



**En defensa de la vida:**  
**Recognizing Territory as Victim of the Armed Conflict within  
the Transitional Restorative Process in Cauca, Colombia**

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## **NO SOMOS GENTE**

*No somos gente de mundo ajeno  
con anhelo de seguir viviendo;  
no somos gente de territorio  
de quienes mañana se escuche hablar  
que nosotros fuimos.*  
*No somos pueblo venido de otros lugares,  
nuestras raíces son de aquí.*  
*Somos árbol-hombre, somos gente, somos pueblo,  
nacidos del fondo de la tierra,  
árboles caminando por el lugar  
heredado de nuestros taitas,  
gente cuidando la armonía y equilibrio natural,  
pueblo construyendo la casa  
para que nuestros hijos  
vivan felices y de manera natural.*

**Hugo Jamioy Juagibioy**

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## List of Acronyms

CNMH	National Center for Historical Memory
CRIC	Cauca's' Regional Indigenous Council
DANE	Colombian Statistics Department
FARC-EP	Revolutionary Armed Force of Colombia – People's Army guerrilla
JEP	Special Peace Jurisdiction
ONIC	Colombian National Indigenous Organization
PSC	Protracted Social Conflict
TOAR	Jobs, Works, Actions with Reparative Content
TRC	Truth and Reconciliation Commission - South Africa
TRJ	Transitional Restorative Justice
URT	Land Restitution Unit

## **Abstract**

This research analyzes how the recognition of the Territory as victim of the armed conflict, made through the Special Peace Jurisdiction – JEP, modifies the relationship between the Indigenous Peoples and the Colombian State. Using qualitative analysis, this study identified that this recognition made visible Indigenous ontologies, giving them a place within this modern world that traditionally has seen the land and Territory from a productivistic point of view.

Taking in consideration indigenous understandings of the world, this research identifies harms suffered by the Territory and explores ways in which it could be healed. This approach also allowed to give agency to the Territory, promoting Indigenous Peoples autonomy and the exercise of their rights.

In the same way, the recognition of the Territory as victim is part of a restorative process that requires the active participation of the victims, as well as the involvement of the State and perpetrators. This research is relevant due to it offers an alternative view to relate to nature and the environment, breaking with extractivist logic and promoting a more holistic understanding of the Territory.

## **Relevance to Development Studies**

This topic is relevant to Development Studies insofar as it is part of a transitional justice process of international scope that incorporates innovative legal mechanisms such as the recognition of the Territory as a victim of the armed conflict. Through indigenous ontologies, using their understandings of the world, this study provides a vision that transcends conventional notions of development, questioning the predominant extractivist and productivist logics. Instead, it offers alternatives that value the cultural and spiritual relationship with nature proposing different ways of relating to the Territory that respect and enhance its cultural, ecological, and social significance.

## **Keywords**

Territory, Indigenous Peoples, Political Ontology, Transitional Restorative Justice, Special Peace Jurisdiction – JEP.



# 1. Introduction

*“No hay indio sin tierra,  
no hay tierra sin indio”*

Participant 5

Colombian armed conflict has left millions of victims and vulnerable populations were the most affected. Specifically, Indigenous Peoples have suffered disproportionate damage at both individual and collective levels. Their identity, cultural practices, and Territories have been severely affected by the war.

With the 2016 Peace Agreement, Colombia defined a new transitional institutional scheme that aims to overcome this legacy of violence and achieve a stable and lasting peace. Through this, the Special Peace Jurisdiction – JEP was created to satisfy victims’ rights of truth, justice, reparation, and guarantees of non-repetition. Through this entity, victims have requested the recognition and protection of their rights.

In this context, after the request made by Indigenous Peoples, the JEP recognized ethnic Territories as victims of the armed conflict. This recognition is a legal innovation of the Colombian State with multiple impacts, the most relevant is that it allows the validation of indigenous ontologies in front of a modern State. Thus, despite the multiple limitations and challenges it represents, it accepts their ways of understanding the world.

With the above, this Research Paper seeks to understand how the recognition of the Territory as a victim of the armed conflict modifies the relationship of the Indigenous Peoples with the State as well as to make visible the cultural and spiritual value of the Territory, the damages it suffered, and its needs for reparation as part of the post-agreement.

## 1.1 Research problem

With the Peace Agreement signed in 2016 between the Colombian State and the Revolutionary Armed Force of Colombia – People’s Army guerrilla (FARC-EP for its name in Spanish), institutional agreements to seek a stable and lasting peace were established. As it will be explained in detail further ahead, this Peace Agreement consists of six main points, and the fifth one focuses on victims, justice, reparation, truth, and no-repetition. Through this point, the Special Peace Jurisdiction - JEP<sup>1</sup> was created to implement a Transitional Restorative Justice (TRJ) process that is characterized by the objective of guaranteeing victims’ rights, their participation as well as that for the perpetrators, and the search of mechanisms and actions to restore community ties.

In this scenario, the recognition of the rights of nature and specifically the recognition of the Indigenous Territory as a victim of the armed conflict might be seen as a significant advance for TRJ. Thus, the main issue of this Research Paper is to identify the transformations in the political relation between the Indigenous Peoples and the Colombian State that lie in the recognition of the Indigenous Territories as victims of the armed conflict, and how that recognition leads to consider ways to repair the Territory.

## 1.2 Context

Considering the previous research problem, this context will expose the specific social and institutional framework in which this Research Paper is developed. It will begin with a general

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<sup>1</sup> *Jurisdicción Especial para la Paz* – JEP can be traslate as Special Peace Jurisdiction.

characterization of the Colombian armed conflict around its victimization and the Cauca region. Later, it will focus on the historical violence suffered by Indigenous Peoples in Colombia and their struggles as social movements. Then, some institutional efforts of peace-building that impact this Research Paper will be presented and, finally, the concept of Territory will be discussed as well as the advances of the JEP with a focus on the recognition of the Territory as victim of the armed conflict.

### 1.2.1 The Armed Conflict

A Protracted Social Conflict - PSC is often characterized by a multiplicity of political, social, and economic factors that perpetuate its existence and difficult its resolution (Azar, 1990). For Azar (1990), a PSC may be deeply rooted in the history and culture of societies and highlight the importance of power structures and collective identities in its evolution. The Colombian Armed Conflict might fit into this category.

Colombia has experienced several periods of violence and long-armed conflicts that left millions of victims in its history (Calderon, 2016). Academic literature identifies problems linked to land and the precariousness of Colombian democracy as determining and recurring factors in the origin, transformation, and continuity of it (CNMH, 2013)<sup>2</sup>. Similarly, considering the mentioned characteristic of the Colombian conflict and the diversity of the population, the victimization process had differentiated impacts, particularly on historically marginalized and vulnerable populations (Comisión de la Verdad, 2022b).

According to the Victims Unit<sup>3</sup> (2024a) more than 9.6 million people are victims of the conflict in Colombia, this represents 18,4% of the national population. Adding to that 18.2% of the Colombian women, 33,0% of the afro-Colombian, and 23.8% of the indigenous are also victims of the conflict (ibid). Regarding the victimization acts, more than 8.6 million of victims suffered forced displacement in the country, 277,620 homicide, 142,705 lockdown, and 40,307 were victims of forced land dispossession<sup>4</sup> (ibid). This means that 8.6 million people were forced to abandon their homes and activities because their life, security or freedom was violated or threatened by violence. In the same way, the lockdown refers to a situation of fundamental rights violation, in which communities, despite remaining in a part of their Territory, lose mobility, as a consequence of the presence and actions of armed groups (ibid); 70.6% of the victims of lockdown are part of the Indigenous Peoples of Colombia, and 29.3% are part of the Afro-Colombian (ibid).

#### 1.2.1.1 The Cauca region.

The Cauca is a region located in the southwest of Colombia characterized by its natural and water wealth (Gobernación del Cauca, 2024). This region has over 1.5 million inhabitants, 62.7% of them live in rural areas (DANE, 2020)<sup>5</sup> reflecting the predominantly rural characteristic of this Department. The economy of Cauca is based on agricultural, livestock farming, and mining activities, taking advantage of its abundant natural diversity (Gobernación del Cauca, 2024). In addition, it is a place of cultural diversity, 25.4% of its population are part of Indigenous Peoples and 20.0% to Afro-Colombian Communities (DANE, 2020), this

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<sup>2</sup> *Centro Nacional de Memoria Histórica – CNMH* can be translate as National Center for Historical Memory. It was created with the objective of document and preserve the memory of the internal armed conflict in Colombia.

<sup>3</sup> *Unidad para la Atención y Reparación Integral a las Víctimas – UARIV* can be translated as Victims Unit, is an organization created with the Law 1448 of 2011 to guide the activities of care, assistance, and reparation of the victims of the Colombian armed conflict.

<sup>4</sup> In Colombia, the Law 1448 of 2011 defined a classification of 15 types of victimization actions.

<sup>5</sup> *Departamento Administrativo Nacional de Estadística – DANE* is the Colombian statistic department.

contrasts with the national average where the percentages of indigenous and afro-Colombian population are 4.4% and 9.3% respectively (DANE, 2019).

Historically, Cauca has been home of several Indigenous Peoples since before the time of the Spanish conquest (Gobernación del Cauca, 2024). Today, the region has 119 Indigenous Reservations<sup>6</sup> (Portal de Datos, 2024) where 11 of the 115 Indigenous Peoples recognized in Colombia live, which are distributed mainly in 10 municipalities of the north-eastern area that concentrates 70% of the indigenous population of the region (Gobernación del Cauca, 2024). Similarly, Afro-Colombian communities are organized in 79 Community Councils<sup>7</sup> located in 20 municipalities (ibid).

Regarding the armed conflict, the Truth Commission<sup>8</sup> (2022b) identified 17 macroregions made up of places where indigenous and afro-colombian communities live, in those regions the armed groups disputed geographic control and rents from their activities in the area. They were called *Conflict Corridors* and were characterized by the permanent or temporary occupation of these spaces, the confrontation of armed groups, and the imposition and development of legal and illegal extractive economies, wielding violence against communities, nature, and the Territory (ibid). Of these 17 macroregions, the Department of Cauca appears in four of them: (1) Western Mountain range and “*Serranía del Baudó*”: connected with the Pacific Ocean, Departments of Valle del Cauca, Cauca, Antioquia, Risaralda and Chocó; (2) Northern Cauca: connected with the Pacific Ocean, Municipalities of Northern Cauca; (3) Central Mountain range and Las Hermosas Canyon, Departments of Tolima, Huila, Cauca and Valle del Cauca; and (4) southern Cauca and northern Nariño: connection with the Pacific Ocean. Municipalities in southern Cauca and northern Nariño.

Given the characteristics of cultural and natural diversity of Cauca’s department, in conjunction with its strategic value for the armed conflict, several areas of the region were highly affected by it (Gobernación del Cauca, 2024). So far, in terms of victimization, according to the Victims Unit (2024b) 754,390 victimization events occurred in Cauca, 148,535 (19,7%) of them were against afro-colombian population, and 157,252 (20,8%) against Indigenous Peoples. In addition, even after the signing of the Peace Agreement of 2016, this region still faces violence considering that 24.15% of the victimization events reported in Cauca occurred between 2017 and 2024 (ibid).

In short, Colombia is a country that has experienced long periods of violence that have more impact on vulnerable populations. This research takes place in the new peace-building process and is focused on those groups to understand the impacts and transformations of this new scenario.

## 1.2.2 Violence as colonial legacy

According to Dwyer and Nettelbeck (2018), colonization was a process that used violence that entitled the domination of people along with their lands, cultures, and institutional ways and this kind of physical and symbolic violence was a common element across time in colonial societies. The slavery events of black and indigenous groups in the Americas and the Apartheid in South Africa are a few examples of this dynamic.

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<sup>6</sup> *Resguardos Indígenas* can be translate as Indigenous Reservations, they are geographical spaces related to indigenous communities in which they have the right to self-determination, autonomous government, and their own justice systems.

<sup>7</sup> *Consejos Comunitarios* can be translate as Community Councils, they are Afro-Colombian authorities in charge of the the administration of their Collectives Territories.

<sup>8</sup> *Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No Repetición* – CEV is the Truth Comison organization that was created with the peace agreement of 2016.

In Colombia, since the Spanish occupation, Indigenous Peoples were perceived as inferior to their human condition, and their Territories were constantly occupied (Comisión de la Verdad, 2022b). Similarly, those colonial narratives remain unchained after the independence wars and in the national consolidation process (ibid). With this, is possible to say that the impact of the war on Indigenous Peoples and Afro-Colombian Communities is the result of the heritage of colonial practices inserted in the Colombian social imaginaries of ethnic and racial discrimination placed since the XV century with the European invasion and colonization process (ibid).

Similarly, according to the Truth Commission (2022b), Indigenous Peoples were victims of systematic actions of invasion, occupation, and dispossession of their Territories, where the actors of the war did not recognize their rights. Consequently, the multiple infractions against International Humanitarian Law and International Human Rights Law related to the indigenous populations in Colombia were placed, primarily, inside their Territories (ibid). Even today in a post-agreement context, these acts of violence are still present in Colombia, according to Global Witness (2021), this is the most dangerous country for the Indigenous Peoples to exercise their rights. Specifically in Cauca, indigenous leaders are facing a continuum of racialized violence (Ruelle-Orihuela *et al.*, 2023).

This historical and still present racialized violence is also linked to a recurrent cycle of cultural and ideological imposition product of colonial domination (Comisión de la Verdad, 2022b). It is considered as spiritual violence against the Indigenous Peoples ancestral knowledge and understood as a frontal attack made by “armed actors, economic interest over the Territory, and State policies that weakness the [ancestral] knowledge of the Indigenous Peoples” (CNMH and ONIC, 2019, p. 114 | authors’ translation)<sup>9</sup>.

#### ***1.2.2.1 What is not named does not exist. Recognition and epistemic justice***

The cultural domination suffered by Indigenous Peoples can be understood as a form of epistemic injustice. According to Kidd, Medina and Pohlhaus (2017), this concept refers to unfair forms of treatment regarding issues of knowledge that reproduces practices of exclusion and invisibility. Even more, to Fraser (1997) “[c]ultural domination supplants exploitation as the fundamental injustice”(p.11). In this sense, the indigenous struggle has been a collective action seeking to demand citizen rights and social recognition from the State, as well as the conservation of their lands, resources, and culture (Ulloa, 2004; Escobar, 2008).

In the same way, Fraser (1997) argues that justice includes dimensions of redistribution as well as recognition. On this, the ontological gap between indigenous worldviews and the predominant modern paradigm has implied a change in modern conceptions of democracy for the recognition of the Indigenous Peoples rights as well as their notions about land and nature (Ulloa, 2004). In fact, in Latin America, indigenous movements have been considered actors that have “reconfigured concepts of identity, development, democracy and nature” (Ulloa, 2004, p. 5 | author’s translation). This multiculturalism and diversity, are part of the elements that constitute the idea of nation (Bhabha, 1994; Wade, 1997).

Similarly, for Bustillo Marín (2016) recognition implies respect for the identity and for those activities, practices, and ways of seeing the world. This process not only reaffirms the Indigenous Peoples historical struggle of resistance but also places an ontological conflict and the need to value and respect the different ways of understanding and constructing the world as an essential part of diversity in the construction of an inclusive nation. Thus, as the reader will see in the following chapters, this Research Paper focuses on the recognition of the Territory as victim of the conflict and through the recognition highlights components of

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<sup>9</sup> *Organización Nacional Indígena de Colombia* – ONIC can be translate as Colombian National Indigenous Organization. Is an indigenous organization that brings together and represents Indigenous Peoples.

Indigenous Peoples's identity giving relevance to their knowledge systems, worldviews, and culture.

### ***1.2.2.2 Indigenous visibility. The long fight and the Colombian Constitution.***

The indigenous struggle and resistance has a long history, but it is since the 1970s that Indigenous Peoples have consolidated and positioned themselves as political actors with the capacity to affect national and international scenarios (Ulloa, 2004). For different authors, in Latin America this collective struggle arose mainly due to the pressures on Indigenous Territories and the effects caused by the opening up of borders and modernization processes of Latin American countries (Yashar, 1999; Ulloa, 2004; Quijano, 2006). In this international scene, it is possible to observe some of the victories of these struggles with a series of United Nations declarations such as the “Declaration on the Elimination of All Forms of Racial Discrimination” in 1963, the International Labour Organization 169 Convention on Indigenous and Tribal Peoples of 1989, and the declaration of the International Day of Indigenous Peoples on August 9.

In the Colombian case, the 1970s are also representative of the advance of the indigenous struggle and resistance with the appearance of the first indigenous organization marking the beginning and rise of their political participation in the country (Ulloa, 2004). During the 1980s, the strengthening of these groups was evident with the First Colombian National Indigenous Meeting that was held in a *Pijao*<sup>10</sup> Territory, in Lomas de Ilarco community, in Coyaima, Tolima. At this meeting, the recovery of their Territories, the protection of culture, the right to exercise their self-government, and to guarantee their right to health and education were raised as specific problems of the indigenous struggle (CNMH and ONIC, 2019). In parallel, in this decade the Colombian State promoted a process of administrative decentralization and constitutional review that was consolidated with the creation of the 1991 Constitution (Ulloa, 2004).

The new Constitution, as a renewed structure of rules, made visible Colombian diversity, Article 7 establishes that “the State recognizes and protects ethnic and cultural diversity of the Colombian Nation” (Congreso de la República, 1991). Similarly, the Constitution established specific representations in the Congress for the ethnic communities<sup>11</sup> and the rights to self-determination, self-government, autonomy, justice systems and, decision-making for Indigenous Peoples in their Territories (Congreso de la República, 1991). In addition, this new democratic scheme paved the way to the ratification of the ILO 169 Convention in 1991 (CNMH and ONIC, 2019).

In general, the 1991 Constitution transformed the demand for political, economic, social and cultural rights into an essential element for a dignified life favouring the transformation of the country (Comisión de la Verdad, 2022a). Additionally, it meant the recognition of the rights for ethnic peoples, their entry into social democracy and, in particular, the recognition of their Territories, forms of government and culture (ibid). Paradoxically, despite the advance in recognition and rights, the Colombian economic development model as well as the persistence of violence and conflict in the country, generated restrictions on the autonomy of Indigenous Peoples with tensions over economic interests in their territories (CNMH and ONIC, 2019).

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<sup>10</sup> *Pijao* is one of the 115 Indigenous Peoples that are recognized in Colombia. They are located in the Tolima department, in the center of Colombia.

<sup>11</sup> In Colombia, this perspective of ethnic diversity refers to the recognition and existence of three ethnic groups, namely: Black, Afro-Colombian, Raizales, and Palenqueras communities as the first one, Indigenous Peoples as the second, and Romani or Gypsy People for the third one (DNP, 2016)

### 1.2.3 Peacebuilding efforts. Victim's Law and 2016 Peace Agreement

The Law 1448 of 2011, commonly known as Victims Law, recognized the existence of an armed conflict in Colombia and determines measures of care, assistance, and reparation for victims of the armed conflict (Congreso de la República, 2011b). To implement those measures, this Law created two organizations (1) the Victims Unit and (2) the Land Restitution Unit<sup>12</sup> (URT for its name in Spanish) as State institutions responsible for direct and coordinate the national victim's public policy. According to Lazala (2022) through the Victims Law, the Colombian State incorporated the transformative approach and the definition of elements related to harm and reparation and turned to be "the most relevant legal tool for the victims of armed conflict that appeared before the Peace Agreements signed with the FARC[EP] in 2016" (p. 48).

Regarding Indigenous Peoples, this law paved the way for Act 4633 of 2011, also known as the victim's law for indigenous communities. This Act defined actions of assistance, care, reparation, and restitution of Territorial rights specifically to indigenous victims (Congreso de la República, 2011a). It was precisely in this law that the concept of Territory as a victim of the conflict appears.

The 2016 Peace Agreement between the Government of Colombia and the FARC-EP has been seen as the starting point for achieving a stable and lasting peace (Calderon, 2016). While it is acknowledged that this agreement does not guarantee the end of cultural and structural violence in Colombia (Calderon, 2016), for the Truth Commission (2022a) this pact is a closure point between war and the search for peace with the inclusion in the democracy of sectors that were not part of it in the past. This Peace Agreement seeks the end of the internal armed conflict and is composed of six interrelated points that together look to solve the structural characteristic of that conflict<sup>13</sup> (Gobierno de Colombia and FARC – EP, 2016). For the purposes of this Research Paper, I highlight three elements of the agreement: (1) the recognition of land as one of the underlying factors of the internal armed conflict in Colombia, (2) the centrality of the victims and the creation of the Transitional Justice System, and (3) the inclusion of an ethnic perspective through a specific chapter.

Regarding the recognition of land as a factor of the conflict, the first point of the 2016 Peace Agreement is the Integral Rural Reform. In this point, the Colombian Government and FARC – EP (2016) recognized elements associated with land, such as its concentration, are part of the historical causes of the conflict that has facilitated the persistence of violence. In the same way, point four identifies that illegal economies have changed territorialities and recognizes that the quest for peace requires options to transform those crops and generate well-being options for the people who live in those areas (Gobierno de Colombia and FARC – EP, 2016).

Similarly, as it was mentioned, the fifth point of the 2016 Peace Agreement is about the victims. In this chapter, the centrality of the victims is a concept related to the maximum possible satisfaction of the victims' rights to truth, justice, reparation, and non-repetition (ibid). Likewise, this chapter creates the Integral System of Truth, Justice, Reparation, and Non-Repetition. It is a system composed of three organizations, The Truth Commission –

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<sup>12</sup> *Unidad de Restitución de Tierras* - URT can be translated as Land Restitution Unit, is an organization created with the Law 1448 of 2011 to identify and manage the lands registry in Colombia that was abandoned or taken in the armed conflict.

<sup>13</sup> The 2016 Peace Agreement points are (1) Towards a new Colombian countryside: Integral Rural Reform, (2) Political Participation: Democratic opening to build peace, (3) End of Conflict, (4) Solutions to the illicit drug problem, (5) Agreement on the victims of the conflict: Integral System of Truth, Justice, Reparation and Non-Repetition and, (6) Implementation, Verification, and Ratification.

CEV, the Special Peace Jurisdiction – JEP and the Missing Persons Searching Unit – UBPJ. Specifically, JEP is the transitional judicial body that investigates, clarifies, and punishes serious violations of human rights and the international humanitarian law (ibid).

Finally, regarding the multicultural perspective, in the sixth chapter of Implementation, Verification, and Ratification, an ethnic section was defined that incorporates an ethnic and cultural perspective for the interpretation and implementation of the Final Agreement (ibid). This section also recognized the serious effects of the armed conflict over the Indigenous Peoples and Afro-Colombian Communities and linked them to the historical conditions of injustice product of colonialism, enslavement, exclusion, and the dispossession of lands, Territories, and resources (ibid). With the above, this chapter promotes the “maximum guarantees for the full exercise of their human and collective rights within the framework of their own aspirations, interests and worldviews” (Gobierno de Colombia and FARC - EP, 2016, p. 205 | author’s translation).

In sum, these institutional arrangements are part of the peacebuilding efforts made by the Colombian State. They seek to modify the social and political conditions of the country and give back to the victims of the conflict the possibility of enjoying their rights and they are a key context for this investigation.

#### **1.2.4 Territory with a capital T**

Concerning Indigenous Peoples, concepts of Land and Territory are often used as synonyms, and both uses are different than the understandings in the modern world. My intention in this section is not to provide a deep analysis of those differences but rather (1) highlight the ontological gap between the indigenous understanding of them in comparison with the Western paradigm and (2) present the general notion of Territory that will be used on this Research Paper which derives from the terminologies used in the Colombian context.

From an anthropological view, the notion of territory is usually related to issues of State and Nation (Wilson, 2013). It is a political technology that involves the existence and control of a socio-political order within certain borders (Wilson, 2013; Mitrovic Pease, 2015; Anthias, 2018) in other words, it is “understood as the geographical space that defines and delimits the sovereignty of a political power” (Echeverry, 2005, p. 231). Similarly, regarding land, the modern world has a productivistic view focused on resource extraction from it, for example, classical economics proposes land as a factor of production that generates different levels of income (Ricardo, 2000). Over this colonial understanding of territory, Indigenous Peoples face the challenge of making legible their conceptions of land and Territory, and their relationship with them (Atleo and Boron, 2022). For instance, some Indigenous Canadian Peoples understand land “as a relative (i.e., Mother Earth) with agency and worthy of respect” (Atleo and Boron, 2022, p.2). In their worldview, it is a collective relation with land, that “is held to the common for the benefit of all” (Silversmith, 2021 in Atleo and Boron, 2022, p. 6). For some Peruvian and Ecuadorian Amazonian Peoples, “[T]erritory belongs to the social sphere” where nature and culture are part of the same single reality (García and Surrallés, 2005, p. 15). In the Colombian case, due to the armed conflict, the land concept was used by the Marxist left-wing revolutionary movements as a ‘land struggle’ slogan which led to the Indigenous Peoples movements to find another word to express their relation to the land (Echeverry, 2005).

In line with the above, a colonial interpretation of Land and Territory misses the symbolic and spiritual value that the Indigenous People have on it (Echeverry 2005; Anthias, 2018). According to Echeverry (2005), “an [I]ndigenous [T]erritory, although possibly demarcated and delimited, is defined not primarily by its borders and limits but by geographical marks which represent the bond between a group of humans, landscape and history” (p.

232). In the same way, the Truth Commission (2022b) also establishes that for the Indigenous Peoples in Colombia the relation to Territory implies their material and cultural survival. In this sense, this concept “transcends to refer to vital practices in which human, spiritual and natural beings are related and they order the world” (CNMH and ONIC, 2019, p.384 | author’s translation). This holistic vision of Territory can be identified also in the Colombian law and specifically in its relation to the armed conflict, the Act 4633 of 2011 (Congreso de la República, 2011a) defined Territory as:

“(…) understood as living integrity and support of identity and harmony, in accordance with the worldview of the indigenous population and in consideration of the special and collective bond that they maintain with it, it suffers damage when it is violated or desecrated by the internal armed conflict and its linked and underlying factors” (Article 45 | author’s translation).

In the same way, in Act 4633 of 2011, the understanding of Territory also includes references to Mother Earth in Article 3. In addition, the JEP (2022) establishes that an Indigenous Territory is:

“(…) (1) a living subject, (2) a sacred entity (3) endowed with spiritual relationships (4) based on its own cultural processes, and (4) with a relationship of interdependence with the natural environment” (p. 23 | author’s translation)

Thus, for the present Research Paper, Territory will be perceived as an element of cultural value that transcends the productivistic notion of land, nature, or environment, understanding it as a living agent. Under this interpretation, and respecting the Indigenous Peoples worldviews, Territory will be written with a capital T every time that it is related to an indigenous or ethnic view.

#### ***1.2.4.1 JEP’s innovation. The recognition of Territory as a Victim.***

The JEP organization was created in the fifth point of the 2016 Peace Agreement and its main function is to investigate and administering justice for crimes that occurred during the armed conflict in Colombia (Gobierno de Colombia and FARC - EP, 2016). To do so, the organization implements a dialogic process where the perpetrators accept their responsibility for the events of the conflict and make contributions to the truth (Congreso de la República, 2018). The JEPs investigation methodology is through macro-cases which groups the most serious acts committed within the armed conflict with the objective of identifying and establishing the patterns of the criminal actions (Congreso de la República, 2018). This research structure also seeks to determine the sanctions for the perpetrators and determine the ways in which the victims will be compensated (Congreso de la República, 2018).

In the same way, due to the centrality of the victims, it is established their participation in the entire process of investigation (JEP, 2020b). According to the Manual of Victims Participation, the Special Peace Jurisdiction (2020b) established that the victims can participate in some of the following forms: (1) submitting reports to the JEP describing the events of the conflict, (2) being recognized as victims in specific macro-cases, (3) participating in the hearings of the perpetrators, (4) presenting comments over the hearings of the perpetrators, and (5) participating in the definition of the Jobs, Works, Actions with Reparative Content (TOAR<sup>14</sup> - for its name in Spanish) that will be imposed on the perpetrators (JEP, 2020b). Similarly, JEP has created a guideline for the implementation of the ethnic approach within the Transitional Justice scheme with the objective of to guarantee the rights of victims and perpetrators who are part of the ethnic communities in order to contribute to the

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<sup>14</sup> *Trabajos, Obras y Acciones con contenido Reparador* - TOAR can be translate as Jobs, Works, Actions with Reparative Content. They are the sanctions that the perpetrators compromise to do in the framework of the Transactional Restorative Justice. They have to be agreed upon.



elimination of structural and historical inequality and the discrimination of State institutions against them (JEP, 2021). Specifically, macro-case 09 was opened in September of 2023 to investigate, judge, and punish the acts committed against ethnic peoples and territories during the armed conflict (JEP, 2023b).

Another relevant element within Special Peace Jurisdiction institutionally is the creation of the Territorial and Environmental Commission. This commission works on the formulation of protocols, manuals, and guidelines to guarantee environmental and Territorial protection within the Transitional Justice scheme as well as conducting studies on the vulnerability and impact of the armed conflict over Territories (JEP, 2024c). This commission developed the guide for the application of the Territorial and environmental approach in JEPs organization with the conceptual, regulatory, and methodological guidelines for its implementation (JEP, 2020a).

In this context, using all the institutional arrangements described, the Special Peace Jurisdiction has recognized specific Indigenous Territories as victims of the armed conflict in Colombia giving rise to the present Research Paper. According to the JEP regulation, Transitional Restorative Justice must include ethnic people's justice systems and worldviews in the search for truth, healing and harmonization with the Territory (Congreso de la República, 2018). There are three specific accreditations that are that are highlight for this investigation:

- a. Accreditation of *Katsa Su*, Act SRVR 079 of November 12, 2019. *Katsa Su*, the sacred Territory of *Awá* People, is recognized as a victim of the armed conflict (JEP, 2019).
- b. Accreditation of the Cauca River, Act SRVR 226 of June 12, 2023. The Cauca River is recognized as a victim of the armed conflict. (JEP, 2023a).
- c. Accreditation of the ancestral, sacred, and collective territory of *the Sierra Nevada de Gonawindua* in Santa Marta. Within macro-case 09 related to ethnic populations, the ancestral, sacred and collective Territory of the *Sierra Nevada of Gonawindua* and the *Iku* (*Ar-buaco*), *Kággaba* (*Kogui*), *Wíwa* and *Kankuamo*<sup>15</sup> Indigenous Peoples are recognized as victims of the armed conflict (JEP, 2024a).

The message of the accreditations is the recognition of the Territory as a subject that suffers damage and requires reparation. (Huneus and Rueda, 2021). Thus, JEP not only protects human lives but also adopts measures to restore and protect the environment (JEP, 2024c). The details of how the recognition of the Territory as victim of the conflict is operationalized and the way it provides actions to protect the environment will be discuss in Chapter 4.

Finally, another relevant element of the JEP in relation to indigenous and ethnic visibility is representativeness. Since the foundation of the organization, the Jurisdiction has included individuals with ethnicity as judges and decision-makers. Today, four indigenous individuals and tree afrocolombian are part of the JEP.

### 1.3 Research question and objectives

Considering the specific characteristics of the Transitional Restorative Justice in Colombia, this post-agreement situation is an opportunity for Indigenous Peoples and their Territories to break the legacy of historical violence. With that, through this Research Paper, I want to

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<sup>15</sup> *Ar-buaco*, *Kogui*, *Wíwa* and *Kankuamo* are four of the 115 Indigenous Peoples that live in Colombia. They are placed in *Sierra Nevada* of Santa Marta in the Caribbean north part of Colombia.

explore if the recognition of the Territory as a victim of the armed conflict in Colombia reconfigures the political relationship of Indigenous Peoples with the State and how, specifically for the *Nasa*<sup>16</sup> People in Cauca.

#### Sub-questions

- What does the recognition of the Territory as victim of the armed conflict aim to achieve?
- What does the recognition of the Territory as a victim of the armed conflict mean for *Nasa*'s Indigenous People?
- What are the restorative actions caused by the recognition of the Territory as a victim of the armed conflict?

## **1.4 Justification and relevance of this research**

With the implementation of the Peace Agreement of 2016, Colombia is going through its most recent peace-building process. This Transitional Justice scheme has emerged as a relevant case study due to its innovative norm-making and its potential to “sets a precedent for ending future civil wars in the new international context” (McCoy, Subotic, and Carlin, 2021, p. 95). In the same way, Izquierdo and Viaene (2018) mentioned that “Colombia has great potential to become a laboratory where Indigenous Peoples, together with those responsible for public policies of transitional justice, transcend the limits imposed by the conceptual comfort zone and the practices of this dominant [modern] paradigm” (p.15). In this regard, the recognition of the Territory as a victim in Colombia is an innovation of the Colombian peacebuilding process. Through this experience, many lessons learned can be found about institutional adaptation for the inclusion of Indigenous Peoples rights or mechanisms for nature and environmental protection.

Similarly, regarding the TRJ, understand the characteristics of the recognition of the Territory as victim and its practical implementation in the indigenous Territories might contribute to provide information on mechanisms and actions to integrate perpetrators with victims and collective communities and support TOARs' implementation.

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<sup>16</sup> *Nasa* is one of the 115 Indigenous Peoples that live in Colombia. They are placed in the departments of Cauca, Huila, Tolima, Putumayo, and Valle del Cauca.

## 2. Methodology

In this chapter, I will describe specific methodological characteristics of this Research Paper. I will present the groups of participants chose for interview, the way in which they were contacted, the places where the interviews took place, special features of the participants, the implemented analysis method, positionality, some ethical considerations, and limitations of this research.

### 2.1 Methodology and Methods

Considering the questions, objectives, and actors of this study, I chose for this investigation a qualitative methodological approach. I applied semi-structured interviews focused on four different groups: (1) indigenous leaders and representatives whose communities had participated in the seek for the recognition of the Territory as Victim of the Conflict in Colombia or have a relation with some of the areas that have been recognized, (2) representatives of some Colombian State institutions that have specific functions to attend victims of the Colombian conflict, (3) representatives of the Special Peace Jurisdiction and, (4) representatives of social organizations and academy related to the topic. Through this classification, I tried to get a group of key informants pertinent to the focus of this Research Paper. The questions designed for the interviews can be reviewed in the Appendix A.

For the population targeted by this research, to avoid homogeneous analysis and conclusions for the multiple ethnic groups that live in Colombia, I decided to limit its scope only to Indigenous Peoples. To get to the participants to be interviewed, through my parents who used to work with Indigenous Peoples, I established contact with representatives of the Special High-Level Instance for Ethnic Peoples (IEANPE<sup>17</sup> for its name in Spanish) in May of 2024. Thanks to this contact, I get appointments with public officials of the Victims Unit and Land Restitution Unit and some representatives of the Indigenous Peoples. Similarly, contact with the officials of JEP was made through the judges who participated in the International Conference on Transitional Justice placed in the ISS on November 23rd and 24th of 2023.

#### 2.1.1 Field work and sampling

Fieldwork was conducted in Colombia from July 18 to August 12, 2024. It was made in three different cities: Bogota (20 days), Popayan (4 days), and Santander de Quilichao (1 day). Popayan and Santander de Quilichao are two cities located in the Cauca region of the country. There, I interviewed representatives of the Indigenous Peoples, representatives of the CRIC<sup>18</sup> organization, a professor of Cauca University, and a social organization called “*Ensayos*”. Most of the interviews made with the Indigenous Peoples were placed in the indigenous university *Universidad Autónoma Indígena Intercultural* – UAII during an event of the board of directors of CRIC authorities; I was invited there through one of the indigenous authorities that I interviewed for this research. Similarly, in Bogota, I interviewed representatives of the Land Restitution Unit, the Victims Unit, the vice-presidency of Colombia, JEP, and the National Commission of Indigenous Territories. Specifically, for the Special Peace Jurisdiction, interviews were conducted with an officer of the Restorative Justice Office and

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<sup>17</sup> *Instancia Especial de Alto Nivel con Pueblos Étnicos* - IEANPE can be translate as Special High-Level Instance for Ethnic Peoples. This is an organization created with the 2016 peace agreement to watch for the fulfillment of the agreement regarding the ethnic population.

<sup>18</sup> *Consejo Regional Indígena del Cauca* - CRIC can be translate as Cauca’s Regional Indigenous Council. This is the biggest indigenous organization in the region.

judges who have been carrying out the processes of recognition of the Territory as a victim of the armed conflict inside the organization. Some interviews had to be online due to the availability of the participants

**Figure 1.**

Universidad Autónoma Indígena Intercultural. Maloka and Spiral



Source: Fieldwork 2007

During the fieldwork, on August 19<sup>th</sup>, I had the opportunity to participate in the International Day of the World's Indigenous Peoples event that was placed in the *Centro de Memoria, Paz y Reconciliación* in Bogota. This was a commemoration of the historic struggles and resistance of Indigenous Peoples in Colombia and I had the chance to get involved in an indigenous harmonization ritual, led by one of the spiritual leaders of the *Ar-huacos* peoples.

**Table 1. Field Work Participants**

Identif.	Gender	Ethnicity	Type of Actor	Organization	Indigenous People	Place	Type of interview
P1	Man	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P2	Man	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P3	Woman	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P4	Woman	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P5	Man	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P6	Woman	Indigenous	Indigenous Leader	N/A	Nasa	Santander de Quilichao	In person
P7	Man	Indigenous	Indigenous Leader	N/A	Nasa	Santander de Quilichao	In person
P8	Man	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P9	Man	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P10	Man	Indigenous	Indigenous Leader	N/A	Nasa	Popayan	In person
P11	Woman	Indigenous	Social Actor	Ensayos	Nasa	Santander de Quilichao	In person
P12	Man	Indigenous	Indigenous Leader, Social Actor	National Commission of Indigenous Territories	Ar-huaco	Bogota	In person
P13	Man	No ethnicity	Social Actor	Cauca University	N/A	Popayan	In person
P14	Woman	Indigenous	Public Organization	Victims Unit	Sikuani	Bogota	In person
P15	Woman	Indigenous	Public Organization	Victims Unit	Inga	Bogota	In person
P16	Man	Indigenous	Public Organization	URT	Nasa	Bogota	In person
P17	Woman	Indigenous	Public Organization	Vice Presidential Office	Kamëntsa	Online	Virtual
P18	Man	No ethnicity	Public Organization	JEP	N/A	Bogota	In person
P19	Man	No ethnicity	Public Organization	JEP	N/A	Online	Virtual
P20	Woman	Indigenous	Public Organization	JEP	Ar-huaco	Online	Virtual

Source: Made by the author based on the field work information.

I collected 20 interviews. Ten of them were with representatives of indigenous organizations, seven with public officers, three of them were representatives from the Special Peace Jurisdiction, two with social organizations, and one with an academic. Likewise, 12 interviews were with men and the other eight were women, and, finally, 17 interviews were applied to people who are part of an Indigenous People in Colombia. Specific characteristics for all the participants interviewed are showed in Table 1 as well as the way they will be reference in this research.

### **2.1.2 Analysis Methods**

For the analysis, I used codification and thematic analysis. The objective of this structure is to create segments and identify patrons that lie in the data collected from the interviews (Calleros, 2022). I created a structure of topics, categories, and sub-categories. The three main topics were Territory, Transitional Restorative Justice, and Institutional Approach. For every topic I created at least two categories of analysis and, in total, I created 8 categories and 13 sub-categories. In Appendix B all the topics, categories, and sub-categories can be identified with their definitions. In the same way, as long as the analysis advances in the research, I connect different topics, categories, and sub-categories in order to comprehend the data collected and find relations between the interviews, the context, and the theoretical framework.

### **2.1.3 Ethics and limitations**

Given the guidelines for this research, ethical considerations can be consult in the form attached in Appendix C. In the same way, due to the characteristics of this research, I designed an informed consent form that was shared and signed by all participants. This consent includes general information and objectives of this research, the way the collected data is store, and the approval to record the interview. For the interviews that were online, the consent was read before the beginning of the interview and the approval was made by voice. The form can be review in the Appendix D.

In addition, the interviews were conducted in the places where the participants agreed and felt safe and considering that the information collected in the interviews may have sensitive issues given the reappearance of violence in the region, all information is presented anonymously.

Regarding the limitations, due to the recent topic of this investigation, contacting key interviewees was a challenge. Therefore, some interviews had to be conducted virtually. Similarly, some participants in Popayan could not be interviewed due to some protests and blockages on the road.

## **2.2 Positionality**

I was born and raised in Bogota, Colombia. I recognize the privileges I have had as an urban man with mixed race ethnicity and with the chance to do a master's degree in Europe. I have worked in some public organizations for more than 10 years, including JEP and the Victims Unit. This experience allows me to have a general understanding of the limited rights access for Indigenous Peoples in Colombia as well as to be critical with those organizations being aware of their limitations and challenges over the implementation of public policies in the country.

I came from a family that used to work with Indigenous Peoples, a family that participated in their struggles with them. I share the Indigenous Peoples fights but I know that I

write this Research Paper from a place that is not comparable to their experiences. I understand that I came from a Western view that understood Territories in a different way. This starting point allows me to be aware of the need to deconstruct my knowledge and keep an open mind to the learnings that comes through indigenous wisdom.

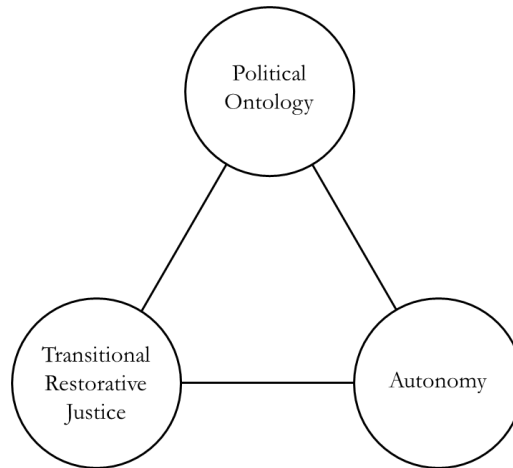
Finally, to prevent my background interferes in the research process, I picked a subject I did not know in-depth, I found and interviewed key actors related to the topic, I achieved broad participation of indigenous interviewers, I was invited to shared their practices and I did it with respect and intellectual curiosity, I “*sostuve en mi corazón*” -held in my heart- the new knowledge that the participants shared with me, and I asked to all of them how I could repay their time and participation. This research is my way of giving them a voice.

### 3. Theoretical Considerations

In this chapter, the concepts of political ontology, transitional restorative justice and autonomy will be examined as part of the theoretical framework (Figure 2). In this review, those concepts will be linked to the specific matters of this Research Paper such as Indigenous Peoples, Territory, victimization, post-agreement scenario and, decentralization others.

**Figure 2.**

Theoretical Framework



Source: Made by the author.

#### 3.1 Territory as Victim. Political Ontology

Western modernity has tended to impose its own system of values and knowledge as universal, marginalizing other ways of seeing and comprehending the world (Blaser, 2009). Thus, the Indigenous Peoples struggle has not been limited to the physical survival and the recognition of their existence, but it has sought the validation of their ways to understand reality (Blaser 2009; Escobar 2015), this is an ontological conflict (Blaser, 2014). To Viaene and Izquierdo (2018), indigenous views challenge the dominant division of modern ontology - the human/non-human, the live/non-live-, since they understand the world as non-dual, as a unicity interrelated and interdepend. Similarly, to Escobar (2015), the indigenous struggle for their Territorial rights involves a worldview that is deeply different from modern capitalism.

To Blaser (2009), these worlds are not just different interpretations of the same reality, he argues that those are realities that coexist together, and they are in constant tension. In this sense, Escobar (2015) proposes political ontology as a tool that questions the modernist premises that assume a single ontological order, a single existence. The understanding of Territory that is used in this Research Paper, and the struggle behind it, might be seen as part of that ontological conflict. The indigenous struggle has been a way to resist against the neoliberal practices to commodify and exploit Territories (Escobar, 2015). This fight to defend the Territories is a defense of life itself that is opposed to Western views that see them as a source of economic resources (Escobar, 2014).

Similarly, for some Indigenous Peoples, “autonomy emerges as a key concept in its ontological political practice” (Escobar, 2014, p.129 | author’s translation). For Blaser (2014) is essential to recognize those ontologies as legitimate forms of understand the world and suggest that public policies and governance schemes should be more inclusive instead to impose

dominant ontologies. In this context, autonomy is related to the conditions that allows Indigenous Peoples to live and manage their world from inside (Escobar, 2014).

Specifically, in the case of the Territory as a victim of the armed conflict, Ruiz-Serna (2017) argues that political ontology is a tool for the conflicts around the definitions of harm and possible reparations. Under this view, Human Rights frame and the considerations over the conflict impacts over people are not enough to describe the effects of the armed conflict (Ruiz-Serna, 2017) and is precisely where the recognition of the Territory has a relevant value to recognize multiple ontologies and the impacts and needs of the Territory and Indigenous Peoples.

### 3.2 Transitional Restorative Justice - TRJ

To understand Transitional Restorative Justice, it is required to consider the concepts of both Transitional Justice and Restorative Justice. In general, transitional justice refers to the definition and implementation of a set of judicial and non-judicial measures and mechanisms to address massive human rights violations in contexts of political transitions (Teitel, 2000).

The application of transitional justice schemes considers the seek for truth as one of its guiding principles (Teitel, 2000; Hayner, 2010). Regarding the mechanisms, it can include truth commissions, special courts, amnesty programs, and reparation for victims (Teitel, 2000). Around the globe, it is possible to identify different cases of application of transitional justice schemes such as the cases of South Africa, Chile and Rwanda among others.

South Africa and Chile created truth commissions where the victims told their stories and documented the atrocities. In Chile, the Truth Commission was called the “National Commission for Truth and Reconciliation” and produced the “*Rettig Report*”. The *Rettig Report* seeks to assist in the reconciliation of the Chilean people by contributing to the clarification of the truth and the most serious violations of human rights (National Commission for Truth and Reconciliation, 1996). In South Africa, the name was “Truth and Reconciliation Commission” -TRC- and had been perceived with a significant role to the healing and rebuilding of the South African social fabric (Gibson, 2004). In Rwanda, the “Gacaca court” was implemented as a traditional system of community justice where, in a reconciliation context, survivors and perpetrators confront their stories (Clark, 2010). All of these mechanisms aimed to restore community relations.

Some critics of the transitional justice processes are associated with the fact that some scenarios have fallen short in investigating broader issues of social justice that underlying conflicts (Turner, 2017). In this sense, Turner (2017) mentions “the tendency of legal transitional justice mechanisms to prioritize civil and political rights at the expense of economic and social rights.” (p.60) Other criticisms of transitional justice are linked to the role of truth and its connection to the idea of reconciliation. According to Turner (2017), “it cannot be said that there is any clear agreement on the relationship between truth and reconciliation, or between truth and justice” (p.63); for instance, in the South African case, Gibson (2004) argues that the results of the TRC were limited by various factors, including the feeling that perpetrators did not face the consequences of their actions as well as the lack of follow-up in the implementation of the Commission's recommendations.

Colombia has experienced different transitional justice arrangements. For example, before the current 2016 Peace Agreement, Colombia implemented a transitional justice scheme in 2005 known as the “Peace and Justice Law” as part of an agreement between the Government and the paramilitary groups that created mechanisms of truth, special courts, and sentence reduction programs for perpetrators (Rowen, 2017). In this scheme there was no compensation for the victims of the State and several groups of victims interpreted the



“Peace and Justice Law” as a mechanism to guarantee impunity to the paramilitary groups (Rowen, 2017). This experience is an immediate precedent for the current Peace Agreement with learnings related to the institutional framework, the centrality of victims, and the inclusion of restorative justice.

On the other hand, restorative justice is characterized by its focus on the needs of the groups involved, such as victims, perpetrators and the community, rather than focusing exclusively on normative transgressions (Zehr, 2015). In this sense, the reparation of damages is done in a participatory and deliberative way, considering the impacts of the social contexts (Marshall, 1999).

For Marshall (1999), restorative justice seeks to (1) address the rights of victims, (2) prevent the recidivism of perpetrators through their integration into the community, (3) the recognition of their responsibilities, and (4) recreate a collaborative community that supports the perpetrators rehabilitation. To this extent, according to Rojas and Merchan (2023), restorative practices are characterized by emphasizing an active participation of all groups involved in the event (crime) that damaged the social fabric. Thus, in general, restorative justice in ordinary contexts is an alternative to the punitive approach of traditional criminal justice (JEP, 2024b). On this matter, P18 (2024), who is part of the JEP Restorative Justice office, mentioned in his interview that “when a transition is made to a restorative paradigm, the concern is not for the transgression of the normative order, the concern is for all the transgression that was generated in the social and moral order of the country” (2024|author’s translation). In the same way, for Ross (1996) restorative justice in Indigenous Peoples is based on the worldview of the interconnection between all forms of life. The objective is to restore, to heal the broken balance within the community, the individuals, and the environment (Ross, 1996). Thus, this restorative approach seeks the restitution of rights and agency to victims by linking different actors.

Due to its limitations, transitional justice has gradually integrated restorative elements, paving the way to Restorative Transitional Justice (JEP, 2024b). As an example, JEP (2024b) mentions that in some transitional contexts, criminal courts had limited impacts in terms of the possibility of criminal liability for perpetrators. This is a risk of diminishing their contributions to the truth, which can also generate distrust in victims.

In the Colombian case, because of the 2016 Peace Agreement, the integration of the elements of restorative justice can be observed in the transitional justice scheme. Specifically for the JEP, it can be identified in the centrality of the victims, the dialogical process of collective construction of truth, the participation of the victims in the different scenarios of the judicial process, the generation of sanctions for the perpetrators, and the collective definition and agreement of the TOAR. In the same way, the Integral System places special emphasis on restorative and reparative measures and aims to achieve justice not only with retributive sanctions, seeking to end the situation of social exclusion of the victims that has caused the victimization (Congreso de la República, 2018).

In sum, Transitional Restorative Justice – TRJ refers to the institutional framework of the Transitional Justice scheme created through the 2016 Peace Agreement that includes the principles of Restorative Justice as a justice mechanism to seek peace and reconciliation.

### 3.3 Autonomy

One of the principles of the Indigenous Peoples struggle is autonomy. This principle is related to its recognition as subjects of authority, a source of power that makes decisions and understands the Territory (CNMH and ONIC, 2019). The inclusion of the Territory and the special bond with it implies that autonomy is based on their understanding of the world, in

Weitzner (2023) words this principle “goes hand in hand with a cosmovision, a lifeworld, where autonomous stewardship of the [T]erritory enables survival over time in a homeland” (pg. 611). Thus, this concept is part of the ethnic ontological practices (Escobar, 2014).

The indigenous struggle for autonomy has focused on their right to live under their own decisions, cultural practices, and traditions (CNMH and ONIC, 2019). This quest found support in the policies of decentralization in Latin America (Van Cott, 2001). In conjunction, this decentralization has a special characteristic, the Territorial jurisdiction is closely tied to cultural identities (Jackson, 2002). But what is decentralization? It is understood as a process that transfers power from a national centralized State to municipalities or local communities (Pening, 2003). This transfer may be political, administrative, or fiscal, but in essence, it refers to the delegation of decision-making (Bardhan, 2002). In Colombia, the decentralization process was the result of a legitimacy crisis of the central State in the 80s (Duarte, 2018; Pening, 2003) and it was mainly promoted through the new constitution and included the increase of local authority, popular election on local governments, and fiscal transfers among others (Eaton, 2006; Pening, 2003). Thus, for Indigenous Peoples decentralization took relevance due to the administrative delegation of power and the legal representation of their government structures (CNMH and ONIC, 2019). In this context, through autonomy, decentralization represented a chance to include their own education and health systems (Weitzner, 2023).

Despite their relevance, the decentralization process in Colombia had some limitations. For the purposes of this Research, I will highlight four. The first one is related to the transfer of the functions to local bodies. For Pening (2003), those activities were done without the technical support or necessary resources for its fulfillment. For Indigenous Peoples, this limitation has been more profound given that decentralization, as part of a colonial institutional framework such as the State, requires from them to get into logics and visions that do not correspond to their worldviews (Mitchell, 2024). That ontological conflict led to the second limitation, due to that top-down process, spirituality is absent in decentralization, and it is a fundamental concept that lies in autonomy (Weitzner, 2023). The third limitation of this process is that it has been done in parallel of the existence of Armed Conflict and the country's constantly violence (Mitchell, 2024) limiting its potentialities (Penning, 2003) and reproducing perverse incentives over the use of the land -legal or illegal- exacerbating conflict specifically on Indigenous Territories (Mitchell, 2024). Those Territorial overlaps superimpose ethnic, environmental, and productive interests (Duarte 2018). Finally, the fourth limitation is the “lack of political will to regulate the Indigenous Territorial Entities – ETIS” (Duarte, 2018, p. 397 | author's translation). On this, the absence of this regulation restricts administrative, political, and fiscal autonomy of Indigenous Peoples, in fact, in 2023, the Constitutional Court of Colombia asked Congress to create institutional instruments for ETIS<sup>19</sup>, which are more than 30 years behind schedule (Corte Constitucional de Colombia, 2023).

In sum, autonomy is a principle of the Indigenous Peoples struggle linked to the authority to make decisions that include the Territory and their understanding of the world. It is connected to decentralization as an Indigenous Peoples associative mechanism with the Colombian State in which implementation is possible to observe several limitations for the guarantee of ethnic rights.

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<sup>19</sup> According to the Constitution, the ETIS are specific political-administrative structures at the same level as municipalities that determine the autonomous operation of the Indigenous Peoples in their territorial jurisdiction (Congreso de la República, 1991).

## 4. Findings

In this chapter, I will present the main findings of this Research Paper. They are related to the recognition of the Territory as victim of the armed conflict, its characteristics and meaning for the Indigenous Peoples, as well as the way the TRJ is operationalized within the recognition.

In short, the reader will find that recognition of the Territory as victim of the armed conflict is an important advance for the Indigenous Peoples rights and seeks to recognize the disproportionate harm suffered by them in the armed conflict context as well as the Colombian multiculturalism (P20, 2024 | indigenous Judge). Thus, the Territory as victim is the validation of the Indigenous Peoples ontology that allows us to understand it as a living entity that suffers harm (damage) and requires reparation (healing). Also, within their autonomy, it transforms Indigenous Peoples into active subjects of politics, giving them decision-making power in their Territories.

### 4.1 In defense of life

*“El Territorio es el espacio de vida, de armonía y equilibrio  
que tienen todos los seres en el universo”*

Participant 5

In this section, I will show the ontological place of the concept of Territory for the representatives of the *Nasa* People who were interviewed, identifying its characteristics, damages, and restorative actions. Similarly, the findings associated with the meaning of the recognition of the Territory as a victim of the armed conflict will be presented.

#### 4.1.1 *La Casa Grande*<sup>20</sup>

My interviews with Indigenous Peoples' representatives always began by asking what they understood by “Territory”. The leaders' answers allowed us to observe that there are differences with the Western understanding of borders or nation mentioned in point 1.2.4. Their definition of Territory was often associated with life, P5 (2024 | Indigenous leader) said that “the native peoples refer to Territory as a person, a living being, a being that is part of the universal environment of living beings and among them, understanding living beings as animals, as plants, as minerals and people who are in that big house called Territory” (author's translation). Similarly, this notion of life is supported and associated with concepts of (1) the big house, (2) mother earth, (3) a person, and (4) a woman. In fact, P6 (2024 | Indigenous leader) mentioned that for the *Nasa* people the Territory “is considered as a woman we are part of, of mother earth (...) it is everything for us, it has life for us” (author's translation).

Regarding the relationship of the Indigenous Peoples with the Territory, P1 (2024 | Indigenous leader) mentioned that they are not owners of it but, on the contrary, they are part of it. In fact, according to P8 (2024 | Indigenous leader), although the 115 Indigenous Peoples in Colombia are different, the *Nasa* people do not find any other Indigenous People who “do not talk about Territory, we all find ourselves in it” (author's translation). This point expressed the collective value of the Territory as a communal point of identity. Additionally, P7 (2024 | Indigenous leader) stated that the Territory also “gathers the spiritual, (...) material

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<sup>20</sup> *La Casa Grande* can be translated as “The Big House”.

and, (...) natural life” (author’s translation) of the Indigenous Peoples, that is, it gathers life, nature, minerals, thunder, their daily activities, and cosmology. It is “La Casa Grande”- The Big House.

In line with the above, according to my conversation with *Nasa* representatives, the Territory is a unifying element of the Indigenous Peoples, the basis of life and collective identity. It breaks the anthropocentric sphere (Ruiz-Serna, 2023) giving a place to the plants, to the moon, to the rain, to the thunder, to the animals, to the interdependence of all beings, where any affectation to the Territory is an affectation to the Indigenous Peoples and vice versa. It also breaks the duality of the living/not living to the human/non-human. In sum, Territory is the spiritual, cultural, and material indigenous reserve, the expression of life, and the harmony that lies in it.

#### **4.1.2 Cleaning the dirty. Harm and Healing over the Territory**

Considering what “Territory means”, this section presents the information collected on the set of harms to the Territory and different activities to restore and heal it. For this analysis, having identified the characteristics of the Territory during the previous section allows us to propose a classification of the different notions of harm (damage) and restoration (healing) that coexist for Indigenous Peoples and some visions of the western model. Thus, harm is classified into four groups, while healing is classified into three.

The first group of harms is material and stems from the modern world's extractivist vision of the land. According to O'Connor (1994), capitalism has exploited nature and transformed ecology into an element of production and this view has reduced land and natural resources to economic inputs. Under this vision, P7 (2024|Indigenous leader) mentioned that the Territory “is affected when we deforest, when we dig mining or extract mining and energy resources”. All these activities, even within the legal framework of mining and other extractive activities, generate material damage to the Territory through, for example, chemical contamination. Along the same lines, several participants mentioned illegal economies, such as illegal mining and drug production, as causing similar impacts.

The second group of harms refers to the damage done to the people living in the Territory, both individually and collectively, thus being a more integral component. Most of the interviewees referred to such harms through the murder of indigenous leaders, the forced recruitment of children, the use of anti-personnel mines – which not only affect people but also restrict free movement within the Territory –, and the fighting between armed groups. As mentioned above, to affect the Indigenous Peoples is to affect the Territory and vice versa.

The third group of harms refers to spirituality. P8 (2024|Indigenous leader) mentioned that combats and mobility constraints within the Territory do not allow them to “go to do our practices, uses and customs to our Territories, to our sacred centers” (author’s translation). Similarly, P15 (2024|Indigenous public official) reported the impossibility of collecting medicinal plants, which are a fundamental part of their relationship with the Territory. As such, she stated that they are not allowed “direct contact with the plants, [to] feed ourselves with them and heal ourselves with them” (author’s translation). Regarding physical violence within the Territory –murders and attacks- P4 (2024|Indigenous leader) mentioned that the violence, and specifically the armed groups “sow people”, violating and affecting their spiritual relationship with the Territory. Similarly, participants inform that material harm also affects the spirituality component of the Territory. For them, aerial fumigations, bombings, mining activities and many other actions and transformations in the Territory affected

and caused damage to its vital energy. This harm puts the cultural and social- reproduction of the Indigenous Peoples at risk.

The fourth group of harms is of historical nature. Several participants mentioned that the damage to the Territory is, precisely, historical. This type of damage comes from the conquest and colonization and therefore, is not limited to the armed conflict. In this regard, P4 (2024|Indigenous leader) mentioned that “the damages to the Territory are not only in the framework of the armed conflict, but since the colony itself, in the conquest processes, which led us, the Indigenous Peoples, to be exterminated, excluded, minimized, dispossessed of our Territory, our environment” (author’s translation).

At this point, all harms and affectations over the Territory can occur simultaneously and in parallel, making deep damages over the Indigenous Peoples, the Territory and the special bond between them. Similarly, as a consequence of these affectations, spiritual and historical damage acquires even more relevance given that their existence is linked to the ontological conflict described in this Research Paper. Thus, considering that Colombian regulations are limited in the recognition of damages to Indigenous Peoples that fall out of the armed conflict’s framework, such as those related to inherited and remaining colonial dynamics and those referring to spiritual components. Even more, transformation on the Territory product of legal activities promoted by the State such as monocrop system and mining fall under the category of harms through this ontological conflict. On this, the recognition of multiple harms and the following healings, reaffirms the autonomy of the Indigenous Peoples by giving a place to their understanding of these damages and reparations.

As mentioned in section 3.2, an essential part of the restorative principle is the reparation of harm, for which the damages described above require specific reparation actions. The groupings of reparation mentioned at the beginning of the section will be described next; however, the notions associated with the restorative paradigm will be specifically discussed in chapter 4.2. Regarding reparation of harm, I noticed that during conversations about repairing the Territory constantly used the term “healing”. This association of the Indigenous Peoples’ representatives to the healing of the Territory reaffirms their recognition of it as a living entity.

In this sense, the first group of the healing component is material and relates to environmental management. P19 (2024|JEP representative), mentioned that this component implies the recognition of nature as a subject of rights. He also mentioned that the effects on nature require actions to protect and restore rivers, forests and the Territory in general in its natural and biophysical components. In this component, healing refers to the “care of mother earth”, as mentioned by P7 (2024|Indigenous leader). On this matter, discussions and progress over the rights of nature were witnessed in the world. For example, in 2017, rights were recognized over the *Whanganui* River in New Zealand and in 2016, the Colombian Constitutional Court did the same for the *Atrato* River. In the case of the *Atrato* River damage caused by pollution and illegal mining was recognized over the river and it was declared as a subject of rights to protection, conservation, maintenance and restoration (García and Hinestroza, 2020). Similarly, the case of the *Whanganui* River has been emblematic for the recognition of nature’s legal personality, its treatment as a “living being”, and the participation of the Indigenous People *inwi Whanganui* (Boyd, 2017). The role of indigenous worldviews has been key for the formulation of laws that protect the rights of nature (Boyd, 2017).

The second group of healing is of spiritual nature. As part of their cultural activities, several interviewees mentioned the need for harmonization activities in the Territories to heal them. On this, P7 (2024|Indigenous leader) mentioned that it is a spiritual exercise to “lift and clean all the dirt that violence (...) has left because there is a lot of blood spilled in

the Territories and because we have not done this process [harmonization], that is why today Mother Earth is claiming” (author’s translation).

The last group refers to social justice. P2 (2024|Indigenous leader) claimed that the restoration of the territory also requires social investment. Consequently, P12 (2024|Indigenous leader) argued that since the Territory is the foundation of life, a healthy Territory “should help other fundamental rights such as health, such as education” (author’s translation) that are identified as fundamental. A relevant value about the healing of the Territory through social investment refers to the fact that several participants mentioned that its activities should be carried out under indigenous ontological structure. In other words, this social justice is health, education, food that is built through the cosmovision of Indigenous Peoples from below and not imposed from the State.

Thus, it has been identified that the Territory “heals” the damages through material, spiritual, and social justice actions. Likewise, these actions should not be imposed, as established by P13 (2024|Social actor), both the Territory and the Indigenous Peoples should not be “the object of public policies” but “it is about the populations and especially their organizations becoming subjects of policy” (author’s translation). In other words, this diverse group of activities should be carried out from the autonomy of the Indigenous Peoples, and through the guarantee of their rights by the State.

### 4.1.3 The Ontological Conflict

This section will show two relevant observations associated with the ontological conflict arising from the concepts of Territory and harm. On this, P13 (2024|Social actor) mentioned that by understanding the Territory from the political point of view, it is possible to say that this is a place of decision-making where Territorialities “many times enter into dispute with the very logics of the State” (author’s translation).

The first one is related to how the institutional structure of the State as a colonial inheritance comes into conflict with Indigenous Peoples when talking about the Territory. Participants who are part of an Indigenous People and public officials, at some point during their interviews, broke their role as public servants in order to talk about their worldviews. For example, P15 (2024|Indigenous public official) was aware of the context of the recognition of the Territory as a victim of the armed conflict but at the moment of starting the interview, when I started to ask, her answer was:

“The truth is that I cannot start talking to you like this, so I am going to start by telling you the following: I am from the *Inga* People, from the department of Putumayo, from the Inga Santiago Indigenous Reservation, in Putumayo. It is a Territory that was usurped at the time of colonization and evangelization”. (author’s translation)

The second one takes up the group of historical damage described in section 4.1.2. As previously mentioned, in the Colombian regulation, the notion of harms on the Territory is limited to linear temporal structures, specifically related to the armed conflict. In this scenario, this reduced temporal space minimizes the historical affectations suffered by Indigenous Peoples. For the modern world, this linear temporality facilitates the location of the facts, however, in terms of Lederach (2007), it fractures the narratives and memory of Indigenous Peoples making it impossible to link the past with the future, forcing a false choice between the two that does not exist in the indigenous world given its spiral understanding and continuity of time. Once again, the ontological conflict of coexistence of multiple realities is evidenced. Nevertheless, it is precisely the recognition of the Territory within the

modern State that opens the door for new ways that allow the mutual understanding of the described realities.

#### 4.1.4 Recognizing Territory as a Victim

This section will present the value assigned to the recognition of the Territory as a victim of the armed conflict by the interviewers. The starting point is that for all interviewees the recognition was something positive, a step forward, an advance in terms of autonomy. P1 (2024|Indigenous leader) said that this meant an “(...) advance in the recognition of the communities’ autonomy in relation to the enjoyment and exercise of their rights within their Territories” (author’s translation), similarly, P8 (2024|Indigenous leader) claimed that the *Nasa* People celebrated that “the JEP has been the only entity that has been able to understand the issue, (...) to read our concepts” (author’s translation). For P5 (2024|Indigenous leader), JEP is an entity “that has gone beyond, (...) has broken schemes (...): normative schemes, ideological schemes, legal schemes and Mother Earth is grateful to them for that” (author’s translation).

However, participants also assured that the recognition is not given by the approval of the institutions, on the contrary, P4 (2024|Indigenous leader) affirmed that “it has not been easy (...), this recognition has been given precisely because of these permanent and constant struggles that we give as Indigenous Peoples”. In fact, P20 (2024|Indigenous Judge) argued that of the more than one thousand reports submitted to the Jurisdiction (mentioned in section 1.2.4.1 of this Research Paper) “50% have victimizing events that were committed against ethnic peoples and Territories” and “they also request the accreditation of the Territory as a victim, taking into account that the Territory is the life, identity and protection of Indigenous Peoples” (author’s translation). P17 (2024|Indigenous public official) stated that this recognition “shows that persistence can finally lead to concrete things” (author’s translation).

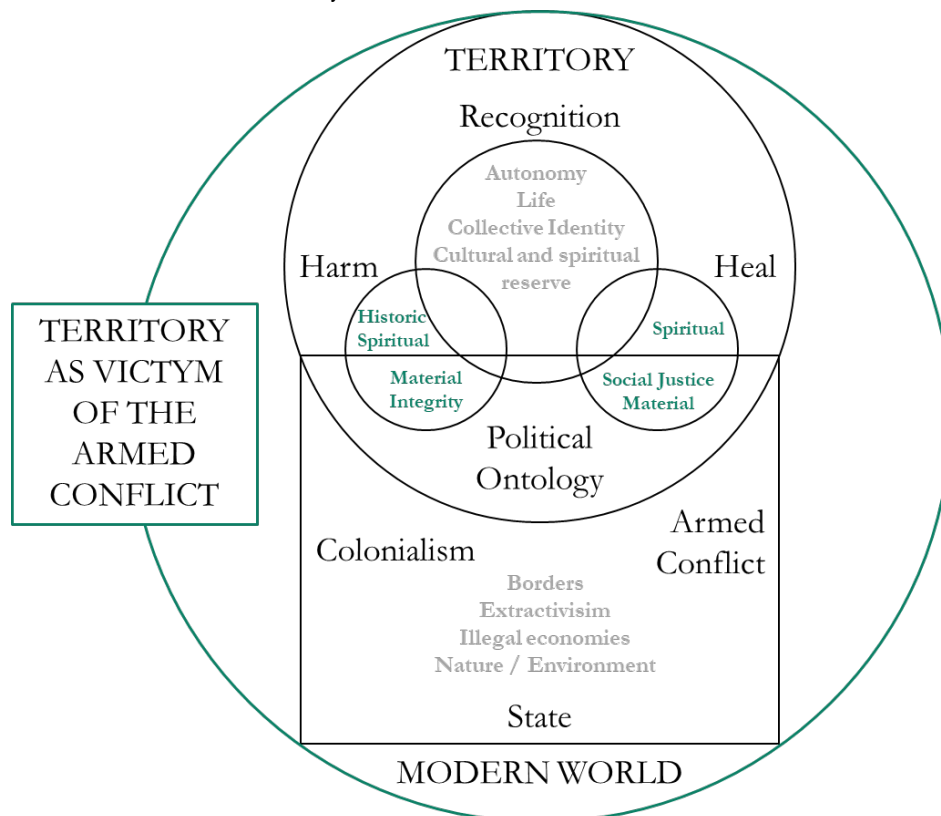
Another relevant element about this recognition is that the category of victim makes visible the damages and needs for reparation discussed in a previous section. In this sense, P7 (2024|Indigenous leader) pointed out that the recognition “generates a commitment of the institutions to at least make an exercise of characterization of the risks and the affectations to advance in the process of collective reparation”. Additionally, given the understanding of the Territory as a living entity, as a person, this recognition as a victim gives to it an agency. This point is discussed in more detail in section 4.2.

The participants of the JEP agreed that this recognition was based on the centrality of the victims. In this sense, for P20 (2024|Indigenous Judge), the recognition of the Territory as a victim was also a recognition of the most serious and disproportionate damages that occurred in the conflict, specifically against Indigenous Peoples and against ethnic and cultural diversity. In the same way, P19 (2024|JEP representative) highlighted that it was a recognition derived from the request of the victims. Similarly, for P18 (2024|JEP representative), it was the expression of the transition towards the restorative paradigm, which includes a greater understanding of the contexts of violence and is more concerned with the reconstruction of the affected social fabric than with the transgressed norms. Finally, an additional point on recognition was made by P19 (2024|JEP representative), who mentioned that “it can also have an impact on the protection of nature in times of peace” generating impacts on very broad extractivist policies.

In sum, the recognition of the Territory as a victim of the armed conflict is an important advance resulting from the struggles of Indigenous Peoples and the institutional framework created in the peace process. This advance recognizes the coexistence of multiple realities and builds bridges between the Western understanding of land and nature, and the understanding of the indigenous populations based on the Territory, in words of Ruiz-Serna

(2023) it can be seen as a “seed liable to disrupt the way in which the multicultural state has been regulating the relationships—and building boundaries—between “the real,” or the world itself, and cultural representations or worldviews.” (p.67). It is also significant in terms of identifying the damages against ethnic Territories, both in their collective and individual functions and in giving a place to the healing processes of the Territory that include not only liberal ideas about the care of nature and the guarantee of human rights, but also include those notions related to the spirituality of Indigenous Peoples. All the analysis and discussion described so far can be identified in Figure 3.

**Figure 3.**  
Territory as victim of the armed conflict



Source: Made by the author.

## 4.2 Restorative Paradigm

*“Es la casa todos y todos nos ponemos  
de acuerdo en cuidar la casa”*  
Participant 9

In this chapter I am going to analyze interviews information related to the restorative actions linked to the recognition of the Territory as Victim of the conflict. This analysis will be focus on its implications to the restorative paradigm and will use examples to examine the way the Transitional Restorative Justice is working in Colombia.

Going back to the concept of restorative justice mentioned in chapter 3.2, the representatives of the JEP agreed that it is a process with multiple characteristics. In that sense, P18, an official of the JEP, affirmed that:



the paradigmatic transition is to stop worrying (...) about the normative dimension of the transgression, (...) and the punishment that should weigh on those who are responsible and on the contrary think about what are, or have been the consequences and what are the works, the interventions, the transformations that have to be given to effectively address the damage caused. (author's translation)

As such, it is possible to state that the restorative paradigm is not about the norm that was affected but the damage that this generated by the action, as well as the fact that it is not about punishing who committed the crime it but determining how to transform and heal those damages. In fact, P5 (2024|Indigenous leader), indigenous leader, claimed that “justice is not punishment, justice is not condemnation, justice is how to make the one who did the damage understand the one who suffered the damage, to sit them together, to be able to cross their hands, to share their seeds, to cross their words” (author's translation). Thus, the restoration or healing becomes a set of activities that involve diverse actors and roles, having as a fundamental element the determination of harms and the ways in which these can be transformed and healed. The particularities in the recognition of the Territory as a victim will be identified below.

As demonstrated so far, the recognition of the Territory as victim gives an ontological place to the Territory in relation to the modern worldview, but it is only the first step in the restorative process. This is an idea shared by interviewees representing Indigenous Peoples. In fact, when asked if this recognition is restorative in itself, P6 (2024|Indigenous leader) denies it and said: “No, there is still a long way to go, it is a part of the restorative issue because the harms are there and the wave of violence, which was experienced and is still being experienced, is too much” (author's translation).

Recognition is a step in the restorative process since it makes harm visible, but it does not necessarily dictate the restorative actions to transform that damage. To this extent, the transitional judicial process of the JEP, through its participation mechanisms and protection of rights, acquires a relevant role in achieving the restorative paradigm. For P19 (2024|JEP representative), the recognition of the Territory as a subject of rights implies protecting but also “recognizing that it has agency and, therefore, can have a direct impact on judicial proceedings” (author's translation). In other words, the Territory can participate in the judicial process, and, for this, it requires a representation, a voice. In this matter, P19 (2024|JEP representative) stated that “human beings have given characteristics of legal personality to a company, (...) which is something that does not exist in nature” (author's translation).

Thus, the modern world has made institutional adjustments to recognize rights over fictitious human creations such as companies and, therefore, these are actions that are also applicable to the Territory. For the representatives of the JEP, the challenge has been to coordinate and coincide Colombian and international norms to achieve recognition. Likewise, regarding the continuity of the restorative process and associated with participation, P7 (2024|Indigenous leader) established that “a fundamental phase is approaching, which will be the construction of reparations plans” (author's translation). In his words:

one thing is what is built there [outside the Territory] another what is built here, with the communities. Reparations have to come in the following senses: some processes of cultural and spiritual reparations, healing the Territory and harmonizing it from the spiritual exercises, and that is not done by the JEP, but by the Indigenous Peoples with their ancestral wise men.

to advance in reparation processes with the perpetrators, there are many ways that they have already shown, (...) they make a process of harmonization doing community work

with the communities, that is one way and specially to restore or compensate the harms caused from the perpetrators (...) of how they help and commit themselves to what the indigenous world is already being here, to come like this, work in the moors, in the forests (author's translation).

Two elements emerge from these statements, the first is about autonomy through the relevance and need for decision making on restorative actions to be carried out with the Indigenous Peoples, in the Territories and respecting their uses and customs, and the second is that the perpetrators participate in this way of seeing the world. With these actions, as P20 mentioned "the judicial process becomes restorative in itself, then we generate many spaces for participation through restorative scenarios, dialogues" (author's translation), where a key element is the horizontality with the Indigenous Peoples that allows a better understanding of the harms to the Territory and through this, the actions and activities to restore it.

#### 4.2.1 The Walk, The River, The Food

During the interviews, P18 and P20 shared examples of how Transitional Restorative Justice has been implemented in Territories recognized as victims of the conflict. The three of them will be presented and detailed below. Special attention will be given to how the restorative actions were carried out and discussing the implications of those actions on the restorative paradigm. The first example is from a hearing held by the JEP in the Territory of the Sierra Nevada de Santa Marta, on the Caribbean coast<sup>21</sup>. An indigenous couple was murdered by national army soldiers after having been taken from their home, transferred to another location, executed and presented as combat casualties. The woman was pregnant and a minor. The hearing was attended by the perpetrators of the crime, judges from the JEP, indigenous authorities, and relatives of the victims who are members of the *Kankuamo* and *Wíwa* Peoples.

P18 (2024|JEP representative) reported that the first interjurisdictional restorative hearing was held in Mojao, a town of the *Kankuamo* Indigenous Reservation. In this hearing, JEPs judges and the political and traditional authorities of the two Indigenous Peoples intervened at the same level with the same incidence. On this, P18 (2024|JEP representative) highlighted the horizontal treatment done by the representatives of the JEP, and therefore of the Colombian State, with the indigenous authorities. Judges were in an Indigenous Territory, placing themselves at the disposal of the traditional and political authorities of these Peoples.

Additionally, the hearing took place in the Territory but also included a displacement within the Territory. The perpetrators, family members, indigenous authorities, and judges of the JEP walked with the perpetrators to the place of residence of this couple where a direct dialogue between the participants and the families of the victims took place. Afterwards, they walked again, and everyone followed the same route that had been travelled by those who were later murdered. The same route was used to the place of execution, which is highly complex considering the conditions of the mountain and the absence of an easy road.

P18 highlighted several elements, the first is that the audience was not static, but flowed through the Territory. The second is that, due to the conditions of the road, during the hearing there was a debate on how to get to the execution point. The possibility of using another route that was simpler was raised, however, relatives of the victims stated that it did not make sense to do it that way. They argue that the objective of the process was that those

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<sup>21</sup> This example is placed in the framework of accreditation C described in the 1.2.4.1 section related to the collective Territory of the *Sierra Nevada de Gonaivindua*.

who committed the damage went through and cleaned up the harm they had caused in all the places where they passed. For the Indigenous People, those places were also destabilized and affected by the commission of these crimes. So, they all agreed to walk through the same road, even the JEP's judges. Finally, upon arriving at the point of execution, one of the indigenous authorities mentioned that in other conditions that act, the harmonization walk with all the diverse actors, would have been unthinkable in other times and that it had no precedents (P18, 2024|JEP representative). It was an interjurisdictional and tangible workspace where Indigenous Peoples "were not users of a justice system, but co-producers of it" (P18, author's translation). It was the respect and validation of their autonomy, their judges, their sanctions, and their worldviews.

From this example, by way of reflection, P18 (2024|JEP representative) stated that the actions carried out are not protocol, that "the path is as essential as the point of arrival within that justice [indigenous justice], and (...) it becomes a global metaphor of what restorative justice is, the sentence, the sanction, the hearing are as important as the journey to get there and that is something that the communities, the Peoples and the indigenous authorities know better than anyone else".

The second example consists of the accreditation of the Cauca River as a Victim of the armed conflict<sup>22</sup>. In the judicial process of the JEP, the recognition as victim is accompanied by the delivery of a certificate signed by whoever is accredited. Given that, the Cauca river as a being represented a challenge for the Jurisdiction, so they decided to break down the logic behind the meaning of a signature (P18, 2024|JEP representative). To do so, they decided that a signature is a record and can be likened to a watermark and, given that the river was the entity to be recognized, it made sense for it to leave its watermark. They also determined that a signature is a mark, and that rivers leave marks with their sediments as it flows. Finally, they considered that in other cosmovision, such recognitions can be made orally, whereby the voice of the river becomes relevant and can be heard through its sounds and its flow. Thus, they decided that in the accreditation ceremony a triple signature of the river would be collected, (1) the water mark, (2) a footprint of the sediment, and (3) the recording of the sounds of the river.

Additionally, P18 (2024|JEP representative) reported that the recognition of the river as a victim was a restorative act in itself. Indigenous Peoples and Afro-Colombian Communities participated in the event and their special link with the river was recognized. In fact, the signatures of the river were collected by the spokeswomen of the organizations that requested its recognition as victim of the armed conflict. Additionally, at the beginning of the act, the communities of the Territories held a harmonization event and the judge who made the recognition addressed his speech to the river. Thus, P18 stated that the act of accreditation ended up being a tribute to the river in which the actions carried out "seem like small things, but it is a transformation of the logics and forms of justice in this restorative exercise" (author's translation).

This restorative act is also relevant given what a river means. They are Territories with deep cultural identity that unite the defense of the Territorial, social, economic, political, and cultural rights of ethnic groups (Escobar, 2014). On this, with this act, P18 (2024|JEP representative) stated that the JEP "clearly recognizes the indigenous and afro-Colombian knowledge, which is as much, or perhaps more relevant than ours [Western] in terms of what it means to do justice, this reverence for the river implies a reverence for the ways of thinking of the authorities [indigenous and afro-colombian], which generates an absolutely different relationship" (author's translation). In this way, this restorative act recognizes the cultural

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<sup>22</sup> This example is placed in the framework of accreditation B described in the 1.2.4.1 section related to the collective Territory of Cauca River.

value of the river as Territory and its agency giving it a voice through its representatives. On this, the Territory is linked to decision making within the judicial process, recognizing its needs as a thinking, sentient and living being.

The third example is related to a pilot of TOARS called “*Armonizando*”<sup>23</sup>. This is a proposal of TOARS implemented between the *Awá* Indigenous People and some perpetrators that are part of the Macro-case 02<sup>24</sup>. According to P20 (2024|Indigenous Judge), the restorative actions planned for the spiritual healing of the Territory includes the strengthen of the traditional medicine. This strengthen was made through the construction of the “*Casa de la Sabiduría*” -Wisdom House- and specifically, a stone road to access to that place (P20, 2024|Indigenous Judge).

Even though it sounds simple, implementing this project required rebuilding the trust and social fabric between the *Awá* People and perpetrators. It was achieved through the understanding of a common goal and made step by step, in words of P20 (2024|Indigenous Judge) “it started with basic elements such as cooking for everyone so they we can all eat together, it does not seems to be essential, but anyone can poison the other” (authors’ translation).

The restorative component in this example is related to two elements. The first one is the perpetrators understanding of the harms they caused to the families, to the social fabric, to the Territory (P20, 2024|Indigenous Judge) and their participation in the healing actions, and the second one is the participation of the indigenous authorities in the decision making and implementation activities (P20, 2024|Indigenous Judge). For P20 (2024|Indigenous Judge), these acts “allowed us to have elements to talk about truly restorative justice, to reconcile us” (authors’ translation)

These examples show how the recognition of the Territory as a victim and the restorative paradigm build bridges for the coexistence and validation of multiple ontological realities. In the same way, they show the integration of different actors, including perpetrators, into a reconciliation process. This is observable through the acts that (1) recognize the autonomy and decision making of the Indigenous Peoples within their Territories, (2) through institutional adjustments uses mechanisms of the modern world to legitimize the recognition of a river as a victim, (3) recognizes harms on Territories that go beyond the tangible damages of the western world, (4) participates in the harmonization and healing of the Territory according to the cosmovision and ethnic traditions, (5) favors and allows the participation of the Indigenous Peoples as active actors within the process, (6) delivers an agency and interlocution to a Territory in front of a modern state, and (7) favors the reconciliation process between perpetrators and victims.

This chapter has determined that the recognition of the Territory as victim is restorative when it is part of a process. This is, the restorative effect lies in what is done with the recognition, not in the recognition itself. That is why the act of recognition in the river acquires more relevance than the legal instruments described in section 1.2.4.1 through which the Territory was recognized as victim.

It is also evident that in the restorative process, participation is a key factor, both for victims and perpetrators and, in the case of the Territory as victim, the Territory itself,

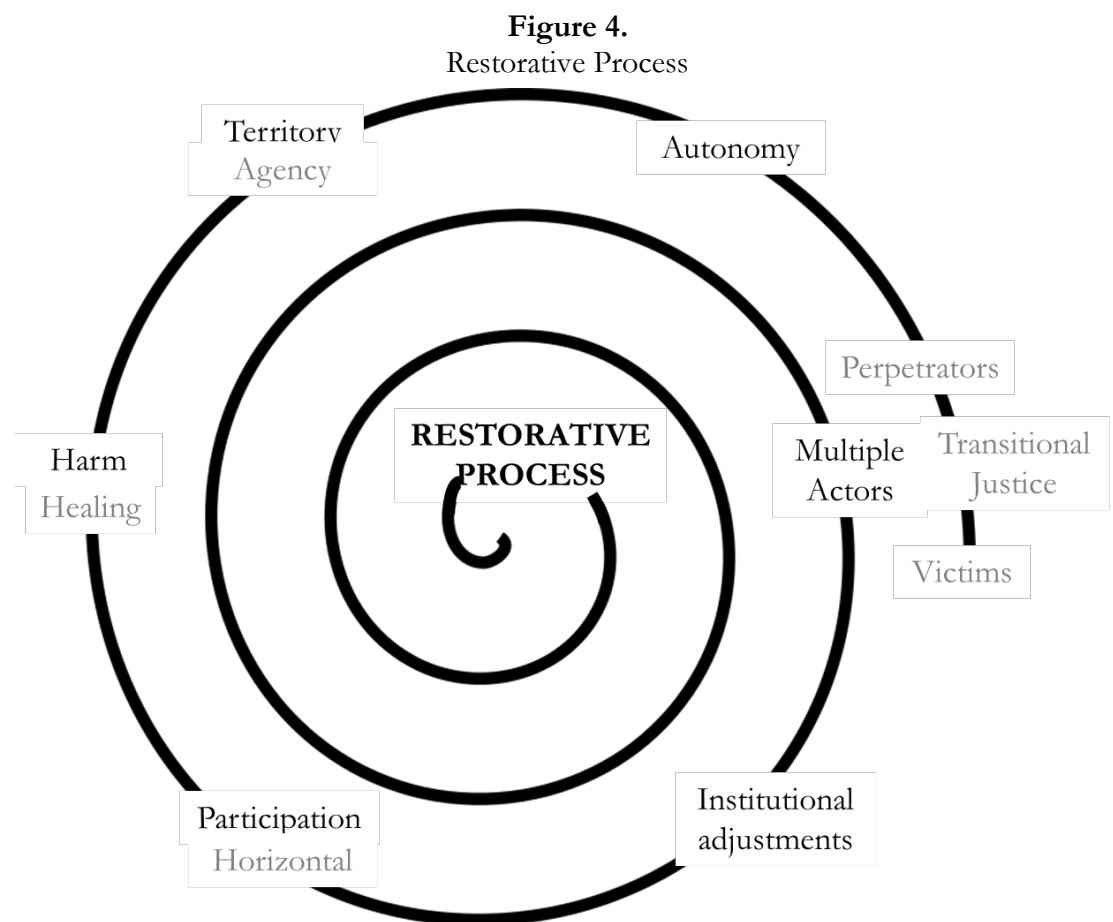
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<sup>23</sup> *Armonizando* can be translate as harmonizing. This example is placed in the framework of accreditation A described in the 1.2.4.1 section related to the recognition of the *Katsa Su* Territory as victim of the conflict.

<sup>24</sup> The Macro-case 02 is one of the cases that have a Territorial approach in the JEP. It is related to the situation of Tumaco, Ricaurte, and Barbacoas in the south of the country. It is not related only to Indigenous Peoples, nevertheless, the recognition of the *Katsa Su* Territory is part of it.

through its own agency. The recognition of the Territory cannot be restorative if it ignores the particularities of each Territory.

In sum, Figure 4, represents the analysis made and components identified of the restorative process during this chapter. On it, due to the characteristic of a process, the restorative paradigm can be represented in a spiral form. Similarly, to achieved it, and considering the examples showed on this research, it is required the horizontal participation of multiple actors, the identification and recognition of harms and their ways of healing, institutional adjustments that provide bridges between different ontologies, and the recognition of the autonomy, agency and Territories of the Indigenous Peoples.



**Source:** Made by the author.

Finally, although important advances in the restorative paradigm have been witnessed, it is important to mention that the recognition of the Territory as victim is still very recent. In that context, given that the restorative paradigm is a process, the healing and restoration of the Territory still faces multiple limitations. For example, some of them include determining the mechanisms by which the representation of the Cauca River will be assigned and validated, or the ways in which the restorative actions on the Territory will effectively generate healing impacts in all its components.

## 5. Analysis and Discussion

In this chapter I will discuss how the recognition of the Territory as victim of the conflict has been changing the relation of the Indigenous Peoples with the Colombian State and some institutional particularities related to the recognition.

The 2016 Peace Agreement created a new institutional framework that allowed the recognition of the Territory as victim of the armed conflict by the JEP. This recognition was a turning point in the relationship between the Indigenous Peoples with the Colombian State. According to P5 (2024|Indigenous leader), the recognition “improves the relationship between the State and us [*Nasa* People]” and “allows the recognition, the validation, the protection of the Indigenous Peoples rights (...) the guarantee of the collective and individual rights in the Territory” (Author’s translation). Added to it, P4 (2024|Indigenous leader) claimed that through recognition “the State respects and accepts that there are certain particularities, dynamics, and needs that must be heard, [and] made visible, but from cultural identities” (Authors translation). Thus, the Transitional Justice, specifically the JEP, has transformed the relationship between Indigenous Peoples and the State.

Up to this point, it was shown that through the recognition of the Territory as victim the Colombian State recognize Indigenous Peoples’ understanding of the world. With it, political ontology makes visible and validates the multiple harms and healings over the Territory as well as its agency, understanding it as living being. In the same way, since this recognition is given thanks to the JEP, TRJ becomes a mediator of the ontological conflict and generates commitments for the State, as well as for the perpetrators and the victims to the reparation and healing of the Territory. Likewise, this recognition is the result of the indigenous struggle and participation, gives continuity to their contributions and favors the Indigenous Peoples decision-making inside their territories strengthening their autonomy. However, despite the progress, these changes may pertain exclusively to the post-agreement institutional sphere.

Through the JEP, is clear that the participation of victims and the implementation of ethnic and Territorial approaches set the stage for the recognition of the Territory as victim of the conflict. Those elements incorporated institutional tools developed in the Jurisdiction listed in section 1.2.4.1 of this research. Nevertheless, those elements seem to be a specific feature of JEP, on this P17 (2024|Indigenous public official) mentions that “unlike the general victims’ public policy (...) in JEP, the participation of the Indigenous Peoples does become important. There are specific methodologies for ethnic peoples, there are specific cases for ethnic peoples such as case 9” (author’s translation). This means that even in the field of the organizations that works with the victims of the conflict (including URT and Victims Unit as were referenced in section 1.2.3), there are several limitations to recognize and implement Indigenous Peoples rights. In connection with this, P17 (2024|Indigenous public official) said that “institutional adaptation is a debt, (...) organizations have historically been designed to serve the general population. All of them make the effort to talk [with the Indigenous Peoples], some more than others, but it is always missing the place of the ethnic rights” (author’s translation).

Added to the institutional limitations, for P14 (2024|Indigenous public official), who is representative of the Victims’ Unit, the absence of institutional adaptation and instruments in this organization implies that administrative decisions “lacks of ethnic approach”. In the same way, for URT, P16 (2024|Indigenous public official) informed that “(...) when I arrived at this institution I hit a wall, (...) one thing was what I thought I could do here and another is what I can do, the little I can do, because it is a structure already organized, with procedures, with methods, with protocols that, in some way, what they have done is delay times and the victims do not access to their fundamental right to the Territory” (author’s

translation). On this, P10 (2024 | Indigenous leader) expressed that “the majority [of victims] do not benefit, (...) the victim's reparation is not concrete.”

Thus, TRJ through the victim's participation, the integration of multiple actors, and the institutional tools developed by the JEP are steps in direction to guarantee of Indigenous Peoples rights, specially within the sphere of transitional justice sphere and as part of the restorative process. However, the limitation of the rest of the State organization on institutional adjustments are also limitations to the autonomy and rights of the Indigenous Peoples and reveal the ontological gap that still exist, not only in Colombia but on an international scale.

Similarly, considering the above, the recognition of the Territory is the gateway to many challenges. The lawful framework made by the JEP, where Territory and nature have agency, is considered one of the “most radical environmental rights” (Lyons, 2023, p. 65) and has the potential to change several dynamics of nature care and protection. Nevertheless, P12 (2024 | Indigenous leader) claimed that “there is big progress in the lawful recognition, but in the implementation is where most of the challenges have been in Colombia” and mentioned that “there has been regulatory development (...) but with low levels of compliance”. On this, García and Hinestroza (2020) argued that for the Atrato River in Colombia, despite its recognition as a subject of rights, judicial decisions have not been able to guarantee the care of the river. This innovative approach to Territory and environmental protection might be relevant in the world given the current climate crisis that requires multiple actions to care for nature, however, implementation turns to be a key element for it. So far, regarding implementation, TRJ is showing articulation mechanism and integration of different actors that can be used as examples to improve implementation limitations (section 4.2.1). In the same way, during the interviews, some solutions and particularities were also mentioned, related to the issued around implementation associated to three elements, (1) institutional transformations, (2) articulation mechanism, and (3) strengthening autonomy.

About institutional transformations, P12 (2024 | Indigenous leader) mentioned that “we used to believe that the problem to have progress in Territorial matters was the lack of budget, but these two years have been a historical to the national indigenous movement, with a big budget, five times bigger (...) and the State was not able to spend that budget, to adequate its internal instruments to speed up the procedures [to use the budget]”. However, at the same time this scenario is changing through Restorative Transitional Justice. Recently, the URT and the Victims' Unit implemented some institutional adjustments. According to P15, due to the recognition of the Territory as Victim of the conflict, the Victims' Unit started to work with some subjects of collective reparation in the harm characterization of their Territories. Similarly, the URT has been modifying some process and procedures, in words of P16 (2024 | Indigenous public official) “if the organization does not change itself according to the dynamics of the [ethnic] peoples in the Territories, the organization will not be able to respond to the responsibility that it has” (author's translation).

About the articulation mechanisms, P17 (2024 | Indigenous public official) established that “besides there are entities that make efforts, according to their missionally, as long as there is no institutional coordination, the effect or the impact over the Territories and the communities is going to be very incipient” (author's translation). About this, the participants agree that the current planning tools of the Colombian State, do not create enough synergies to guarantee the rights of the Indigenous Peoples. As a result, it is possible to claim that if there are no institutional adjustments in all organizations in the State, the improvements that came with the recognition of the Territory as a victim of the conflict, will have a limited impact, visible in the transitional justice sphere, but without creating deep impacts in the Colombian society.

Finally, P12 (2024 | Indigenous leader) claimed that Colombia is still a very “centralized country, and the decisions sometimes are made in the central level (...) for which the Territorial autonomies many times do not link with this development”. From this perspective, the obstacles to link the Indigenous Peoples to the decision-making process in Colombia, is a huge limitation to exercise their autonomy. Thus, the regulation of the ETIS would be a fundamental step to strength the autonomy of the Indigenous Peoples.

Moreover, another relevant element in terms of the autonomy of the Indigenous Peoples is the representativeness they hold in the decision-making process. An example of this representativeness is the incorporation of indigenous with decision-making capacity in the JEP, URT, and Victims Unit. This representativeness favored the understanding of the indigenous worldviews and was a relevant factor in the recognition of the Territory as victim of the conflict and the institutional transformations that are witness today in the URT and Victims Unit that have been promoted precisely through the indigenous leaderships that exist in these organizations.

In sum, the application of restorative actions over the Territory still have several implementation problems. On this context, the recognition of the Territory as victim of the armed conflict turns to be not enough by itself, but is a window opportunity, as part of a long process, to advance to the guarantee of the Indigenous Peoples rights.



## 6. Conclusions and Reflections

The 2016 Peace Agreement signed in Colombia created the Transitional Justice scheme and included the centrality of the victims as one of its main principles. This new institutional framework is modifying the political relationship between the Indigenous Peoples and the National State through the recognition of the Territory as victim of the conflict that has been led by the Special Peace Jurisdiction – JEP.

This recognition makes visible the coexistence of multiple realities and validates the indigenous worldview in front of the State. It also allows us to understand the Territory as a living entity that keeps the material, cultural and spiritual value of the Indigenous People and is part of their individual and collective identity.

In the same way, the recognition of the Territory as a victim of the armed conflict as well as the application of Restorative Justice through it, strengthens the autonomy of the Indigenous Peoples and builds bridges between their worldviews and the Western understanding of land and nature. Similarly, makes visible the damage to ethnic Territories, both in their collective and individual functions and link different actors in an associative way to restore or heal that damage through actions that includes not only liberal ideas about the care of nature, the guarantee of human rights and the application of public policies, but also those notions related to the spirituality of the Indigenous Peoples.

However, the recognition of the Territory as a victim of the armed conflict may not have a major impact on access to Indigenous Peoples rights if its implementation does not exceed the limits of the Transitional Justice framework of the 2016 Peace Agreement. Similarly, up to this point, it is still too early to assess the impacts and transformations that arise from this recognition.

Finally, for further investigations many questions arise from this recognition. What will happen with the mining and oil operations that already exist in these places? How will the State now reconcile economic interests and indigenous rights? Will economic interests continue to prevail? What could be the influence of the recognition of the Territory as a victim on climate change policy? Can the recognition of the Territory as a victim change the extractivist vision of land and nature? How can be ensure that the agency given to the Territories does not turn into inter-ethnic disputes? Given its agency, how will the Territory participate in the judicial process? will the institutional transformations of transitional justice be able to impact the general institutional structure of the Colombian State? Despite all of this questions, there is no doubt that the recognition of the Territory as victim is a game changer for the State, the Indigenous People, and the relation of the modern world with the mother earth.

## 7. References

- Anthias, P. (2018) *Limits to Decolonization: Indigeneity, Territory, and Hydrocarbon Politics in the Bolivian Chaco*. Ithaca: Cornell University Press.
- Atleo, C. and Boron, J. (2022) "Land Is Life: Indigenous Relationships to Territory and Navigating Settler Colonial Property Regimes in Canada," *Land*, 11(5), p. 609. Available at: <https://doi.org/10.3390/land11050609>.
- Azar, E.E. (1990) "Protracted International Conflicts: Ten Propositions.," *Conflict: Readings in Management and Resolution*, pp. 145–155.
- Bardhan, P. (2002) "Decentralization of Governance and Development," *Journal of Economic Perspectives*, 16(4), pp. 185–205. Available at: <https://doi.org/10.1257/089533002320951037>.
- Bhabha, H.K. (1994) *The location of culture*. London: Routledge.
- Blaser, M. (2009) "Political Ontology," *Cultural Studies*, 23(5–6), pp. 873–896. Available at: <https://doi.org/10.1080/09502380903208023>.
- Blaser, M. (2014) "Ontology and indigeneity: on the political ontology of heterogeneous assemblages," *cultural geographies*, 21(1), pp. 49–58. Available at: <https://doi.org/10.1177/1474474012462534>.
- Boyd, D.R. (2017) *Rights of nature: a legal revolution that could save the world*. Toronto: ECW Press. Available at: <https://www.deslibris.ca/ID/453491> (Accessed: October 15, 2024).
- Bustillo Marín, R. (2016) "Lo indígena y las teorías del reconocimiento de las culturas 'de la otredad a la alteridad,'" *Quid iuris (Chihuahua)*, 1, pp. 84–116.
- Calderon, J. (2016) "Etapas del conflicto armado en Colombia: hacia el posconflicto," *Revista de Estudios Latinoamericanos*, 62. Available at: [https://www.scielo.org.mx/scielo.php?script=sci\\_arttext&pid=S1665-85742016000100227](https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S1665-85742016000100227) (Accessed: October 10, 2024).
- Calleros, H. (2022) "Investigación cualitativa, pueblos indígenas y procesos políticos," *Revista Mexicana de Ciencias Políticas y Sociales*, 67(245). Available at: <https://doi.org/10.22201/fcpys.2448492xe.2022.245.75283>.
- Centro Nacional de Memoria Histórica - CNMH (2013) *Basta Ya*. Bogotá, Colombia. Available at: <https://centrodememoriahistorica.gov.co/wp-content/uploads/2021/12/1.-Basta-ya-2021-baja.pdf> (Accessed: September 3, 2024).
- Centro Nacional de Memoria Histórica - CNMH and Organización Nacional Indígena de Colombia - ONIC (2019) *Tiempos de vida y muerte: memorias y luchas de los pueblos indígenas en Colombia*. Bogotá, Colombia: Centro Nacional de Memoria Histórica : Organización Nacional Indígena de Colombia. Available at: <https://centrodememoriahistorica.gov.co/wp-content/uploads/2020/02/tiempos-de-vida-y-muerte.pdf> (Accessed: September 3, 2024).
- Clark, P. (2010) *The Gacaca Courts, Post-Genocide Justice and Reconciliation in Rwanda*. Cambridge University Press. Available at: <https://doi.org/10.1017/CBO9780511761584>.
- Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No repetición. (2022a) *Hay Futuro Si Hay Verdad. Informe Final. Hallazgos y Recomendaciones de la Comisión de la Verdad de Colombia*. Bogotá, Colombia. Available at: <https://www.comisiondelaverdad.co/hallazgos-y-recomendaciones-1> (Accessed: March 2, 2024).
- Comisión para el Esclarecimiento de la Verdad, la Convivencia y la No repetición. (2022b) *Hay Futuro Si Hay Verdad. Informe Final. Resistir No Es Aguantar. Violencias y daños contra los pueblos étnicos de Colombia*. Bogotá, Colombia. Available at: <https://www.comisiondelaverdad.co/resistir-no-es-aguantar> (Accessed: September 3, 2024).

- Congreso de la República (1991) “Constitución Política de Colombia.” Available at: <https://www.corteconstitucional.gov.co/inicio/Constitucion%20politica%20de%20Colombia%20-%202015.pdf> (Accessed: December 17, 2023).
- Congreso de la República (2011a) Decreto Ley 4633 de 2011- Congreso de la República. Por medio del cual se dictan medidas de asistencia, atención, reparación integral y de restitución de derechos territoriales a las víctimas pertenecientes a los pueblos y comunidades indígenas. Available at: [https://www.unidadvictimas.gov.co/wp-content/uploads/2024/05/12.-Decreto\\_4633-Indigenas.pdf](https://www.unidadvictimas.gov.co/wp-content/uploads/2024/05/12.-Decreto_4633-Indigenas.pdf) (Accessed: May 19, 2024).
- Congreso de la República (2011b) Ley 1448 de 2011 - Congreso de la República. Por la cual se dictan medidas de atención, asistencia y reparación integral a las víctimas del conflicto armado interno y se dictan otras disposiciones. Available at: <https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=43043> (Accessed: March 2, 2024).
- Congreso de la República (2018) “Ley 1922 de 2018. Por medio de la cual el Congreso de la República decreta que se adoptan unas reglas de procedimiento para la Jurisdicción Especial para la paz (JEP).” Available at: <https://bapp.com.co/documento/ley-1922-de-2018/> (Accessed: January 6, 2024).
- Corte Constitucional de Colombia (2023) “Sentencia C-054 de 2023 - Medidas legislativas relacionadas con la municipalización de áreas no municipalizadas ubicadas en territorios indígenas,” Corte Constitucional de Colombia [Preprint]. Available at: <https://www.corteconstitucional.gov.co/relatoria/2023/C-054-23.htm> (Accessed: October 28, 2024).
- Van Cott, D.L. (2001) “Explaining Ethnic Autonomy Regimes in Latin America,” *Studies in Comparative International Development*, 35(4), pp. 30–58. Available at: <https://doi.org/10.1007/BF02732707>.
- Departamento Nacional de Estadística - DANE (2019) Información de Grupos Étnicos. Available at: <https://www.dane.gov.co/index.php/estadisticas-por-tema/demografia-y-poblacion/grupos-etnicos/informacion-tecnica> (Accessed: October 13, 2024).
- Departamento Nacional de Estadística - DANE (2020) La información del DANE en la toma de decisiones de los departamentos. Available at: <https://www.dane.gov.co/files/investigaciones/planes-desarrollo-territorial/200313-Info-Dane-Cauca.pdf> (Accessed: June 20, 2024).
- Departamento Nacional de Planeación - DNP (2016) Lineamientos para la implementación del enfoque de derechos y la atención diferencial a grupos étnicos en la gestión de las entidades territoriales. Available at: <https://colaboracion.dnp.gov.co/CDT/Desarrollo%20Territorial/Lineamientos%20Enfoque%20Diferencial%20%C3%89TNICO%20VPublicable%20FINAL%20260216.pdf> (Accessed: June 10, 2024).
- Duarte, C. (2018) *Hacia una antropología del Estado colombiano: descentralización y gubernamentalidad multicultural*. Cali: Sello Editorial Javeriano-Pontificia Universidad Javeriana.
- Dwyer, P. and Nettelbeck, A. (2018) *Violence, Colonialism and Empire in the Modern World*, Violence, colonialism and empire in the modern world. Edited by P. Dwyer and A. Nettelbeck. Cham: Springer International Publishing. Available at: <https://doi.org/10.1007/978-3-319-62923-0>.
- Eaton, K. (2006) “The Downside of Decentralization: Armed Clientelism in Colombia,” *Security Studies*, 15(4), pp. 533–562. Available at: <https://doi.org/10.1080/09636410601188463>.
- Echeverri, J.Á. (2005) “Territory as Body and Territory as Nature: Intercultural Dialogue?,” in *The Land Within: Indigenous territory and the perception of environment*. Skive, Denmark: IWGIA, pp. 230–247.
- Escobar, A. (2008) “Identity,” in *Territories of Difference*. Duke University Press, pp. 200–253. Available at: <https://doi.org/10.2307/j.ctv1198wg2.12>.

- Escobar, A. (2014) *Sentipensar con la tierra: Nuevas lecturas sobre desarrollo, territorio y diferencia*. Medellín: Ediciones Unaula.
- Escobar, A. (2015) "Territorios de diferencia: la ontología política de los 'derechos al territorio,'" *Cuadernos De antropología Social*, 41, pp. 25–37. Available at: <https://doi.org/https://doi.org/10.34096/cas.i41.1594>.
- Fraser, N. (1997) *Justice interruptus: critical reflections on the "postsocialist" condition*. New York: Routledge.
- García, P. and Surrallés, A. (2005) "Introduction," in *The Land Within: Indigenous territory and the perception of environment*. Skive, Denmark: IWGIA, pp. 8–20.
- García, M. P. and Hinestroza, L. (2020) "El reconocimiento de los recursos naturales como sujetos de derechos," in *Reconocimiento de la naturaleza y de sus componentes como sujetos de derechos*. Universidad del Externado, pp. 21–74. Available at: <https://doi.org/10.2307/j.ctv1rcf17d.5>.
- Gibson, J.L. (2004) "Overcoming apartheid: can truth reconcile a divided nation?," *Politikon*, 31(2), pp. 129–155. Available at: <https://doi.org/10.1080/0258934042000280698>.
- Global Witness (2021) *Last line of defense: The industries causing the climate crisis and attacks against defenders*. Available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/last-line-defence/> (Accessed: October 11, 2024).
- Gobernación del Cauca (2024) *Plan de Desarrollo Departamental Cauca 2024 - 2027*. Available at: <https://www.cauca.gov.co/NuestraGestion/PlaneacionGestionyControl/Documento%20Preliminar%20del%20Plan%20Departamental%20de%20Desarrollo%202024%20-%202027.pdf> (Accessed: October 11, 2024).
- Gobierno de Colombia and FARC - EP (2016) "Acuerdo Final Para La Terminación Del Conflicto Y La Construcción De Una Paz Estable Y Duradera." Available at: [https://www.jep.gov.co/Marco%20Normativo/Normativa\\_v2/01%20ACUERDOS/Texto-Nuevo-Acuerdo-Final.pdf?csf=1&e=0fpYA0](https://www.jep.gov.co/Marco%20Normativo/Normativa_v2/01%20ACUERDOS/Texto-Nuevo-Acuerdo-Final.pdf?csf=1&e=0fpYA0) (Accessed: May 1, 2024).
- Hayner, P.B. (2010) *Unspeakable Truths. Transitional Justice and the Challenge of Truth Commissions*. Routledge. Available at: <https://doi.org/10.4324/9780203867822>.
- Huneus, A. and Rueda Sáiz, P. (2021) "Territory as a Victim of Armed Conflict," *International Journal of Transitional Justice*, 15(1), pp. 210–229. Available at: <https://doi.org/10.1093/ijtj/ijab002>.
- Izquierdo, B. and Viaene, L. (2018) "Decolonizing transitional justice from indigenous territories," *Peace in Progress*, 34, pp. 12–20. Available at: <https://www.ohchr.org/sites/default/files/Documents/Issues/IPeoples/SR/IPAndJustice/22-LViaene.pdf> (Accessed: September 3, 2024).
- Jackson, J. (2002) "Caught in the crossfire: Colombia's indigenous peoples during the 1990s," in D. Maybury-Lewis (ed.) *The politics of ethnicity : indigenous peoples in Latin American states*. Cambridge: Harvard University Press, pp. 107–133.
- Jurisdicción Especial para la Paz - JEP (2019) "Auto SRVR - 079. Acreditar como víctimas en calidad de sujetos colectivos de derechos al 'Katsa Su', gran territorio Awá, y a los treinta y dos (32) cabildos indígenas Awá, asociados y representados en la Unidad Indígena del Pueblo Awá – Asociación De Autoridades Tradicionales Indígenas Awá – UNIPA en el marco del Caso 02.," JEP Sala de Reconocimiento de Verdad, Responsabilidad y Determinación de Hechos y Conductas [Preprint]. Available at: [https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto\\_SRVR-079\\_12-noviembre-2019.docx](https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-079_12-noviembre-2019.docx) (Accessed: October 20, 2024).
- Jurisdicción Especial para la Paz - JEP (2020a) "Lineamientos para la aplicación del enfoque territorial en la secretaría ejecutiva de la Jurisdicción Especial para la Paz," JEP Secretaría Ejecutiva [Preprint]. Bogota, Colombia. Available at:

- <https://www.jep.gov.co/Politicas%20y%20Lineamientos/Lineamientos%20de%20enfoco%20territorial%20en%20la%20Secretari%C3%A1%20Ejecutiva%20de%20la%20JEP.pdf> (Accessed: October 28, 2024).
- Jurisdicción Especial para la Paz - JEP (2020b) “Manual para la participación de las víctimas ante la Jurisdicción Especial para la Paz,” JEP Secretaría Ejecutiva [Preprint]. Bogotá. Available at: <https://www.jep.gov.co/Infografas/participacion/manualparticipacion.pdf> (Accessed: October 28, 2024).
- Jurisdicción Especial para la Paz - JEP (2021) “Lineamientos para la implementación del enfoque étnico racial en la Jurisdicción Especial para la Paz,” JEP Secretaría Ejecutiva [Preprint]. Bogotá. Available at: <https://www.jep.gov.co/Politicas%20y%20Lineamientos/Lineamientos%20para%20la%20implementaci%C3%B3n%20del%20enfoco%20%C3%A9tnico%20racial%20en%20la%20Jurisdicci%C3%B3n%20Especial%20para%20la%20Paz.pdf> (Accessed: October 28, 2024).
- Jurisdicción Especial para la Paz - JEP (2022) “Auto No. 105 de 2022. Avocar conocimiento del Caso No. 09 sobre crímenes no amniables cometidos contra Pueblos y Territorios Étnicos por causa, con ocasión, o en relación directa o indirecta con el conflicto armado colombiano,” JEP Sala de Reconocimiento de Verdad, Responsabilidad y Determinación de Hechos y Conductas [Preprint]. Available at: <https://www.jep.gov.co/Sala-de-Prensa/SiteAssets/Paginas/JEP-abre-caso-09-investigar-cr%C3%ADmenes-contrapueblos-etnicos/Auto%20105%2007%20de%20septiembre%20de%202022Caso09.pdf> (Accessed: October 28, 2024).
- Jurisdicción Especial para la Paz - JEP (2023a) “Auto SRVR-226 - Acreditación del Río Cauca en el Caso 05,” JEP Sala de Reconocimiento de Verdad, Responsabilidad y Determinación de Hechos y Conductas [Preprint]. Bogotá, Colombia. Available at: [https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto\\_SRVR-226\\_11-julio-2023.docx](https://relatoria.jep.gov.co/documentos/providencias/1/1/Auto_SRVR-226_11-julio-2023.docx) (Accessed: October 21, 2024).
- Jurisdicción Especial para la Paz - JEP (2023b) JEP abre Caso 09 para investigar crímenes contra pueblos étnicos, JEP Sala de Prensa. Available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/JEP-abre-caso-09-investigar-cr%C3%ADmenes-contrapueblos-etnicos.aspx> (Accessed: October 21, 2024).
- Jurisdicción Especial para la Paz - JEP (2024a) “AUTO SRVBIT-XCBM-NNHC-JJCP-ACHP-01 - Acreditar como víctimas en su calidad de sujetos colectivos de derechos al Territorio ancestral, sagrado y colectivo de la Sierra Nevada de Gonawindua (Santa Marta), delimitado por el sistema de sitios sagrados de la Línea Negra, denominado Seykutukunumaku (Iku), Séshizha (Kággaba) o Shetana Zhiwa (Damana); y a los Pueblos Iku (Arhuaco), Kággaba (Kogui), Wiwa y Kankuamo, en el marco del Caso 09, subcaso Sierra Nevada de Santa Marta y zonas de influencia,” JEP Sala de Reconocimiento de Verdad, Responsabilidad y Determinación de Hechos y Conductas [Preprint]. Bogotá, Colombia. Available at: [https://relatoria.jep.gov.co/documentos/providencias/2/3/Resoluci%C3%B3n\\_SAI-AOI-R-XBM-005-2021\\_23-febrero-2021.docx](https://relatoria.jep.gov.co/documentos/providencias/2/3/Resoluci%C3%B3n_SAI-AOI-R-XBM-005-2021_23-febrero-2021.docx) (Accessed: October 28, 2024).
- Jurisdicción Especial para la Paz - JEP (2024b) “Manual de Justicia Transicional Restaurativa.” Available at: <https://www.jep.gov.co/practicarestaurativas/docs/Manual%20JTR.pdf> (Accessed: September 3, 2024).
- Jurisdicción Especial para la Paz - JEP (2024c) “Reconocer la Naturaleza y el Territorio como víctimas del conflicto armado es una prioridad en la JEP,” JEP Sala de Prensa [Preprint]. Available at: <https://www.jep.gov.co/Sala-de-Prensa/Paginas/reconocer-la-naturaleza-y-el-territorio-como-victimas-del-conflicto-armado-es-una-prioridad-en-la-jep.aspx> (Accessed: October 28, 2024).
- Kidd, I.J., Medina, J. and Pohlhaus, G. (2017) *The Routledge Handbook of Epistemic Injustice*. Edited by I.J. Kidd, J. Medina, and G. Pohlhaus. 1 [edition]. | New York : Routledge, 2017. | : Routledge. Available at: <https://doi.org/10.4324/9781315212043>.

- Lazala, Y. (2022) "Spatiality, Temporality and Ontology: Constraints for the Restitution of Indigenous Peoples' Territorial Rights in Colombia," *Alternautas*, 7(1). Available at: <https://doi.org/10.31273/alternautas.v7i1.1103>.
- Lederach, J.P. (2005) "On Time," in *The moral imagination : the art and soul of building peace* , pp. 131–151.
- Lyons, K. (2023) "'Nature' and territories as victims: Decolonizing Colombia's transitional justice process," *American Anthropologist*, 125(1), pp. 63–76. Available at: <https://doi.org/10.1111/aman.13798>.
- McCoy, J.L., Subotic, J. and Carlin, R.E. (2021) "Transforming transitional justice from below. Colombia's pioneering peace proposal," in *The Colombian Peace Agreement. A Multidisciplinary Assessment* , pp. 93–109.
- Marshall, T.F. (1999) *Restorative Justice: An Overview*. London: Home Office Research Development and Statistics Directorate.
- Mitchell, D.P. (2024) "Indigenous autonomy and decentralization in Colombia's quest for peace," *Global Policy*, 15(S3), pp. 14–25. Available at: <https://doi.org/10.1111/1758-5899.13329>.
- Mitrovic Pease, M. (2015) "Tierra, terreno, territorio: Perspectivas antropológicas.," *Anthropía*, 13, pp. 50–57. Available at: <https://revistas.pucp.edu.pe/index.php/anthropia/article/view/21315> (Accessed: October 18, 2024).
- National Commission for Truth and Reconciliation (1996) "Informe de la Comisión Nacional de Verdad y Reconciliación," *Comisión Nacional de Verdad y Reconciliación* [Preprint]. Santiago de Chile. Available at: <https://bibliotecadigital.indh.cl/items/edb83a4d-9121-48ee-8e66-09fe31e926fe> (Accessed: October 28, 2024).
- O'Connor, M. (1994) *Is capitalism sustainable?: political economy and the politics of ecology*. New York: Guilford Press.
- Pening, J.P. (2003) "El modelo de descentralización en Colombia," *Con-texto*, 16, pp. 6–24.
- Portal de Datos (2024) *Resguardos Indígenas a Nivel Nacional 2020*, Ministerio del Interior. Available at: [https://www.datos.gov.co/dataset/Resguardos-Indigenas-a-Nivel-Nacional-2020/epzt-64uw/about\\_data](https://www.datos.gov.co/dataset/Resguardos-Indigenas-a-Nivel-Nacional-2020/epzt-64uw/about_data) (Accessed: October 11, 2024).
- Quijano, A. (2006) "El 'Movimiento indígena' y las cuestiones pendientes en América Latina," *Argumentos* (Méx.), 19(50), pp. 51–77. Available at: [https://www.scielo.org.mx/scielo.php?script=sci\\_arttext&pid=S0187-57952006000100003](https://www.scielo.org.mx/scielo.php?script=sci_arttext&pid=S0187-57952006000100003) (Accessed: October 14, 2024).
- Ricardo, D. (2000) *Principles of Political Economy and Taxation*. London: Electric Book Company. Available at: <https://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=3008474> (Accessed: October 15, 2024).
- Rojas, G. and Merchán, M. (2023) "Capítulo 3: Enfoque restaurativo en lógica macro-criminal: Aproximación conceptual a la justicia restaurativa," in Tirant Lo Blanch (ed.) *Investigación Macrocriminal y enfoque restaurativo en la justicia transicional*, pp. 103–107.
- Ross, R. (1996) *Returning to the Teachings: Exploring Aboriginal Justice*. Penguin Books Canada.
- Rowen, J.R. (2017) "'We Don't Believe in Transitional Justice:' Peace and the Politics of Legal Ideas in Colombia," *Law & Social Inquiry*, 42(03), pp. 622–647. Available at: <https://doi.org/10.1111/lsi.12262>.
- Ruette-Orihuela, K. et al. (2023) "Necropolitics, peacebuilding and racialized violence: The elimination of indigenous leaders in Colombia," *Political Geography*, 105, p. 102934. Available at: <https://doi.org/10.1016/j.polgeo.2023.102934>.
- Ruiz-Serna, D. (2023) "Transitional Justice beyond the Human," *Cultural Politics*, 19(1), pp. 57–76. Available at: <https://doi.org/10.1215/17432197-10232473>.

- Ruiz Serna, D. (2017) “El territorio como víctima. Ontología política y las leyes de víctimas para comunidades indígenas y negras en Colombia,” *Revista Colombiana de Antropología*, 53(2), p. 85. Available at: <https://doi.org/10.22380/2539472X.118>.
- Teitel, R.G. (2000) *Transitional Justice*. New York: Oxford University Press.
- Turner, C. (2017) “Transitional justice and critique,” in *Research Handbook on Transitional Justice*. Edward Elgar Publishing. Available at: <https://doi.org/10.4337/9781781955314.00010>.
- Ulloa, A. (2004) *La construcción del nativo ecológico*. Bogotá, Colombia: Imprenta Nacional de Colombia.
- Unidad para la Atención y Reparación Integral a las Víctimas - UARIV (2024a) Datos para la Paz. Available at: [https://datospaz.unidadvictimas.gov.co/archivos/datosPaz/boletines/Boletin\\_Abril\\_2024.pdf](https://datospaz.unidadvictimas.gov.co/archivos/datosPaz/boletines/Boletin_Abril_2024.pdf) (Accessed: May 15, 2024).
- Unidad para la Atención y Reparación Integral a las Víctimas - UARIV (2024b) Publicación de datos abiertos. Available at: <https://www.unidadvictimas.gov.co/publicacion-de-datos-abiertos/> (Accessed: October 10, 2024).
- Wade, P. (1997) *Race and ethnicity in Latin America*. 2nd edn. London: Pluto Press. Available at: <https://www.oapen.org/download?type=document&docid=625258> (Accessed: September 14, 2024).
- Weitzner, V. (2023) “‘¡Guardia, Guardia!': Autonomies and Territorial Defense in the Context of Colombia’s Post Peace-Accord,” in *Indigenous territorial autonomy and self-government in the diverse Americas*. Calgary, Alberta: University of Calgary Press, pp. 603–640.
- Wilson, T.M. (2013) “Territoriality matters in the anthropology of borders, cities and regions,” *Cadernos do Ceom*, v.25 n.37, pp. 199–216. Available at: <https://bell.unochapeco.edu.br/revistas/index.php/rcc/article/view/1438> (Accessed: October 18, 2024).
- Yashar, D.J. (1999) “Democracy, Indigenous Movements, and Postliberal Challenge in Latin America,” *World Politics*, 52(1), pp. 76–104. Available at: <https://doi.org/10.1017/S0043887100020037>.
- Zehr, H. (2015) *The Little Book of Restorative Justice*. Revised and updated. New York, NY: Good Books.

## ***INTERVIEWS***

- Participant 1, (2024). Interviewed in person by Diego Ternera. July 31st, 2024. Popayan, Colombia
- Participant 2, (2024). Interviewed in person by Diego Ternera. July 30th, 2024. Popayan, Colombia
- Participant 4, (2024). Interviewed in person by Diego Ternera. July 31st, 2024. Popayan, Colombia
- Participant 5, (2024). Interviewed in person by Diego Ternera. July 31st, 2024. Popayan, Colombia
- Participant 6, (2024). Interviewed in person by Diego Ternera. August 1st, 2024. Santander de Quilichao, Colombia
- Participant 7, (2024). Interviewed in person by Diego Ternera. August 1st, 2024. Santander de Quilichao, Colombia
- Participant 8, (2024). Interviewed in person by Diego Ternera. July 30th, 2024. Popayan, Colombia
- Participant 9, (2024). Interviewed in person by Diego Ternera. July 31st, 2024. Popayan, Colombia

Participant 10, (2024). Interviewed in person by Diego Ternera. August 2nd, 2024. Popayan, Colombia

Participant 12, (2024). Interviewed in person by Diego Ternera. August 8th, 2024. Bogota, Colombia

Participant 13, (2024). Interviewed in person by Diego Ternera. July 30th, 2024. Popayan, Colombia

Participant 14, (2024). Interviewed in person by Diego Ternera. July 26th, 2024. Bogota, Colombia

Participant 15, (2024). Interviewed in person by Diego Ternera. August 9th, 2024. Bogota, Colombia

Participant 16, (2024). Interviewed in person by Diego Ternera. August 5th, 2024. Bogota, Colombia

Participant 17, (2024). Interviewed online by Diego Ternera. August 26th, 2024. The Hague, The Netherlands

Participant 18, (2024). Interviewed In person by Diego Ternera. August 5th, 2024. Bogota, Colombia

Participant 19, (2024). Interviewed online by Diego Ternera. August 6th, 2024. Bogota, Colombia

Participant 20, (2024). Interviewed online by Diego Ternera. August 21st, 2024. The Hague, The Netherlands



## 8. Appendices

### Appendix A

#	Questions	Indigenous Peoples	JEP Reps.	Public Organizations Reps.	Social Organizations
1	What is Territory?	X			X
2	What damages have suffered the Territory as a result of the armed conflict?	X			X
	How these damages affected Indigenous Peoples?				
3	What does the recognition of Territory as a victim mean for indigenous peoples?	X			
	Is it restorative? Why? What is restorative about the recognition?				
4	How does this recognition modify the relationship between Indigenous Peoples and the State?	X	X		X
5	What implications does this recognition have for the ancestral territories of indigenous peoples?	X			
6	How can the Territory be restored?	X	X		X
7	What is the role of restorative justice in the Territory restoration process?	X			
8	How this recognition and the restorative justice actions are articulated with the planning tools that impacts your Territories? (e.g. PIRC, return and relocation plans, restitution plans, life plans, Territorial Development Plans)	X			X
9	How the recognition of the Territory as a victim has modified the way in your organization implements its public policy?			X	
10	How the recognition of the Territory as victim is linked to the planning instruments of the Colombian State? (e.g. PIRC, return and relocation plans, restitution plans, life plans, Territorial Development Plans)		X	X	
11	What have been the challenges, obstacles and difficulties of this articulation and implementation?			X	
12	Does the organization has a public policy aimed at fulfilling the right to Territory as a fundamental right of ethnic peoples?			X	
	If there is, how has it been implemented in the indigenous peoples of Cauca?				
13	What channels have been made available for participation and dialogue regarding the implementation of restorative measures in relation to the recognition of the territory as a victim of the armed conflict?			X	
14	How has participation been in the implementation of restorative measures in relation to the recognition of the territory as a victim of the armed conflict?			X	
15	What is the role of this organization in the processes of restoration to the Territory?		X	X	
16	What is the motivation to recognize indigenous peoples Territories as victims of the armed conflict?		X		
17	What have been the challenges, obstacles and difficulties in the recognition of the Territory as a victim of the armed conflict?		X		
18	What have been the participation mechanisms for indigenous peoples, specifically in Cauca, regarding the recognition of the territory as a victim of the conflict?		X		

## Appendix B

Topic	Category	Sub-Category	Definition
Territory	Definition and characteristics	Identity	Worldviews and definitions
		Damages	Damages over the Territory
		Healing	Healing actions over the Territory
	Meaning of recognition		Assessment of Territory as victim recognition.
TRJ	Restorative Paradigm		Interpretations regarding the restorative nature of recognition and its actions. Changes with the restorative activities done. Examples. Determination of whether the recognition is restorative or not.
	Contextual factors of the conflict		Elements of the armed conflict that have been mentioned during the interviews that are considered relevant.
	Restorative Actions	Participation	Activities and actions that have allowed the participation of Indigenous Peoples.
		Roles	Roles of entities, individuals and communities regarding restorative actions.
Institutional approach	Changes / Modifications in relationship	Changes <b>WITH</b> the recognition	Specific implications generated by recognition
		Institutional adaptation	Identify and determines the need for structural changes in institutions.
	Potentialities and difficulties		Bottlenecks and other elements that are identified as key points to be solved. Elements that are considered as a starting point for structural changes required.
	Autonomy	Self-government and	Related to Indigenous Peoples self-government and
		Coordination / Planning Instruments	Impacts and considerations over the planning instruments.

## Appendix C

The ethics form was approved by the supervisor on October 21<sup>st</sup> of 2024.

### **ISS Research Ethics Review Form for RP research carried out by MA students\***

#### Aim:

This Form aims to help you identify research ethics issues which may come up in the design and delivery of your Research Paper (RP). It builds on the session on Research Ethics session in course 3105 and subsequent discussions with your peers and RP supervisor/reader. We hope the form encourages you to reflect on the ethics issues which may arise.

#### The process:

The Ethics Review process consists of answering questions in the following two checklists: B1-Low-sensitivity and B2-High-sensitivity. Depending on the answer to these questions you might need to fill section C-Statement of Research Ethics too.

The background document “ISS Research Ethics Guidelines for MA Students” provides advice and detailed information on how to complete this form.

Step 1 - Fill checklists B1 and B2

Step 2 - After answering checklists B1 and B2, the process proceeds as follows:

- If you answer ‘yes’ to one or more low-sensitivity questions (checklist B1): please discuss the issues raised with your supervisor and include an overview of the risks, and actions you can take to mitigate them, in the final design of your RP. You can refer to the ISS Research Ethics Guidelines for MA Students for help with this.

- If you answer ‘yes’ to one or more high-sensitivity questions (checklist B2), please complete section ‘C’ of the form below describing the risks you have identified and how you plan to mitigate against them. Discuss the material with your supervisor, in most cases the supervisor will provide approval for you to go ahead with your research and attach this form to the RP design when you upload it in canvas. If, after consultation with your supervisor, it is felt that additional reflection is needed, please submit this form (sections B1, B2, and C) to the Research Ethics Committee (REC) for review as follows:

When submitting your form to the REC, please send the following to [researchethics@iss.nl](mailto:researchethics@iss.nl):

- 1) the completed checklists B1 and B2 (or equivalent if dealing with an external ethics requirement)
- 2) the completed form C ‘Statement of Research Ethics’
- 3) a copy of the RP design
- 4) any accompanying documentation, for example, consent forms, Data Management Plans (DMP), ethics clearances from other institutions.

Your application will be reviewed by a reviewer who is not part of your supervisory team. The REC aims to respond to ethics approval requests within a period of 15 working days.

Step 3 - Integrating the Ethics Review process into the RP:

- This Ethics Review Form needs to be added as an annex in your final RP Design document to be uploaded in the Canvas page for course 3105.

## Project details, Checklists, and Approval Status

### A) Project/Proposal details

1. Project/Proposal Title	TERRITORY AS VICTIM OF THE ARMED CONFLICT: COLOMBIAN CASE
2. Name of MA student (applicant)	Diego Alejandro Ternera Aya
3. Email address of MA student	612293dt@eur.nl
4. Name of Supervisor	Murat Arsel
5. Email address of Supervisor	arsel@iss.nl
6. Country/countries where re-search will take place	Colombia
<p>7. Short description of the proposed research and the context in which it is carried out:</p> <p>This investigation will be placed in the current peacebuilding Colombian context. With the most recent peace agreement signed between the Colombian government and the FARC guerrilla, the ethnic approach has become more relevant and recently some indigenous territories have been recognized as victims of the armed conflict.</p> <p>Taking in count those recognitions I am wondering what elements of the current Transitional Justice scheme pave the way for epistemic justice for ethnic communities in Colombia. Similarly, another objectives are:</p> <ul style="list-style-type: none"> <li>- Understand what was the harm suffered by the territory under the worldview of the indigenous communities.</li> <li>- Identify what is the role of this new understanding of "Territory" in the Colombian public policy scheme.</li> <li>- Understand what is the role of memory in the indigenous reparation process.</li> </ul>	

### B) Research checklist

*following checklist acts as a guide to help you think through what areas of research ethics you may need to address. For explanations and guidance please refer to the background document 'ISS Research Ethics Guidelines for MA students'. Please complete both sections (B1 and B2)*

<i>Please tick the appropriate box</i>	YES	NO
<b>B1: LOW-SENSITIVITY</b>		
1. Does the research involve the collection and or processing of (primary or secondary) personal data (including personal data in the public domain)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Does the research involve participants from whom voluntary informed consent needs to be sought?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
3. Will financial or material incentives (other than reasonable expenses and compensation for time) be offered to participants?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
4. Will the research require the co-operation of a gatekeeper for access to the groups, communities or individuals to be recruited (e.g., administrator for a private Facebook group, manager of an institution, government official)?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
5. Does the research include benefit-sharing measures for research which takes place with people who could be considered vulnerable? – please revise the background document (Guidelines) for more information.	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If you have ticked ‘yes’ to any of the above boxes (1-5),** please discuss with your supervisor and include more information in your RP design describing the issue raised and how you propose to deal with it during your research.

<b>B2: HIGH SENSITIVITY</b>	YES	NO
6. Does the research involve the collection or processing of <i>sensitive</i> (primary or secondary) personal data? (e.g. regarding racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, biometric data, data related to health or a person's sex life or sexual orientation)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
7. Does the research involve participants for whom voluntary and informed consent may require special attention or who can be considered ‘vulnerable’? (e.g., children (under 18), people with learning disabilities, undocumented migrants, patients, prisoners)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
8. Will it be necessary for participants to take part in the research without their knowledge and consent (covert observation of people in non-public places)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
9. Will the research be conducted in healthcare institutions, in healthcare settings, or will it involve the recruitment or study of patients or healthcare personnel?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
10. Could the research induce psychological stress or anxiety or cause harm or negative consequences for research participants, researchers, or persons and institutions connected to them?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
11. Could the situation in one or several of the countries where research is carried out put the researcher, individuals taking part in the research, or individuals connected to the researcher, at risk? Presence of an infectious disease such as COVID-19 is considered a risk – please provide information as outlined in the background document (Guidelines).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
12. Does the research require ethical approval or research permission from a local institution or body?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**If you have ticked ‘Yes’ to one of the above (5-11),** please complete section ‘C’ below describing how you propose to mitigate the risks you have identified. After discussion with your supervisor, please submit the form to the Research Ethics Committee. In addition, if you have ticked ‘Yes’ to a question on any kind of personal data, please also complete the privacy questionnaire.

### C) **Statement of Research Ethics**

*Using the background document 'ISS Research Ethics Guidelines for MA students', please address how you are going to deal with the ethics concern identified, including prevention measure to avoid them from manifesting, mitigation strategies to reduce their impact, and preparedness and contingency planning if the risks manifest.*

*Please number each point to correspond with the relevant checklist question above. Expand this section as needed and add any additional documentation which might not be included in your RP design, such as consent forms.*

**[TO BE COMPLETED BY MA STUDENT AND DISCUSSED WITH THE SUPERVISOR. IF THE SUPERVISOR FINDS IT NECESSARY TO SEEK FURTHER REVIEW, THE STUDENT MUST SUBMIT THE FORM TO THE RESEARCH ETHICS COMMITTEE]**

For B1. I will need to record voices for the semi-structured interviews. For those I will collect also information about ethnicity and if the person is related to specific organizations (indigenous communities, government organizations, and others). I will have a written consent form and establish an individual consent and I will work with anonymized information.

For B2. The consent will include relevant elements about the investigation and inform about the way information will be treated. In case the participants do not want to sign it (some ethnic communities do not like to sign documents), I will inform them by voice all those features and ask for permission to tape the interviews.

For B4. It is possible that for some interviews, governmental organizations will help me to have access to the relevant actors to interview. If this is the case, I will inform the person the way I access the contact. Along the same line, I will not conduct interviews in the presence of different actors, this means, that governmental actors will be interviewed apart from indigenous actors.

For B6. Information will be anonymized as soon as possible. In case any participant would like to reveal his/her name/information in the investigation, the consent will be signed or taped and the information will be stored in the university one drive related to my account.

For B11. With the 2016 peace agreement signed security in zones like Cauca improved in Colombia. Nevertheless, in recent months a new wave of violence has started to grow in the region. I have been in contact with different governmental actors who can advise, collaborate, assist and keep me company on the field work. Also, I intended to travel only to regional capital cities where the violence has less presence.

### D) **Approval from Research Ethics Committee**

\*To be completed by the Research Ethics Committee only if

**Approved by Research Ethics Committee:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Additional comments for consideration from Research Ethics Committee:**

If the REC needs more information before approving, the REC secretary will be in touch with the MA student. If after requesting more information the REC still has concerns, the REC secretary will ask the supervisor to discuss these with the student. In the unlikely event that there is still no resolution, the REC will refer the application to the Institute Board.

## Appendix D

### FORMATO DE CONSENTIMIENTO E INFORMACIÓN

# *Territorio como víctima del conflicto armado y su relación con la justicia restaurativa en Co- lombia*

Respetado participante

Yo, Diego Alejandro Ternera Aya, ciudadano colombiano y en calidad de investigador de la Universidad Erasmus de Rotterdam, estoy realizando un estudio con el objetivo de entender las implicaciones del reconocimiento del Territorio como víctima del conflicto armado en el contexto actual colombiano de fortalecimiento de la justicia restaurativa. Es de aclarar que la Universidad Erasmus de Rotterdam realiza investigación científica con el objetivo de contribuir al entendimiento de fenómenos sociales de forma tal que se puedan buscar e identificar caminos que aporten en la construcción de sociedad.

Con lo anterior, usted es invitado(a) a participar en una entrevista con el objetivo de recolectar información relevante para el citado estudio. Tenga en cuenta que su participación es completamente voluntaria y que algunos datos personales serán recolectados durante la misma. De igual forma, toda la información recolectada en el estudio será conservada y presentada de forma anónima y confidencial. No es obligatorio hacer referencia a sus nombres reales o de otras personas, la firma del presente formulario es suficiente. Si tiene alguna duda sobre el estudio, por favor pregúnteme. Usted podrá detener su participación en esta investigación en cualquier momento y, así mismo, no está en la obligación de responder aquellas preguntas con las cuales no se sienta conforme.

Por otro lado, dados los elementos metodológicos de la investigación, es relevante tener una grabación de audio de la entrevista, sin datos personales, que facilite el análisis de la información. No obstante, si en algún momento de la entrevista usted considera que la grabación no debe realizarse, no dude en informarlo y se procederá a tomar notas a mano. Reitero que la información compartida será tratada de forma segura y confidencial, a esta solo tendrán acceso los investigadores envueltos en el estudio y será almacenada por 10 años.

Finalmente, tenga en cuenta que esta investigación cuenta con el respaldo, revisión y aprobación de un comité de Revisión interno de la mencionada Universidad, el cual garantiza la seguridad de aquellas personas que hacen parte del estudio. Si tiene dudas o comentarios sobre la privacidad de la información, puede comunicarse a la oficina de protección de datos en el correo [fg@eur.nl](mailto:fg@eur.nl) o visitar la página [www.autoriteitpersoonsgegevens.nl](http://www.autoriteitpersoonsgegevens.nl). Así mismo, Si lo desea, puede comunicarse al número +31 614257512 o enviar un correo a [612293dt@eur.nl](mailto:612293dt@eur.nl) para solicitar copia de los resultados de la presente investigación o cualquier otra duda que tenga.

## INVESTIGADOR

**DIEGO ALEJANDRO TERNERA AYA**  
CC 1015420762

## PARTICIPANTE

Firma: \_\_\_\_\_

Autorización de la grabación: Sí \_\_\_ No \_\_\_