in the country, and they have permanently been disconnected from armed actors and since 1970 have been self-declared as autonomous (CRIC, 1978, p. 25) with regards to the struggle for power that the guerrilla, paramilitaries and the army have held in different parts of the country.

To address this question, it is important to clarify that the notion of space, place and land is special and different for indigenous people; the territory is not only a place where they live and grow crops, but it is directly related to nature or Mother Earth, which must be in full harmony with the community. (Inter-American Commission on Human Rights, 2010, p. 20).

In this sense, the right to land is not only related to the demarcation and titling, but it rather implies the possibility that the community can live in harmony with natural resources, or put another way, that nature and its primary cycles are in balance with their ancestral cultural practices, so that the territory becomes a living entity, which just as the community, is entitled to its own rights.





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This fully coincides with the first forms of recognition of rights by the State for so-called "indigenous reserves", which had similar objectives as natural reserves, as they were based on the fact that indigenous people have sustainable practices and have proven to be good caregivers of natural resources throughout time. More than a sustainable care economy, these communities have a cultural notion that unlike the Western perspective, has not separated society and environment, therefore, the fate of Mother Earth, will be the fate of the community.

This is why the continuity of cultural traditions depends on the existence of nature's health, therefore if for some reason, the territory is impacted, the natural balance it has with the community becomes unbalanced, traditional cultural aspects are lost and the community loses the elements that build its identity as such, and that ultimately, is the added value of cultural diversity.

Therefore, the territory is the element that allows confluence of all ethnic rights, and in this case, the community may not even have been forcibly displaced, but if during the armed conflict it lost its cultural practices or access to natural resources, it is considered to be a victim community that is at risk of survival and therefore is subject to restitution and reparation.

However, this balance between culture-nature-community, is totally fragile and usually goes into shock when communities establish contact with the West and with the monetary model of utilization of natural resources, something that in Colombia's case is much more aggressive because this is not just about an intercultural impact, but it is rather absolutely aggressive, armed and violent. The mere fact of the presence of armed actors has been listed as harmful to the rights of communities, (Inter-American Commission on Human Rights, 2015, p. 167) as well as the alteration of sacred sites (as those for payment, worship, or communication with spirits) involves limiting the cosmovision of each community on its territory.

In Colombia, indigenous communities receive far greater pressure when compared to the rest of the population, because their territories hold the vast majority of natural resources that can generate economic benefits to illegal armed groups and thus there are greater interests of armed actors to control these territories. Being an armed conflict of such duration, guerrillas and paramilitaries have generated lucrative extractive economies that have not only made the armed conflict more lasting, but have also generated



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large changes in the territories and in traditional economies of communities, affecting their ethnic development projects forever.

In this regard, it is common to find ethnic territories with presence of illegal mining, single crop farming (e.g. illicit crops), deforested areas for extensive grazing, dried or modified rivers to feed irrigation districts or mineral processing, among others. There have even been cases of legal industries that have taken advantage of the forced displacement of indigenous people and the presence of armed groups in the area, to grow their industries.

Before the entry of these new economic models of exploitation of natural resources, communities did not have an exchange model based on the currency, but rather on bartering (exchange of products in kind) or direct consumption from traditional practices such as hunting and fishing. Upon the inclusion of third parties or legal or illegal businesses, communities become dependent on holding money as a survival mechanism, given that they change their traditional practices. An example of this lies primarily in the territories where mining enters, since people end up working in the mine and depending on income, something that in turn generates differences within the community between those who agree and those who do not agree, with new extractive activities.

This type of modification in the territories, can often be accompanied with accusations that have been made against indigenous leaders that belong to armed groups, accusations which are based on the presence of guerrilla in ethnic territories. (Villa & Houghton, 2004, p. 87) As explained above, such presence is not due to ideological affinities but rather war strategies and hiding in mountains and forests, therefore, indigenous people have been claiming for many years, that these accusations are not only malicious but also put them at risk of death, a situation that becomes very obvious when you look at the number of indigenous leaders killed in the armed conflict.

Besides being a violation of human rights for the family, the killing of leaders or traditional authorities ends up being a violation for the whole community, because their organizational schemes or spiritual vision end up being severed and permanently harmed. A community without authority is a disorientated community with its political project difficult to achieve without cohesion and without the possibility of demanding their rights.



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Another situation that arises is the lack of recognition of the prior consultation (*consulta previa*), especially in cases where there are interpretative doubts on compulsory nature of the prior consultation, or where the community is displaced at the time the project is carried out. It has been very common in most indigenous reserves to find mining titles granted to different companies and issued in Bogota, but on which there was no prior consultation carried out.

All these situations are worse for communities that have not been constituted as indigenous reserves, or have such a resolution but only covering part of their territory. Although, according to national standards and Convention 169 of the ILO, communities own their territories even if they don't have such resolution (the property is given by ancestry) the recognition of the State ends up being an absolutely necessary practice for the effective enjoyment of land rights, so much so, that in the Inter-American Human rights system, the right to land demarcation has been established as an international standard. (Inter-American Commission on Human Rights, 2010, p. 45) An example of this is the Yukpa case as discussed in the second part of this writing.

Over the past 25 years, the State has been constituting reserves across the country, and about 30% of the national territory has become recognized as indigenous communities, however, most people have the need to extend or mark the boundaries of their land, therefore, the effective enjoyment of rights will depend on the level of formalization that the government can advance. The vast majority of indigenous territories with titling overlap with other protected areas such as National Parks, Areas of Forest Reserves and moors among others, given that their purpose is fundamentally environmental, which generates no legal conflict of tenure.

### **1.2. PUBLIC POLICY ON RESTITUTION OF ETHNIC TERRITORIES**

Given this set of complexities, the public policy should take into account all possible damage variables to land rights and sufficient flexibility to be applicable to the 102 different cosmovisions of indigenous people of Colombia.

In this regard, in 2009, the Constitutional Court of Colombia issued a series of verdicts that stated that all policies to assist the displaced population were insufficient and would perpetuate the status of victims of these people, and thus ordered the government to reformulate all existing policies and institutions to



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recognize international standards of comprehensive reparation, investigation of violations of human rights and their corresponding sanctions.

In the same way, but for indigenous people, the Constitutional Court generated specific orders through Ruling 004 of 2009, (Constitutional Court of Colombia, 2009) which makes a description of the main ways in which the fundamental rights of various indigenous people in Colombia have been violated, and specifies that 35 communities are at risk of ceasing to exist and therefore urges the government to take urgent action, in addition to public general policies. This statement is very important because it recognizes that indigenous people have suffered the armed conflict in special and aggravated ways when compared to the rest of the population, which seriously affects the cultural diversity of the nation, an aspect that is the cornerstone of what characterizes Colombia since its establishment in 1991.

Over the next three years, the institutions failed to adapt and formulate a public policy that met the requirements of the Ruling, however, in 2011 there was an important milestone in the country; the issuance of Act 1448 of 2011 aimed at regulating everything related with care, humanitarian assistance, comprehensive reparation and land restitution of farmers, but it did not regulate anything regarding the indigenous communities, but rather empowered the government to issue a specialized standard subject to prior consultation (Colombian Republic Congress, 2011, art. 205)

Pursuant to the above, the first process in Colombian history of prior consultation over a National Act began; to this end, indigenous organizations proposed a standard language, and the government proposed another, both texts were agreed and then taken to all regions of the country to be consulted with 102 communities. Later on, with the observations of each community, a final version was consolidated and the Decree under Act 4633 of 2011 was finally issued, which is considered a success in terms of prior consultation of a national law both by organizations and by the national government, this implies that the public policy on ethnic restitution enjoys acceptance among organizations and indigenous people.

The standard is based on a fundamental aspect; it takes into account the territory as a subject with rights, since Article 3 states that the territory can be a victim itself. This implies that the definition of territoriality that occurred in the previous section, was elevated to an Act, which is the central point of the entire public policy. In addition, various types of damage that will direct the collection of information



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carried out by entities were established: individual, collective damage, individual with a collective and ecological impact.

On the other hand, considering that the armed conflict had different dynamics and expressions in every town or reserve, and often damages or impact occurred even when the conflict was not directly over the communities, the standard states that if there are "*underlying or related factors*", meaning situations indirectly related to the armed conflict, they must also be subject to land restitution.

Examples of these factors can be found in areas where an illegal armed group is present in the territory using it as a transit route, but without generating threats or murders or land exploitation, or anything other than mere passage by a sacred area territory; however the mere fact that people in the community see that armed people pass through their territory, intimidates and limits their mobility out of fear of meeting with them, additionally, holy sites cannot be desecrated by non-indigenous people, for they consider that the territory suffers a spiritual disconnection and ultimately a loss of harmony with the community.

Thus, the chances of armed conflict affecting a territory directly or through underlying and related factors, are virtually endless, and the Decree Act specifies that restitution seeks to recover the special relationship that the community had with its territory before the armed conflict, and understands that an impairment is any form of restriction over territorial rights. This implies that any of the forms of territoriality of the 102 communities may be subject to restitution and therefore that the interpretation of the armed conflict is based on their cosmovision.

The fundamental role of the LRU is to identify, systematize and describe in Western language, the restrictions on land rights that ethnic communities perceive from the armed conflict, based on their cosmovision; for that, the entity has a characterization methodology that it has been consolidating through the proceedings of various cases throughout the country.

Basically, the case is selected, the existing secondary information from previous research or other entities is collected, a theory of the case that will guide the characterization is prepared, and we enter the territory for an entire survey of primary information and evidentiary material of each impact, and finally a characterization report on everything found on the field is drawn in the language of territorial rights violated. Communities are the directors of this process because they are the ones that mention the type of



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impact, where it is, how to recognize or visit them, as well as they lead all historical narratives of violence. The LRU has a role of technical guidance and conversion of social and cultural aspects into legal evidentiary pieces, but based on the people's cosmovision.

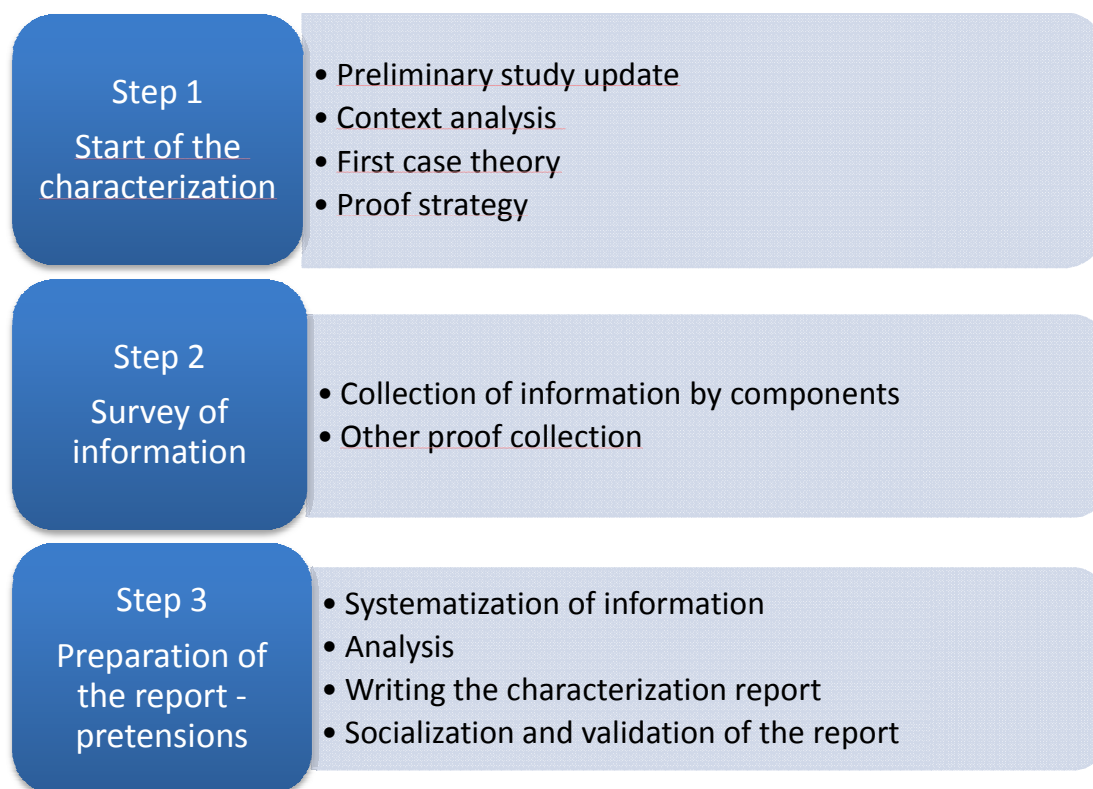


Figure 1: Steps for the characterization of ethnic territorial impact. Source: (LRU, 2013)

A lawsuit was drawn and submitted before a specialized land restitution judge to make a decision on the merits, which also has a wide range of possibilities, as it has the possibility of revoking administrative decisions affecting natural resources or land ownership, declaring contracts or legal transactions null and ordering that the various state entities perform actions to recover the balance of the community with nature.

The LRDP used this characterization methodology for the Yukpa case, producing the corresponding report and lawsuit as discussed later in this paper. Additionally, the program has been carrying out actions aimed at strengthening the methodology based on what was found in the various cases assisted. As you



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may see in the final part of this paper, some improvements have been proposed over the methodology in order to consolidate the different types of interventions.





## 2) SERRANÍA DEL PERIJÁ AND THE INDIGENOUS YUKPA PEOPLE

The indigenous Yukpa people are a binational community because its territory occupies both Colombian and Venezuelan land, inhabiting the final part of the eastern mountain range known as Serrania del Perija, which has its variety of thermal floors and microclimates as its main feature, northern dry and southern humid highlands. The Yukpa traditionally inhabited from the valley of Cesar up to Lake Maracaibo in Venezuela, with mainly nomadic traditions, leaving the hunting and fishing sites idle between one and ten years, while recovering for new consumption. (Presidential Program of HHRR and IHL, 2010).

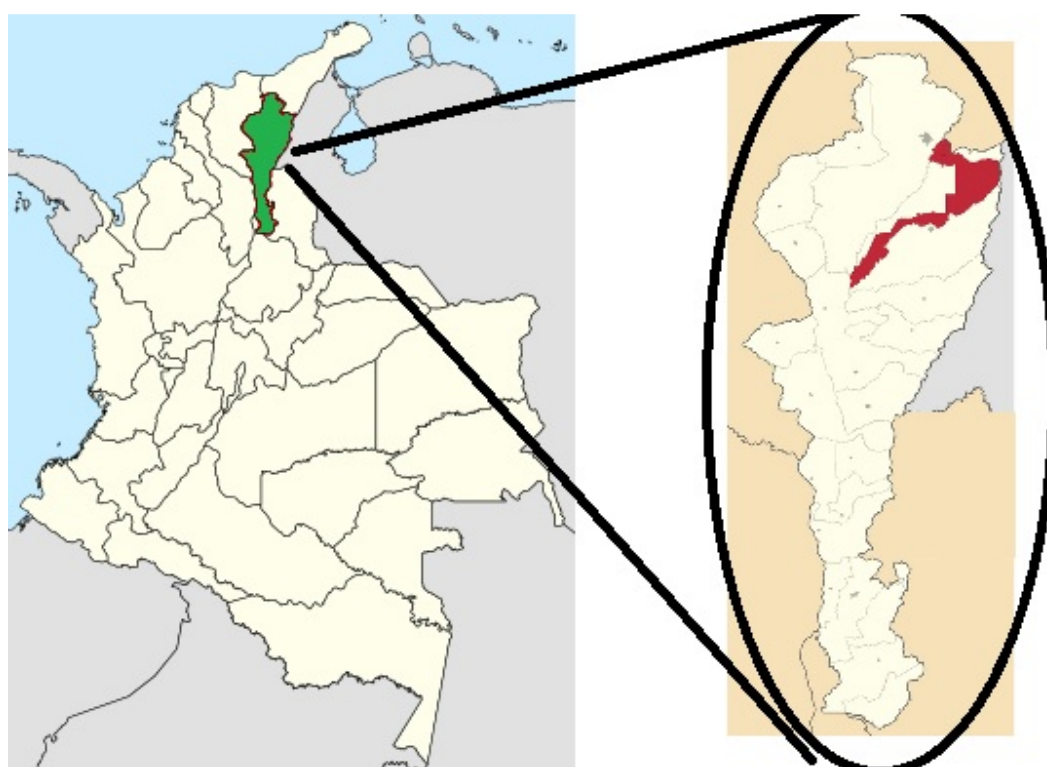


Figure 2: Map of Colombia, Department of César and shaded in red, the city of La Paz. Source: Compiled by author.

The community has lost large part of the territory that it used freely to allow nature rest as part of its nomad practices. The areas where you can find Yukpa territory now go north from the municipality of Becerril in Cesar to the Tutuco River, in southern Venezuela. On the east to the municipality of San





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As mentioned previously, this is the only indigenous community in the country, with all of their reserves characterized (all communities have been victims), of which, the last three of the above list were supported by the LRDP, which is the topic at hand for this paper. We must clarify that although the characterization report produced by the Program for the LRU is already completed, (LRDP - USAID, 2016) it has not been made public for security and confidentiality reasons, therefore any content will be cited as unpublished work.

The Yukpa people, once nomadic communities, have been pressured by the *Watilla* in recent decades (name in Yukpa language that refers to the white man or those who are not Yukpa), this has forced them to establish settlements in the folds of the mountains and change their crops and types of traditional plants for marketable products that are more common in non-indigenous areas.



Figure 4: Serranía del Perijá. Lands and Rural Development Program - USAID

The Yukpa people have a common foundation myth which comes with a sacred character called *Sekeimu* who alerted the residents of a flood that would kill them, and when the rain began to fall, *Sekeimu* became mountain, saved the entire town and became the mountainous area where they live today. *Aponto* (ancestral deity), in turn, granted them all the physical and cultural legacy that builds the Yukpa identity,



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which is why he is considered their ancestral father, and the spiritual means that connects them with Mother Earth. (Tairona Indigenous Confederation, 2011).

Cemeteries are amongst the community's most sacred places, given that they believe that once a person dies, they take on a journey through the rivers and then the sea in search for *kumoku*(God). That is why Graves must be located in human areas and bodies cannot be exhumed, test that could cause danger, disease and natural disasters. Bodies of water, such as lakes, are equally sacred, as they provide protection, especially in the Lake is a female, as it produces subterranean noises that alert the community in the face of danger (LRDP – USAID, 2016, page 25).

Another key aspect of life for the Yupka people is their traditional medicine, which is handled by their *tuano* or traditional doctor. *Tuanos* are the wisest people in the community, as they can identify the type of disease and the plant that should be used to cure each patient. *Tuanos* can neither cultivate, nor reveal the names of the traditional plants that they use, and they are too babe instead plans in order to guarantee their existence. For that reason, a community without a *tuano* is a highly vulnerable community that risks losing its culture.

*Tuanos* are also in charge of rituals for crops and hunting and fishing, which are necessary for these activities to be successful. Through these rituals, *tuanos* communicate with the spirits, which lives in the trees and must be near cemeteries and sacred sites, which is why deforestation of these areas entails the community losing their connection with their spirits. These rituals must also be held during important milestones in the life of the Yukpa, such as birth, death, or menarche.

All of these cultural aspects were impacted by the conflict, and some of these customs have been permanently lost, as described in the following section, as the dynamics of the internal armed conflict modified every aspect of the Yukpa people's lives, to the point of preventing them from practicing their ancestral traditions and worldview.

### **2. 1. THE YUKPA OF THE MUNICIPALITY OF LA PAZ AND THE DYNAMICS OF THE ARMED CONFLICT**

As a result of collaborations between USAID's Land and Rural Development Program and the LRU, a characterization team applied the characterization methodology, resulting in a characterization report that tells of the main factors needed to enter a final judicial phase. The main findings are summarized as follows.





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Included in the list of Yukpa reserves are three very small reserves located in the Municipality of La Paz, Cesar. This division was the result of internal problems between clans and extended family in 1930 in the Yukpa community of Becerril and Codazzi, where the majority of the Yukpa have historically lived; five families had to leave the land and relocated to an area near the Municipality of Manaure, La Guajira. Since then, these families moved throughout the region and never found a new, permanent territory until they found a site in the Municipality of La Paz called 'La Vega.' In the 1960's there was another division in the community due to internal disputes and they settled in nearby outlying areas.

Despite living in different settlements, the Yukpa de La Paz maintained the same identity as a people and managed to re-signify a new territory that fit the Yukpa cosmovision. Considered to be all one community in just one territory, they continued practicing all their traditional rituals and forms of hunting, fishing, and traditional medicine, etc.

In the '80s and '90s, the region's first armed, leftist *guerilla* members arrived to the region. They supported themselves by growing illicit crops, which increasingly depleted and reduced indigenous territories until the Yukpa de La Paz communities were forced to leave the mountain's lowlands and flatlands. They took refuge in its higher areas, which limited their ability to grow traditional crops due to the mountain's steep slopes. There was also demographic pressure to buy land in this region, leading to the informal sale of families' arable land. All that remained were small farms, which INCORA (Colombia's land authority at the time) would later allocate to them so they could live there temporarily. This land eventually became the three small indigenous reserves that they are today.

With regard to the armed actors, records indicate that a delegation of FARC's 19<sup>th</sup> front arrived to Cesar in 1986 in order to organize. Their arrival led to the formation of FARC's 41<sup>st</sup> front in 1989, Cacique Upar, which gained strength throughout several different areas of the Perijá mountains at the beginning of the '90s. The first incident of violence described by the Yukpade La Paz was the assassination of Mr. Alfonso Mesquete and his wife by the FARC (PTDR - USAID, 2016, pg. 69) and the first forced recruitments of community members. The arrival of the guerrilla brought the direct consequence of an increase in illicit crops, which led Colombia's military to conduct several fumigation operations. On repeated occasions, these also destroyed the few crops that belong to indigenous communities.



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The AUC paramilitary group entered the entire region of the Department of Cesar in 1996 and worked in connivance with the Colombian military (PTDR - USAID, 2016, pg. 70). Because indigenous people lived in the same regions as FARC's 41<sup>st</sup> front, they began to be constantly accused as being *guerillamembers*. There is also record of the José Marínez Quiroz front (of the ELN *guerrilla*) being present during this period of time. In 2005, Colombia's national military founded the High Mountain Brigade in the Perijá mountains. This was considered a violation of the communities' land rights as the location of the brigade's base was a sacred site for the communities, who were also not previously consulted with prior to its establishment.

According to the Ombudsman's Office, this indigenous region experienced two periods of extreme violence (Defensoría del Pueblo de Colombia, 2012). The first occurred in 1996 with the arrival of the fronts Juan Andrés Álvarez and Mártires del Valle de Upar, part of the Northern Block of the AUC paramilitary group. During this period, the indigenous and farmers populations experienced targeted killings, massacres, disappearances, and forced displacement.

As forced displacements occurred, land was no longer being worked by the indigenous peoples and armed groups with great interest in these lands took control of them making these communities essentially lose any chance of their land rights being recognized. The interest in these lands was so great that Mr. Gentil Cruz was killed in 2000, a public official of the Ministry of Internal Affairs who was working on recognizing the first indigenous Yukpa city hall in La Paz. Mr. Rodrigo Gamboa was also assassinated in 2001, an INCORA official that was in the process of officially filing the land ownership paperwork for the Yukpa. These assassinations were a great threat to indigenous peoples and government officials interested in preserving indigenous land rights.

The second period of violence, which consisted mostly of forced displacement, occurred in 2003 and 2006. The FARC and the ELN present in the region led a counter-attack on the paramilitary in order to take back land they had lost, causing combat and great mobilizations throughout the Serranía mountains. Between 2005 and 2006 the AUC Northern Block demobilized because of a national disarmament and demobilization process, paving the way for the *guerrilla* to regroup and organize to occupy the zones left by the paramilitary groups.



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Following this period, the violence took on a new dynamic. The paramilitary groups did not actually demobilize in 2006. Instead, they changed their name and divided into several paramilitary successor groups (Defensoría del Pueblo de Colombia, 2012, pg. 18): the first group was Águilas Negras, followed by the Rastrojos, Paisas and Urabeños. These groups engaged in extortion, drug trafficking and illegal fuel trafficking from Venezuela (its low cost in this country made fuel very profitable). This contraband fuel was the main economic activity in the Municipality of La Paz, employing nearly its entire population. This created divisions among criminal bands and competition for controlling illegal business operations and trade routes. In 2011, a wave of targeted killings hit, at which point government institutions began to cite alarms on the situation.

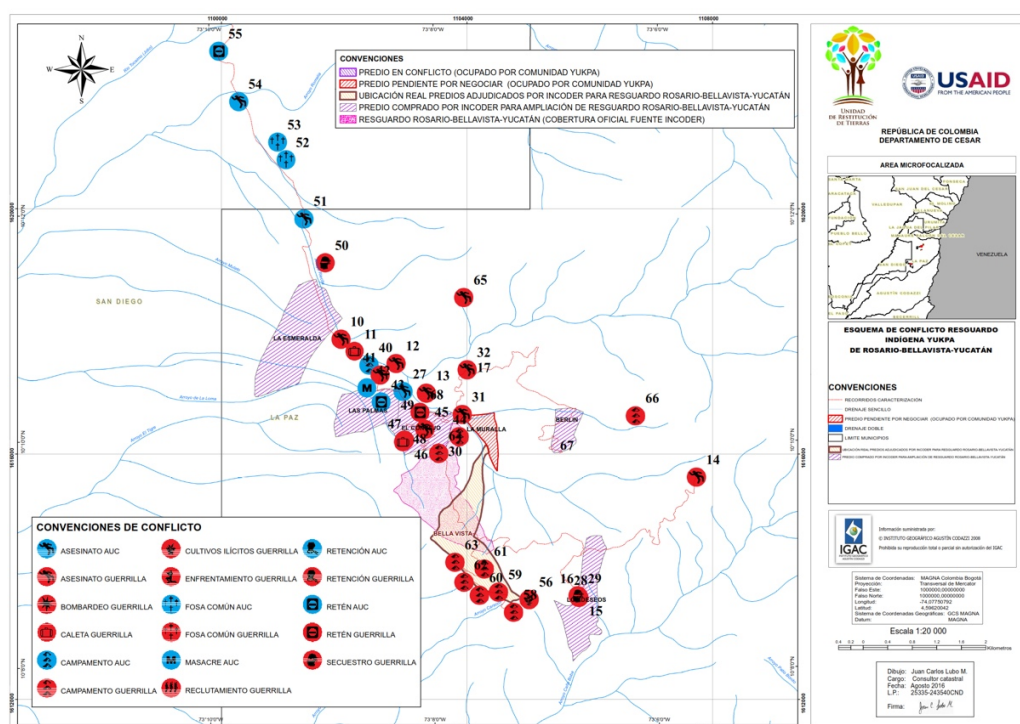


Figure 5: Map of Yukpa de Rosario-Bellavista-Cinco Caminos Indigenous Reserve.

Source: (PTDR - USAID, 2016, pg. 74)

The LRDP characterization team gathered and systematized all the incidences of armed conflict-related violence amounting to a list of more than 200 specific events. As shown in Figure 5, an example of one of the three characterized reserves, these events were georeferenced onto the land and crossed with the reserves' cadastre information. The final version of the characterization report includes the maps for each





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reserve, highlighting the intersection of information. All of these maps could not be included here because of space limitations.

### **2.1. A THREAT TO THE EXISTENCE OF THE YUKPA PEOPLE: THE COMPLEXITY OF TERRITORIAL ISSUES AS A RESULT OF ARMED CONFLICT**

As mentioned above, the Yukpa de La Paz people have three reserves. Characterization work helped to confirm that since these communities began seeking to establish their own territory in 1991. Their intention was to establish a single Yukpa territory that included the communities living in the municipality since they separated from the majority of the Yukpa. In 1995 the community applied for land ownership. As the process continued, however, INCORA could not proceed due to issues with purchasing neighboring lands. INCORA then suggested that the community divide in order to establish several reserves.

ILO Convention 169 calls upon nations to establish unified lands in order for the people to fully develop their culture. National law also requires this and does so more explicitly by stating that upon issuance of the land title, the land authority must “*continue the legal agenda, in pursuing the cohesion and unity of the land,*” (National Decree 2164 of 1995, Article 6).

The community strongly rejected this division, which is why the land authority abandoned the process, which was not resumed until 1999 after the community occupied the agency headquarters in order to hasten the process. Between 2000 and 2013, three separate reserves were granted land titles, each of which were very distant from each other and with land areas that were too small to meet the community’s needs. They were so small that an entire Yukpa community of 50 families was granted the amount equivalent to the minimum size for three families, according to the regulation that designates the minimum recommended amount for allotted farmland (Family Farming Unit). Additionally, when the Colombian Institute for Rural Development (Incoder) issued the title, it also purchased other plots of land that were never included in the reserve. Instead, these plots remained as state-owned land, leaving the entire titling process incomplete.



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This led to undue containment –discriminating the farmer population that has the legal right to a minimum amount of land– and to the division of the community through the issuance of three separate, disperse land titles. The following table demonstrates that on average, each indigenous family would have had 5 hectares, where the minimum for this region is 31. It is important to clarify that for the Yukpa, land ownership is not measured in hectares per family, as they own the land collectively and instead of using the land in parceled divisions, they follow ancestral practices and customs. This comparison is used to illustrate the discrimination that indigenous people have experienced and the overcrowding to which they have been subject.

Reserves and expansions	Area of Issued Land Titles	Actual No. of Families Actual. Approx.*	Hectare per Family
Caño Padilla	256.23 ha	50 families	5
La Laguna CosoCinco	182. 33 ha	70 families	2.5
Rosario Bellavista Yucatán	532.75 ha	78 families	7
<b>Total</b>	<b>971.31 ha</b>	<b>198 families</b>	<b>5</b>

Table #1: Number of occupied hectares with land titles in state-owned land per reserve.

Source: LRDP characterization report (PTDR – USAID, 2016, pg. 160).

The international IACHR standard states that “...*communal property by indigenous peoples “necessarily requires the State to effectively delimit and demarcate the territory to which the people’s property right extends and to take the appropriate measures to protect the right of the [corresponding] people in their territory, including official recognition of that right,”* (IACHR, 2009, pg. 41). In the case of the Yukpade La Paz, these indigenous people’s rights have therefore been infringed upon.

The lack of these land titles is entirely related to the armed conflict. First, when the paramilitary was present, the public officials that were working on recognizing the Yukpa’s rights were killed (Gentil Cruz and Rodrigo Gamboa in 2001 and 2001 respectively). As previously mentioned, because the indigenous people were accused of participating in the *guerilla*, for war strategy and territorial control reasons, paramilitary forces did not agree that the Yukpa should be granted more land titles.

The impact of the conflict was so strong that in 1997 several families had to leave the region due both to local combat and because paramilitary groups had killed several *campesinos* in neighboring lands, frightening the indigenous population. The *guerilla* had also taken over their small territories and in 1998 the FARC established a camp next to the house of the town’s governor without authorization. In 2002,



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more families experienced forced displacement, yet they managed to return quickly (PTDR - USAID, 2016, pg. 125).

In 2009, the Constitutional Court read, “*Cesar: Yukpa ethnic group – Municipality of La Paz, communities of Caño Padilla, El Rosario, ‘Bellavista-Yucatán, La Rubia, Media Luna, La pista. 575 people; at risk of extinction due to high morbidity and mortality rates, an increasing population decline, territorial conflicts with colonists, and a lack of institutional presence, food access, public utilities and poor communication conditions,*” (Constitutional Court, 2009, pg. 45).

Another consequence of these divided territories is that they limit opportunities for cultural transfer. The *tuano* becomes isolated to a community and neighboring communities do not have established pathways to walk easily between the lands granted to them as reserves, therefore not allowing knowledge to be passed on to the following generation. In illustration of this, to conduct this characterization the LRDP and LRU held an assembly with the three reserves and authorities reported that the communities had not all come together in over 10 years.

In the neighboring farmlands that belonged to the Yukpa several decades ago, the territory has been ravished, which the community has no control over. For example, a utility pole was installed at a long-standing cemetery where the grandfather of the current *tuano* was buried (Mr. Sabas), seriously affecting the community’s spiritual relationship with their territory.

Another factor that has restricted the community’s spiritual relationship has been their inability to practice traditional medicine, which is founded on medicinal plants and on the spirits of mother earth that enter these plants through rituals, healing people from disease. These plants have been disappearing due either to logging in the areas surrounding the reserves or, additionally, to the fact that they are not being picked. This is the case with the *pitaya* plant, which was never seen again by the community because the region where it used to be found was deforested (PTDR – USAID, 2016, pg. 124).

The community’s food sovereignty was also restricted during the conflict. With the rise of the paramilitary (1997-2005), the *guerrilla* withdrew from the indigenous territories and their surroundings (the mountain’s highlands) and the paramilitary limited the mobility of food as a war tactic to prevent it reaching the *guerrilla*. The *guerilla* also practiced extortion with a “war tax” applied to anyone living in



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the region. Because the Yukpa had no money, they had to pay with the yucca and potatoes they grew. In 2004, however, the military conducted aerial spraying with glyphosate to eliminate alleged illegal crops, destroying several crop harvests. Considering that the Yukpa own very little land and cannot grow all they need, several cases of child malnutrition arose in addition to overall famine in the community.

*“Doctors almost never reach this settlement (Yukatán). There are women here whose children have died. Sometimes they die just from an injury, they don’t have the money. Miscarriages occur...We have buried 6 children this year...some have died of miscarriages. Children are malnourished and it is impossible to grow crops because during summer, the plants dry up and there is no way to water them. There is not enough land. As families grow they don’t have enough to live off of; crops are planted, but they die because there is not enough water to irrigate them.”*

Source: Characterization testimony.

Last, the community reported how their organizational system was damaged and how their autonomous rights were not recognized. During the periods of conflict, the *guerilla* imposed many regulations on coexistence as well as mechanisms for resolving internal conflicts that were different than what the Yukpa traditionally used. As ILO Convention 169 and as national regulations state, indigenous people have the right to maintain their own civil and penal legal system. This right was completely violated by the regulations imposed on them by the *guerilla*, once again violating all cultural aspects with which they identify.



### **3) CHALLENGES TO THE RESTITUTION OF ETHNIC TERRITORIES AND TO CHARACTERIZATION METHODOLOGY, POST-RESTITUTION**

Upon completing the characterization, the LRU began to examine the case of the Registry of Evacuated and Abandoned Land Caused by Forced Displacement. With the information gathered, a land restitution claim was made and issued to restitution judges with the task of making an overarching decision requiring government agencies, depending on the case, to take the corresponding actions to continue with the formalization and unification of the reserve, the comprehensive and collective reparation to the community (compensation, non-repetition measures, and satisfaction and symbolic measures, etc.), in addition to other measures deemed necessary depending on the damage involved.

These types of cases, however, are much more complex than they appear to be as there are many factors involved that depend not only on the LRU or on land restitution judges, but also on the government as a whole. The scars from war are the result of so many variables and are so complex that many times it is impossible for the community to return to their original balance of life in nature and in their land.

The LRU has produced several characterizations of many indigenous peoples and of people of African descent throughout the country. It has gained a great amount of experience in its five years of existence and improved upon its initiatives in the field. Sensitive issues continue to arise, however, such as with the case of the Yukpa.

An issue that is currently grounds for discussion and that is being interpreted in different ways is the so-called, “non-ethnic occupants:” the non-indigenous population found living in the collective territory as individuals. Referred to as colonists, in some cases these people establish themselves in ethnic territories as invaders with economic or other interests. In other cases, these colonists are victims of the armed conflict who have found a space to live and work in these collective ethnic territories, therefore granting them the right to land restitution. Another common situation is when a farmer community lies within an indigenous reserve as a result of the authorities’ faulty precision when property lines are established.

To add to this complexity, these three situations can even intersect in the same indigenous territory. The *campesino* population may have encountered an endless number of situations including invading colonists, *campesinos* who in good faith have also become victims of the conflict, legal and illegal



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companies that have somehow benefited from the armed conflict, and legitimate companies that have helped the indigenous population, etc.

This variety of factors leads to a myriad of conflicts over the land and makes it very difficult to discover, systemize and interpret the facts. This puts a great amount of pressure on land restitution judges as they try to address this complexity, leading to different interpretations of the law and different rulings.

In an attempt to address this great challenge, the LRU has been working on making the characterization methodology more flexible and adaptable so that each case and situation can be interpreted and analyzed individually. Establishing a firm and rigid guideline is not feasible because in some situations, indigenous people may have priority, while in others, they do not. In an effort to reconcile these different interest, the LRU has had to sort out these situations, developing respectful and careful initiatives in order to not generate conflict between communities or families with shared interests in the same parcel or territory. The unit has had to do this in accordance with the regulatory provisions on recognizing and prioritizing the mechanisms for solving territorial conflicts that already exist among the indigenous people and communities.

These conciliations have not been easy as it is well understood that any process that involves establishing trust, coordination, agreements, etc. takes a lot of time, and in addition to this, the reparation of war damages must also be taken into consideration. Provided that public policy on land restitution is temporary (it is only valid for 10 years) and that cases involving different ethnicities involve a lot of time due to their complex nature, the challenge to the LRU is great. It essentially must weigh each of the different actor's rights, research the dynamics of the armed conflict and establish an agreement that prevents further land conflicts from happening.

By taking these complexities into account and founded upon LRU's best practices from different cases on strengthening the methodology, the LRDP—in partnership with USAID's Afro-Colombian and Indigenous Program (ACIP)—proposed to adapt the characterization methodology for analyzing such issues.

The proposal essentially addresses when information should be gathered and analyzed, especially that which is related to land tenure, titles and formalization. One of the recurring problems of the characterization is identifying the territory, the contrasting legal and cadaster information on the plots of





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land, and identifying the property lines of territories that are to expand in the indigenous reserves. Plans to improve these issues have been made and currently the agency is in the process of adopting them.

Another great challenge that land restitution faces, and specifically the LRU, is coordinating institutional efforts and unifying the visions, policies, priorities and objectives of other agencies that help secure the full enjoyment of territorial rights. The clearest example of this need is to coordinate institutions with the Victims Unit, the agency responsible for the comprehensive reparation of all victims of conflict in Colombia, including those involving land restitution. These two units must work towards coordinating their efforts and reaching out to the victims together.

The characterizations and restitution claims clearly do not coincide with the plans for collective ethnic reparation, rendering the work of information gathering and understanding the communities' different needs inefficient. In addition to achieving institutional coordination, the challenge to the LRU is to identify any main areas that require comprehensive reparation and include them in characterization reports and restitution claims for judges to order the corresponding agencies to take reparative action in the community.

Another example of this is with coordination of the country's development policies, which have a strong focus on the use of natural resources, especially with mining, an activity that for indigenous communities represents risk and threatens to damage their territories. This classic clash between the environment and development takes a unique turn with the restitution of ethnic territories as the following all must be considered: environmental rights, the sustainability of development initiatives, and the reestablishment of balance between indigenous people and the nature that was lost to them as a result of the armed conflict. The challenge for institutionalism will therefore always be present in each case, with its unique characteristics. The goal will always be to avoid creating internal divisions or conflicts in the communities, allowing the rights of victims and their cultural diversity to prevail over other interests.

In conclusion, while a very important step has been made with the Yukpa de la Paz people in completing the characterization of how their territories have been affected by the armed conflict, the process will continue on with all the challenges and difficulties that have been explored here, as the judicial phase is the most important stage for analysis, confrontation and transcendental decision-making for the future of the physical and cultural preservation of the Yukpa people.





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The cemeteries are part of the most sacred sites in the community, because once a person dies, they begin a long journey through rivers and the sea in search of *Kumoku* (God), which is the reason why their graves must be in a damp place and their bodies cannot be dug out because that would create hazards, disease and natural disasters. Bodies of water such as lagoons are also sacred as they offer protection, especially if the lagoon is female, producing underground noises that alert the community about future danger (LRDP - USAID, 2016, p. 25)

Another key aspect of the Yukpa life is their traditional medicine, which is led by the *Tuano* or traditional doctor, who is the wisest person in the community since it identifies the type of disease and the plant to be used as a cure. This person cannot plant, or disclose the name of traditional plants and must bathe in them to ensure the existence of each plant, this is the reason why a community without *Tuano* is a community with serious disruption and loss of culture.



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The *Tuano* also leads the rituals for crops and days of hunting and fishing, which are necessary for the success of these activities. Through these rituals, they communicate with spirits, who live in trees and must be near cemeteries and holy sites, therefore, the deforestation of these sites involves the community losing its connection with its spirits. These rituals should also be performed at different important moments in the life of the Yukpa such as their death, birth or menarche.

All these cultural aspects were affected and some no longer exist, as discussed in the next section, because the dynamics of the internal armed conflict changed every aspect of their life, hindering them from exercising their cosmovision and traditional practices.