

# Un Dilema entre el uso de la tierra y el derecho a la consulta previa en Colombia: La disputa por la tierra de los resguardos

## **Summary**

*Introduction. Background: The Indigenous People and the Government's Contradictions over the Land. The Concept of Resguardos in the Legal and Political Framework. The Conception of the Resources: The Example of the Coca leaf. The Importance of the Land and the Right of Previous Consultation. A Conflict beyond the Borders of the Legal and Political Framework. The Current Claims of the Indigenous People. The Responses of the Government. To Preserve the Environment or to Achieve Development? Contradictions in the Legal and Political Framework. Conclusions: The Unclosed Gap Between Perspectives. Bibliographic.*

## **Abstract**

*This article constitutes one contribution to the analysis of the conflict between the indigenous people and the governments through history in Colombia over the lands of resguardos or native indigenous reservation areas, focusing the attention in the legal and political framework that rules these ethnic minorities' rights and especially the right of prior consultation; understood as one of the reasons which has intensified the conflict between both parties in time specifically from the decade of the 1990s. This study considers that this dispute between these both parties is not only caused due to the contrary visions and perspectives over the land –and over the natural resources present in it– but also due to the presence of contradictions in the laws, policies, norms, decrees, etc., as the factors which have not only extended for more than 400 years but also intensified the dispute amid these two parties to the present day.*

**Key Words:** *Indigenous People, Government, Resguardos, land conflict, right of Previous Consultation.*

## **Resumen**

*Este artículo constituye un aporte al análisis del conflicto entre los indígenas y los gobiernos de la historia en Colombia por las tierras de los resguardos, enfocando la atención en el marco legal y político que rige especialmente los derechos de estas minorías étnicas y especialmente el derecho a la consulta previa; entendido como una de las razones que ha intensificado el conflicto entre ambos actores en el tiempo específicamente desde la década de 1990. Este estudio también considera que esta disputa entre estos ambos actores no solo se da por las visiones y perspectivas contrarias sobre la tierra –y sobre los recursos naturales que hay en ella– sino también por la presencia de contradicciones en las leyes, políticas, normas, decretos, etc., como los factores que no solo han intensificado pero también extendido la disputa entre estos dos actores por más de 400 años hasta hoy en día.*

**Palabras Clave:** *Indígenas, Gobierno, Resguardos, conflicto de tierras, derecho a la consulta previa.*

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**Germán Andrés Mora Vera:** *Master of Arts in International Development at Nagoya University and is a current doctoral student (Ph.D.) at the same university in Japan.*

**Correo electrónico:** *andreskurachi@gmail.com*

# ***A Dilemma Between the Use of the Land and the Right of Prior Consultation in Colombia: The Dispute for the Land of the resguardos<sup>1</sup>***

**Germán Andrés Mora Vera**

## **Introduction**

The conflict over the lands could be catalogued as a stone in the shoe for Colombia since the beginning of the colonial period and lasting until the present days. One of the noticeable and perhaps one of the most important conflicts over the lands in this country is the one that it has been present between the indigenous people and the government over the territorial zones of *resguardos* also known as indigenous reservation areas in English<sup>2</sup>.

This scuffle has gradually become worse not only because due to the lack of consensus between both parties but also due to its prolongation in time gradually involving other actors such as other minorities like the Afro-descendants who as same as the indigenous perceive the lands as sacred places in which their deities live; as well as mining companies, bigger landlords, among others, who instead see these lands as merely potential sources for the generation of capital assets. Therefore, this article will analyze this conflict between the indigenous people and the government, that at the same time has been transcending to other scales beyond the borders of a) the laws and policies and b) the academic discussions that have been present which have studied the territorial conflict in Colombia. Now, let us begin by mentioning in a brief way some of the most relevant contradictions between these two parties.

## **Background: The Indigenous People and the Government's Contradictions over the Land**

Before going deeper into our discussion and revising other sources like the scholars' perspectives, the laws, the policies, the norms, the constitutional rulings of the Constitutional Court and the decrees; let us observe the background of this dispute by first examining the contradictions between the indigenous people and the government over the land, the resources, and more specifically the

1 This article is one of the results of the doctoral course investigation in international development. I would like to use this space also for extending my deep gratitude and appreciation above all to my wife, Rina Kurachi, for her constant support; to my colleague and friend, Nairo Rodriguez for his scholarly enlightenment; and finally, to my professor and main supervisor, Doctor, Isamu Okada, from Nagoya University for always giving me his kind advice.

2 The conflict over the land in Colombia seems to be more evident when we analyze the ongoing dispute between the indigenous people and the government over *resguardos*.

*resguardos*<sup>3</sup>. First, we must understand that those two parties perceive the land and its resources differently and even though there are policies, laws, norms, and decrees which have been designed for avoiding conflict between them, we can still find disagreements among them.

On one side, for the indigenous people, who have fought for more than 400 years since the colonial times against the government over their territories, the land "...is sacred and cannot be touched" (Mendoza, 2012) thus the natural resources in it (like the *coca* leaf cultivars, oil, and other similar non-renewable minerals) which can be neither extracted nor forcibly removed because they have above all a spiritual meaning. As one example the indigenous people from the *Kogi* tribe of Santa Marta city in the department of Magdalena sustain that "why people did not understand that the earth is a living body and if we damage part of it, we damage the whole body...What happens in one specific site is ... echoed in another miles away" (Reddy, 2013). The indigenous people argue from this position because they sustain that the actions of third parties and above all the government towards their areas contradict not only their Cosmo vision but above all what is enacted in the laws, policies, norms, and decrees created for their territories' protection. They claim especially that the government, in its race for a) eradicating *coca* leaf cultivars and b) searching minerals and similar valuable resources like gold, copper, oil, etc., is constantly not only invading their lands without prior authorization but also is allowing to both, national and multinational companies, to explore these territories without the permission of the tribes (Hallazi, 2013) destroying their environment threatening the lives of the members of *resguardos*.

On the other side, according to the current President, Juan Manuel Santos (2010 -), who on September of 2016 was awarded by the Wildlife Conservation Society (WCS) the Theodore Roosevelt prize for his efforts done in protecting the biodiversity and "expanding the national park system, a legacy for future generations"<sup>4</sup> and on who as well received in

December of 2016 the Nobel Peace Prize; the government has been making every possible effort to respect as well as of understand the visions of the indigenous peoples over the land and it has continuously made a commitment to defend these areas from possible hazards which may threaten the integrity of those living in them. In a speech given, to the indigenous communities from the *Sierra Nevada de Santa Martha (Arhuacos and Kogis)*, Juan Manuel Santos declared the position of the government as the party that is not only respecting but above all learning from the indigenous peoples' Cosmo vision over the territory<sup>5</sup>. In his discourse, Santos also sustained that the preservation of the whole ecological system in Colombia was a priority for his administration and he eagerly said to the indigenous people that he was committed to maintain this task in the following words: "let us defend the environment, let us preserve what is fundamental, let us avoid that the climate change continues, let us respect the nature. It is a shout from everybody. There are some that do not want to listen, there are others, also, that do not believe what is occurring"<sup>6</sup>. With these words, Santos' administration opposes to the position of those who categorize the government as party which is neither protecting its indigenous people's rights nor its lands. Therefore, after observing the last arguments we can assume that the government's official position sustains in a general way that there is no conflict over the *resguardos* because not only there is a compromise towards these lands but also because they are indeed protected by the strength of the legal and political framework which was carefully designed to: 1) avoid the further generation of disputes and 2) ensure the safety of the areas itself and of course of its members.

### **The Concept of *Resguardos* in the Legal and Political Framework**

Consistent with the government's vision, the laws, policies, norms, and decrees enacted that are protecting *resguardos* are the solid basis for considering these zones as special lands in

<sup>3</sup> Further in this article we will observe on a wider panorama that beyond the clash of perspectives between the indigenous people and the government over the lands and despite the existence of a legal and political framework originally created for the protection of *resguardos*' habitants; there are not only discrepancies in the same laws, policies, and decrees but above all there seems to be present an ambivalent position of the government concerning the right usage of these areas which are being 1) forcibly intervened by third parties and 2) mostly used for extracting resources through mining operations.

<sup>4</sup> Wildlife Conservation Society (WCS) (20/09/2016) "WCS Honors President of Colombia For Wildlife Conservation". *Wildlife Conservation Society (WCS)*. WCS Newsroom. WCS News Releases. [Online]. Available From: <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9286/WCS-Honors-President-of-Colombia-For-Wildlife-Conservation.aspx> Retrieved: 20/01/2017

<sup>5</sup> Presidencia de la República. Todos por un nuevo país. (25/02/2017). Nabusimake, Sierra Nevada de Santa Marta. "Palabras del Presidente Juan Manuel Santos en la entrega de títulos para el programa Guardabosques Corazón del Mundo, en la Sierra Nevada de Santa Marta" Sistema Informativo del Gobierno – SIG, sábado, 25 de febrero de 2017 [Online] Available From: <http://es.presidencia.gov.co/discursos/170225-Palabras-del-Presidente-Juan-Manuel-Santos-en-la-entrega-de-titulos-para-el-programa-Guardabosques-Corazon-del-Mundo-en-la-Sierra-Nevada-de-Santa-Marta>. Retrieved: 01/03/2017.

<sup>6</sup> *Ibid.*



which the indigenous people are destined to live along with their customs and traditions without the intervention of third parties, even from the same government. The definition as well as the purposes of *resguardos* can be found in the legal and political framework's tools enacted through the years. One main referent we must consider is the Political Constitution of 1991<sup>7</sup> which established not only the purposes of those territories but above all defined *resguardos* as “communal lands in which a group of indigenous people live and are above all “inalienable, imprescriptible, and indefeasible”. In simpler words, those lands 1) cannot be sold, 2) their validity is maintained in time, and finally 3) nobody, not even a judge, can dispossess them. These basic constitutional principles are also supported by some of the most important laws and decrees which were enacted especially after 1991 that aside describe, create, organize, and delimit *resguardos* in the national order of Colombia also establish the norms to be considered and most importantly followed by other parties regarding the property rights of the indigenous people over those assigned areas for them to live.

In theory, these legal and political mechanisms according to the perspectives of the government have been working effectively since the time they were enacted and for that reason there is no conflict over the lands. However, considering the point of view of the indigenous people, these tools of the legal and political framework seem to be not working properly in accordance to their Cosmo vision and traditional principles because their lands are commonly facing unauthorized intrusions of the same government, private corporations, mining companies, and other third parties who seek to use these lands as a mean for the generation of incomes.

The guerrillas as well as other similar criminal bands have been unauthorizedly entering to *resguardos* and using the indigenous people's workforce to crop *coca* leaves for their gain. As it will be explained in the following section, the *coca* is understood from the perspective of the indigenous people as a sacred traditional element, and on the contrary for the government is a threat because not only its commercial value increases the profits of the illegal armed groups but also favors the drug production and smuggling activities; degrading the national context with more violence.

### **The Conception of the Resources: The Example of the *Coca* leaf**

For the indigenous people, the *coca* leaf is an element which is used for their rituals and especially for the so called *mamus*, or the indigenous medicine men in English, this resource serves for elaborating remedies and treatments. The presence of the cultivars of *coca* inside *resguardos* is one of the reasons the government uses to intervene these areas which intensifies even more the conflict with the indigenous communities who claim to be using its leaves for their traditions and not to produce economic revenues out of its selling nor to support criminal groups on their causes by cropping it in vast quantities.

For the indigenous, the *coca* aside being used for their traditions and rituals is conceived as well as an energy booster which after being consumed allows them to resist hours of elevated work in the fields without feeling exhausted (Friede, 1976). The “Coca leaf is one of the most important symbols in the Andean culture. Its use in that culture is ... principally for other religious matters” (Ossio, Acuña, 1989, p. 306). Hence, when the government enters into *resguardos* justified by the intent of suppressing the threats represented in the *coca* cultivars, without the prior authorization of the communities, not only the indigenous' rights are infringed but also their lands' natural balance is broken, and their deities disrespected (Jiménez, 2017). The land is strongly tied to the indigenous people's Cosmo vision, traditions, values, beliefs, culture, and inside those areas the rituals of adoration are conducted as well. Due to this reason, the indigenous people have been preserving the ecosystem and the environment, so entering without consulting them whilst attempting to either eliminate the *coca* crops or to gain revenues out of the exploitation of the land ignoring the principles enacted in tools of the legal and political framework is a transgression towards their autonomy (Jiménez, 2017). Therefore, even the authorities of the government for whatever reason they have for entering the lands of *resguardos*, they ought to obtain the traditional permission through a special ritual to avoid the destruction of the communities' lives as well as the harmonic relationships with the environment (Gómez, y Ruiz, 1997).

Unlike the indigenous people, from the point of view of the government, there is a high concentration of illicit crops like *coca* (Ross,

<sup>7</sup> For more information, see also: a) Law 21 of 1991 (Ley No. 21, 1991), b) Decree 2164 of 1995 (Decreto No. 2164, 1995), c) Law 60 of 1994 (Ley No 60, 1994), d) Decree 1475 of 1995 (Decreto No. 1475, 1995), e) Decree 1320 of 1998 (Decreto No. 1320, 1998); f) Decree-Law 4633 of 2011 (Decreto-Ley No. 4633, 2011); g) Decree 1953 of 2014 (Decreto No. 1953, 2014); and h) Decree 2333 of 2014 (Decreto No. 2333, 2014), among others.



2003, p. 17) in *resguardos* which is indeed a threat for the national security because of the existence of an abundant number of guerrillas, paramilitaries, drug lords, and similar criminal bands who try by illegal means 1) to crop and harvest the *coca* leaves in vast quantities and 2) to extract the natural resources like gold and similar precious metals for augmenting their monetary assets<sup>8</sup>. These last parties have been with their actions intensifying even more the conflict over the lands and especially over the *resguardos*.

In addition to this general point of view, for more than a decade, in an interview done to Magda Mesa, the government has believed that the indigenous people in *resguardos* are supporting the terrorist actions of the guerrillas and similar illegal groups by cropping and selling them in secret the *coca* leaves without notifying to the pertinent governmental authorities about it. Also, according to her, the indigenous people

have indeed established these *coca* cultivation fields in *resguardos* through the years and have harvested these resources in some quantities for the wealth of the guerrillas supporting their criminal activities<sup>9</sup>. This recognition done justifies the actions that the government has used for intervening, dividing, and even suppressing these lands of *resguardos* to avoid the generation of black markets and increase the security of the regions.

Mike Ross sustains that indeed “natural resources play a key role in triggering, prolonging, and financing these conflicts” (Ross, 2003, p. 17) and especially in the Colombian case the *coca* has been through history an important key element which has been prolonging the dispute between the indigenous people and the government<sup>10</sup> as it is also observed in the (Table 1) mostly because of the value that this resource has in the black market.

**Table 1. “Civil Wars Linked to Resource Wealth, 1990-2002”**

<i>Country</i>	<i>Duration</i>	<i>Resources</i>
Afghanistan	1978–2001	Gems, opium
Angola	1975–2002?	Oil, diamonds
<i>Angola (Cabinda)</i>	1975–	Oil
Cambodia	1978–97	Timber, gems
Colombia	1984–	Oil, gold, coca
Congo, Rep. of	1997	Oil
Congo, Dem. Rep. of	1996–97, 1998–	Copper, coltan, diamonds, gold, cobalt
<i>Indonesia (Aceh)</i>	1975–	Natural gas
<i>Indonesia (West Papua)</i>	1969–	Copper, gold
Liberia	1989–96	Timber, diamonds, iron, palm oil, cocoa, coffee, marijuana, rubber, gold
<i>Morocco</i>	1975–	Phosphates, oil
<i>Myanmar</i>	1949–	Timber, tin, gems, opium
<i>Papua New Guinea</i>	1988–	Copper, gold
Peru	1980–95	Coca
Sierra Leone	1991–2000	Diamonds
<i>Sudan</i>	1983–	Oil

*Note:* Separatist conflicts are listed in italics.

**Source:** Ross, Michael (2003). Chapter 2. “The Natural Resource Curse: How Wealth Can Make You Poor”. Table 2.1 Civil Wars Linked to Resource Wealth, 1990–2002. In: Bannon, Ian., and Collier, Paul. (Editors) (2003). *Natural Resources and Violent Conflict. Options and Actions*. The International Bank for Reconstruction and Development. The World Bank. Washington, DC. p. 18.

In a report done by the United Nations Office on Drugs and Crime (UNODC) (UNODC; 2015, p.13) it is stated that: “It is important to highlight that the *coca* cultivars detected in the census of 2014 occupied the 0,04% of the total of the cultivable land in Colombia. The

participation of the indigenous *resguardos* in the cropped area returned to the 11%, the same participation percentage reported in 2013, but it increased in the area with *coca* in 25%.” (UNODC; 2015, p.18). Despite these calculations, the *coca* cultivation in the indigenous lands has kept remaining one of the biggest problems for the government because speaking in terms of the security of the country, the drug processing and trafficking continue to be the reasons for the generation of violence and the generation of conflicts between groups in the whole nation. The same UNODC reported a year later in 2016 that “the *coca* cultivars remain

<sup>8</sup> For the government, the rights of the indigenous people are respected and guaranteed. However, its perspective suggests that the conflict over the lands of *resguardos* in Colombia is not caused by the presence the presence mining companies which are contributing with their actions to the development of the country but rather due to the existence of *coca* cultivars which are the source of incomes for the illegally armed groups.

<sup>9</sup> Mesa, Magda. Personal Interview. March 13th of 2014.

<sup>10</sup> Since the decades of the Spanish invasion and colonization, Colombia was a territory in which the enormous fields, rich lands, and wide plantations were seen as potential elements for the generation of incomes.



being a threat for the ecologic and biological diversity of Colombia; the *coca* in indigenous *resguardos* increased in 52% from 7.799 hectares in 2014 to 11.837 hectares in 2015” (UNODC; 2016, p. 13.). Therefore, in some cases, to keep the lands secure from the guerrillas and similar criminal groups, the regular forces of the government have entered to the indigenous *resguardos* for surveillance tasks. These actions were done in order not only to eradicate the *coca* leaves and the founts of incomes for the criminal groups but also, at the same time, to prevent the uprising of other future conflicts establishing secure perimeters and keep the safety of the population<sup>11</sup>.

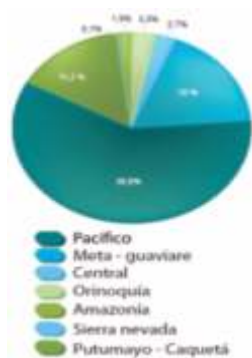
Speaking of the value of the *coca* and its link to the generation of conflicts we must observe more into detail the prices and they way they have evolved because this is one of the main reasons behind the confrontations between the guerrillas, the indigenous, and the government over *resguardos*. In this case we can find interesting results by comparing the price of the *coca* leaf and the cocaine. The UNODC sustained that the prize of the fresh *coca* leaf by kilogram increased from 2,150 Colombian Pesos (COP) in 2014 to 3,000 COP in 2015 (UNODC; 2016, p. 54) and after being chemically processed into cocaine, the kilogram of this product elevated its price from 4,538,200 COP in 2014 to 4,747,300 COP in 2015 (UNODC; 2016, p. 54). Once smuggled to the United States, its value can easily surpass the 30,000 US\$ by

kilogram<sup>12</sup> making evident the reason which explained the monetary of this resource also increases the possibilities of more conflicts.

The UNODC in its report published in 2015 sustained that the concentration of *coca* cultivars in indigenous *resguardos* was present in the Pacific region with one of the highest percentages of 58,8% followed by the Meta-Guaviare region with 18%; the Putumayo-Caquetá region with 15,2%; the Orinoquía region with 3,3%; the Central region with 2,7%; the Amazonía with 1,9%; and finally, the Sierra Nevada region with 0,1% (UNODC; 2015, p.44) (Figure 1). In its following report published in 2016, the UNODC sustained that there was no significant change evident in terms of the reduction of the *coca* cultivars in *resguardos* in total; these cultivars remain being perceived as threat for the government in terms of the security of the country. There were regions in which *resguardos* are present that could reduce the cultivation of *coca* in a small percentage in comparison to the ciphers presented in 2015 but in terms of the entire country we observe that the tendency of augmenting continued. The newest report indicated that the highest percentage is in the Pacific region with 68,8% followed by the Putumayo-Caquetá with 14,0%, the Guaviare-Meta with 12,0%, the Central with 3,3%, the Amazonía with 1,3%, the Orinoquía with 1,3%, and the Sierra Nevada with 0,1% (UNODC; 2016, p. 41) (Figure 2).

**Figure 1.**

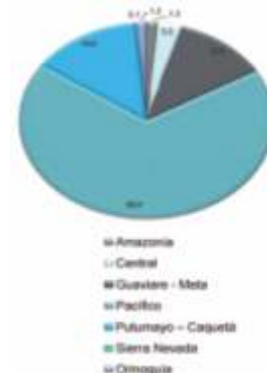
Percentage in the Participation of the *Coca* Cultivars in the Indigenous *Resguardos* by Region, 2014.



**Source:** United Nations Office on Drugs and Crime - Oficina de las Naciones Unidas contra la Droga y el Delito (UNODC) Gobierno de Colombia (2015). *Colombia Monitoreo de Cultivos de Coca 2014*, Julio 2015. "Producción de Drogas". Cultivos de coca en resguardos indígenas. Gráfica 6. Participación porcentual de los cultivos de coca en los resguardos indígenas por región, 2014. p. 44. [Online] Available From: [https://www.unodc.org/documents/crop-monitoring/ing/Colombia/Monitoreo\\_de\\_Cultivos\\_de\\_Coca\\_2014\\_web.pdf](https://www.unodc.org/documents/crop-monitoring/ing/Colombia/Monitoreo_de_Cultivos_de_Coca_2014_web.pdf). Retrieved: 27/08/2014.

**Figure 2.**

Percentage in the Participation of the *Coca* Cultivars in the Indigenous *Resguardos* by Region, 2015



**Source:** United Nations Office on Drugs and Crime - Oficina de las Naciones Unidas contra la Droga y el Delito (UNODC) Gobierno de Colombia (2016) Colombia. *Monitoreo de territorios afectados por cultivos ilícitos 2015*, Julio 2016. "Cultivos de Coca en área de manejo especial" Gráfica 7. Participación porcentual de los cultivos de coca en los resguardos indígenas por región, 2015. p. 41. [Online] Available From: [https://www.unodc.org/documents/crop-monitoring/Colombia/Monitoreo\\_Cultivos\\_ilicitos\\_2015.pdf](https://www.unodc.org/documents/crop-monitoring/Colombia/Monitoreo_Cultivos_ilicitos_2015.pdf). Retrieved: 12/09/2016

<sup>11</sup> Mesa, Magda. (2014). Personal Interview. March 13th of 2014.

<sup>12</sup> Narcotic News (n.d) "Cocaine Prices". In: *Narcotic News*. [Online] Available From: <http://www.narcoticnews.com/drug-prices/cocaine/> Retrieved: 20/20/2017.

## **The Importance of the Land and the Right of Prior Consultation**

We could continue expanding our discussion regarding the radical contradictions between the indigenous people and the government over the lands, the ways they are conceived, the meaning of its resources (the *coca* leaf and its spiritual meaning or its commercial value), etc. Instead, let us now examine the importance the land acquires within the legal and political framework and the right of prior consultation as well as its role in the middle of this conflict. This right is from the standpoint of this article conceived as one of the imminent proofs that demonstrate the existence of a conflict present to this day over *resguardos* which has transcended the boundaries of the laws, the policies, norms, and the decrees.

The right of prior consultation can be easily understood as the protective legal mechanism given by the government to the indigenous people who can either accept or reject the entrance of a third party to their territories. Whether it is for a) the exploration of their territories, b) the development of infrastructural projects in these areas, c) the exploitation of the resources or d) to develop security missions given the presence of guerrilla members or to eradicate the increased cultivars of *coca* to avoid the uprising of further scuffles; the third parties including the government as well and its correspondent authorities, have the obligation to consult the indigenous people before entering into a *resguardo* (Rodríguez, 2010, p. 44.). Therefore, this tool was enacted to prevent the generation of more conflicts between the indigenous and the government.

The way the land is treated in the legal and political framework as well as the existence of this right can be found easily mentioned among these main following tools:

First, the law 21 of 1991 (Ley No. 21, 1991) which approved the principles in the convention No. 169 of the International Labor Organization (ILO) regarding the protection of the indigenous lands and the prior consultation to these communities. Second, the decree (Decreto No. 1320, 1998) which establishes more precisely in its Article 2 the right of prior consultation to the indigenous communities whenever entering their territories for extracting minerals or to develop similar activities. This decree was ratified to legitimize the right of prior consultation and give to the indigenous communities in *resguardos* voice and participation in the determinations of the government in what concerns to the intervention

and above all, the natural resources' exploitation in their lands. It establishes the prior consultation as a process which:

“shall be realized when the project, activity, and construction work processes are pretended to be developed in the zones of *resguardos* or indigenous reservation areas or in settled zones in collective property to the afro-descendant communities. Equally, the prior consultation shall be realized when the project, activity, or construction works are pretended to be developed in non-entitled zones and habituated in regular forms and permanently by those indigenous or black communities, in conformity with the enacted in the following article” (decreto No. 1320, 1998).

Third, in the constitutional court ruling C-383 of 2003 (Sentencia C-383, 2003) which establishes the tutelage as a legal mechanism that the indigenous people shall use to protect their territories from invasions without being previously consulted to their territories by third parties. Fourth, in the decree-law 4633 of 2011 (decreto-ley No. 4633 de 2011) which was enacted to create assistance and integral reparation mechanisms to the indigenous communities who have, to some degree, suffered from damages in their territories. In its Article 1, this decree establishes that:

“this decree-law has as main objective to generate and to create the legal and institutional background of the public policy of integral attention, protection, integral reparation, and territorial rights' restitution to the indigenous people and communities as collective subjects and to their members considered individually, in conformity with the Political Constitution, the law of origin, the natural law, the superior right or the own right, and taking as reference the international instruments which compose the pillar of constitutionality, the laws, the jurisprudence, the international principles to the truth, to the justice, to the reparation and no repetition guarantees, respecting their culture, material existence e including their rights as victims of grave violation and manifested of international norms of human rights or infraction to the



humanitarian international right and dignify their ancestral rights” (decreto Ley No. 4633 de 2011).

Fifth, in the decree 1953 of 2014 (decreto No. 1953, 2014) which creates a special regime aiming to put in functioning the indigenous territories according to their own administration systems considering the land, in its Article 10 section (d) territoriality, as a living entity, as a “mother, the master, the space in which the law of origin is experienced, and it is composed by beings, spirits and energies which allow an order and make possible the life, in conformity with the traditional cultures by each community” (decreto No. 1953, 2014). Sixth, the decree 2333 of 2014 (decreto No. 2333, 2014) which creates a system of coordination between the dependencies of government to, as stated in article 1, “establish the mechanisms to the effective protection and judicial security of the lands and occupied territories or ancestrally possessed and/ or traditionally by the indigenous people”. This decree in its second principle in Article 2, sustained that the government understands the existence of a “special relation of the indigenous people with the lands and the territories” (decreto No. 2333, 2014); **therefore:**

“the government recognizes, respects, protects, and guarantees the special importance which for the cultures and spiritual values of the indigenous people sheathes its relationship with the lands or territories, or both, which occupy or use in one or in any other way, and in particular, the collective aspects of that relation” (decreto No. 2333, 2014).

And finally, seventh, and overall the most important, in the political constitution of 1991 in articles 7 and 8 that determine the government has the obligation to protect the ethnic minorities in the nation<sup>13</sup>. At the same time, it is stated in article 330 of the constitution in its last paragraph that the:

“Exploitation of natural resources in the indigenous (Indian) territories will be done without impairing the cultural, social, and economic integrity of the

indigenous communities. In the decisions adopted with respect to the said exploitation, the government will encourage the participation of the representatives of the respective communities”<sup>14</sup>.

Despite the existence of these laws, decrees, constitutional rulings of the Constitutional Court, and articles of the political constitution in which are clearly stated the importance of the land and the existence of the right of prior consultation, the conflict is still evident. As we have seen, on one side the indigenous people sustain that the land and the right of prior consultation have not been respected because the government, in an ambivalent position, always acts against them interfering and destroying their territories. On the other side, the government sustains that the land as same as the right of prior consultation is always being respected and the communities are always invited to gather with the authorities to discuss the whether or not is possible to enter to those lands, to conduct surveillance acts, to explore the areas, to search for minerals, or to develop projects in them<sup>15</sup>. These are another set of contradictions which can be added to the list of reasons that justify the conflict between the indigenous people and the government over *resguardos* prolonging it to this day.

The right of prior consultation aside being enacted process the government in the legal and political framework for formally considering the opinions and perspectives of the indigenous people is perhaps one uncomfortable needle digging under the feet of both parties whose conflict in most of its part relies on it. Therefore, to find an ultimate answer which benefits both parties equally has been even for the authors like searching a way out from an infinite maze in which some the opinions are lost in the paths and the others find themselves trapped in a dead-end without a way out. These last two metaphors will be our references for considering the positions of the indigenous people, the government, but especially of the authors who aside reflecting over the importance of the lands and of the right of prior consultation, do neither have clarity nor a consensus settled because they as well have opposed positions.

<sup>13</sup>Text of the Constitution of Colombia (1991). Title I. Concerning Fundamental Principles. pp. 4-5. [Online]. Available From: [http://confinder.richmond.edu/admin/docs/colombia\\_const2.pdf](http://confinder.richmond.edu/admin/docs/colombia_const2.pdf). Retrieved: 18/11/2012. See also: Colombia (1991) Constitución Política de Colombia 1991. Panamericana Editorial. Bogotá, D.C.

<sup>14</sup>Text of the Constitution of Colombia (1991). Title X. Concerning the Supervisory Bodies Chapter 4. Concerning the Special Regime. p. 112 [Online]. Available From: [http://confinder.richmond.edu/admin/docs/colombia\\_const2.pdf](http://confinder.richmond.edu/admin/docs/colombia_const2.pdf). Retrieved: 18/11/2012. See also: Colombia (1991) Constitución Política de Colombia 1991. Panamericana Editorial. Bogotá, D.C.

<sup>15</sup>Ministerio del Interior de Colombia. Todos por un Nuevo País. Dirección de Consulta Previa. Mininterior. [Online]. Available From: <http://www.mininterior.gov.co/mision/direccion-de-consulta-previa>. Retrieved: 14/10/2016.



Adding to this last point, the scenario seems to get worse analyzing the presence of constant reforms and changes in the legal and political framework thorough the history because the laws, the policies, norms, and the decrees in some occasions contradict themselves as we will observe further in this article. Something that makes the right of prior consultation not only more complex topic for the analysis but also one important component of the dispute over *resguardos* is that on one side the indigenous people believe that the lands as same as the resources are theirs but on the contrary government believes that the resources of the subsoil under the *resguardos* belong to the whole nation and constitute the key elements for achieving the sustainable development of the country. This last point will be examined deeper in the following sections and for now, let us examine the positions of the scholars over this topic.

### **A Conflict Beyond the Borders of the Legal and Political Framework**

Authors like Wehrmann do not consider the existence of the right of prior consultation as a reason justifying the conflict between the indigenous people and the government; in other words, whether the right of prior consultation is required or not seems to be out of her perspective because she believes it is not a matter of rights but on the contrary of value the land has. In her words:

“Land conflicts are indeed a widespread phenomenon, and can occur at any time or place. Both need and greed can equally lead to them, and scarcity and increases in land value can make things worse. Land conflicts especially occur when there is a chance to obtain land for free – no matter if this land is state, common or someone's private property” (Wehrmann, 2008, p. 8).

In comparison to Wehrmann who sustains that the land value is what generates conflict instead of the right of prior consultation, there are authors like Bouvier who argue that the conflict over the lands in Colombia is caused by the presence other more important actors —than the indigenous people— whose desires for

appropriating the land and its resources pose a much bigger threat to the internal context of the country. In her words: “today, guerrilla insurgents, paramilitary groups, drug traffickers, agro-industrialists, and the State battle for the control of land, natural resources, and geostrategic corridors” (Bouvier, 2013) And all of them together are the most active in the field of the fight over the lands; unlike the indigenous people who aside being a minority do not conduct in the same level terrorist activities as the criminal groups like the guerrillas. In her viewpoint, it seems that the guerrillas and similar criminal bands who battle against the government make the land conflict more complex in Colombia than just a group of indigenous people; even though she does not leave completely their presence aside in this conflict because she also considers the mining expeditions is as well one of the reasons for the generation of conflicts among groups. In this sense, she also sustains that:

“the land issue in Colombia is central to the conflict's origins...Entrenched rural elites responded to the guerrillas' call for land reform by forming private armies... that relied on public security forces and regional politicians to protect the interests of large landowners. In recent decades, conflicts over land have become intertwined with the drug trade and extractive industries as well” (Bouvier, 2013).

Pizarro distinct from Wehrmann and similar to some extent to Bouvier sustains that it is not the value of the land but instead of that is the value of the resources allotted in the land what generates conflict between the parties and in “production areas and of illegal drugs processing, zones rich in gold, coal, oil, bananas, stockbreeding, and progressively coffee” (Pizarro-Leongómez, 2004, p. 185) more confrontations tend to occur<sup>16</sup>. Especially, in the rural zones of Colombia in which these natural resources are abundant the conflict amid groups is more than constant; in the words of this article, in *resguardos* where the indigenous communities are allotted.

These are some of the different academic perspectives that as we could observe are very diverse in their statements concerning the analysis of the conflict over the lands and

<sup>16</sup> It is interesting to observe an assumption that the richer the land is the higher levels of conflict will be presented. This proportional relation can be understood if we consider the amount of wealth and resources in a determined nation; this means, if a country has high concentration of oil, fertile lands to cultivate or high quantity of precious stones to develop mining activities is likely proportional the conflicts for the domination of these resources and of course the land in which they are allotted will arise. These scuffles generate negative consequences for the society such as the reduction of the security levels, massive murderers, internal displaced persons (IDP), among others., which may last for years even after the disputes are settled.



more specifically of *resguardos*. The positions of the indigenous people and of the government over the lands as well as of these scholars are very challenging to harmonize because each author is sustaining his opinion at the basis of the information and experiences at hand. The same occurs with the indigenous people and the government because both are operating in a scenario in which not only their information is different but above all their interests and perspectives that are mutually confronted seem radical and with no intention of ceding space for the generation of consensus. This makes more difficult for these two actors to generate spaces of agreements and the establishment of future negotiations that can assist in their mutual understanding because their unwillingness to yield in their points makes the scenario more complex to understand.

Likewise as we have seen, the indigenous people as well as the government are accusing each other constantly; of intromission into their territories for eradicating *coca* cultivars, for constructing infrastructures, and for developing mining expeditions—from the arguments of the indigenous people—and of cultivating in high amounts illicit crops whilst supporting the guerrillas in their criminal activities—from the arguments of the government—without even settling their perspectives in a common negotiation table. The *resguardos* that are the center of the dispute as we have seen have not only a very ambiguous conception among the indigenous people and the government but also amid the authors who deal with this topic because their positions support either to the indigenous people or to the government (Mora, 2016). This last factor is still causing a disagreement between positions and is also blocking the possibility of establishing an accord which eventually shall lower the intensity of the conflict that spins around the land of the *resguardos* and more specifically in what concerns to the right of prior consultation.

### The Current Claims of the Indigenous People

The indigenous people to this day for more than 400 years (Mora, 2015) have demanded two main points: First, their respect of their lands and second, to be previously consulted—also they include the request for more lands—. These are

the most important appeals that the indigenous people have made through the decades to the government. According to their first claim, the indigenous people are asking to the government the respect of their lands considering the contents enacted in the laws and decrees of the legal and political framework. However, Juan Friede, a specialized anthropologist in the history of the conquest and the Americas' colonization, sustains that these lands of *resguardos* were not given by the government to the indigenous to preserve and safeguard their rights. Instead, these lands are “formed centers in an artificial way as consequence of the dispossession, forced or legal, that the Spanish subdued the indigenous population” (Friede, 1976, p. 22) and they were given to the indigenous as a method the Crown—and eventually the governments in the republic—used to continue its exploitations in other parts of the territory in which these natives used to live. Friede does not see the government as the guarantor of the rights of the indigenous people but on the contrary as a dominator that created *resguardos* as a way of translating the indigenous communities away from the richer lands and confining them in artificial areas use them later for future interventions. Therefore, according to this claim in this perspective there is no need for the government to consider their rights over the *resguardos* before acting against them.

The indigenous people are requesting to the government to stop interfering in their lifestyle invading their territories in the quest of 1) inexistent *coca* cultivars destined for the support of the guerrillas and 2) natural resources like gold, silver, oil, etc., without asking them first their consent on whether it is possible or not to conduct these types of activities. For this reason and as for their second claim they also request more lands. This is because the *resguardos* in which they live are gradually losing their purpose of protecting their members because not only they are being intervened but above all destroyed and poisoned by the a) use of glyphosate in the fumigations of the *coca* cultivars (Sentencia T-253/16) and of b) employment of toxic chemicals like cyanide and mercury used in the mining expeditions<sup>17</sup>; contravening the communities' rights and especially the content of the most recent, the constitutional ruling Sentencia T-253/16<sup>18</sup>. This

17 See also: *El Tiempo.com* (16/08/2014) “La fiebre del oro envenena aguas en 17 departamentos. El país no tiene datos sobre el número de personas intoxicadas por mercurio, metal usado en minería”. Justicia. In: *El tiempo.com* [Online] Available From: <http://www.eltiempo.com/archivo/documento/CMS-14394739>. Retrieved: 21/12/2016.

18 See also: González, Posso. Darío (2003) “Fumigaciones ilegales en territorios indígenas. ¿Decisión de la Corte Constitucional a medio camino?”. *Colectivo Mamacoca*. [www.mamacoca.org](http://www.mamacoca.org). Conflict & Drugs. On-line academic journal on complexity, conflict and drugs in the American Region. [Online] Available From: [http://www.mamacoca.org/FSMT\\_sept\\_2003/es/doc/gonzalez\\_fumigaciones\\_ilegales\\_es.htm](http://www.mamacoca.org/FSMT_sept_2003/es/doc/gonzalez_fumigaciones_ilegales_es.htm). Retrieved: 15/01/2014.

constitutional ruling enacts that the indigenous people shall use the tutelage to directly demand the respect of the indigenous' collective property rights infringed due to the use of glyphosate and mercury near or in where they live. Nonetheless, despite the existence of this tool the government has not given an appropriate effective response to the communities and the use of those toxic chemicals continues. The indigenous communities sustain they need not only need to be consulted before entering to their *resguardos* but also more lands to live because the ones they have are not suitable enough to provide the necessary elements for the survival of their whole members whose lives are always threatened (Semana, 2008; pp. 30-32) especially by the poisoning of their environment.

Those destructive actions against the indigenous' territories occur probably because the legal and political framework of Colombia is fragile even though is well constructed. Nevertheless, it does not have enough force to block these intrusions because the government and third parties prefer to accomplish their goals instead of respecting the indigenous rights even though they are already enacted. Perhaps the government sees the indigenous people as rebels who in some lands support the criminal groups like the guerrillas, paramilitaries and so on. But even the same authorities of the government have demonstrated in their actions their unwillingness to respect these communities' cultural background and just pursue their own interests disregarding the presence of the indigenous people and conceding permission to the regular forces of the government to investigate and eradicate the *coca* cultivars and to the mining companies to explore on *resguardos* for valuable natural resources that according to those who are in the power of the State it contribute to the economic growth and development.

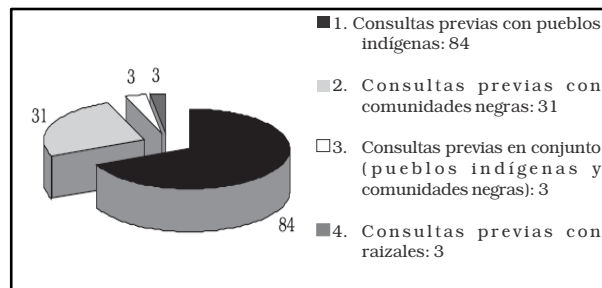
### The Responses of the Government.

After seeing the indigenous people's claims now let us explore the responses given by the government to their petitions. Regarding the first claim, the government has sustained that the rights of the indigenous people enacted in the legal and political framework, especially their property rights over *resguardos* and the right prior consultation are being respected as well as protected. For every occasion in which the

government expresses its desire of entering to the indigenous' territories, in quest of illicit activities linked with the excess of *coca* cultivars or for developing mining expeditions, there has been a prior gathering between the authorities of the government and the indigenous tribal leaders<sup>19</sup>, as publicly announced by the dependency in charge of the prior consultation from Ministry of Internal Affairs.

According to Gloria Amparo Rodriguez, who quoted in her study information from the actual Colombian Ministry of Environment and Sustainable Development referred in her study as the former Ministry of Environment, Housing, and Territorial Development "since 1994 until July of the present year [2009], the Ministry... had realized a total of 121 consultations, from which of them 84 have been with indigenous people, 31 with Afro-descendant communities, in 3 cases there have been consultations with both groups and 3 with raizal communities (Figure 3)" (Rodriguez, 2009, p. 61) and as it is observed in the next figure in her study the Ministry of Environment has maintained a record of the consultation processes made to all the communities involved in the projects of the government despite the results are low in number.

Figure 3. Prior Consultation by Ethnicity



Source: Ministerio de Ambiente, Vivienda y Desarrollo Territorial, respuesta derecho de petición. Radicado MAVDT 4120-E1-81394 del 21 de julio de 2009. See also: Rodriguez, (2009). "El papel de la consulta previa en la pervivencia de los pueblos indígenas y demás grupos étnicos de Colombia". Consulta previa en asuntos ambientales. Figura 1. Consultas previas por etnias. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) (2009). *El derecho a la consulta previa en América Latina: del reconocimiento formal a la exigibilidad de los derechos de los pueblos indígenas*. El Otro Derecho, No 40. Gente Nueva Editorial, Bogotá, Colombia. Junio 2009. p. 61 [Online] Available

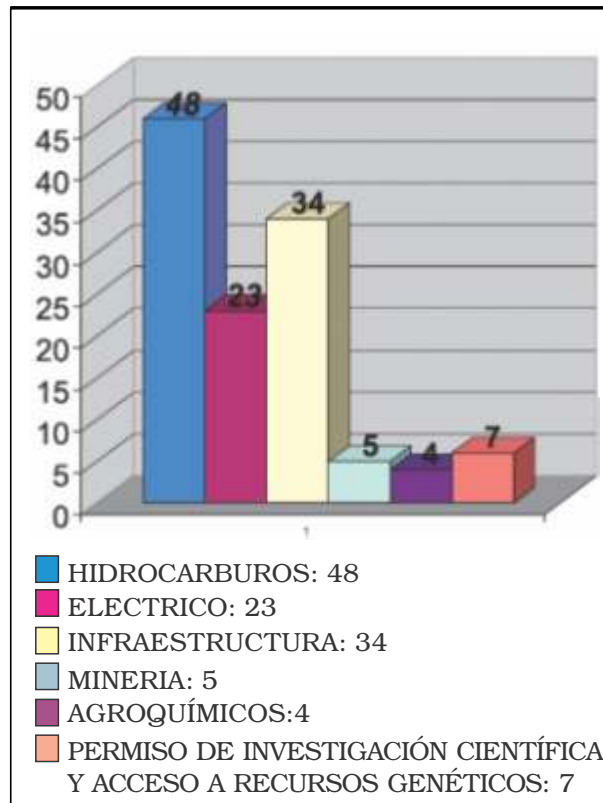
19 See also: Ministerio del Interior de Colombia. Todos por un Nuevo País. Dirección de Consulta Previa. Mininterior. [Online]. Available From: <http://www.mininterior.gov.co/mision/direccion-de-consulta-previa..> Retrieved: 14/10/2016



from: SSRN: <http://ssrn.com/abstract=2559292>. Retrieved: 2013/07/04.

As stated by the same author, Rodriguez, depending on the sectors and types of activities in the need for consultations to the indigenous communities up to 2009 the consultation processes “have been effectuated in the following way: Hydrocarbons 48, electric 23, infrastructure 34, mining 5, agrochemicals 4, and permissions of scientific investigation and access to genetic resources 7” (Rodriguez, 2009, p. 61) and as it is observed in the following Figure 4 the author points out that the prior consultation has been catalogued depending on the sectors that the government desires to exploit on these territories.

**Figure 4.** Prior Consultation by Sector.



**Source:** Rodriguez, Gloria Amparo (2009). “El papel de la consulta previa en la pervivencia de los pueblos indígenas y demás grupos étnicos de Colombia”. Consulta previa en asuntos ambientales. Figura 2. Consultas previas por sector. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) (2009). *El derecho a la consulta previa en América Latina: del reconocimiento formal a la exigibilidad de los derechos de los pueblos indígenas*. El Otro Derecho, No 40. Gente Nueva Editorial, Bogotá, Colombia. Junio 2009. p. 61 [Online] Available

from: SSRN: <http://ssrn.com/abstract=2559292>. Retrieved: 2013/07/04.

These data presented by Rodriguez reveal in the first place the record of a total number of the consultations done to these communities by the government since 1994 to 2009 and in the second place demonstrate the existence of some of the categories established for consulting to each of those communities depending on the different sectors desired to be exploited. This information obtained from official authorities like the Ministry of Environment exposes in its results that the government is indeed demonstrating a commitment towards the protection of the indigenous lands acting following the principles enacted in the legal and political framework. However, there is no information presented in either the study of Rodriguez or in the Ministry of Internal Affairs regarding the use of the prior consultation related to the actions to eradicate the excessive amount of *coca* cultivars deployed by the government — who in some cases authorizes the fumigation with glyphosate without considering the presence of the communities living there (González, 2003) — and of its regular forces—who for surveillance activities establishes security perimeters and enters to these lands using force—. Neither the Ministry of Internal Affairs, Rodriguez, nor the Ministry of Environment mentioned it in their data the relation between the right of prior consultation and the unauthorized intervention of the government and its regular forces into these areas. Despite Rodriguez mentioning in her study that the government consults to the indigenous communities before developing actions in *resguardos*, in most of the cases that are related with the monitoring and the regulation of the *coca* cultivars in their lands this right is ignored.

Considering the argument presented by González Posso related to the fumigations done by the government in *resguardos* to eradicate the *coca* cultivars (González, 2003) in the constitutional court's Ruling *Sentencia C-383* of 2003 (*Sentencia C-383*, 2003) it is enacted that the government as well as its authorities must consult to the indigenous communities with anticipation every time even for fumigation in order to safeguard not only the indigenous' rights but also their lives. Therefore, the indigenous communities have to also inform to the government and to the pertinent authorities about the purposes of the *coca* cultivars in *resguardos* in order to avoid misunderstandings, which are still remaining.



The presence of the military as well as of the fumigations in these areas without the prior consultation to the indigenous people demonstrates that there is another ambiguity present which is caused in most part by the unwillingness of the government to act according its own legal and political framework which keeps 1) generating more disagreements between both parties, 2) separating even more the positions of the authors who support the indigenous people and the government, and 3) extending this conflict in time as well as its ambiguities.

Finally, regarding to the indigenous people's second claim related to the need of more lands, Martínez arguments that thanks to the agrarian reform done in the decade of the 1960s the government through its legal and political framework was able to give to the whole population more hectares of territory determining effectively the titles and its owners, along with their correct location, the types of lands, and their limits for avoiding future conflicts (Martínez, 2003, p. 6). His position also suggests that “through the enactment of the law 70 of 1993, over 4.000.000 million hectares have been owned by the indigenous communities ... [and] actually, the indigenous communities have more or less 30.000.000 million of hectares that corresponds to the 30 or 32% of the total of the titled land in Colombia” (Martínez, 2003, p. 6) This argument which seems to be very convincing in its logic is not only ambiguous but above all mistaken because the author is not considering the fact *that the law 70 of 1993 (Ley No. 70, 1993) is not designed for indigenous people but on the contrary is especially enacted for the Afro-descendants. They are other group which cannot be equated in the same category as the indigenous people because their context, history, Cosmo vision over the land, their relationship with the government, the types of lands in which they live, and above all the laws and policies designed for them are different. This argument not only leaves us in uncertainty but also questioning whether the authors, and even government are able to understand the complexity of this conflict full of ambiguities and unending arguments.*

### **To Preserve the Environment or to Achieve Development?**

The indigenous people in *resguardos* have played an important role in Colombia not only because they represent the traditional roots of the country but above all because they seek to

protect the environment considered to be sacred unlike the government who sees it to be a mean for achieving sustainable development. Esther Sánchez Botero sustains that the contradicting believes between the indigenous people and the government over the lands are caused by an intervention of the market forces that always had attempted to give commercial value to the natural resources like gold, silver, emeralds, oil, etc., and the rich biologic diversity allotted in these specific territories (Sánchez, 2010, pp. 115-116.). According to her, this value is also owned by the indigenous peoples who have taken care and protected these territorial spaces even risking their own lives against the guerrillas and similar bands who desire to appropriate these areas to gain profits as it has been sustained previously (Sánchez, 2010, pp. 115-116.).

As we saw earlier, the current president Juan Manuel Santos Calderón (2010-) has given priorities to the preservation of the rights of the indigenous people as well as to the development of the country in a sustainable way which in other words means the usage of some of the most important the natural resources in Colombia like oil, coal, gold, barite, etc., for accomplishing this goal. Despite enacting new decrees like the decree-law 4633 of 2011 (decreto-ley No. 4633, 2011), the decree 1953 of 2014 (decreto No. 1953, 2014); and the decree 2333 of 2014 (decreto No. 2333, 2014) destined all of them to protect the indigenous people's rights, over *resguardos* and of their right to be previously consulted, Santos' administration has also focused his efforts in the impulse of the economy through the so called *locomotora minera* or mining locomotive in English. This plan of the current administration has intended to stimulate in a fast and constant way the industrialization, growth, and the development of Colombia by conceding licenses and concessions –mostly for mining– to private and multinational companies for exploring the territories and gathering natural resources (Ahumada, 2013). According to the arguments given by the current Minister of Finance Mauricio Cárdenas quoted by Antonio Paz “the responsible mining is an ally for eradicating the misery in Colombia” (Paz, 2014).

By the beginning of Santos' administration, the mining concessions were conceded to several more multinational and private companies which settled their operations in the indigenous *resguardos* in the quest for resources and as it is observed in the maps (figure 5 and 6) presented by the organisation Geoactivismo the number of companies waiting



for the government's approval doubled and almost quadrupled the already present by 2010. This means that the government in its rush for

achieving development has attempted to explore the whole territory unremittingly in order to gain profits.

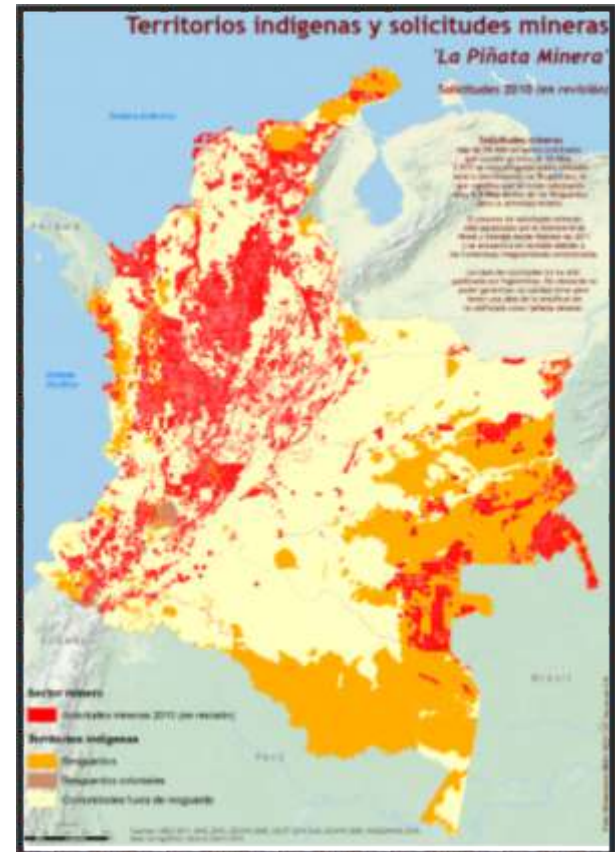
**Figure 5.**

Indigenous Territories and Mining Titles.  
Current Titles 2010



**Figure 6.**

Indigenous Territories and Mining Requests.  
Requests in 2010 (Under Revision)



**Source:** Fidel Mingorance, posted by: Geo (16/06/2011) “La piñata minera” *Geoactivismo. Org. En Defensa de derechos y de territorios*. Coordina: Human Rights Everywhere (HRE) 2010-2012. Fuentes: Human Rights Everywhere 2011, Organización Nacional Indígena de Colombia (ONIC), Centro de Cooperación al Indígena (CECOIN) 2008, Sistema de Información Geográfica para la Planeación y el Ordenamiento Territorial (SIGOT) 2010 Instituto Geográfico Agustín Codazzi (IGAG), Sistema de Información Geográfica Agencia Nacional de Hidrocarburos (SIGANH) 2008, INGEOMINAS / Sistema Geológico Colombiano (SGC) 2010. Base cartográfica; Natural Earth 2010. Iconografía derivada de Inconoclasistas. [Online] Available From: <http://geoactivismo.org/2011/06/16/la-pinata-minera/>. Retrieved: 14/02/2014.

Perhaps it is also necessary to highlight that aside the generation of profits the mining process for the government

“represent the 2% of the Gross Domestic Product (GDP), constitute the 18,8% of the total of exportations of Colombia, produces the 91,3% of the coal, 12% of the gold, and 100% of the nickel; generates 350.000 direct employments, annually are destined 135.000 millions of pesos in programs of social responsibility and near 176.000 million in environmental management plans; together with the national government near 2.000 miners have been formalized [and] each year near six billions of pesos are bought to national providers” (Paz, 2014).

The land in Colombia and especially the lands of *resguardos* as we have observed are highly valued for both parties. The indigenous people who aside claiming it as their own insist that the mining processes in their territories constitute a destruction of the cultural roots and of the environment which they have been preserving for more than 400 years. The land does not have a value in the same commercial logic than the government as it was mentioned before but instead of that has spiritual meaning which through the proper relationships with the men is balanced. This is known as *etnoecología*, or the discipline that takes care, studies the relationship between the man and the environment, and that tries to preserve it in English (Casas, 2011, p. 113).

To preserve their lands from destruction and to establish an equilibrated relationship with the ecosystem the indigenous people do not conduct mining or similar activities that eventually in the end may contaminate and endanger the soils that are sacred for them. The *etnoecología* developed constantly by these natives has been done to avoid the generation of future environmental and costs that could be originated by the excessive destruction and contamination of the environment as a result of the actions of the multinational companies who have as priority the accumulation of the capital in excess rather than the preservation of the ecosystem, the rights, the and lives of the indigenous people (Reyes and Martí, 2007, pp. 46-55). Azevedo Luíndia says that to generate development in a sustainable way considering not only the interests and rights of the indigenous but also their skills or in this case the knowledge of *etnoecología*, is as well a viable strategy. For her, the implementation of ecotourism can be used as a way of not only preserving the environment but also an alternative manner of stimulating the economy (Azevedo, 2007) by realizing activities that make the persons interact with a preserved community. The revenues out of this process may be determined by the contents and costs of the programs, and this could gradually reduce the dependency in the excavation for natural nonrenewable resources and diminish the destruction of these lands through the mining process surprisingly legitimized also in the legal and political framework.

### **Contradictions in the Legal and Political Framework**

Up to this point we had been debating the positions of the indigenous and the government

over the lands of the *resguardos* considering some of the most controversial points between them which include at the same time the property rights over the lands and the right of prior consultation.

As continuously mentioned in this article, the indigenous people sustain that the government is neither respecting their lands nor considering the tools of the legal and political framework for their protection. On the contrary, the government says not only the indigenous people's rights are guaranteed but most importantly protected. It also says that the actions developed towards the indigenous *resguardos* are above all legitimate under the tools of the legal and political framework in: 1) article 80 of the 1991 political constitution in which is enacted that the state of Colombia "shall plan the administration and the usage of the natural resources, in order to guarantee its sustainable development, its preservation, restoration, or substitution..." (constitución política de Colombia 1991, artículo 80); 2) in article 332 of the political constitution that states that all the non-renewable natural resources are regarded the property of the State (constitución política de Colombia 1991, artículo 332); and in 3) in the national Mining Code also known as the law 685 of 2001 (ley No. 685, 2001) that states in its article 1 that all the resources allotted in the soil of the nation are considered contributing elements for achieving the sustainable development of the country (ley No. 685, 2001), and also that sustains in article 5 that:

"The minerals of any kind and location, allotted in the soils or subsoils, in any natural or physical conditions, are exclusively property of the country, without consideration that their property, possession, or tenancy of the correspondent terrains, belong to other public entities, of particulars or communities or groups" (ley No. 685, 2001).

Finally, in 4) in the decree 934 of 2013 (decreto No. 934, 2013) that legalizes article 37 of the law 685 of 2001 which in a paraphrased way says that no regional, or similar authority is allowed in Colombia to exclude parts of the territory from becoming part of the mining projects of the country (ley No. 685, 2001) and that also declares in a broad way that the mining in Colombia is an indispensable process required to achieve sustainable development (decreto No. 934, 2013). In the preamble of this last decree it





is mentioned that Ministry of Environment is the most important public organization<sup>20</sup> that delegated by the government oversees not only determining the procedures for the mining processes but also in deciding which are the zones potentially filled with resources for exploring them.

In this sense, authors like Alexa Catherine Ortíz who support the actions of the government in favor of the mining activities and the exploration of the soils and subsoils for gathering natural resources argues in her study that in this case "... the judicial norm reflects the importance of the minerals in the development of the actual societies, as we know them" (Ortíz, 2014, p.23). Her logic suggests that these types of laws, decrees and, Articles from the political constitution used by the government are designed not only to achieve sustainable development but also to benefit the entire nation as well. In a broad way, the government justifies the actions taken toward the indigenous *resguardos* mentioning these tools as said before as well as the indigenous people do by quoting laws, decrees, and articles from the political constitution for requesting the respect over their lands and their right of prior consultation.

Both positions, of the indigenous people and the government over the land are justified by their own perspectives and they are also legitimized by the laws, decrees, etc., depending on the point of view; but considering this conflicting scenario those two parties are using the elements enacted in the legal and political framework to contradict each other constantly to obtain more benefits for themselves. The complexity of conflict over *resguardos* and most concretely over the right of prior consultation is concentrated in the beliefs of the parties over the purposes of the lands and its resources.

Summarizing, using the legal and political framework the indigenous people have believed through the years that they are the unique authority over the *resguardos* and also have sustained that they have the right to be consulted previously before a third party tries to enter to these lands in where they live that are catalogued as inalienable, imprescriptible, and indefeasible. The indigenous people also argued against the government that none of the natural resources such as the *coca* leaves, the gold, the silver, the oil, and even precious stones are being

used by them for personal gain because instead of this they are preserving them along with the environment. According to the organization Survival International (SI) "the indigenous people and tribal communities are the best conservatives and guardians of the natural world"<sup>21</sup> and in comparison, to the perspectives of the government, the indigenous people sustain that the environment is under constant threat due to the excessive interventions and mining expeditions done.

Nevertheless, the government using the same tools of the legal and political framework as same as the indigenous people have said that indeed the lands of the *resguardos* are under protection but from its perspective it seems that the extraction of natural resources is in a more privileged position than the rights of the indigenous people. This is because from this point the economic growth and the achievement of sustainable development comes first and in order to reach both of these aspects it is necessary to take advantage of the lands and extract as much as possible non-renewable natural resources.

### **Conclusions: The Unclosed Gap Between Perspectives**

This article analyzed the positions of the indigenous people and of the government over the lands of *resguardos* emphasizing its attention in the relation of the legal and political framework with *resguardos* concentrating its attention in the right of prior consultation as one of the most important components of the conflict between these two parties. After observing the contradictions between them we can argue that there is indeed a dilemma between the use of the land and the right of prior consultation in Colombia over the *resguardos* which is worsened due to the following points.

In the first place, the contradictions between the indigenous people and of the government over the *resguardos* had been generated because the conceptions that each party has regarding the purpose of the areas and the usage of the resources in them is completely different and opposed to each other. Therefore, the most visible point in which this disagreement is evident —aside in the conception of the resources and their value— is the rights of prior consultation.

<sup>20</sup> This includes also other delegated public organisms such as the *Agencia Nacional de Minería*, National Mining Agency in English (ANM), the *Unidad de Planeación Minero Energética*, Mining and Energy Planning Unit in English (UPME), among others.

<sup>21</sup> Survival International (SI) (2014). El movimiento global por los derechos de los pueblos indígenas y tribales. *Survival International. Informe. Los parques necesitan a los indígenas*. p. 23 [Online] Available From: <http://assets.survivalinternational.org/documents/1444/survival-informe-losparquesnecesitanalosindigenas.pdf> Retrieved: 20/09/2015.



In the second place, it seems that the legal and political framework is weak in Colombia because it is used by the indigenous people and the government for accommodating the enacted contents of the laws, the policies, the decrees, and the articles of the political constitution easily to their interests for obtaining benefits. Also, these tools are in some cases ratified without taking reference to neither other similar mechanisms enacted nor to the other parties' interests. As an example, the laws and decrees designed for the indigenous people on the right of prior consultation contradict mutually the laws and decrees that the government uses for achieving sustainable development. Regarding the lands of *resguardos* and the right of prior consultation the tools that the indigenous people use to justify their argument say that they must be always consulted before a third party enters to their territories either for searching coca cultivars, or for developing mining expeditions. Nonetheless the laws, the decrees, and the articles of the political constitution used by the government to justify its actions sustain that the mining process is legal and above all required for achieving economic growth and that the indigenous communities are not allowed to block the mining actions in the national territory.

In third place, we can also see the lack of clarity and the presence of several ambiguities between the concepts stated in the laws, the decrees, etc. The vocabulary used for describing the natural resources is similar to the one used for making reference to the lands of *resguardos* because both of these are inalienable, imprescriptible, and indefeasible. Due to the existence of these contradictions and ambiguous vocabulary the conflict over the lands between the indigenous people and the government still exists. This keeps not only making the scenario of this conflict unclear but also expanding the infinite maze of contradictions in which the scholars are also involved in.

Finally, the problem over the lands of *resguardos* and more specifically on the right of prior consultation transcends not only the borders of the scholars but also the boundaries of the legal and political framework because on one side the academic arguments supporting the indigenous people and the government are varied and keep generating a spiral of contradictions; and on the other, both the indigenous people and the government lack of willingness for leaving their interests aside and negotiate in same conditions either an agreement or probably create new laws which may avoid the

prolonging of their dispute.

Colombia is against a situation in which there is a need to find a balance between the conservation of the traditional roots represented by the indigenous people living in *resguardos* and the achievement of sustainable development using the natural resources allotted in the whole territory an especially in *resguardos*. As long as these factors remain unsettled the gap between perspectives shall continuously expand and so will this dilemma extend in history.

## Bibliographic References

### First References

- Colombia (1991) Constitución Política de Colombia 1991. Panamericana Editorial. Bogotá, D.C.
- Colombia (1998) Artículos 7, 8, 69, 329 and 330. Constitución Política de 1991, Panamericana editorial. Bogotá.
- Colombia, Congreso Nacional de Colombia. (1991/03/04) "Ley 21 de 1991 Por medio de la cual se aprueba el Convenio número 169 sobre pueblos indígenas y tribales en países independientes, adoptado por la 76a. reunión de la Conferencia General de la O.I.T., Ginebra 1989". *Diario Oficial*, num, 39.720 de marzo 6 de 1991. Bogotá. D.C.
- Colombia, Ministerio de Agricultura. (1994/12/07). "Decreto 2164 de 1995 por el cual se reglamenta parcialmente el Capítulo XIV de la Ley 160 de 1994 en lo relacionado con la dotación y titulación de tierras a las comunidades indígenas para la constitución, reestructuración, ampliación y saneamiento de los Resguardos Indígenas en el territorio nacional". En: *Diario Oficial* num 42.140, del 7 de Diciembre de 1995. Bogotá.
- Colombia. Congreso Nacional de la república. (1993/27/08). "Ley 70 de 1993. Por la cual se desarrolla el artículo transitorio 55 de la Constitución Política". En: *Diario Oficial* num. 41.013 del 31 de Agosto de 1993. Bogotá.
- Colombia. Congreso Nacional de la república. (1994/08/03). "Ley 160 de 1994. Por la cual se crea el Sistema Nacional de Reforma Agraria y Desarrollo Rural Campesino, se establece un subsidio para la adquisición de tierras, se reforma el Instituto Colombiano de la Reforma Agraria y se dictan otras disposiciones".



- En: *Diario Oficial* num. 41.479, de 5 de agosto de 1994. Bogotá.
- Colombia. Presidencia de la República de Colombia. (1995/12/10) “Decreto 1475 de 1995. Por el cual se reglamenta el Capítulo III de la Ley 70 de 1993, se adopta el procedimiento para el reconocimiento del derecho a la propiedad colectiva de las “Tierras de las Comunidades Negras” y se dictan otras disposiciones”. En: *Diario Oficial* num. 42.049 de Octubre 13 de 1995. Bogotá.
- Colombia, Ministerio del Interior. (2011/30/12). “Decreto-Ley número 4633 de 2011, “Por medio del cual se dictan medidas de asistencia, atención, reparación integral y de restitución de derechos territoriales a las víctimas pertenecientes a los Pueblos y Comunidades indígenas”, en *Diario oficial*, núm No. 48.278 de 9 de Diciembre de 2011 Bogotá. D.C.
- Colombia. Ministerio del interior. (1998/08/13) “Decreto 1320 de 1998. Por el cual se reglamenta la consulta previa con las comunidades indígenas y negras para la explotación de los recursos naturales dentro de su territorio”. *Diario Oficial*, num 43.340, del 15 de julio de 1998. Bogotá.
- Colombia. Congreso nacional de la Republica de Colombia (2001/08/15) “por la cual se expide el Código de Minas y se dictan otras disposiciones”. En; *Diario Oficial* num. 44.545 de 15 de Agosto de 2001. Bogotá, D.C.
- Colombia. Ministerio de Minas y Energía. (2013/05/09) “Decreto 0934 de 2013. **Por el cual se reglamenta el artículo 37 de la Ley 685 de 2001. El presidente de la República de Colombia** en uso de sus facultades constitucionales y legales, en especial las conferidas por el numeral 11 del artículo 189 de la Constitución Política, y en desarrollo del artículo 37 de la Ley 685 de 2001”. En *Diario Oficial*, num 48785 del 9 de Mayo del 2013. Bogotá. D.C.
- Colombia, Ministerio del Interior. (2014/10/07). “Decreto número 1953 de 2014. Por el cual se crea un régimen especial con el fin de poner en funcionamiento los Territorios Indígenas respecto de la administración de los sistemas propios de los pueblos indígenas hasta que el Congreso expida la ley de que trata el artículo 329 de la Constitución Política”.
- En: *Diario Oficial*, num. 49.297 del 7 de octubre de 2014. Bogotá. D.C.
- Colombia, Ministerio de Agricultura y Desarrollo Rural. (2014/11/19) “Decreto 2333 de 2014 “Por el cual se establecen los mecanismos para la efectiva protección y seguridad jurídica de las tierras y territorios ocupados o poseídos ancestralmente y/o tradicionalmente por los pueblos indígenas acorde con lo dispuesto en los artículos 13 y 14 del Convenio 169 de la OIT, y se adicionan los artículos 13,16 Y 19 del Decreto 2664 de 1994”. en *Diario Oficial*, núm 49.340 de 19 de noviembre de 2014. Bogotá. D.C.
- Colombia. Corte Constitucional (Mayo, 2003) “Sentencia C-383”. M.P: Tafur, Gálvis. Álvaro. Bogotá.
- Colombia. Corte Constitucional (Mayo, 2016) “Sentencia T-253/16”. M.P: Vargas, Silva. Luís Ernesto. Bogotá.
- Text of the Constitution of Colombia (1991). Title I. Concerning Fundamental Principles. pp. 4-5. [Online]. Available From: [http://confinder.richmond.edu/admin/docs/colombia\\_const2.pdf](http://confinder.richmond.edu/admin/docs/colombia_const2.pdf). Retrieved: 18/11/2012.
- Text of the Constitution of Colombia (1991). Title XI. Concerning the Territorial Organization. Chapter 4. Concerning the Special Regime. [Online]. Available From: [http://confinder.richmond.edu/admin/docs/colombia\\_const2.pdf](http://confinder.richmond.edu/admin/docs/colombia_const2.pdf). Retrieved: 18/11/2012.

## Secondary References

- Azevedo, Luíndia. Luiza (2007) *Ecoturismo de Pueblos indígenas: Propuestas Sostenibles*. Fondo Para el Desarrollo de Los Pueblos Indígenas de América Latina y el Caribe. Fondo Indígena. Secretaría Técnica. Arters Gráficas-Sagitario srl. La Paz, Bolivia. 2007.
- Friede, Juan. (1976) *El Indio en lucha por la tierra*. 3ra Edición. Editorial Punta de Lanza. Bogotá, Colombia.
- Hallazi, Luis. (23 mayo, 2013) “Conflictos mineros y el derecho a la consulta previa de los pueblos indígenas”. Actualidad Indígena Global. In: *C.R.I.C (Consejo Regional Indígena del Cauca) 45 años de lucha y resistencia en la defensa de la Unidad, Tierra, Cultura y Autonomía*. [Online] Available From: <http://www.cric-colombia.org/portal/conflictos-mineros->

- y-el-derecho-a-la-consulta-previa-de-los-pueblos-indigenas/. Retrieved: 30/09/2015.
- Martínez, Martínez. Yovanny (2003). “La tenencia de la Tierra en Colombia” p. 1-11. [Online]. Available From: <http://www.sogeocol.edu.co/documentos/09late.pdf>. Retrieved: 26/12/2013.
- Mendoza, Diana Alexandra (2012) Programa de las Naciones Unidas para el Desarrollo (PNUD). *Gobernabilidad democrática e industrias extractivas. Estudio de caso. Minería en territorios indígenas del Guainía en la Orinoquia y la Amazonia colombiana*. Programa de las Naciones Unidas para el Desarrollo (PNUD) [Online] [https://redjusticiaambientalcolombia.files.wordpress.com/2013/03/pnud\\_estudio-de-caso-\\_minerc3ada-en-el-guainc3ada\\_\\_2012.pdf](https://redjusticiaambientalcolombia.files.wordpress.com/2013/03/pnud_estudio-de-caso-_minerc3ada-en-el-guainc3ada__2012.pdf). Retrieved: 14/04/2014.
- Mora Vera, Germán. Andrés. (2016). “The dispute for the land in Colombia over the resguardos: concepts, analytical angles and standpoints”. *Papel Político*, 21(1), Enero-Junio de 2016. pp. 57-79.
- Mora Vera, Germán Andrés (2015). “The land conflict over the resguardos between the indigenous people and the government in Colombia”. *Reflexión Política* No. 34 año 17. Diciembre de 2015. pp. 88-99.
- Ossio, Acuña. Juan (Coordinador general) (1989), Ortíz, Rescamare., Cabieses, Fernando., Nuñez del Prado, Oscar., Paz, Flores, Percy., Hinostraza, Lauro., and Dávila, Pilar. In: Instituto Indigenista Interamericano (1989) *La Coca... Tradición, rito, identidad*. Mexico, 1989.
- Ortiz, Rodríguez. Alexa Catherine (2014). *Manual de derecho Minero*. Universidad Externado de Colombia. ISBN: 978-958-772, Bogotá, Colombia. 2014.
- Pizarro-Leongómez, Eduardo. (2004) *Una democracia asediada. Balance y perspectivas del conflicto armado en Colombia*. “IV. Narcotráfico: ¿Motivación o combustible de la guerra interna en Colombia?” Bogotá. Norma. 2004. pp. 167-203.
- Reddy, Jini (29/10/2013) “What Colombia's Kogi people can teach us about the environment” *Health and wellbeing the guardian*: [Online] Available From: <https://www.theguardian.com/sustainable-business/colombia-kogi-environment-destruction>. Retrieved: 30/09/2015.
- Rodríguez, Gloria Amparo (2009). “El papel de la consulta previa en la pervivencia de los pueblos indígenas y demás grupos étnicos de Colombia”. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) (2009). *El derecho a la consulta previa en América Latina: del reconocimiento formal a la exigibilidad de los derechos de los pueblos indígenas*. El Otro Derecho, No 40. Gente Nueva Editorial, Bogotá, Colombia. Junio 2009. pp. 55-75. [Online] Available from: SSRN: <http://ssrn.com/abstract=2559292>. Retrieved: 2013//07/04.
- Rodríguez, Gloria Amparo (2010). *La consulta previa con pueblos indígenas y comunidades Afrodescendientes en Colombia*. Bogotá, Octubre de 2010. [Online] Available From: <http://www.iccaconsortium.org/wp-content/uploads/images/stories/Database/important%20sentence-%20fpic.pdf>. Retrieved: 12/03/2014.
- Rodríguez, Gloria Amparo (2009). “El papel de la consulta previa en la pervivencia de los pueblos indígenas y demás grupos étnicos de Colombia”. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) (2009). *El derecho a la consulta previa en América Latina: del reconocimiento formal a la exigibilidad de los derechos de los pueblos indígenas*. El Otro Derecho, No 40. Gente Nueva Editorial, Bogotá, Colombia. Junio 2009. p. 55-74 [Online] Available from: SSRN: <http://ssrn.com/abstract=2559292>. Retrieved:04/07/2013.
- Reyes, García, Victoria., and Martí, Sanz, Neus. (2007) “Etnoecología: punto de encuentro entre naturaleza y cultura”. In: *Ecosistemas*. Vol. 16, No. 3. Septiembre-Diciembre de 2007, pp. 46-55.
- Ross, Michael (2003). Chapter 2. “The Natural Resource Curse: How Wealth Can Make You Poor”. In: Bannon, Ian., and Collier, Paul. (Editors) (2003). *Natural Resources and Violent Conflict. Options and Actions*. The International Bank for Reconstruction and Development. The World Bank. Washington, DC. pp. 17-43.
- Sánchez, Botero. Esther (2010). *Justicia y pueblos indígenas en Colombia. La tutela como medio para la construcción del entendimiento intercultural*. 3ra Edición. Universidad Nacional de Colombia. Facultad de Derecho, Ciencias





- políticas y Sociales. Instituto de Unidad de Investigación Jurídico- Sociales Gerardo Molina (UNIJUS). Bogotá, Colombia., 2010.
- Wehrmann, Babette. (2008). Land Conflicts. A practical guide to dealing with land disputes. 1. "Introduction". Eschborn 2008 Deutsche Gesellschaft für Technische Zusammenarbeit (GTZ) GmbH. Eschborn, Germany. 2008. [Online] Available From: <https://www.giz.de/fachexpertise/downloads/Fachexpertise/giz2008-en-land-conflicts.pdf>. Retrieved 12/15/2013.
- Other Sources**
- Ahumada, R. Omar G. (16/05/2013). "Santos defiende la locomotora minera". Economía. Finanzas. In: *Portafolio.co*. [Online] Available From: <http://www.portafolio.co/economia/finanzas/santos-defiende-locomotora-minera-83728>. Retrieved: 17/05/2014.
- Bouvier, Virginia (2013). "Land, Conflict, and Peace in Colombia. An Interview with USIP's Virginia Bouvier" In: United States Institute for Peace. Published: April 10<sup>th</sup> of 2013. [Online] Available From: <http://www.usip.org/publications/land-conflict-and-peace-in-colombia>. Retrieved: 20/07/2013.
- Casas, Ronald. U. (2011). Universidad Nacional, Universidad de Costa Rica. "Encuentros con la naturaleza y América Latina". *Praxis* 67. Julio-Diciembre 2011. pp. 107-119. [Online]. Available From: <http://www.revistas.una.ac.cr/index.php/praxis/article/viewFile/5051/4833>. Retrieved: 09/5/2014.
- El Tiempo.com* (16/08/2014) "La fiebre del oro envenena aguas en 17 departamentos. El país no tiene datos sobre el número de personas intoxicadas por mercurio, metal usado en minería". Justicia. In: *El tiempo.com* [Online] Available From: <http://www.eltiempo.com/archivo/documento/CMS-14394739>. Retrieved: 21/12/2016.
- Fidel Mingorance, posted by: Geo (16/06/2011) "La piñata minera" *Geoactivismo. Org. En Defensa de derechos y de territorios*. Coordina: Human Rights Everywhere (HRE) 2010-2012. Fuentes: Human Rights Everywhere 2011, Organización Nacional Indígena de Colombia (ONIC), Centro de Cooperación al Indígena (CECOIN) 2008, Sistema de Información Geográfica para la Planeación y el Ordenamiento Territorial (SIGOT) 2010 Instituto Geográfico Agustín Codazzi (IGAG), Sistema de Información Geográfica Agencia Nacional de Hidrocarburos (SIGANH) 2008, INGEOMINAS / Sistema Geológico Colombiano (SGC) 2010. Base cartográfica; Natural Earth 2010. Iconografía derivada de Inconoclasistas. [Online] Available From: <http://geoactivismo.org/2011/06/16/lapinata-minera/>. Retrieved: 14/02/2014.
- Gómez, Herinaldy., y Ruiz, Carlos Ariel. (1997). *Los Paezes: Gente territorio. Metáfora que Perdura*. Fundación para la Comunicación Popular. FUNCOP. Universidad del Cauca. Quoted by: Cerbini, Francesca. (21/07/2007). "Cultura Paez en el departamento del Cauca", Colombia. Sur América. (Obtained from: [www.geocities.com](http://www.geocities.com)). [Online]. Available From: <http://gcollo.comunidadcoomeva.com/blog/index.php?/archives/157-CULTURA-PAEZ-EN-EL-DEPARTAMENTO-DEL-CAUCA,-COLOMBIA,-SUR-AMERICA.html>. Retrieved: 10/10/2012.
- González, Posso. Darío (2003) "Fumigaciones Ilegales en territorios indígenas. ¿Decisión de la Corte Constitucional a medio camino?". *Colectivo Mamacoca*. [www.mamacoca.org](http://www.mamacoca.org). Conflict & Drugs. On-line academic journal on complexity, conflict and drugs in the American Region. [Online] Available From: [http://www.mamacoca.org/FSMT\\_sept\\_2003/es/doc/gonzalez\\_fumigaciones\\_ilegales\\_es\\_es.htm](http://www.mamacoca.org/FSMT_sept_2003/es/doc/gonzalez_fumigaciones_ilegales_es_es.htm). Retrieved: 15/01/2014.
- Jiménez Santofimio, Camilo (31/03/2017) "¡Ustedes están acabando con todo!": mamó Félix". In: *¡PACIFISTA! Una plataforma para la generación de paz*. Construcción de Paz. [Online] Available From: <http://pacifista.co/ustedes-estancabando-con-todo-mamo-felix/>. Retrieved: 01/04/2017.
- Ministerio de Ambiente, Vivienda y Desarrollo Territorial, respuesta derecho de petición. Radicado MAVDT 4120-E1-81394 del 21 de julio de 2009. See also: Rodríguez, Gloria Amparo (2009). "El papel de la consulta previa en la pervivencia de los pueblos indígenas y demás grupos étnicos



- de Colombia”. Instituto Latinoamericano de Servicios Legales Alternativos (ILSA) (2009). *El derecho a la consulta previa en América Latina: del reconocimiento formal a la exigibilidad de los derechos de los pueblos indígenas*. El Otro Derecho, No 40. Gente Nueva Editorial, Bogotá, Colombia. Junio 2009. p. 55-74 [Online] Available from: SSRN: <http://ssrn.com/abstract=2559292>. Retrieved:04/07/2013.
- Ministerio del Interior de Colombia. Todos por un Nuevo País. Dirección de Consulta Previa. Mininterior. [Online]. Available From: <http://www.mininterior.gov.co/mision/direccion-de-consulta-previa..> Retrieved: 14/10/2016.
- Narcotic News (n.d) “Cocaine Prices”. In: *Narcotic News*. [Online] Available From: <http://www.narcoticnews.com/drug-prices/cocaine/> Retrieved: 20/20/2017.
- Paz, Antonio. (02/20/2014). Economía. “La minería no destruye el ambiente ni empobrece comunidades”, El presidente Juan Manuel Santos le apuesta a la minería responsable y su gobierno la considera una gran locomotora. *Semana*. [Online] Available From: <http://www.semana.com/economia/articulo/santos-dice-que-mineria-no-contamina-ni-empobrece/377889-3>. Retrieved: 17/05/2014.
- Presidencia de la República. Todos por un nuevo país. (25/02/2017). Nabusímake, Sierra Nevada de Santa Marta. “Palabras del Presidente Juan Manuel Santos en la entrega de títulos para el programa Guardabosques Corazón del Mundo, en la Sierra Nevada de Santa Marta” Sistema Informativo del Gobierno – SIG, sábado, 25 de febrero de 2017 [Online] Available From: <http://es.presidencia.gov.co/discursos/170225-Palabras-del-Presidente-Juan-Manuel-Santos-en-la-entrega-de-titulos-para-el-programa-Guardabosques-Corazon-del-Mundo-en-la-Sierra-Nevada-de-Santa-Marta>. Retrieved: 01/03/2017.
- Semana*. (27/10/2008). Marchas. “El poder indígena”, La mitad de los pueblos indígenas del país está en Nariño, Cauca y La Guajira. In: *Semana*. Bogotá, pp. 30-32.
- Survival International (SI) (2014). El movimiento global por los derechos de los pueblos indígenas y tribales. *Survival International. Informe. Los parques necesitan a los indígenas*. [Online] Available From: <http://assets.survivalinternational.org/documents/1444/survival-informe-losparquesnecesitanalosindigenas.pdf> Retrieved: 20/09/2015.
- United Nations Office on Drugs and Crime - Oficina de las Naciones Unidas contra la Droga y el Delito (UNODC) Gobierno de Colombia (2015). *Colombia Monitoreo de Cultivos de Coca 2014*, Julio 2015. [Online] Available From: [https://www.unodc.org/documents/crop-monito/ing/Colombia/Colombia\\_Monitoreo\\_de\\_Cultivos\\_de\\_Coca\\_2014\\_web.pdf](https://www.unodc.org/documents/crop-monito/ing/Colombia/Colombia_Monitoreo_de_Cultivos_de_Coca_2014_web.pdf). Retrieved: 27/08/2014.
- United Nations Office on Drugs and Crime - Oficina de las Naciones Unidas contra la Droga y el Delito (2016) Colombia, Monitoreo de territorios afectados por cultivos ilícitos 2015, Julio 2016. [Online] Available From: [https://www.unodc.org/documents/crop-monitoring/Colombia/Monitoreo\\_Cultivos\\_ilicitos\\_2015.pdf](https://www.unodc.org/documents/crop-monitoring/Colombia/Monitoreo_Cultivos_ilicitos_2015.pdf). Retrieved: 12/09/2016.
- Wildlife Conservation Society (WCS) (20/09/2016) “WCS Honors President of Colombia for Wildlife Conservation”. *Wildlife Conservation Society (WCS)*. WCS Newsroom. WCS News Releases. [Online]. Available From: <https://newsroom.wcs.org/News-Releases/articleType/ArticleView/articleId/9286/WCS-Honors-President-of-Colombia-For-Wildlife-Conservation.aspx> Retrieved: 20/01/2017.