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Greening the land restoration question

Exploring tensions between gold mining and land restitution for black communities in Colombia

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Disclaimer:

This document represents part of the author's study programme while at the Institute of Social Studies. The views stated therein are those of the author and not necessarily those of the Institute.

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List of Acronyms

AMEI   Asuntos Ambientales, Minero Energéticos e Infraestructura (Group of Environment, Mining and Energy Affairs)

ANM   Agencia Nacional Minera (National Mining Agency)

CVC   Coorporacion Autonoma Regional del Valle del Cauca (Regional Autonomous Corporation of Valle del Cauca)[1]

PND   Plan Nacional de Desarrollo (National Development Plan)

PCN   Proceso de Comunidades Negras (Process of Black Communities)

URT   Unidad de Restitución de Tierras (Land Restitution Unit)

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[1] Regional Environmental Authority.

Acknowledgements

Abstract

The so-called Master Narrative of Loss and Restoration applied in land restitution policies "place productive land at the center of peoples well-being" (Walker 2008:15) and defend the idea that by 'giving the land back' to the forcibly displaced populations larger problems of dispossession and marginalization may be solved. Experiences on land restitution, such as the South African, have demonstrated that land restoration is not a panacea for solving far larger rural problems (Walker 2008:227). This research aims to problematize the master narrative by studying, from a political ecology approach, the way the Colombian State has addressed the environmental conflicts caused by uncontrolled gold mining in black communities territories from the Colombian Pacific coast. I will argue that a land restitution policy carried out over territories that are on dispute for the control of its natural resources, should put at the center the environmental conflicts in order to guarantee the effective and sustainable restoration of territory. I will do this by analyzing the case of the *regressive territorial restructuring* of *places* and *spaces* (Holt-Gimenez 2008) of the Community Council of the Raposo river basin in Valle del Cauca, and other territories of the Pacific region in processes of restoration.

Relevance to Development Studies

This paper explores potential analytical links between, the fields of political and cultural ecology, and agrarian political economy. This research gives some insights on how the study environmental conflicts may help -States, activists, and development practitioners- to reconfigure the way they look at land restitution policies in particular, and at land reforms in general.

Keywords

Land restitution, environmental conflicts, black communities, gold mining, territory, regressive territorial restructuring.

Chapter 1
Setting the stage

Introduction

Illustration 1 Mining Handbook

The last 17 May 2016, the Land Restitution Unit –URT by its Spanish acronym – and the National Mining Agency –ANM- presented on twitter the so-called 'mining handbook'. As announced by La Silla Vacía (Orduz 2016), the primer reflects the attempt of both institutions to reconcile the *mining-led development policy* (Velez-Torrez 2014:68) of the current government with the *land restitution policy* that is part of the victim's reparation policy, also promoted by the president Juan Manuel Santos since 2011. The image above is its cover illustration. On the left, it appears an orchard, mountains, a very blond and white farmer, and a sense of a lively atmosphere where green colour predominates. On the right, a mine and a very white miner all painted with yellow and orange, a tunnel that has restructured the mountains landscape, and the rails for the transportation of what seems to be coal. Both men. Each of them representing an institution and activity: mining and agriculture.

Despite the smiles of the characters, who seem to have found a way to live together harmonically, when one opens the handbook the landscape is other. The primer almost caricatures the primacy of mining activities over agriculture. Inside it, only yellow and black colours appear everywhere. The institutions just explain the concepts, principles and laws that rule the mining policy silencing, the rights of peasants and ethnic communities over the land, and the constitutional and legal framework for land restitution. The handbook almost suggests that in case of clash among those activities, peasants must yield the enjoyment of the land restored to the expansion of the mining sector (Orduz 2016).

On the one side, the illustration of the peasant is supposed to personify the land restitution policy of Santos administration which, as part of a transitional justice model of reparations, recognized since 2011 the condition of victims to peasants and ethnic groups. Besides that, the legal framework that protects the

ethnic groups since the Constitutional Reform in 1991, and its right to collective ownership over ancestral territories[2].

On the other side, the figure of the miner is intending to represent the so-called *mining locomotive* to which Santos first mandate gave life through the National Development Plan PND-2010-2014 'Prosperity for All'. In this plan, he depicted mining as one of the five locomotives of the train of the Economy that will allow the government to reduce poverty, create more job opportunities and guarantee security. A sector that must pull the other railway wagons of the Economy forward in order to achieve development. Later, in his second administration after being reelected with the promise of achieving peace with the FARC-EP guerrilla, Santos proposed the PND 2014-2018 'Everyone for a New Country'. Despite the fact that the metaphorical definition of his model of development does not appear anymore on it, his aim of inflating the State's coffers at the expense of the richness of the subsoil is clearly expressed, but now invoking the pacification discourse. Mining locomotive that was grounded in the constitutional provision according to which the State owns the subsoil and the non-renewable natural resources[3].

Both current policies that overlap and have been contested from both sides, take us back to a broader historical clash visible in the political arena since the discussions of the National Constituent Assembly in 1991. At that moment, Fals Borda conceptualised it as a phenomenon of planetary scale, not only local, that was calling us to return to the primitive, to the roots, and to value another conception of life that balances the evil effects that development had caused since the State entrusted it only to the Economy. The Constitution was then the unique opportunity that Colombia had to recover that living history through the recognition of the peasant, indigenous and black peoples (Case of Alto Andágueda 2014).

Today, twenty-six years after the enactment of the Constitution, one may see the same collision in land restitution scenarios. The recognition of cultural diversity do not imply the recognition of the epistemological diversity (de Sousa Santos 2007:68), and Colombia is the best example of that. The lack of a timely effort for balancing the principles in which these two policies are rooted, lead to today's picture of ethnic territories. A picture of sharp contrasts.

For the moment the primer was launched, I was working as a legal consultant in land restitution process of a Community Council[4] from a Black Community in Colombia's Pacific Region, in the rural area of Buenaventura. The Pacific –a tropical rainforest area, rich in gold, and home of a wide variety of black and indigenous groups – is a region that historically has been a source of raw materials. A place profoundly affected since conquest time, when the Spanish exploited the afro-Colombians in the gold mines, until today (Grueso et al. 2003). The community's location within the region is strategic as it facilitates the development of illegal economies. Conflicts over natural resources have underpinned there an upsurge of violence, and consequently, the perpetration of multiple in-

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[2] Article 55TR of Colombian Political Constitution, 1991.

[3] Article 333 of Colombian Political Constitution, 1991.

[4] Community Councils are administrative units of the black communities that can administer the lands that have been collectively titled to them, according to the Law 70 of 2011.

ternal forced displacements and dispossession since the early 90s. As this community, other indigenous and black communities (African descendants) living in the Pacific have struggled for decades to maintain their different material and cultural practices within this context (2003:432).

Despite the law, in this community and in many other ethnic communities located in the region, the allocation of mining titles by the State without the prior consultation -which may be also called illegal- has prevailed. The gold extractive frontier has increased dramatically since the beginning of this century when the price of gold skyrocketed in the international markets. Illegal gold mining has also be a serious problem. Today, 60% of open pit gold mining is illegal in Colombia (El Espectador 2016); mining that is done without title and environmental license, that degrades the environment and that even, in some cases, receives support or counts with the participation of armed groups. This illegal economy has become one of the principal generators of violence in Colombia that have displaced many local populations, caused deforestation, destroyed pristine environments and polluted sources of water and land with mercury and cyanide. (Global Initiative against Transnational Organized Crime 2016). This is threatening the survival of ethnic communities.

The gold fever is triggering violence over the same territories involved in processes of restoration, generating new waves of dispossession and displacement. Environmental damage due to mining reached already unacceptable levels. Not only violence, but the deterioration of their Traditional Productive Practices (hereafter TPPs) and the poisoned ecosystems itself are alsoforcing black peoples to displace.

The Colombian government is intending to restore territories that are being restructured due to the regressive impacts of gold mining activities. The river basins in the Pacific affected by the armed conflict and large scale gold mining show striking contrasts between the dominant models of development and the different epistemologies of the rural black communities. These contrasts may be glimpsed in the multiple and varied environmental conflicts that gold mining has unleashed in ethnic territories.

I this paper, I define Uncontrolled Gold Mining (UGM) conflicts as the institutional or physical expressions of resistance from the communities against the negative effects that UGM is causing or might cause in the future to their territories. I understand UGM activities are those that generate severe impacts to the environment violating fundamental human rights, and that competent environmental authorities from the State are not controlling or monitoring. The effects of these conflicts usually imply economic, cultural and ecological transformations. Ombudsman Office of Colombia (Defensoría del Pueblo 2015) and land restitution judges (Case Renacer Negro 2015) have also used this term 'uncontrolled' in an attempt to counter Santos Calderon discourse that depicts State's gold mining as legal and sustainable in all cases.

With the case of the Pacific region in mind, I questioned myself about how land reforms are addressing the contemporary resource conflicts that happen in the context of its implementation. More precisely, how land restitution, characterized by the law as a transitional justice measure, should deal with this regressive territorial restructuring (Holt-Gimenez 2008) that UGM is causing in the Pacific? I wonder how is possible that a handbook elaborated by the URT, that

is part of the Ministry of Agriculture, and the Minister of Mines, could have solve that complicated clash of constitutional rights in such a straightforward way?

This research has the purpose of, first, analysing the different ways in which the State is addressing the UGM conflicts in the context of the implementation of the land restitution policy. The previous to determine how state's responses are affecting the land restitution program negatively. I intend to unveil the power asymmetries, assumptions and practices that determine those responses. Moreover, to analyse how those reactions, and in turn the land restitution process itself, might be contributing to consolidate the broader mining-led national development plan (Velez-Torres 2014).

My second objective is to yield some insights on how the ecological concerns, derived from this complicated scenario created by the expansion of the extractive frontier in a restoration context, may help us to reconsider the way the states implement land reforms. In broad terms, I want to explore if there are any potential analytical links, within the fields of political ecology that may be a contribution to the debates on agrarian political economy, particularly in the field of restoration of land after an armed conflict.

The reflections I am intending to do in this paper matter because the land restitution policy for Afro-descendant peoples established in the Decree Law 4635 of 2011 has a validity of 10 years, and the results for black communities have not been encouraging at all. The restitution of ethnic-territorial rights has not accomplished the expected outcomes so far. , as is going to be explained later. Land restitution for black communities has been apparent-but-not-real (Borras 2007). The State is not resolving the environmental conflicts, and the way the State is addressing them is not generating good results, threatening the sustainability of the restitution processes. Land restitution in Colombia is even, in some cases, intensifying social conflicts in the rural areas, as Latin-American countries have tended to do in the past with previous agrarian reforms (Kay 1998:24).

The problem

According to the *Master Narrative of Loss and Restoration* (Walker 2008:15) that places the restoration of productive land at the center of peoples well-being, giving the land back and restituting the territories to the communities as part of a land reform is enough to solve the problems of dispossession and marginalization in the countryside. However, land restitution programs might not be adequate to respond far larger rural problems (Walker 2008:15), new dynamics and conflicts that may arise in a country due to transition to capitalism, such as those brought about the intensification of extractive industries.

In Colombia, UGM (the misnamed legal, and the illegal) have generated all sort of environmental conflicts, which intentionally or accidentally, have been addressed or silenced by the State within land restitution processes using different strategies and implementing measures that ignore the rural realities, situation that in some cases has aggravated the rural problematics. Land restitution processes are not being a scenario to address and resolve adequately those environmental conflicts that gold mining has brought about.

This paper has the objective to problematize this master narrative by bringing into the debate the importance of the ecological component of a land restitution policy, particularly by studying the environmental conflicts caused by UGM occurring in the context of the process of restoration. Land reforms, as the land restitution policy, should be understood within the context of competing projects for territorial control (Holt-Gimenez 2008), and for doing so environmental conflicts should be placed at the center of its implementation. Santos intentions to restore the ethnic territories should be rescued, and the window of opportunity to repair the victims should not missed.

So far the land restitution rulings have restituted land as that: mere land. The State has done it well in restoring legal rights to territory; in paper. Land restitution is ignoring that beyond being land a productive factor, land for black communities is also the basis for their social and cultural reproduction, is *territory*. For this reason, UGM activities may pose a broad-based agrarian threat to their existence (2008:32), as they are also heavily restructuring culture and politics. These gaps between the understanding the State has of the concept of 'territory', and the way black communities see it, is one of the main issues that is causing already a high level of frustration among the black people involved in these processes.

Moreover, the different ways the State is addressing those environmental conflicts on the ground seem to be restructuring political spaces to favor the expansion of the extractive frontier. Some of the measures the State has taken are even causing new waves of dispossession. Land restitution process is not fulfilling its promises, and might be becoming an anti-reform power that impede agrarian transformations.

Background

Law 70 of 1993 and afro-descendant realities

As argued by Delgado (2006:59), the laws on agrarian reforms in Colombia have not been directed towards the protection of the territorial rights of the black communities of the Pacific. On the contrary, some of the regulations such as the Law 2 of 1959 have impeded the recognition of their ownership over those territories (Valencia in Delgado: 2006:59). Even the constitutional reforms after the abolition of slavery in 1851 did not recognized particular rights for ethnic minorities, as is the case of the Constitution of 1886.

However later, thanks to the end of military regimes in Latin America in 1980s, many countries from the region started to adopt new constitutions in order to ensure the beginning of real political, economic and cultural transformations. Colombia was one of those. In 1991, a new Constitution recognized Colombia's ethnic diversity and entitled black and indigenous communities territorial and political rights. Based on the principles of pluriethnicity and multiculturalism, the popularly elected Constituent Assembly, which drew up the Constitution, opted to redesign the current agrarian policies and chart out a more equitable constitutional framework for ethnic minorities (Oslender 2002).

This representation, backed by the most remarkable socio-political mobilization from the black people in history, end up with the enactment of the *transitional article 55* by the Assembly which ordered the promulgation of a law that

grants the right to collective ownership to those black communities that, in accordance with their 'traditional practices of production', have been occupying *tierras baldías*[5] in the riverine rural areas of the Pacific Basin in Colombia.

Two years later, Black Communities Law – Law 70 of 1993. It regulated their right of collective property of afro-descendent communities; right of property that would include the soils and forests and that should be exercised by them with a social and ecological function. Right that will not include the *subsoil* and the rural properties in which private property was credited according to the previous agrarian reform -Law 200 of 1936.

Dispossession and displacement after 1991

The Pacific Region has been denominated by the local black and indigenous movements as a Region-Territory of ethnic groups, as this communities represent the ninety-three percent of the population of the region (Grueso et al 2003). This territory is house of more than 900.000 inhabitants, whose forty percent lives in the margins of its rivers (2003). The rural black peoples living there are descendants of cimarrones (run-away slaves) and emancipated slaves who find in the remote tropical forest a secure place to live (Hoffmann 2000:124).

The Pacific's has a massive biological diversity that has been a blessing for the black peoples. Its rich nature provided them before with all they needed to survive. However, its biodiversity has also meant a curse. The Pacific is a very rich region in gold, being one of the places where more gold has been extracted in history. That same richness is what has made it a region of contrasts, profoundly unequal.

In this context, it was to be expected that the vindication of Afro-descendants rights of the early 90s and the achievement of a special law -Law 70- was only the beginning of a long struggle. Especially if we add the fact that the same Constitution, on the quest to accommodate to the global trends of increasing competitiveness and productivity in all sectors, gave strong teeth to the private sector, consolidating a market economy that has become the engine of economic and social development. Black communities have had a constant legal discussion with the institutionality for their right to the subsoil, but simultaneously the struggle extended also against the armed actors, due to the configuration of illegal economies in their territories[6] controlled or protected by them.

The evident economic interests of the State and of illegal armed groups brought about, since the beginning of the 90s, internal forced displacements of the black people due to their implementation of all kind of violent and non-violent strategies of dispossession. On one hand, the murder of leaders; enforced disappearance and sexual violence against women, were only some of the forms of violence they implemented to control illegal economies such as the expansion of drug trafficking, illegal timber and gold extraction. On the other hand, with the aim of consolidating the development of legal economies, the State also orchestrate different mechanisms of legal dispossession such as the granting of

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[5] The misnamed *bienes baldíos* translate in english 'empty lands' and, according to the constitution, make reference to the those lands that do not belong to any other person and therefore are owned by the Nation. However,

[6] Interview with José Absalón Suárez, activist from PCN (28 July 2017).

mining rights to national and international companies, without the compliance of the constitutional and legal requirements, as will be explained later.

In sum, despite the existence of the Law 70 and the Constitution of 1991, the legal relationships of the black communities with the land have been historically precarious. In fact, it was that legal achievement of the communities that sparked, after 1993, the struggle by different actors for this region's natural resources. As the Constitutional Court denounced that "as soon as they are legally recognized as the ancestral owners of the Pacific lands (formerly considered as 'empty lands' by the Colombian State) black communities have started to be victims of processes of deterritorialization by being violently displaced from their lands by the different armed actors" (Judicial writ No. 005 2009). Therefore, ironically, the rate of internal displacements and the impoverishment of the population increased after 1993 (Escobar 1998:158).

Chapter 2 Theoretical and Analytical Framework

Thinking on the UGM conflicts occurring in the context of the implementation of the land restitution processes of black communities, I found and assembled a set of analytical concepts and theories that can serve the activists, the different public institutions and the scholars to study environmental conflicts within a land reform. In this section, I will first explain the analytical concepts; later I will address the two theories relevant for this study, and lastly I will illustrate the model I propose to study the UGM in the context of the land restitution policy for black communities. Being the objective of this research to unveil the different manners the State has dealt with the UGM conflicts within the land restitution process, I will put special emphasis on political ecology.

Analytical concepts

Territory

Colombian armed conflict, and its underlying factors as the UGM, may embody multiple and different damages to the territories which are not easy to capture if one see the land from a purely economic perspective, especially in the case of ethnic communities. Thinking on the land, only as an economist, might even end up undermining the communities (Marglin 2008:262). As stated by Cherryl Walker, a social anthropologist that has studied closely the land restitution program in South Africa for the black communities that faced the 'forced removals'[7] during the apartheid period, restoration should not only be 'material'. During the apartheid, dispossession by the racist government was social, cultural, economic, physiological and political. Therefore, the piece of land to be restituted had to embodied all what was lost, even the symbolic and subjective dimension, for the individual and for the collective (Walker 2008:34).

Therefore, the land is understood not only as the physical areas that were impacted and heavily restructured UGM, what Holt-Gimenez (2008:6) call 'places'. However, it includes material and non-material elements. Land restitution should restitute and therefore repair damages to land beyond its economic connotation: "restorative justice through the return of the land is thus called upon to address far more than land as a productive asset and means of livelihood" (Walker 2008:34). This is relevant because the way one conceptualize 'land' within a land restitution process is key to understand what was lost, and therefore, what the State needs to repair. The concept of 'territory' that will be studied in chapter 4, allow one to unveil the way black communities from the Pacific understand 'land', and thus to think critically on how to restore what was lost.

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[7] "Moving black communities out of the areas designated for whites" (Walker 2008:34).

Territorial restructuring

In some Latin-American countries, land reforms have even serve as complements of broader strategies for the expansion of the extractive industries, as in Guatemala's case (Holt-Gimenez 2008). As happened in this case, along the implementation of the Colombian land restitution policy, Santos government has deployed multiple strategies in different political *spaces* to create a secure scenario that permits the consolidation of the mining-led development plan. Moreover, due to the direct allocation of mining rights on ethnic territories and its lack of control, the State has been accomplice of the social and environmental destruction that mining has caused in those *places*.

The seek for control over the territory, and over the socio-political spaces where surplus is produced, is what is called *territorial restructuring* (Holt-Gimenez 2008:6): a process of transformation of places and spaces where the institutions and social relations of production, extraction and accumulation are controlled to facilitate the expansion of extractive industries. *Spaces* are then "the socio-political arenas in which different actors vie for power" (2008:6). In this sense, 're-structured spaces' refer to all the political and economic transformations that are linked to the definition of the development agenda by different actors, and allows the extractive frontier to expand. The concept of *places* go beyond the physical area that gold mining restructured and expands, as stated before, to its non-material connotation (Walker 2008). So that, for black communities 'restructured places' are translated into the different transformations that their 'territory' experienced after the internal armed conflict and the expansion of mining.

Theories that frame the study

Political economy of land control

Not only property relations allow people gain control and maintain the access to resources. On the contrary, there are a wide variety of power relations that may limit a person's ability to benefit from them, affecting any rights-based model of access to natural resources (Ribot and Pelusso 2003:173). Based on this idea, they defined the democratic control of land as the bundle of rights and powers to ensure access and derive benefit from it, which may take different colors in every country depending on its socio political context. This is the reason why the demands for democratic land control or, in other words, for the satisfaction of the human right to land or territory (Franco et al 2015:67) may require different responses and political interventions by the States.

In cases where there is a good degree of democratic land control, the role of the State is mostly to *respect and protect* that democratic access to land. Respect and protection may come, in some cases, in the form of the titling of collective territorial rights to ethnic communities. However, in situations where there is a very unequal distribution of land control, titling the land might consolidate existing inequalities. For that reason, formalization will not mean democratization, being the task of the state to *redistribute* the land the elites are controlling. Finally, in countries that have suffered the consequences of internal armed conflict and violence, in which people have lost the control of land due to displacement or dispossession, the challenge is to carry out land restitution that *restore* the democratic control of land to whom have lost it. The latter model has been adopted

by countries like South Africa, Myanmar, Perú, and Colombia (Franco et al 2015:68)

Regarding the restoration principle, a number of agrarian political economists have suggested that giving the land back and restituting the territories to the communities as part of a land restitution program may solve the distribution problems in the countryside and guarantee the livelihoods of the returned rural populations. This position that 'place productive land at the center of peoples well-being' has been called the *'master narrative of loss and restoration'* (Walker 2008:15) and has underpinned the land restitution programs in countries such as South Africa and Colombia. For instance, Santos Calderon has underpinned land restitution as the solution for the problematic of dispossession and internal displacement, and the path for a sustainable peace scenario.

Nevertheless, do really giving land back will solve the rural problematics? Different experiences of restitution have shown that the mere restoration is not a *panacea* for solving far larger problems of marginalization of the rural inhabitants (Walker 2008:227). Land restitution programs might not be adequate to respond to the new dynamics and conflicts, for instance, by the intensification of the extractivism. As stated by Walker (2008) "Underpinning it is the naive hope that through this act of reversal our society will indeed reach its promised land and thereby overcome the entrenched poverty, suffering, alienation, ignorance and conflict we see all around us" (2008:17).

Particularly, Latin American states have depicted land reforms as the salvation of the rural societies, the drivers of real social change in the rural world, and the only way of achieving the equitable rural development (Kay 1998:20). However, the reality have shown that many other factors intervene to influence the outcomes of an agrarian reform (1998). Land reforms that are implemented in the context of resource conflicts should be aware of the evident contradiction between the concepts 'restoration' and 'restructuring'.

Political ecology

Environmental conflicts are conflicts "over traded or untraded environmental resources or services" (Martinez-Alier 2003:70). Also denominated 'ecological distribution conflicts' (EDC) by ecological economists, these conflicts arise when the patterns of access to benefits derived from the environment (resources and services) vary unequally between communitarian, local, national and global actors, due to changing power relations (Martinez-Alier 2003:30). Political ecology is the study of those conflicts.

In Colombia, most of the conflicts over natural resources imply three different kind of transformations: *economic* transformations of local diverse economies from being based in the self-subsistence to become market-driven; *cultural* transformations of the place-based, local cultures into market-oriented modern cultures that are characterized by an individualistic and productive ethos; and *ecological* transformations of the complex relations that normally exist within ecosystems (such as a river basin) into forms of relating with nature typical of modernity (Escobar 2006:7).

Within the field of 'Third World' political ecology that emerged since the 80s due to the intensification of environmental problems in developing countries, scholars have found there has been insufficient 'politics' (Moore 1993) in

the field, and therefore there is an urgent need to find ways to integrate environmental and political understanding (Bryant and Bailey 1997). This gap may be noticed, for instance, within land reforms in Latin America, which often do not put at the center of its implementation the study of power relations that contribute to the emergence and consolidation of environmental conflicts.

When using a political economy perspective to the investigation of human—environmental relations, a political ecologist may adopt different approaches to study environmental conflicts, which may vary depending on the issues to be addressed (Bryant and Bailey 1997:20)

> "Thus, political ecologists have sought to explain Third World environmental change and conflict in terms of key environmental problems (i.e. soil erosion), concepts (i.e. sustainable development), socio-economic characteristics (i.e. class), actors (i.e. the State) and regions (i.e. South-East Asia), or they have used various combinations of these approaches (…)" (Bryant and Bailey 1997:1).

So which political ecology approach should one use to engage with political-economy literature? Depends on the argument one intend to develop (1997:2). When the same environmental conflict not only involves the construction of discourses and representations of reality, but a complex set of power relations that transform the socio-environmental context of a particular region; when it is unleashing multiple environmental problems at the same time (land degradation, deforestation, water poisoning), and is impacting class, ethnic and gender socio-economic conditions, a good strategy of studying those complex and multi-causal conflicts is through the combination of different political ecology approaches. For instance, how to study an environmental conflict when it intersects with the implementation of a land reform, as the land restitution policy for Afro-descendants?

Model applied: Political ecology of land restitution

Very few scholars have discussed in depth the ecological concerns that may arise during the implementation of land reforms and how they should be addressed by the States in this context. On the one side, political economist such as Eric Holt-Gimenez have studied the existent links between the struggles against extractive industries with the struggle for land in Latin America (2008), highlighting the political economy's undeveloped conceptualization of nature and making an effort to enrich the land reform literature in that sense, as was mentioned before.

On the other side, political ecologists have studied the importance of discourses and power asymmetries when analyzing environmental conflicts, building up on the principles of political economy (Bryant and Bailey 1997, Ribot and Pelusso 2003). In the study of environmental conflicts, Bryant and Bailey (1997) have put more emphasis on the importance of using an actor-centered perspective in order to unveil the ways environmental change is shaped by actors that have unequal power resources and are placed in different scales. In the context of a land reform, this will allow one to study how different actors intertwine in the socio-political arena influencing the emergence or perpetuation of environmental conflicts, or backing a particular set of interest that help to consolidate

other policies that contradict the goals of the land reform. Other political ecologist such as Escobar and Harcourt have highlighted the human and cultural ecology's lack of attention to power relations, and the importance to understand the politics behind every *place* (Harcourt and Escobar 2002).

A proper combination of this authors (See figure 1) and theories is crucial for doing a critical analysis of environmental conflicts. That will allow one to appreciate the ways the UGM conflicts have restructured the material and non-material component of the places where mining is carried out (territorial restructuring of places). It will also permit the study of the manners in which power relations and discourses are created in the socio-political arenas conditioning and, in some cases, triggering those conflicts (territorial restructuring of spaces).

As I illustrate below, I will do an analysis of the **UGM conflicts** in the context of the implementation of a **land reform** by using the concept of **spaces** and **places**. First, I will pay attention to the *restructuring of spaces*, which I understand as all the set of power asymmetries, discourses and practices that have influenced the relation humans-environment in black communities, and have permitted the consolidation or unleashing of those conflicts. Second, I will reflect about the *restructuring of places* –in its material and non-material dimension- caused by UGM. As will be explained further later, I relate the concept of place with the idea of 'territory'. Besides that, I use this analytical concept to understand what is a 'territorial damage' for the black communities in a restoration context, and therefore to unveil what UGM restructured in reality, and what the State should restore. The final purpose of the application of this method is to understand the way both (macro and micro politics) affect the democratic control of land in its restoration facet.

Figure 1 Model applied
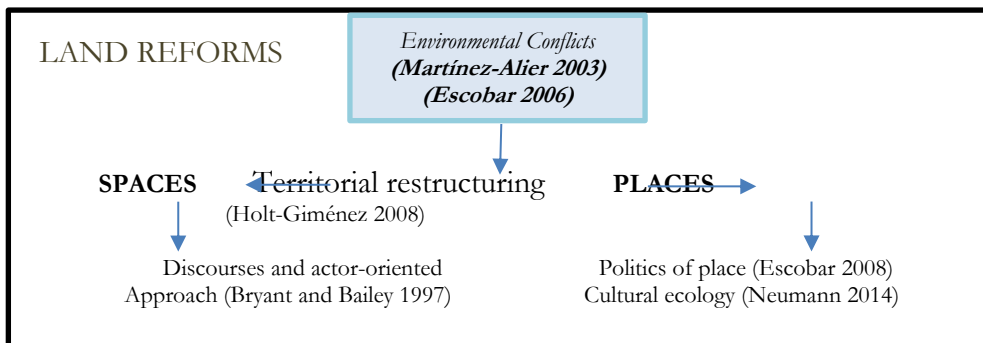
This kind of analysis of an environmental conflict permit to unveil how spaces and places have been restructured, and which power relations underpin this process. Moreover, it allow to identify the content of the territorial damages, and shed light the definition of measures to restore the 'land' effectively. This model will also allow me to understand why activists and scholars studying land reforms should pay more attention to the politics behind environmental conflicts, as they might be affecting negatively the efficacy of the restoration.

Research questions

The main research question that this research intend to address is: *To what extent do environmental conflicts influence the content and effectiveness of the land restitution*

policy for black communities in Colombia? With the aim of being direct contributions to the causal relationships I intend to explain with this research, I propose the following sub-research questions:

How has the State and the black communities understand the concept of 'territory' and how their understanding of it affects the land restitution policy?

How has the State addressed, in the context of land restitution processes for black communities, the UGM conflicts?

How environmental conflicts help us to reconfigure the way we look at land restitution policies and at land reforms in general?

Methodology

In this section, I present how I aim to answer the proposed research questions while using the model described in the theoretical approach. On the one hand, in order to understand how the State has deal with UGM conflicts and unpack its understanding about the concept of 'territory', I conducted a *content analysis* of three relevant land restitution rulings. I also applied *secondary data analysis* to identify the direct and indirect responses the State has given to those conflicts in the different socio-political arenas, beyond the land restitution scenario itself. On the other hand, to unveil how this way of conceiving 'territory' clash with the one of the black communities, I also underpin my research in nine *semistructured interviews* I conducted in Colombia with members of the social movement Process of Black Communities (hereafter PCN), and with some community councils, as I will explain below. A contrasting analysis of the findings allowed me to understand how UGM conflicts, and the manner the Colombian State is dealing with them within the context of restoration, is impacting negatively the objectives of the land restitution policy.

As suggested by Gerber (2011), despite the fact that political ecology often develops through the analysis of particular case studies of an environmental conflict (Peet and Watts 2004; Martinez-Alier 2002), it may also be done by the analysis of multiple case studies that look at a particular problematic, as the development of tree plantations in the global South (2011). As the aim of my research is to study how the State address UGM conflicts in the context of restoration, I based my research mainly in five land restitution cases that present a multiplicity of UGM conflicts. In all the cases: (i) an ethnic community is the subject affected; (ii) a land restitution process is ongoing in the same territory where mining is practiced; and (iii) whether the judicial or administrative restitution authorities identified gold mining as a *territorial damage* for being an underlying factor of the internal armed conflict.

Content analysis

I analysed the three rulings that land restitution judges enacted in Colombia, which decided about particular cases from ethnic communities (2 from indigenous, 1 from afro-descendant peoples) that fulfill the three characteristics mentioned above. These cases are the Case of Emberá Katío people from the Alto Andágueda (2014); the Community Council Renacer Negro (2015); and the Emberá Dobida people from the Indigenous Reservation Dogibi, ancestral territory Eyáquera (2016). Particularly I focused on the understanding the judges had

about 'territory' and the manner that understanding was reflected or not in the restoration measures ordered to the authorities. For doing so, I elaborated a table in which I identified the main measures taken by the judges to solve the UGM conflicts, and therefore to repair the territorial damages it has caused. While comparing the content of the decisions taken in the three cases, I identified which restauration measures where more common to solve particular concerns related with the UGM conflicts (See Annex 2).

Semi-structured interviews

Community-based knowledge is fundamental for development studies (Escobar 2008). For that reason, the real trunk of my research is the fieldwork I had conducted in the Pacific Region during the last two years. It comprises by two moments: First, my previous experience as senior lawyer in FAO until august 2016, in a project that aimed to strengthen the sustainability of the process of land restitution of the Community Council of Raposo river basin. Second, the fieldwork conducted in the cities of Bogotá, Cali and Buenaventura during July 2017, thanks to the support received by the AFES department from ISS. From the former, I am taking the critical reflections that emerged during those 9 months of working experience. From the latter, I am using the findings of the nine (9) semi-structured individual and collective interviews (See Annex 2) I conducted with the purpose of capturing the perceptions of the PCN and the leaders of the Community Council of Raposo river basin, regarding some contested issues related with the land restitution processes for ethnic communities.

As I also wanted to explore the vision of the people behind the implementation of the land restitution policy, I interviewed members from NGOs and thinktanks, and people currently working at the Ethnic Affairs Department – DAE- of the Land Restitution Unit –URT. Some of the issues discussed were about the conflicts UGM had generated, the way the State have addressed them, and the implications it has had for the communities. Moreover, their understanding of the idea of '*territory*' and how UGM has affected it negatively. Finally, I discuss also about alternatives to the problem of UGM.

Secondary data

I also backed this research with other secondary data as the laws and decrees that constitute the legal framework for land restitution to black communities in Colombia -Law 70 of 1993, Black Communities Law; Decree Law Ley 4635 de 2011, Victims Law for Afro-descendants-, and judicial rulings from the Colombian Constitutional Court. Moreover, on reports, concepts, and data bases from different and public and private institutions such as DeJusticia, Fundación Ideas para la Paz –FiP, URT, Ombudsman Office, and news from El Tiempo, El Espectador, Semana, Verdad Abierta, El Pacifista, La Silla Vacia, among others.

Chapter 3 Political Ecology of Land Restitution

In this section, I want to explain how the State has implement the land restitution policy in the ongoing context of armed conflict and expansion of the extractive frontier. The restitution of ethnic territories has brought to light the existence of multiple UGM conflicts, which have similar features in the community councils established throughout the Pacific Coast, in the departments of Valle del Cauca, Chocó, Cauca and Nariño. By posing some examples of conflicts, which I will connect later with my analysis in chapter 4, I want to show that the URT and land restitution judges have not place at the center of the policy those conflicts.

Land restitution policy for Black communities

As part of his process of pacification, on July 2011 Santos Calderon enacted the Victims and Land Restitution Law -Law 1445 of 2011-. The law that the international community claimed to be the most generous, ambitious, and complex victims' reparation project in the world, has made the country internationally recognized as a pioneer in transitional justice policies (El Espectador 2014). The number of victims that Colombia intends to repair is much larger than any other reparations program in history -Peru, Guatemala, Indonesia, South Africa and Morocco-. However, the materialization of the law is not an easy endeavor as it intends to repair more than 8.300.000 victims.

Three victims decrees for ethnic groups -Decree Law 4633, 4634, 4635 of 2011-, together with Law 1448 of 2011, were promulgated also to integrate the public policy of reparations. This policy included as one of the reparation programs, the restitution of territories to ethnic groups that had been dispossessed. Particularly, land restitution for afro-descendants -Decree-Law 4635 of 2011- established the right of black communities to reclaim their lands for legal and material restitution. This program has as its main objective to enable the return to their territories of origin, without regard to whether or not the land is titled.

The land restitution process has an administrative and a judicial stage (See Annex 3), which have the function to identify and recognized the territorial damages the conflict has caused.

> "Territorial damages are actions directly or indirectly linked to the internal armed conflict, to the extent that they cause **abandonment, confinement and dispossession[8] of territory and other forms of limitation to the effective enjoyment of rights**, in accordance with the

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[8] According to the same article, *'abandonment'* is defined as the actions that generate the loss of access or enjoyment, by the members of the community, of the places and spaces of collective and individual use. Moreover, *'confinement'* is a form of abandonment, which do not implies displacement, but a limitation of the community and the individuals to use and enjoy the whole territory. In other words, a restriction of their free mobility that affects the use of the territory. Finally, *'dispossesion'* are those actions that produce total or partial appropriation of their territory, and their natural and cultural resources, for a third party by the use of illegal means. 'Dispossession' are also

traditions, customs, and habits of management of the territory by the respective Community(…)"[9]

Underlying factors to the conflict can be recognized as territorial damage also. For instance, UGM has been identified as one of those actions linked to the conflict that has restricted in different ways the enjoyment of the territorial rights of black communities.

Violence and gold extraction after 2011

Whilst all this processes of land rights reclamation started after the enactment of the Decree-Laws in 2011, the mining fever also increased in Colombian territories (Ronderos 2011). In the global market, the gold and charcoal prices raised significantly, which brought about the entry of various multinationals, and an exponential growth of foreign investments. This not only due to the competitive prices of minerals, but also to the fact that violence had reduced significantly for that time. The national foreign mining investment increased more than four-fold between 2002 and 2011, and the social conflicts associated with mining also intensified and spread all over the country (Vélez-Torres 2014:68). Colombian government received up to 20.000 applications for mining concessions, which resulted in the allocation of 9.000 mining rights by the authorities consciously ignoring the Constitution of 1991 (2011) and the normativity that regulates the right of ethnic communities to a Free, Prior and Informed Consultation.

Santos Calderón development plans –PNDs- placed mining at the center of the Economy, and they were the starting point for the implementation of his natural resource-led development strategy (Vélez-Torres 2014). Besides that, illegal gold mining seized afro-descendent territories, as many illegal armed groups found in gold a new way to finance their activities, strengthen themselves, and improve their control over ethnic territories that were strategic. Legal and illegal actions to maintain the control over natural resources played an important role in the upsurge of violence (Cramer in Thomson 2011:323) in Colombia. As stated by the Controller General of the Republic in Colombia, 2011 was the year in which the "80% of the human rights violations happened in mining areas" (El Espectador 2013).

UGM conflicts in a context of restoration

During the last 6 years, the restoration of territorial rights has been more formal than material. UGM activities have unleashed different environmental conflicts in the rivers of the Pacific. As stated in the methodology, I base my analysis in five land restitution cases with similarities. In each of these cases, different sort of UGM conflicts have emerged, and with them, varied expressions of resistance from the communities. According to the concept of UGM conflicts expressed above - *institutional or physical expressions of resistance from the communities against the negative effects that UGM is causing or might cause in the future to*

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those contracts, legal transactions, or administrative acts that were concluded during the internal armed conflict, and that generate territorial damages.
[9] Article 110 Decree-Law 4635 of 2011

their territories – I will pose only two examples of contemporary resource conflicts occurring currently in the context of restoration.

Before that, it is important to highlight that this definition counter Santos Calderon discourse that depicts State's gold mining as legal and sustainable in all cases. Moreover, it allow one also to consider class and intra-ethnic UGM conflicts that may arise within one single community, due to the impacts the mining done by some its members may be causing to their own territories; to their own people.

Conflict 1. UGM conflict coming from mining rights allocated illegally (poor people vs. State and armed groups)

One of the most common UCM conflicts in the Pacific region is the one caused by the allocation the State have made, to individuals or companies, of multiple mining rights in areas that overlap with the territory of ethnic communities. For instance, this is the case of the territory of the **Emberá Katío indigenous people located in the Alto Andagueda, Chocó**. Between 2008 and 2012, Uribe and Santos governments granted to eleven different national companies -such as AngloGold Ashanti and AngloGold American Colombia- titles that represented the 62 percent of their indigenous reservation.

In this territory, the armed conflict for the control of gold mines have left numerous victims and have generated the dispossession and massive displacement of the communities. Moreover, the environmental degradation caused by the activity already exceed the limits. The indigenous have done strong legal resistance achieving important judicial victories, as the ruling that granted legal personhood to its River *Atrato*, seriously contaminated with mercury (Constitutional Court of Colombia 2016); and the land restitution ruling that ordered the suspension of mining concessions and the materialization of their Plan of Return (Case Alto Andagueda 2014). In this case, the UGM conflicts remain intact today despite the communities have a collective title of their land since 1979.

Similar UGM conflicts may also be seen in the Community Council of Renacer Negro and La Toma in Cauca, Raposo river in Valle del Cauca, and Eyákera in Chocó. The latter is the case in which, so far, UGM only threatens to enter the territory. In La Toma community the manifestations of resistance by women have been overt. As narrated by the leader Francia Marquez, due to the contamination of the river with high quantities of mercury, women from La Toma and from other community councils that were presenting the same problematics, organized the *"Mobilization of Black Women for the care of life and ancestral territories"* in 2014 from the North of Cauca to Bogotá ('Mujeres Negras Caminan' 2015), to denounce mining and everything that was happening around the illegal economy, such as sexual abuses, prostitution, high fishes mortality, among others. After taking over the Ministry of Interior and Justice, they achieved a resolution in which the government committed to elaborate a study of the environmental, social and cultural impacts that mining was generating the North of Cauca.

Conflict 2. UGM conflict due to Illegal gold mining (poor people vs. poor people and armed groups)

Another UGM conflict is the one brought about by the expansion of the large-scale illegal gold mining in ethnic territories, which in most of the cases is backed, protected or controlled somehow by criminal gangs –BACRIM-, guerrillas or other armed groups. This is the case, for instance, of the **Community Council of Raposo river basin in Buenaventura in Valle del Cauca.** In this territory, illegal gold mining is carried out with the use of backhoes and other heavy machinery since the 90's when foreigners arrived to the community from other mining regions as Timbiquí, Cauca. This activity, practiced mainly in the high areas of the basin, has produced serious environmental problems such as river poisoning with mercury, and has affected other TPPs of the communities, such as the ancestral mining, hunting and fishing. It has generated the forced displacement of the community, especially of leaders due to threats to allow the passage of machinery. Since 1992, the *Raposeños* -people from Raposo river- have been resisting successfully in the past through legal mechanisms, such as the submission of complaints to public institutions. The most important action of direct denunciation was made in 1994 by a woman leader who, after achieving the issuance of resolutions of the Ministries of Environment and Mines that ordered the suspension of illegal mining, had to forcibly displace to the city due to threats.

Today, the difficulties of finding gold as before and the impossibility of alternating between different TPPs have culturally and socially transformed the community. Some natives have created associations with *foráneos* to buy machinery, a situation that has generated intra-ethnic class conflicts due to the unequal distribution of environmental burdens. The struggle of this community is no longer just against foreigners and armed groups, but against some people from their own community. Resistance against this last modality of illegal mining has been more passive, as the presence of armed groups has prevented the community to engage in collective action, which does not necessary mean they are content with their situation (Scott in Fox 1993:24). In the cases were the mining elites are backed by powerful allies, hidden nonconformity is much more common (Fox 1993:24), reason why legal resistance plays a large role. Although the community has collective title since 1999, and is in the administrative stage of restitution since 2016, illegal mining is still seriously affecting this territory.

Similar UGM conflicts may also be seen in the Community Councils of Renacer Negro, and La Toma located in Cauca. In Renacer Negro case, the community launched a campaign in 2010 denominated "*Protecting the territory from the bowels*", which consisted in a boats caravan along the *Timbiquí* river that had the aim to contain the life threats that were facing the leaders and legal representatives from different Community Councils from Cauca.

Chapter 4 Land Restitution Spaces and Places

Restructured Spaces

The whole set of practices, institutional arrangements, construction of discourses, silences and attempts of the State to address or resolve the UGM conflicts have affected negatively the effectiveness of the land restitution policy, and have even generated new waves of violence and internal displacements within the territories that are being restored. State's actions are developing a process of land restitution that is serving capitalism, and securing the titling of mining rights over ethnic territories. The accumulated result of the politics of the State to redefine and keep the control over ethnic territories and facilitate the expansion of extractivism is what constitutes the process of restructuring of the space (Holt-Gimenez 2008:6). The 'politics' behind these environmental conflicts would deserve a more extensive research. However, due to the constraints of this paper, in this section I will only explain very briefly two examples on how this process occurs in the context of restoration, and why power relations matter for the implementation of the policy.

The current frustration of the black peoples that are going through processes of restitution shows that the **measures** the State is taking to address the UGM conflicts do not respond to their complexity, and to the needs of the communities. They do not reflect an understanding of the local contexts and the socio-cultural changes that internal armed conflict and illegal mining have generated in the las decades. An example of this is State's decision to exploit and burn the machinery to combat illegal gold mining -a solution to Conflict 2. Different community councils from the Pacific have denounced how this measure has caused more violence, increasing threats and targeted murders of miners and leaders. The measure has brought about more environmental degradation as people transit to new activities that also degrade nature; and have aggravated the vulnerability of the *barequeros* (traditional miners), mostly woman, whose activity nowadays depends on the activity of the machinery. This is the case of the Community Council of Raposo river basin, which have experienced, after the administrative stage finished in 2016, different socio-environmental impacts and more violence due to the explosion of the some backhoes by the Police and the National Army in their territory:

> "When we initiated the restitution, we knew there would be risks, but we never expected what happened. The restitution does not propose measures to mitigate the impacts of the exploitation of backhoes. What attacking this type of illegal activity, as the law states, does is to stop an activity and give way to others, even more complicated (…) mining became complicated after the destruction of machinery. It has created a super complex economic situation, because people are moving from mining, to the indiscriminate felling of trees. (…) after the explosion of machinery, many people left the territory, including *barequeras* women, since they no longer see it as a place of opportunities"[10].

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[10] Collective interview with leaders from the Community Council of Raposo river basin (27 July 2017).

"The government should look for another mechanism, instead of burning them, it should take into account that it leaves people engaged [economically], indebted. (…) it also generates violence, because if you make an investment, and then you do not pay to whom you owe the machine, that guy kills you"[11].

The increase of violence and life threats may come also from the fact that the leaders are being blamed, by illegal miners, for having supposedly use the land restitution process to inform the authorities about the people and places where mining was being practiced[12].

Secondly, the complexities of the process of land restitution also extend to legislative initiatives and institutional arrangements that do not comply the commitment of restoring the territories to the victims (Salinas n.d.). Some political strategies of Santos Calderón government are silencing or restricting the vision of the community regarding a particular UGM conflict, while restructuring the socio-political space to facilitate the expansion of gold mining in the Pacific. For instance, in 2016, Santos created the group AMEI (Group of Environment, Mining and Energy Affairs) within the URT, supposedly with the purpose of shield the process of inaccuracies about mining issues and guarantee the rights of victims. However, in the ground, this group have had the objective of overseeing judicial restitution claims in which there is an overlapping between mining titles or applications and ethnic territorial rights. In other words, it is the way the State is intending to contain the claims of ethnic communities when they overlap with the mining-led development model. This is the case of the black people from La Toma to whom the URT rejected their main claim regarding mining, which was the declaration of the absolute nullity of the mining titles that were allocate without prior consultatoin (Conflict 1). As claimed by the main communitarian leader:

"The AMEI group changed the community claims expressed in the land restitution lawsuit, despite the fact that we have had an assembly in which all the community council approved the lawsuit"[13].

In this case, as an act of resistance, the leaders from the community decided to take away the legal power from the URT, and give it to the Ombudsman Office, as the former was limiting their right to define how the State should repair their territorial damages. Finally, they presented an *'autonomous demand'* with the help of Cauca's Ombudsman, which has been rejected already three times by the land restitution judges.

These examples on how the State has deal with UGM conflicts show that the Economy is embedded in social institutions (Martinez-Alier 2003:19), institutions that have the power to shape people's abilities to benefit from natural resources (Ribot and Pelusso 2003) and whose actions may impact differently the environment. Moreover, they show that not every solution to those conflicts would lead a sustainable land reform. In many cases, attempts to resolve environmental conflicts have even led to perpetuating the problems that originate the conflict (2003:68).

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[11] Field notes from a conversation with inhabitant of the Raposo river (28 July 2017).
[12] Ibid.
[13] Interview with Francia Marquez, activist and member of the Community Council of La Toma, Cauca. 26 July 2017.

Politics are highly important for land questions. This is why the State cannot continue framing the environmental conflicts caused by the extraction of gold in such a technical way, as the way the problem is framed determines its solution. Direct and non-contextualized application of technical solutions that are in the legal framework (as the burning of machinery to counter illegal gold mining) are also non-political (Li 2007:7).

In this sense, despite the evident economic interests of the State on the subsoil, the institutional responses to UGM conflicts must be based on the local politics of the communities (Harcourt & Escobar 2002). They should be informed by their 'local' dynamics, their alternative economic models, and particular identities and cultures (2002). Unveiling the politics behind them will certainly unblock new paths to improve land reforms. The last assertion set the importance of disentangling the concept of 'territory' as the material and non-material *place* where this restructuring also materializes.

Restructured Places

Illustration 2 Tunda leaves

In August 2016, in my last day as legal consultant for Raposo's river restitution, Sebel Marquez, the former legal representative of that community council, put on my hands a very special present that still today I keep in my agenda. A present that would always protect me wherever I decide to go: a bunch of wrapped green leaves that apparently looked as any other one could pick up from the ground. However, these ones were unique. Sebel explained me that, after have set as 'intention' my protection from anyone who would intend to harm me, the night before he had gone deep into the forest of the upper parts of the river (single place where they can be found) and had gathered the wild and magic *tunda leaves* for me.

My curiosity for this cultural practice tied to the use of plants to prevent or cure the evil on the physical and the spiritual, kept me asking. He told me that it would protect me, for instance, from 'el mal del ojo' (evil eye) caused by the gaze of a person with negative or *sangripesada* energy, as they called it in the Pacific, and it would bring me luck everywhere. For that moment on, I understood we (me and the team I was working with) have done something wrong when characterizing the ethnic-territorial damages of the Raposeños in such a fragmented manner.

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I could understand that the natural word "has intimate presence in the cultural imaginary of this groups" (2008:120), and that their cultural practices are completely embedded in Nature, in their territory. As stated by Escobar, that. Nature has been culturally constructed, and its imbrication with the knowledge of black communities explained very well why their logic of the environment was different. Thinking on the *tunda*, I could easily understand how the restriction of mobility to the upper parts of the river basin due to the presence of illegal miners and armed groups, and the deforestation and destruction of the flora for mining was a **territorial damage,** not only because the material regressive restructuring of that place (environmental degradation) and the impossibility to access it, but also because the loss of the cultural imaginary of these peoples that was embodied in those places, in those parts of the territory. Today, this traditional practice is so abandoned that even other younger members of the community were surprised that one of the *mayores* (elderly and wise members of the community) had found the leaves.

Territory as a *place* is just another way of naming Nature (Polanyi 1944). For black communities their territory embodies much more than the mere natural ecosystems whose degradation is visible and testable. Black people's culture and politics are embedded in it. This is the reason why, when harming Nature, Culture and Politics are also affected, which makes the endeavor of interpreting the legal concept of 'territorial damage' a complex one.

The Decree Law 4535 of 2011 made an attempt to depict the complexities of these imbrications. As explained before, the law establishes a broad definition of territorial damage that comprises the three types of damages: *dispossession, abandonment* (or internal displacement) and *confinement*. Likewise, the law regulates other two types of damages in a separate way; defining *environmental damage* as the cases in which the natural ecosystems and the sustainability of the territory are affected; and *cultural damage* as the cases in which territorial rights are affected and the material and symbolic elements on which cultural ethnic identity is based are impacted. The law do recognize the imbrication Nature-Culture in the latter categories when stating there is an indissoluble relationship between territory, nature and cultural identity, and that the restauration and protection of the environment is a basic condition to safeguard this imbrication.

One may question then how the institutions are making sense of these categories when deciding how to repair territorial damages? Do they really materialize these imbrications and other complexities behind the concept of territory for black communities in their resolutions? The legislator of the DL 4635, despite claiming there is an indissoluble relation between nature and culture, regulated both damages separately, situation that may influence the interpretation of the norm by the different actors. The legal provision also stablishes as a basic condition for safeguard the imbrication Nature-Culture the material recovering of the degraded environment, which might be one of the measures needed to repair the territorial damages, but certainly not the only one. The answer to these questions is what would determine what and how reparations to the territorial damages will occur in each particular case.

In this section, I will argue that within land restitution processes, the understanding the State has about the concept of 'territory', when addressing environmental conflicts that are occurring in the context of restoration, is key to determine the content and measures of reparation. For that reason, the power

relations, silences or negligent acts behind the institutional arrangements on how to interpret it, must be unveiled. In order to do so, first, I will reflect on the way the social movement PCN and the Community Council of the Raposo river basin – whose case is currently in administrative stage – has understood 'territory'. Then, I will comment critically on the definition of 'territory' that was used by the land restitution judges to decide – in the judicial stage – about three of the cases resolved until now. While doing the latter, I will contrast both views and give some examples of why and how these asymmetries may affect the process of land restitution.

'The territory is life and the life is not possible without the territory'

Since the enactment of the Law 70, the social movement of the black communities (PCN) developed a complete political ecology framework to deal with the issue of sustainability, in which the concepts of *territory*, biodiversity, local economies, alternative development, among others, where included.

The PCN defined territory as "a fundamental multidimensional space for the creation and re-creation of the ecological, economic, and cultural practices of the communities" (2008:146). This multidimensionality refers mainly to the several landscape units that the 'territory' cuts across (2008:146), the variety of ecosystems. Territory was also described as a "space of effective appropriation of the ecosystem" in the sense that it serves and satisfies the needs of the community, allowing them to develop socially and culturally (2008:146). In other words, as stated by Escobar (2008:146) territory is an space that embodies the broad community life project. PCN has also describe 'territory' with the formula "Biodiversity equals territory plus culture"[14] (2008:146), which means that the imbrication Territory (nature) + Culture is Biodiversity itself. *Territory* is also the source of life and the only space where black peoples can 'be'. In the words of the PCN activist who coordinates the 'Territory and Environment team' of the social movement:

> "The territory is a whole. It is not only the biophysical or the physical component, is not only the piece of land. Territory is the set of situations of the surrounding environment where we move as a community: culture, biodiversity, water, soil, subsoil, productive activities, traditional wisdom, all that is territory"[15].

This is the approach the movement have been using when interacting with the State, multinationals, NGOs, and academia. While appropriating this concept in multiple institutional scenarios, activists have also defined *sustainability*, claiming that "sustainability cannot be conceived in terms of patches or singular activities or only on economic grounds. It must respond to the integral and multidimensional character of the practices of effective appropriation of ecosystems" (2008:146). In other words, the sustainability of black communities' territories needs to be thought from an ecosystemic approach.

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[14] Interview with José Absalón Suárez, activist from PCN (28 July 2017).
[15] Ibid.

Besides the PCN, the Community Councils in the Pacific have also appropriate this collective frame to define territory. The leaders of Community Council of the Raposo river basin pointed out that *territory*, for them, is the whole set of ecosystems that integrate the river basin – starting by the afro-descendent person itself, and including all the ecosystems that surround and support human life, such as the ocean, the mangroves, the lowlands, the river, the backup forest, the bushes, the forests, the cultivated areas, the *monte*, the mines, the home garden, among others (see illustration 3 below)– and the different kind of relationships among them.

Illustration 3 Definition of 'territory' for the Community Council of Raposo
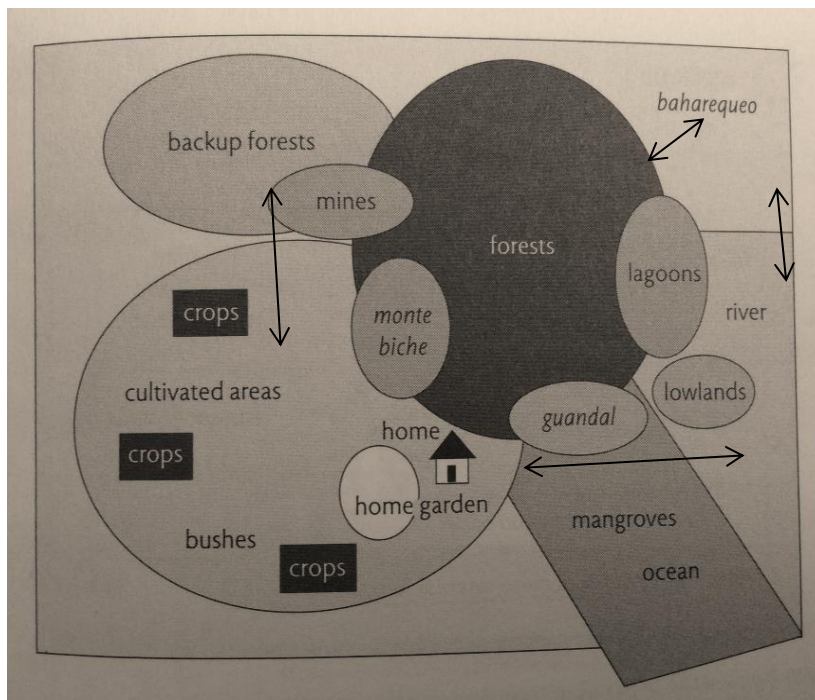
Source: Adaptation of the author from the figure 'spacial integration of the collective Territories of the black communities of the Pacific Region' (Escobar 2008:135)

In other words, they understand that the different ecosystems that exist within the river basins are interconnected and are interdependent, and all of them and the relations among them constitute territory. As stated by one of the leaders from the river Raposo, "the territory is also the relationships between other human beings and me, but also between humans and the rest, which is the fauna and flora"[16].

Local politics

The ecosystems and the relations of the community with them are determinant of their cultural practices and the rural black people's politics. Regarding the **political structures** Oslender (2002), for instance, studied the importance that the river basin as an ecosystem have had for the political organization of the black peoples in the Pacific region. His argument supports Polanyi's idea that

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[16] Collective interview with leaders from the Community Council of Raposo river basin (27 July 2017).

what we call land is simply nature (territory) inextricably interwoven with man's and women's institutions (Polanyi 1944:187). Oslender pointed out:

> "The spatial configurations of everyday life patterns of black communities have informed the current processes of political organization in the region. The concept of 'aquatic space' as a particular set of spatialized social relationships has been instrumental in the organizing structures of rural black communities, which have formed community councils along river basins" (Oslender 2002:89).

Under this logic, any activity that threatens the sustainability of the ecosystems or the harmonic relations that exist among them in turn might threaten the political cohesion and organization of the community councils. For instance, the intensification of uncontrolled gold mining activities in the *upper parts* of Raposo river basin, understanding each of the zones of the basin as a different ecosystems, have brought about a chain of events that altogether have contributed to the weakening and complete political disempowerment of the community council and its leaders.

In the Raposo river, the life threats and internal forced displacements of the communitarian leaders that have opposed to the entrance of the machinery (backhoes), or to effects of UGM in the territory is permanent. These intimidating actions that have confined the leaders and the displacement itself have the potential to weaken the leaders' ability to act and manage those parts of the territory, and also restrict or even cancel, in some cases, their participation in political scenarios. In Raposo, the FARC guerrilla deployed these acts of territorial control of the upper parts since 1992 with the first illegal entrance of backhoes, acts of control that still continue today (Defensoría del Pueblo 2011:12). Despite that, the authorities are not investigating those crimes and dismantling the criminal networks involved in them. The Community Council leaders have loose the control over that zone of the river, being unable to restrict the passing of machinery and foreign miners. Community members are increasingly distrustful of leaders, which detracts their legitimacy to act.

The administration and management of the upper part of the territory by the board of directors of the community council is a political action that must be understood as one of those multidimensional practices with which the community appropriate effectively the ecosystems (low, medium and upper parts of the river basin): Life threatens to the leaders affects the way the community relate with the 'upper parts of the river', which in turn affects the political structures.

Despite this, in sum, land restitution processes – neither in its administrative nor in its judicial stage – have as a priority the strengthening of the political structures of the black peoples as a way to repair the territorial loss. The understanding of territory by the State, without an ecosystemic view, is not contributing to repair the weakened organizing structures of black communities. As stated by a leader of Raposo river:

> "Land restitution program is not focused so much on strengthening the leadership, when this should be one of the first exercises of the URT. Restitution reaches territories that have been affected by armed conflict. This implies that the community that was displaced, dispossessed, and threatened has structural breaks and is not in its best conditions. The

first thing that would have to be strengthen in the restitution is the community leadership"[17].

Cultural imaginary

On the other hand, as stated at the beginning of this section, the existent ecosystems and the relations of the community with them also determine the **cultural practices** of the rural black peoples. Their cultural imaginary is embedded in their territory, in Nature. The territory is a cultural and symbolic construction, and the way it is used and managed relies in the way it is constructed (2008:120).

The raposeños understand territory as a space and source of life. A whole, home of all living things. This people also consider the non-renewable natural resources, such as gold, as natural entities. Even in some cases, they assign some sort human attributes to it, recognizing gold as a living thing.

> "Territory is a whole. It is space and source of life, not only of human beings but also of other resources that for us also have life, like gold. Gold, when he sees there is anxious people around, he moves away"[18].

The gold also constitutes territory. This appreciation of gold as a living thing may also be inferred from some of the so-called *visions* or *espantos* from the black peoples, which are part of their cultural imaginary and describe black community's *world below* and the way they relate with it.

> "visible natural entities, (…) like gold, (…) are both abundant, and thus can never be exhausted, but they may also grow distant in space and time and thus disappear from the reach of people when pressured too much or put under siege (…) Natural beings go far away or may even transform themselves into *espantos* or *animales del monte* (untamed forest animals)" (Escobar 2008:112).

The visions and *espantos* from the so-called *world below*, are part of the local models of nature of the black peoples, and are the best representation of the integration between the human and the natural (2008). "The natural world thus has an intimate presence in the cultural imaginary of these groups" (2008:118). These narratives that probably have borrowed some elements from African, indigenous and Catholic traditions (2008:118) have been interpreted by some as oral traditions that have the purpose of warning the black inhabitants not to overuse Nature, and respect ethics of mutuality and conservation (Pedrosa and Vanín, as cited in Escobar 2008:118). For instance, Escobar mentions the *riviel*, a vision that is "encoding a warning to fishermen to catch whatever they need, and return home instead of staying alone at [the] sea" (2008:118).

The visions are known as the spirits of the forest, the rivers and the mangrove, and show the ecology of black communities. Some of these stories narrated by Raposo inhabitants, began as fantastic stories, but at the end they do have a meaning in the natural world (Chavez n.d.)[19]. These are expressions of

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[17] Ibid.

[18] Ibid.

[19] As stated by Chavez (n.d.), these kind of stories have been identified within the category 'fantastic-uncanny' developed by Todorov where the evens seem supernatural at the beginning, but at the end they do have a rational explanation.

the knowledge black communities have developed ancestrally about their surrounding nature, about their territories (Haila and Dyke, as cited in Escobar 2008:118); their cosmovision which determines their 'local models of Nature'.

For this reason, when repairing the natural environment that UGM has restructured, one must think also on how the cultural imaginary (values and practices) embedded on 'Nature' was damaged, and how it might be repaired. This means UGM is a territorial damage not only because it restructures the ecological equilibrium of a particular set of ecosystems, but also because (i) it affects negatively important *cultural practices* of appropriation of these ecosystems, and (ii) it provokes the transformation of *cultural values* of reciprocity and conservation embodied in Nature.

Afro-descendant communities have constructed ancestrally the natural world by implementing particular local models of nature, which are essential part of their culture. This models include, for instance, the structured use of spaces for doing TPPs such as small-scale mining, fishing, hunting, woodcutting and so on (Escobar 2008). These models are also expressions of the knowledge that black communities have accumulated over the centuries about their environments, and "constitute a cultural code for the appropriation of the territory" (2008). UGM in Raposo river have occupied, poisoned and destroyed (restructured) those spaces (forests, rivers, ravines) due to the use of heavy machinery such as dredgers and backhoes, the application of mercury in the process of gold washing and the spill of oils.

UGM has threatened the reliable and varied sources of subsistence of the community (Scott 1976:5), which materialized in the practice of the '*poliactividad*', a model based in the "less of more" logic: the practice of more TPPs in less intensity and frequency. This model of subsistence is based on a combination of activities such as agriculture, fishing, mining, which communities have done with rudimentary techniques, and within which they alternate according to their necessities and to the different seasons of the year. With their way of life under threat and their political structures weakened; the mining-led development policy opening up new places; the pressure from armed groups, and the complete neglect of the State to guarantee basic needs and conditions to recover other productive activities, Raposeños have suffered, as a territorial damage, a transformation of their cultural values. As stated by one of the leaders:

> "This imposition of the logic of capitalism by the government has generated processes of acculturation within our communities in which we have had to accommodate to those principles of capitalism: accumulate more and faster (…)
>
> This is why today people say: 'the day I go to mine [gold], I take everything, I take out a lot, I destroy that land, otherwise, the government will then come for it' The fact that the government, like the foreign [miners], also see the territory as a way to extract resources, has also impacted the way of thinking of the people"[20].

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[20] Collective interview with leaders from the Community Council of Raposo river basin (27 July 2017).

Adaptations

The previous context not only has transformed the rationale of some Raposeños behind the act of mining gold, which has become scarce in the places where it was traditionally mined, but also the way other TPPs are done in the territory, consolidating processes of specialization that threatens ecosystem's homeostasis. As claimed by Raposo's legal representative:

> "The activities were diversified. One person was a miner, a farmer, a fisherman, a hunter: one person did everything. So, it never happened that if I did not do this, or that, I die. All activities were important. Today, it has changed, and some activities have been put above others. Of course, if we are all miners, the pressure on gold is stronger, which means that the *batea* not longer serve us, nor do the *monitor*, therefore we need a tool that will extract a lot, for many! (…)

> One would like people to give value to other activities again, to give back value to agriculture, to fishing, to hunting. (...) Today, people see agriculture as something slow, something that is not productive. Mining has undoubtedly affected the way of thinking of people in relation to agriculture"[21].

The damage to the cultural construction of Nature in turn has transformed the way the territory is used and managed by the black communities. As mentioned before, even some of the member of the black community councils have now turned totally to illegal gold mining, while going into large debts to buy backhoes and other machinery to extract the resources. The study of these new behavioral responses or adaptations of the human societies to the natural environment (and to its changes, due to the regressive restructuring of places) are fundamental to explain how and why cultural changes came about in an ethnic group (Steward, as cited in Neumann 2014:18).

However, it is crucial not to romanticize any kind of adaptation to the environment or strategies for survival (Scott 1986) coming from the black peoples in their contexts of vulnerability. Survival strategies of some inhabitants may be following the logic of "sav[ing] themselves at the expense of their fellows" (Scott 1986:30). They may undermine the subsistence of others members of the community who are in the same, or even more difficult socio-economic conditions. For example, UGM practiced in the upper parts of the Raposo river basin has meant the progressive deterioration and contamination of the river and the mangroves, which are the basis of the livelihoods for the inhabitants of the low and middle parts of the rivers. Oil residues from machinery and water contaminated with mercury have killed thousands of fishes and mollusks, source of subsistence of the peoples, and have caused skin and digestive diseases due to the use and consumption of contaminated water by the community. In this sense, which could be read at the beginning as an adaptation to protect the subsistence ethic (1986) of some, is actually threatening the subsistence of others within the same territory.

In sum, the natural environment has a tremendous role in shaping culture (Steward 1955). This is why mining activities that damage the environment, exacerbates poverty, and impact food security may lead to dramatic cultural

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[21] Ibid.

changes that result in new adaptations (Steward, ass cited in Neumann 2014:18). Adaptations, such as the specialization process, that constitute also territorial damages that deserve reparation.

This is why the land restitution processes should acknowledge the black community's logic of territorial planning throughout cultural practices and values. There is a cultural logic associated to each part of the river basin (low, middle and upper parts) that depends on its ecological conditions, which in turns means the territorial damages and its measures of reparation may vary according to the different zones, productive activities and spaces.

> "As you can see, people divide Raposo in the upper, middle and lower zones. In the low zone, due to the physical and topographical conditions, a type of activity is developed, which is associated to the ecological and environmental dynamics, to the offer of biodiversity. The same happens in the middle and upper zone. (…) there is a cultural logic associated with nature and territory which is what [the URT] should understand" [22].

In conclusion, 'territory' has been conceptualized by the PCN and the black communities from Raposo river as life and source of life, as the space to 'be' that comprises not only the whole set of ecosystems and natural entities that integrate their surrounding environment, but also the different relations among them. The concept of 'territory' goes further than the concept of land, from its economic perspective: 'territory' embodies cultural practices and values, and its decisive of the political organization of the black peoples and the communitarian leadership within the Community Councils.

> "The territory is the space where we, as Afro, create and recreate our culture. It is the space to 'be', but it is also the exercise of that 'being', of our autonomy as a Black people, of our own forms of government, of our own choice of future and vision of the world. The territory is life, and we have no life without the territory"[23]

'Territory' by the land restitution judges

If one read the text of the six land restitution rulings for ethnic groups that have been enacted so far, one may elucidate the strong commitment the specialized judges have shown with the territorial rights of ethnic groups recognized in 1991. The process of land restitution is permeated by the transitional justice paradigm. For this reason, it was intended to be a special and atypical one where the judges would have very expensive competences. Therefore, one single judicial ruling literally may activate the whole machinery of the State in order to repair territorial damages, while ordering all what is needed to guarantee the effective legal and material restoration of ethnic territories. A judge may order the invalidation of administrative acts, suspension of megaprojects, development of diagnosis and plans to any institution, and so on (Case Alto Andágueda 2014).

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[22] Interview with José Absalón Suárez, activist from PCN (28 July 2017).
[23] Collective interview with leaders from the Community Council of Raposo river basin (27 July 2017).

Restitution judges have played also a crucial role in the implementation of the mining-led development agenda of the last two mandates, as they have slow-down somehow Santo's mining locomotive within ethnic territories while suspending numerous mining titles that were granted to mining companies over the last decades. The judges have identified gold mining activities as an underlying factor of the internal armed conflict which deserve reparation and have delivered different orders to a wide variety of public authorities with the aim of repairing the ecological, economic and cultural damages that UGM has caused in ethnic territories (See Annex 2). They have constantly received life threatens as their rulings not only oppose to the economic interests of many legal and illegal actors, but because there are being issued in an ongoing context of violence.

Land restitution judicial measures to tackle UGM may vary according to the case. While in one case the territorial damage may be materialized in the UGM caused by the mining concessions given without prior consultation (Conflict 1); in other cases the main contention may be generated by the (also) illegal large-scale gold mining (Conflict 2). However, the most important criteria that initially would determine the content of the measures is the way the URT and the specialized restitution judges understand the concept of 'territory'. Therefore, the way the Colombian State understands the idea of 'environment' might influence completely the application of any transitional justice mechanism, such as the restoration of ethnic territories (Rodríguez Garavito 2017:27).

One may observe that, in its *obiter dicta*[24]*,* land restitution rulings have conceptualized the concept of 'territory' in a very similar way as the black communities. Nevertheless, the *ratio decidendi* of the judicial rulings show that the judges have not find yet a manner to reflect in the orders all what it embodies, and the different manners its facets have been impacted by UGM.

Lack of ecosystemic vision

When addressing the impacts of UGM, the restitution rulings prioritize the use of formal measures to protect legally the collective titles predominate within land restitution rulings, such as the suspension of mining titles or concession contracts, the cancelation of any liens against the property, and the registration of the land restitution ruling in the real state folio number of the collective territory (See Annex 2). This measures guarantee that on paper the communities own the land, but in reality they do not have its effective control, phenomena called by Borras (2007:4) as 'apparent-buy-not real ownership of land', which is very common in Latin-American land reforms.

For instance, it is a fact that both of the UGM conflicts described above have brought about multiple environmental damages in ethnic territories, which have altered the equilibrium of the wide variety of ecosystems. Land restitution rulings have acknowledge it. Somehow, judges have conceptualized how the equilibrium and interconnectedness of the several ecosystems that are part of the river basins were lost.

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[24] This expressions correspond to the way literature has classified the arguments and statements made by a judge while resolving a case in a judicial ruling. *Ratio decidendi*, that translates literally 'the rationale for the decision' are those principles that are the basis of decision of a case; while the *Obiter dicta*, that translates 'said by the way' are those statements used merely for persuasive efficacy which are not necessarily reflected in the conclusion of the case.

"The community loses connectivity with the landscape, which also leads to the disappearance of native species such as birds of short flight (pava, paujil, guacharacas) dispensers of seeds that contribute to the regeneration of the forest (…) Animals present in the region migrate due to the destruction of the forest" (Case Renacer Negro 2015).

Likewise, the interdependence of the different TPPs and the way the disequilibrium in one affects the other, is also highlighted by the same judge when stating that "agriculture has been lost as a community practice and that leads to the almost exclusive dedication [of the community] to mining" (Case Renacer Negro 2015). Other measures oriented particularly to restoration of the environment have been ordered. Orders for the development of plans for the restoration of the forest ecosystem; for the recovering of areas affected by mining; and for strengthening the social and cultural fabric of the population. However, they are not reflecting the complexities embodied in environmental damages.

Land restitution measures have the purpose to repair the damages in the relations nature-society generated by armed conflict or by UGM. However, the institutions in charge of the implementation of this policy have been dominated mostly by lawyers and social scientist who understand ecological change in a very limited way. The *ratio decidendi* of those cases show there is a need to recover the importance of an interdisciplinary approach when looking at nature-society relations (Fairhead and Leach, as cited in Neumann 2014:58) in a context of restoration. A lawyer from the Ethnic Affairs Department –DAE- of the URT declared:

> "The restitution processes lack an ecosystemic vision. Those who live above degrade those living in the lowlands. However, environmental problems continue to be addressed in a very sectoral way"[25].

The importance of bringing natural scientists, as ecologists, to the institutions that implement the land restitution policy has been overlooked. This translates in difficulties of the judiciary to propose creative restoration measures that have 'the ecosystem' as a basic unit of analysis. In other words, to look at the territorial damages from an ecosystemic view and decide accordingly.

Productivity imperative

In the case of the Community Council Renacer Negro (2015), the single land restitution ruling for black communities until today, the judge build up a notion of 'territory' based on the one from indigenous communities, stating that it "goes beyond the juridical and economic concepts that the majority of society has conceived since it is based on an ancestral and sacred character" (2015). In the case of the Ancestral territory Eyákera (2016), the judge claimed that the relationship of indigenous with the land is not only an issue of production, but a spiritual matter whose preservation determines the possibility to transmit their cultural legacy to future generations.

Despite the fact that this rulings acknowledged the dichotomy between the economic paradigm that had inspire the meaning of land, and the signification it has for ethnic communities, the decisions taken by the judges in order to restore continue depicting land as a source of economic value. The idea of restoring the

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[25] Interview with Jose Luis Quiroga, Lawyer for Ethnic Groups at Land Restitution Unit (25 July 2017).

damaged territory with the implementation of the so-called 'productive projects' prevails in the imaginary of the land restitution judges as the most important reparation measure ordered in all the rulings analysed (See Annex 2).

This measures that are meant to strengthen the productive capacities of the rural populations with the objective of enhancing their economic and social life. They are part of the national and local development strategy and usually include technical assistance, financing, and entrepreneurship training to rural dwellers that help them to grow food or raise cattle, while giving them a sustainable income. These measures respond to the 'productivity imperative', conceive land as the most basic factor of production, and usually, do not have into account the diverse and interdependent character of the TPPs of black communities.

The standardization of 'productive projects' as the main restoration measure within land restitution processes might have implications. For instance, one may think that the restoration and revitalization of only one or few of the range of TPPs that characterize the cultural logic of the black peasant economy in the Pacific might impede, in the long run, the recovering of the model of *poliactividad*. These measures run the risk of consolidating economies of production around a single activity, situation that may even trigger a new chain of environmental problems. As expressed by a leader from Raposo river:

> "In the Raposo river they are destroying the high mountains to plant cacao. Supposedly, they are doing it as part of a productive project. Worrying! The problem of cacao is the plague that this crop generates (…) there is nothing more to combat these pests, than pure insecticide (…) monoculture in Raposo cannot stand: the banana and the *chontaduro* did not stand"[26].

Despite the fact that this 'productive project' is being carried out by an NGO, the logic that follow the measures taken by the judges is the same. The 'productive projects' are modeling the way of living of the populations that are returning to their land, and as other development measures, they have become a myth that comfort the peoples in the short run (Sachs 1992:1) and silences resistances for black's historical struggles, drawing them a fantasy that they will regain with them all that the war took. As de Sousa Santos claimed: "the brightness of the short term covers the shadows of the long term" (2014:73)[27].

In the same way, the cultural values of reciprocity and communal solidarity that prevail in subsistence economies where production is directed at family consumption (Hoffman 2007:220) are also at risk when a family or a member of a community become more dependent on the abstract value of land.

Underestimation of culture and politics

In the judicial writ 005 of 2009, the Colombian Constitutional Court developed the concept of 'territory' for afro-descendant communities stating that 'territory' is an integral conception that includes the "land, the community, the nature and the relations of interdependence of the diverse components. The territory also includes the practices and customs linked to its habitat (…) which

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[26] Collective interview with leaders from the Community Council of Raposo river basin (27 July 2017).
[27] This section draws upon an essay submitted for The Making of Development course ISS-2101-16-17.

are also expressed in the *saberes* (wisdoms) that people have and in the knowledge of the rhythms and times to do the various activities" (Constitutional Court Judicial writ No. 005 2009).

The constitutional jurisprudence have internalized this imbrication Culture-Politics-Nature, and wisely the land restitution jurisdiction have invoked these precedents in their rulings repeatedly. However, a reading of the judges' decisions (See Annex 2) warns, as was stated before, that they are not placing at the core of the restoration the strengthening of the organizational structures of the black peoples, and the recovering of their cultural values and practices. The restoration measures keep reflecting Nature, Culture and Politics as separated, and not interlinked, systems.

> "Sixth. ORDER to (…) *Codechocó and the National Authority of Environmental Licenses [ANLA]*, in the next 6 months the will implement a plan to monitor and control the recovery of the areas affected by mining, with the agreement of the indigenous authorities" (Case Alto Andágueda 2014).

The measures ordered for the recovering of the ecosystems do not reflect how, while recovering nature, cultural and political territorial damages must also being repaired. A PCN activist expressed clearly why, in order for agrarian reforms to address and solve the problems of mining, they must understand the cultural logic of the territories of the black communities:

> "It must be taken into account that this territory has a 'cultural logic of use and management', which is crossed by, on the one hand; (i) the cultural zoning that people make to the territory, (ii) the productive activities that take place in the territory, (iii) the traditional knowledge associated with the territory, (iv) the social and socio-productive relationships around the territory. That is what an RRI [Integral Rural Reform] should incorporate, and strengthening that, one may solves these mining problems"[28].

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[28] Interview with José Absalón Suárez, activist from PCN (28 July 2017).

Chapter 5 Conclusions

The understanding the State has about 'Environment' is key in the study of land reforms in which contemporary resource conflicts are taking place. Particularly, in the case of the *Land Restitution Policy for Black Communities in Colombia (Decree Law 4635 of 2011)*, it is influencing completely its direction, scope and results. In this paper, I explored the State's concept of 'Environment' in the light of the idea of 'Territory' developed by the black communities from the Pacific Coast. I did it by analysing the manners in which the institutions in charge of the implementation of the land restitution policy (and the State at large) have deal, addressed or intend to solve the environmental conflicts caused by uncontrolled gold mining activities (UGM conflicts) in ethnic territories. With two examples of UGM conflicts in mind (Conflicts 1 and 2), I showed how a clear process of restructuring of the socio-political *spaces* at large, and of many *places* in the Pacific region (Valle del Cauca, Cauca and Chocó) is occurring simultaneously with implementation of the land restitution program. I reflected critically on how those actions of the State are affecting or might affect the land restitution process or the territorial rights of the black communities. This is what I found.

1. Micro-politics (places)

The concept of 'territory' of the black peoples goes further than the concept of land, from its economic perspective. Territory is Nature, where black people's culture and politics are embedded. Territory embodies much more than the mere natural ecosystems whose degradation is visible and testable. This definition should inform the legal concept of territorial damage. It should be reinterpreted taking into account that when harming *Nature, Culture and Politics* are also affected. In the same way, the **restoration measures** of the judges are not reflecting these imbrications, as they keep looking at those systems in a fragmented manner. Its lack of ecosystemic vision when addressing the impacts of UGM have lead the State to overlook the great importance of politics and culture in black people's lives.

Firstly, the ecosystems and the relations of the community with them are determinant of rural black people's **politics**. Therefore, any activity that threatens their sustainability or the harmonic relations among them, in turn threaten the political cohesion and leadership of the community councils. However, the limited vision of 'territory' is not helping to repair the territorial loss by means of strengthening leaderships in the Community Councils.

Secondly, territory is a cultural and a symbolic construction, and the way it is used and managed relies in the way it is constructed by the black peoples. The territory determines the **cultural practices and values** of the rural black peoples, and their cultural imaginary is embedded in their territory. For this reason, when repairing the natural environment, the cultural imaginary (values and practices) embedded on 'Nature' that were damaged, have to be repaired too. UGM has caused the restructuring of the TPPs of black communities and developing processes of specialization that threatens to extinguish *poliactividad* while black communities progressively move forward a "more of less" logic.

The environment and the transformations it has suffered throughout the armed conflict shapes peoples culture. The damage to the cultural construction

of Nature of black peoples has transformed the way they use and manage the territory. The *rationale* behind the activity of gold mining has changed in some Community Councils: new **adaptations** of some people that are mining in large scale are threatening the subsistence of others from the same communities. These adaptations that reflect the transformation of cultural values are also consequence of the context of war, and influenced by Santos' mining-led development model. They might deserve to be treated as a territorial damage in some cases, and therefore to be repaired, instead of immediately criminalized.

2. Macro-politics (spaces)

The Economy is embedded in social institutions, reason why they may affect different the environment. The practices, institutional arrangements and attempts of the State to address or resolve the UGM conflicts have affected negatively the effectiveness of the land restitution policy. Some measures are not responding to the complex realities, they are not reflecting an understanding of the socio-cultural changes black communities are experiencing. The action of the State has led to new waves of violence and internal displacements, which has re-victimized them. The socio-political *space* has been restructured to secure the titling of mining rights. State's actions are configuring a process of land restitution that is allowing the government to keep control over ethnic territories and facilitating the expansion of extractivism. An example of this is the creation of an anti-reform group (AMEI) within the same Land Restitution Unit (URT), with the purpose to contain the claims of ethnic communities when they overlap with private mining interests.

3. Relevance of politics behind environmental conflicts in land reform settings

The politics behind the concepts of 'nature' and 'territory' may influence the content and effectiveness of land reforms. In the Colombian case of land restitution, the power relations behind the UGM conflicts are affecting the democratic control of land, and in turn, the effectiveness of the policy. Politics of 'territory' should inform land reforms in two directions.

In a first moment, informing the implementation of land reform at the national level. Institutions in charge of the implementation should understand how places have been restructured, what was damaged and, how it would be repaired. The Colombian State cannot continue framing the conflicts caused by extractivism in such a technical way, and giving technical solutions. Direct and non-contextualized application of technical solutions to environmental problems are also non-political (Li 2007:7). Solutions must be based on micro-politics of the ethnic territories. Unveiling the politics behind conflicts will certainly unblock new paths to improve land reforms (Li 2007).

For instance, have understood that the Territory, as Nature, has a material (ecosystems) and a non-material component (culture and politics) might transform completely the nature of the restoration measures that a judge would order to repair the territorial loss. The land is crucial in land reforms: that might sound obvious. However, most importantly might be even the idea of *'community'*, their politics and their culture. A land restitution process with a completely weakened community council that does not have the necessary means to administer and defend with autonomy the collective territory, is doomed to failure. A sustainable land restitution requires strong organizational processes that are able to resist

and rebuild the restored land. This might be one of the reasons why today, the Colombian government is openly ignoring the systematic character that the multiple killings of land claimants and natural resource advocates have. In 2016, Colombia was the second country with the most environmental leaders killed, after Brazil, with 37 deaths occurred in 2016 (Global Witness 2016). Undoubtedly, these murders are somehow serving the interests of the development model, facilitating the expansion of mining. Ironic: without controlling what occurs in ethnic territories, the State is maintaining the control over the subsoil.

Likewise, people in those places (and their strategies of resistance) should be informed by the power relations existent in those spaces at the national level; and by how they might be shaping their ability to benefit from the environment in their territories. For instance, land restitution processes are consciously silencing intra-ethnic and class conflicts that UGM has triggered in the Pacific. Moreover, as we stated before, the strengthening of the communitarian leaderships is not a priority in State's agenda. This shows that the State is not interested in the conflicts and the political weakening of communities. Acknowledging this reality might improve the strategies of resistance from the PCN and the community councils, as major transformations for agrarian change cannot be expected from above.

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Annex 1 Interviews fieldwork 2017

Interviewee	Organization	Place and date
1. Jeiner Emmanuel Angulo, David Angulo, Hector Quiñonez, Astolfo Aramburo	Youth Afrodescendent leaders from Community Councils from Magüi Payán (Nariño).	Bogotá, 18 July 2017.
2. Astolfo Aramburo	Leader from the Community Council of Yurumangui river (Valle del Cauca)	Bogotá, 19 July 2017.
3. Carlos Lozano	Senior lawyer, Inter American Association for Environmental Defense AIDA.	Bogotá, 20 July 2017.
4. Carlos Baquero	Researcher, Antidiscrimination Area, DeJusticia (think tank).	Bogotá, 21 July 2017.
5. Jose Luis Quiroga	Coordinator of Indigenous Groups at Directorate of Ethnic Affairs –DAE of Land Restitution Unit. Former independent lawyer who initiated the first lawsuit against the state for the land restitution of the *Resguardo Indigena Embera-Katio* (Chocó)	Bogotá, 25 July 2017.
6. Francia Marquez	Afrodescendent activist from Community Council *La Toma* (Cauca)	Cali, 26 July 2017.
7. Sebel Marquez, Gustavo, Ismael, Wilber Valencia	Leaders, former and current legal representative of the Community Council of	Buenaventura, 27 July 2017.

	Raposo river basin (Valle del Cauca)	
8. Jose Absalón Suarez Solis	Territory and Environment team coordinator. Process of Black Communities – PCN.	Buenaventura, 28 July 2017.
9. Yuseth Camacho, Hector Gomez, Jorge Valencia	Youth Afrodescendent leaders from Community Councils of Raposo river basin and Anchicayá river (Valle del Cauca).	Buenaventura, 28 July 2017.

Annex 2 Judicial restoration measures to UGM in land restitution cases

Judicial restoration measures to address UGM			
Orders	**Case of Emberá Katío people from the Alto Andágueda (2014)**	**Case of the Community Council Renacer Negro (2015)**	**Case of Emberá Dobida people from the Indigenous Reservation Dogibi, ancestral territory Eyáquera (2016)**
Establishment of 'Mining Zone of Black Community (article 131, Law 685 of 2001, mining code) or Indigenous Mining Zone (article 122 Law 685 of 2001)		X	
Formalization of informal mining activity (Decree 933 of 2013)	X	X	
Suspension of mining titles or concession contracts, (which overlap with territory until Prior Consultation is done)	X	X	X
Recovery with the use of force of areas that are being ex-			

ploited illegally (destruction, burning or removal of machinery, and the personnel involved)	X	X	
Plan for the conservation, restoration and sustainable management of the forest ecosystem of the river basin		X	
Diagnosis of mining projects being executed and Plan to recover and reduce the impact on areas affected by mining	X		
Plan for the protection of leaders according to the area, the risk and the work performed		X	
Plan to substitute illicit crops (manual eradication + agrarian productive projects)		X	X
Study, financing and implementation of agricultural and livestock 'productive projects'		X	X
Training in agricultural environmental and livestock technologies, necessary for the sustainability and survival of the community		X	
Training in agricultural production systems	X		
Measures to protect the collective territory of the Community Council and the members of the community		X	

Plan for the recovery and strengthening of the social and cultural fabric of the population	X	X	
Cancelation of liens against the property. And registration of the land restitution ruling in the real state folio number of the collective territory		X	X
Documentation and report of the historical memory of the territorial damages and actions of resistance from the peoples	X	X	
Identification sessions of intra-ethnic conflicts, risk analysis, protection actions, and concerted mechanisms for conflict resolution	X		
Referral to the Office of the Attorney General the report of the characterization of ethnic territorial damages	X		

a. Case Alto Andagueda 2014

In this territory located in Bagadó (Chocó), the war that broke out since 1987, has generated numerous internal displacements, and has taken the lives of many men, women and indigenous kids from the Emberá Katío people who have been victims of a bloody war for the control of the gold mines. In 2008, under Alvaro Uribe mandate, lots of gold mining concessions that overlapped with the collective territory were granted to 11 different national companies and multinationals (such as AngloGold Ashanti, and AngloGold American Colombia, among many others), titles that represented in total the 62% (31.000 ha) of their collective titled territory. In 2012, the President Santos Calderon also gave 7 mining concessions more.

Simultaneously, large-scale illegal mining seized the territory while being backed by illegal armed groups that were present in the territory. In this case, environmental conflicts for the competing claims over the control of gold mines,

existent since the colonial period, remain intact today. All this despite the fact that the communities have a collective title of their land since 1979, and a land restitution ruling from 2014 that intended to restore their ethnic territorial rights affected by war.

b. Case Renacer Negro 2015

The incursión of the *Rastrojos* and *Aguilas Negras*[29] to Timbiquí (Cauca) started in 2003 when armed groups discovered being a strategic zone for the traffic of drugs, this place was still out of the control of the Armed Forces. The confrontations between the armed groups with FARC-EP guerrilla for the control of the illegal economy, and later with the National Army, provoked a massive wave of internal forced displacements of the black communities. This territory was also heavily affected by multiple spraying with glyphosate that caused the destruction of their food crops o *'cultivos de pan coger'* (plantain, maize, fruit trees). Moreover, since 1989, when the illegal large-scale gold mining activities started with the entrance of a Russian company, multiple environmental damages have been caused and the social fabric of the community has deteriorated. After 1999, the price of gold skyrocket in the international markets and the illegal armed groups realized that an alternative to coca (as their main source to finance the war) was emerging (Verdad Abierta 2014)[30].

Between 2007 and 2010, eight mining titles that overlap with the territory were granted without prior consultation. Moreover, the ANM received other 18 applications. With the intensification of large-scale gold mining in 2010 in the middle and upper parts of the river Timbiquí, the upsurge of violence also came due to the disputes among illegal armed groups that wanted to "control the entrance of miners and foreigners to the zone, impose levies, and manage the daily life of locals" (Case of the Community Council Renacer Negro 2015). The river basin was heavily contaminated due to oil, mercury, and cyanide dumpings, the remotion of the riverbed, and the destruction of the flora and fauna of the affected ecosystems[31]. For 2013, the territory was infected with more than 90 backhoes that were illegally mining directly on the riverbed. In sum, mining has been one of the main causes of violence in this territory causing killings, forced disappearances, massive displacements (Semana 2013)[32]. In this case, despite having a collective title since 1999, and to have achieved the first land restitution judicial ruling to a black community in 2015, the divisions within the community and the diverse environmental conflicts caused by gold persist, and the measures taken by the government to address them are even aggravating them.

c. Case Eyákera 2016

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[29] Groups that emerged after the demobilization of paramilitary groups after 2003 and are called neo-paramilitars or BACRIM, from the spanish 'bandas criminales'

[30] Verdad Abierta, 2014. En Timbiquí sueñan con librarse del oro y la coca - 1 junio. http://www.verdadabierta.com/lucha-por-la-tierra/5343-en-timbiqui-suenan-con-librarse-del-oro-y-la-coca

[31] Pasar a cita: Informe de Riesgo de la Defensoría del Pueblo No 017-10. Sistema de Alertas Tempranas.

[32] 'El Dorado' de la guerrilla en Timbiquí. 3/29/2013. http://www.semana.com/nacion/articulo/el-dorado-guerrilla-timbiqui/338109-3

Due to the dispossession caused by the confrontations between the AUC (Autodefensas Unidas de Colombia) and the FARC-EP guerrillas, the Embéra Indigenous had to forcibly displace in 1993 to another part of their ancestral territory located in Unguía (Chocó). The moved to *Eyákera*, which translates aroma of the mountain, where they lived, as the previous communities, a story of resistance and survival to the innumerable confrontations between guerrillas, paramilitaries and criminal gangs (BACRIM), and to the actions of the State that poisoned their territories with glyphosate, in an attempt to eradicate the coca leaf (Verdad Abierta 2016)[33].

After an intense legal struggle, in 2012 they were granted a collective title as the Indigenous Reservation Dóbida Dogibi. However, in 2013 the government sprayed glyphosate over the territory "affecting food crops and water sources, which affected the health, security and food sovereignty of the people" (Verdad Abierta 2016). The latter has been the main cause of environmental degradation of this community, however, gold mining threatened to enter those territories when in 2014 the government granted mining rights to the mining company Capricornio SOM, without prior consultation. This year they benefited from a land restitution ruling which, with the aim of solving the conflicts that may arise due to gold mining, suspended the concessions until the prior consultation was done.

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[33] Verdad Abierta 2017. Los Embéras recuperan "el aroma de la montana" http://www.verdadabierta.com/restitucion-de-bienes/6228-los-embera-recuperan-el-aroma-de-la-montana

Annex 3 Land restitution process for afro-descendant communities
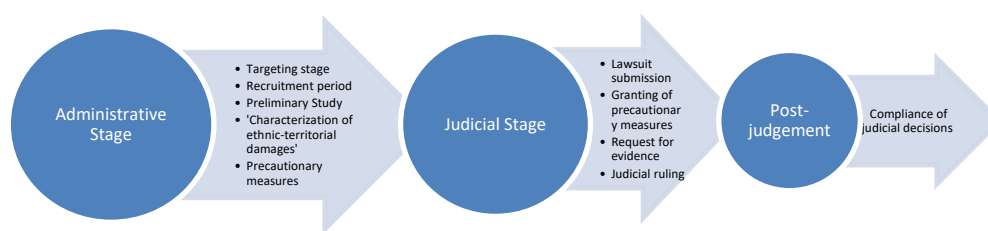
Administrative stage

The administrative stage, leaded by the Land Restitution Unity which is part of the Ministry of Agriculture, has as its main objective the identification of the so-called 'territorial damages' that the armed conflict or factors associated to it have caused. In this stage, a report of the characterization of damages should be elaborated, in order to inform the next stage. According to the decree-law:

During this stage, in many land restitution processes across the Pacific, gold mining has been identified as one of those actions linked to the conflict that has restricted in different ways the enjoyment of the territorial rights of black communities. In other words, it has been recognized in the Pacific region as a territorial damage for which communities also deserve the reparation of the State. These are the cases of the Community Councils of Raposo river basin in Buenaventura, Valle del Cauca; La Toma and Renacer Negro in Cauca; and Cocomopoca in Chocó, among many others.

Judicial stage

The judicial stage, that was entrusted to a group of judges and magistrates specialized in land restitution, has as its main objective the judicial recognition of those territorial damages "for the recovery of the *full exercise of their territorial rights* violated in the context of the internal armed conflict" (article 122 Decree-Law 4635 of 2011). In the case of black communities, for instance, this stage begins with the lawsuit presented by the Land Restitution Unit against the public institutions and companies that have affected the territorial rights of the black peoples and are responsible for its reparation. Up to the 31 July 2017, ethnic groups have presented 23 lawsuits, from which only six have received judicial ruling, and only one is from a Community Council of an afro-descendant communities.

The policy completed this year its sixth year of implementation, and the civil society already has evaluated very critically its impacts on the peoples. Last year, some NGOs and the Office of the Ombudsman presented a balance of the policy to August 2016 highlighting some of the main advances and challenges of the restitution of ethnic-territorial rights in the post-conflict setting. In a more recent report presented at the end of august 2017 by the Follow-up Commision to the ethnic decrees-law – integrated by the Attorney General, the Comptroller General and the Ombudsman – to the Congress, the implementation of the law by the Land Restitution Unit was also fiercely criticized (Verdad Abierta 2017).

Some of the critics were the lack of real collective security schemes for the land claimants and the communities involved in these processes; the excessive length of the proceedings; non-implementation of the measures ordered; no guarantee of non-repetition due to high impunity for the crime of displacement;

and enormous budget constraints within the institutions in charge of the implementation of the restoration measures. Moreover, despite even having a judicial ruling, there is no concrete progress that materialize in the territories what the rulings establish. One of the reasons is the lack of a differential ethnic approach from the public institutions when providing solutions: from the URT in their lawsuits, and from the restitution judges when thinking in creative and effective orders that may solve the rural crisis caused by war and gold mining.

However, the real 'stones in the shoe' have been, on the one hand, the evident large legal economic interests that exist behind ethnic collective territories. The national economic dynamics have led to public policy inconsistencies between the economic policies of the government and the human rights policies that guarantee the ethnic territorial rights. On the other hand, despite its contradictory interests, the fact that the restitution is being done in an ongoing context of violence. Illegal armed groups are still disputing the control of those territories for illegal drug-trafficking and gold mining, situation that depicts also complex scenarios for the restoration and the return of the communities (Navarrete 2017).