

THE COLOMBIAN PACIFIC

THE CASE OF THE NAYA



PEDRO GARCÍA HIERRO
EFRAÍN JARAMILLO JARAMILLO

Prologue

Gonzalo Sánchez Gómez & María Emma Wills Obregón

IWGIA Report 2

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*Territorial uprooting of indigenous, peasant and Afro-descendent
populations as a war objective*

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Prologue

THE NAYA: A TRAGEDY FORETOLD

17 years ago, in 1991, leaders representing many diverse political and social sectors in Colombia, including insurgents recently returned to civilian life, signed agreements on rules and principles to regulate social relationships among citizens and between citizens and their institutions. These agreements became part of the 1991 Colombian Constitution, the new charter that, along with rules and rights, embodies an idea for a country that the Colombian State and its citizens are called upon to build.

According to the new covenant, Colombia, hitherto seen as a mestizo nation, becomes multiethnic and multicultural. This positive recognition and appreciation of ethnic, racial and cultural differences gives rise to a series of articles in which the bearer of constitutional rights and guarantees is no longer exclusively the individual citizen but rather a collective - be it an ethnic group or race - that is conceived of and lives as a community. The proposed change is overwhelming: these collective identities, which in the past have been targets for extermination or dissolution as being in conflict with liberal democracy, become subjects of constitutional protection and are now regarded as the population sectors that most genuinely represent our country's recently described cultural wealth.

The consequences of that legal and political revolution have not been long in coming. Aware that the survival of their culture is indivisibly linked to their right to territory, many population groups, in addition to social mobilizations, are undertaking lobbying and advocacy actions in the courts with respect to lands. So successful have these initiatives been that, it is reported that in the Pacific, as of March 2006, Colombian State institutions had issued 149 collective deeds for the by no means insignificant area of 5,128,830 hectares. In this way, the country began to pay off part of its historical debt to these communities that had been culturally undervalued and economically and politically discriminated against. As a whole, this potential agrarian reform, a product of the awarding of collective deeds and the application of peaceful and legal methods that inspired hopes of reparation for many regions, would shortly become the reason for persecutions, extermination and terror. Many of the virtual beneficiaries were in effect condemned to uprooting and today, having been dispersed, are struggling merely to survive.

At the same time, in The Naya, as part of its inhabitants' efforts to obtain deeds to their lands, a number of inter-ethnic dialogues were begun in the best democratic spirit inspired by the new Constitution. This phenomenon gave rise to the Unión Territorial Interétnica del Naya, UTINAYA (Inter-ethnic Territorial Union of the Naya), an organization that then began to create shared agendas and plans for living, although not without difficulties and disputes. This ongoing initiative served as the basis for undertaking joint actions among indigenous, Afro-descendent and settler populations.

But in the Naya, in contrast to other regions of the Pacific, struggles to obtain land titles were not resolved in the courts. The land, which in neighboring zones was in the process of being awarded by the State itself, would become, before the legal proceedings had culminated, a target for the greed of all of the armed actors. What had been a social conquest became a curse.

A marginal zone unknown to most Colombians, the Naya in the 1990s became the epicenter of a battle without mercy or scruples among paramilitaries, ELN and FARC, because of its strategic importance in military and economic calculations. To the misfortune of its inhabitants, the armed actors entered as expeditionary forces that above all sought territorial control, at the expense of unarmed communities subjected by the illegal armed groups to all kinds of humiliations. The height of terror occurred in April of 2001, when a paramilitary force consisting of some 400 men arrived and, with no hesitation whatsoever, raped, tortured and dismembered alive many of its inhabitants.

Is it just a coincidence that a population the majority of whom are indigenous and Afro-Colombians is so brutally decimated? Greed for territory in this case seemed to be combined with a deeply racist viewpoint, leading the armed actors to behave as forces set on exterminating the differences and carrying out true genocide.

In the face of this disproportionate violence, where were the institutions in charge of fulfilling the 1991 Constitution? There were some who certainly tried to fulfill their mission and provide protection and but from a perspective in which they explicitly accepted their own defeat and inability to stop the tragedy that enveloped the region; others, such as army battalions stationed in the zone, only intervened in May of 2001, a month after the massacre. With the exception of Guillermo Gaviria, then governor of Antioquia, other elected officials barely said anything; and public opinion, instead of taking to the streets in solidarity and repudiation, remained silent.

What happened to the democratizing dream that inspired the Constitution of 1991? In light of these armed incursions and to the shame of the institutions that failed to fulfill their mission to protect, and of the citizenry in general, which did not protest or express its indignation, Colombia's accumulated debt with regard to these exclusions, far from decreasing during this period, has become greater. That is why these communities cry out for justice, truth and reparation, and for recognition and

appreciation of their differences. These populations, today fragmented by war, only a few years ago shared customs, habits and language and were working to build a shared destiny.

It is necessary to recover their lost unity in order to strengthen this multicultural conversation and begin effective collective reparation. This must come about, of course, based on acceptance that the best guardians of the region's wealth and human and environmental diversity are its own inhabitants. To achieve this, they must have our support and the solidarity of the entire nation.

The institutions, above all those that are betting on a democratic solution to the armed conflict, must see that the Naya represents an opportunity to take action to demonstrate their commitment to the dream contained in the Constitution of 1991. It is not fair that these populations have to look to the international arena for the solidarity that has been so scarce in Colombia.

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INTRODUCTION

“We have become a nuisance for everyone on our own lands; everything points to our having to leave, dead or alive”.

This complaint by a member of the Eperara Siapidaara indigenous people on the Naya River reflects the feeling of perplexity among community members in the Colombian Pacific region, who, faced with ever-increasing violence, are being forced to abandon their territories.

Simultaneously with the culmination of a historic process of constitutional recognition of territorial rights that had been denied for centuries, this population has suffered from the sudden eruption of outside forces interested in making sure that those rights cannot be made effective in their daily lives.

The inhabitants of the Colombian Pacific region face terror and the violation of their individual and collective rights on a daily basis. Terror and violation carried out by selfish economic interests that profit from the territory's resources and do not hesitate to use violent means to achieve those ends. Violent means that are also employed by the State in the name of achieving peace. A peace that does not appear to be planned on behalf of the inhabitants of the Pacific region. A peace, however, that no one needs more than they do because the war has been taking away everything that have.

For a large part of the citizenry and for the rest of Colombia, the aggressiveness of government actions could be justified by necessity. President Álvaro Uribe, with the strength of his belligerent position and the vigor of his military alliances, has inspired the hope of being able to end, once and for all and at whatever price, the violence that is part of Colombia's entire modern history.

Exhausted by the conflict and fearful that, once again, their hopes will be frustrated, many Colombians are willing to close their eyes and accept at face value government propaganda that shows the successes of the State security policy but conceals the grave situation of families and communities in the war zones. While it is true that there is a critical position consisting of Colombian citizens with a more

realistic vision of the facts, it is customary for them to focus their denunciations on events that demonstrate State crimes while failing to speak out about crimes committed by the other armed actors. The center of attention for these critical sectors, many of whom are linked to the progressive church, involves guilt, and mainly guilt of the State.

But there is rarely any analysis in which interest focuses on the region's civilian population and a description of their current day-to-day family life along with the grave restrictions on their freedom, food supply and tranquility. In general, they are assigned the role of victims in the statistical inventory of the holocaust or criminalized as inhabitants of "red zones". But the inhabitants' own views of the conflict and their proposals for solutions do not go beyond the limit of family conversation, spoken in a low voice out of fear inspired by the clandestine networks of informants that willingly or unwillingly have been built around all of the actors in the conflict and constitute one of the permanent mechanisms of daily terror.

In effect (and beyond the diverse official or officious readings of the conflict in which the different actors justify their actions in the name of the well-being, tranquility or security of the citizenry), from the perspective of the regional population, which is mostly Afro-Colombian or indigenous, this is a war against the civilian population. It is the civilians, as they see it, who supply the dead, who have been stripped of their lands and displaced, who are constantly pressured by the various actors to destroy the economy that has given them good nutrition, health and family tranquility and replace it with other economies, legal and illegal, that threaten their short-term subsistence. A population that has witnessed the destruction of the mutually supportive interethnic social fabric that they had built up over the years and which suffers from the continuous destruction of an environment characterized by its exuberant biodiversity and correct secular management. Massacres of civilians are as frequent as or more frequent than combats between armed groups and international humanitarian missions are shocked by the statistics on displacement of the civilian population.

But the absurdity could be even greater. According to investigations or resolutions carried out by diverse sources (United Nations rapporteurs, observation missions, Inter-American Court for Human Rights, Colombian Constitutional Court) there are indications that these grave violations of the fundamental rights of the indigenous population of the Pacific region, which the armed actors refer to as "collateral damage" found in all armed conflicts, could actually have their own objectives that are independent of the internal armed conflict itself. In effect, for many analysts, and according to those investigations, the territorial uprooting of the region's indigenous, peasant and Afro-descendent population could be an additional objective rather than an inevitable consequence of the war. Numerous

isolated events could be linked in a more wide-ranging context in which community uprooting is a political objective common to other countries in the region, such as Peru.

Uprooting the population and changing the economic destiny of the Colombian Pacific region seem to be supplementary objectives of what many would classify as premeditated genocide. There is more and more evidence of links between armed action by informal civilian groups and the political ascent of their mentors; or between usurpation of community lands and validation of that usurpation using laws or regulations linked, even judicially, with paramilitary actions.

From the perspective of the indigenous inhabitants of the rivers of the Colombian Pacific, the future is increasingly uncertain and the possibilities for enjoying the benefits stemming from constitutional recognition of their territorial rights ever more remote. In effect, the region has been assigned a mercantile role in which the native communities are an obstacle, as they themselves point out. Their way of life, whose economy is based on food sovereignty, self-sufficiency and simultaneous exploitation of the varied offering of resources of regional biodiversity, does not interest the State or its commercial allies*.

That is why mechanisms proposed by the government to pacify and reconcile the country do not contemplate these communities' agenda. Anxious to end the violence once and for all, Colombians are resigned to the explicit offer of impunity and obscurity for the worst crimes, including additional prizes that imply respect for war booty, political benefits and even economic rewards. "Reconciliation" is seen as a win-win proposition for everyone. Álvaro Uribe, more so than his administration, today has impressive internal political support, with solid alliances with the United States and sufficient financial resources to redouble his military capability, even though the correctness of his policy is beginning to come under question. The paramilitaries and their mentors in para-politics receive mild treatment and the fortunes they have acquired along with property taken from peasants and Afro-Colombian communities are well on the way to legalization. The worst men in the Revolutionary Armed Forces of Colombia (Fuerzas Armadas Revolucionarias de Colombia -FARC) not only achieve impunity but also huge monetary rewards for atrocities that would shame the ethics of any citizen.

The only people who have not received peace offers are those who have suffered the most in this conflict, namely, peasant, indigenous and Afro-descendent communities, even though they are the only ones who would be able to guarantee lasting and just peace based on democratic and constitutional objectives. The institutions of the Colombian State and the country as a whole have an obligation to hear their proposals.

This document focuses on the overall problem in the Pacific region as seen in one of its basins, that of the Naya River, where all the problems that characterize this region are to be found. The Naya basin is inhabited by diverse socio-cultural groups that had organized their coexistence based on very satisfactory territorial relationships in terms of subsistence. Given that the State failed to concern itself with issuing property deeds for the ancestral lands of blacks and indigenous peoples, this coexistence is currently breaking down due to the sudden arrival of a goodly number of outsiders who, in order to plant coca, introduce a different vision of how to exploit nature. Very soon, the population of the Naya basin began to suffer from hunger, food dependence, soil destruction and social destabilization.

At the same time, the Naya has a privileged location and geographical structure that includes the crest of the Western mountain range that connects with the rest of the country and the river's mouth on the Pacific, with very varied ecosystems and great resource wealth. But it also offers excellent strategic advantages to the armed groups, which has generated a continuous state of unrest, massacres, homicides, disappearances and recruitment of young people, with certain peak moments such as the massacre of 2001. There is extreme violence by all of the forces involved in the conflict, structural damage to the local economy due to coca plantations, destruction of the social fabric, territorial exclusion, marginalization of State services and loss of nutritional self-sufficiency. These problems, among others, are characteristic of the current situation in the Colombian Pacific region and are clearly present along the Naya River.

But also in the Naya, as well as in other basins along the Pacific, efforts and initiatives are made on a daily basis to avoid the effects of war and try to establish new forms of solidarity and citizen participation, despite the violence. In spite of those who only believe in the feasibility of a violent solution to put an end to the armed conflict, the inhabitants of the Naya, drawing upon their interethnic experiences and the vigor of their ethnic cultures and peoples, seek to convince the State and people of Colombia that there are other ways to consolidate people's attachment to the zone, build a culture of tolerance, resist violence and make use of the Colombian Pacific region in harmony with its ecological potential.

THE COLOMBIAN PACIFIC AND THE NAYA RIVER

The Colombian Pacific region is in the western part of the country. It borders on Panama on the north, Ecuador on the south, the Western Andean mountain range on the east and the Pacific Ocean on the west.

In 1993, the 'Biopacífico' project, financed by the Global Environment Facility (Fondo Mundial del Medio Ambiente) made the world aware of the ecological importance of the Chocó Biogeográfico¹ (Biogeographic Chocó), one of the Earth's regions with the greatest biodiversity and rainfall, as well as the benefits of agreeing upon a long-term regional development strategy based on exploiting a wide range of resources (marine, fauna, mineral, river and forestry) jointly with a local population that had demonstrated profound knowledge of the appropriate rhythm of exploitation given the characteristics of its ecosystems. This was the most recent contribution by the Colombian scientific community in the field of economic treatment for the Pacific region. Its recommendations, issued in reports beginning in 1997, received little attention in the face of other less scientific but supposedly more lucrative short-term priorities in the context of future economic development options for Colombia.

The signing of a free-trade agreement, FTA, with the United States, the resulting need to specialize agriculture in highly profitable products and the fact that the region is located on the Pacific ocean, an open door to large new international markets, led to the area being assigned a new role. This is an export role that requires large-scale port and highway infrastructure projects (that will have an irreversible impact on the fragile and prodigious regional biodiversity) and which orients use of the region for services and to set up large-scale agribusiness plantations.

In this new scenario, interest focuses on participation by large investors to the point where the second recommendation in the Biopacífico project, local participation, also becomes inoperable, with the prospect of a regional configuration where the indigenous population is an interchangeable link in the transnational productive chains and where its ancestral knowledge of regional biodiversity turns out to be obsolete.

In contrast and opposition to this vision, there is the deep attachment to the territory by a population consisting of Afro-Colombians to a considerable extent², and also Embera, Siapidaara, Awá, Tule and Wounaan indigenous peoples. In 1993 the black communities, along with the indigenous peoples, obtained significant constitutional recognition and legal mechanisms to legalize their territories and began an enthusiastic process of internal reorganization that gave rise to life plans for each collective and established their own political agendas in an attempt to reverse centuries of exclusion.

The distance between the neo-liberal and community objectives regarding the economic and ecological destiny of the Chocó Biogeográfico feeds a conflict that has grown ever more acute over the last 30 years and is today one of the factors of regional instability.

Starting in the 1980s, a new class of entrepreneur began to arrive in the region, anxious to invest resources from drug trafficking in lands, cattle ranching, agribusiness projects, mineral and timber extraction, shrimp farming, fish farming and other modern industries. The pressure on these territories quickly became apparent along with the impact on the subsistence of its population. At the same time, other State initiatives, such as the Plan Colombia, aimed at the guerrillas and drug trafficking, served to spread the coca plantations from Putumayo to Nariño and from there towards the Northern Pacific coast. This tendency was further exacerbated by increasing deterioration in the subsistence conditions of the inhabitants and the arrival of the FARC and the Ejército de Liberación Nacional – ELN. Like the rest of the outside actors, the two guerrilla groups are interested in modifying a productive structure based on diversification and replacing it with single-crop initiatives that are highly profitable but also highly destabilizing for family economies, hostile towards the environment and very dysfunctional from the social point of view.

These processes, along with the effect of military and paramilitary activities in a struggle with the guerrillas for zones of control, have made the Pacific a very unsafe enclave where the citizenry cannot find viable solutions. The uprooting of the population from its territories, through physical death, displacement, recruitment of young people or economic reconversion (with the resulting abandonment of nutritional self-sufficiency) increasingly weakens the population's hopes of one day living in peace in its territories.

Within this general framework, the Naya region was impacted early and more intensely than other zones of the Pacific by the processes described above. That has generated adverse conditions for strengthening and interethnic organizational process based on a vision of the problems of the river from an overall perspective,

and conceiving of the Naya as a territorial unit bound by networks of mutual solidarity, responsibility and dependence among the diverse collectives.

In effect, the interethnic organization UTINAYA (Unión Territorial Interétnica del Naya - Interethnic Territorial Union of the Naya), based on that perspective of a river basin, has been carrying out an agenda with some success based on interethnic integration, food security, territorial security, social inclusion and the recovery of organizational capability and mechanisms for dialogue.

The violent conditions in the Upper Naya put pressure on the inhabitants, making coca cultivation practically the only economic alternative for the indigenous and peasant populations. The threats and forced displacement have been weakening collective control over the territory, facilitating the arrival of large groups of outsiders interested in the land of the Upper, Middle and Lower Naya. Progressive occupation of the river mouths and mangrove swamps by outside actors has led to strangulation of the economy of the inhabitants of the Naya river mouths, based on fishing and exportation of the resources of the mangroves. These impacts in each part of the basin are generating dislocation and its associated problems. Relationships with different actors and problems in each case lead to divisions among the diverse collectives and make it difficult to recover the conditions for internal governance, thus leaving the population at the mercy of outside actors and decisions.

The hydrographic basin of the Naya River is located between the departments of Valle and Cauca, bordered on the east by the San Vicente (3000 meters above sea level) and Cerro Naya mountains, (2650 meters above sea level) of the western mountain range; on the west by the Pacific Ocean; on the north by the division between the waters of the Yurumanguí and Naya rivers, and on the south by the Naya and San Juan de Micay rivers. It covers an area of approximately 300,000 hectares and is under the jurisdiction of the municipalities of Buenaventura in the department of Valle and López de Micay and Buenos Aires in the department of Cauca.

It is one of the most populated river basins and its composition is given in the chart on the next page.

In general, almost all of the inhabitants, with the exception of the Eperara Siapidaara indigenous people, arrived there to rebuild their social and economic lives, the only differences consisting in the periods when they arrived and their ethnic and cultural aspects.

The first known settlements were enclaves based on black slavery. After the abolition of slavery in 1851, the black population dispersed throughout the region,

establishing settlements in the lower and middle part of the Naya River. In the upper part, most of the population are members of the Nasa (Paez) indigenous group, and came from the reservations on the central mountain range in the early 1950s, fleeing from “La violencia”³. There are also a significant number of white and mestizo families in the upper part of the Naya River who came from other zones of the country and had been expelled by “La violencia” or because of the adverse landholding structure in their regions of origin.

In the realm of organization, there is the Community Council of the Naya River (afro-descendants), the (indigenous) councils and diverse community action boards (peasants).

UTINAYA was an attempt to coordinate all of these bodies.

Correct resolution of the two main currently pending legal processes involving the Naya River could provide the necessary mechanisms to begin a return to normal community life along the river. One of these initiatives is to obtain deeds to the territory. The other is to determine how to apply reparation for damages stemming from the massacre of April 2001. In both cases, the aim is to avoid treating claims on an individual basis while seriously proposing solutions for collective improvement of current conditions along the Naya River as a common habitat for a set of groups with different ethnic compositions but nonetheless bound together by a sense of belonging, identity and historic territorial attachment.

THE PROBLEM OF LAND

The Pacific region received a message of hope when the 1991 Colombian Constitution determined, along with the collective territoriality of indigenous peoples (reservations), the right to recognition of the collective property of the lands of black communities in traditional settlements. Law 70 of 1993 and Regulatory Decree 1745 of 1995 established operational mechanisms to validate that right.

The territoriality of the black communities was inspired by that of the indigenous peoples, which has similar connotations associated with flexible, decentralized and extensive exploitation of resources in large ecosystems considered as a whole. Based on traditional handling of productive activities while applying the “logic of the river”, the river basins became the system for determining the method of settlement and territorial appropriation most suited to the traditional practices of these collectives and which would facilitate integrating the diverse populations that share the space. This form of exploitation, along with the resources in the different tributaries of the basin (small-scale mining, hunting and gathering in the upper part, agriculture, forestry in the middle part and fishing and shellfish gathering at the mouth of the river) would facilitate sufficient food supplies while providing for a modern economy based on sustainability and diversification of the use of natural resources. From the social perspective, the basin was an appropriate space for strengthening local identity while developing interethnic relationships very much in harmony with the ecosystem.

The legal support provided by the new Constitution opened up new possibilities, despite a daring assault on the structure of agrarian property in Colombia, characterized by excessive concentration (0.4% of agricultural landowners control 61% of rural lands, whereas three quarters of landowners own just 10%), permanent exclusion of lower income sectors and the resulting violent confrontation over the agrarian question as a historical constant. It was therefore a difficult achievement because it involved recognizing territorial rights, no longer in terms of a small group of indigenous people but rather on behalf of a group of people comprising approximately 85% of the region's population. In other words, it would practically convert the Pacific into an economically organized region based on respect for biodiversity, collective property, multiculturalism, diversified productive models and moderate exploitation.

Supported by this constitutional recognition, the black communities began an intense process of obtaining property deeds that benefited 60,418 families through the issuance of 149 collective deeds as of March 2006 and covering 5,128,830 hectares.

However, this enthusiasm very soon became drama, because the constitutional achievement coincided with an escalation of violence aimed at evicting the inhabitants in order to change the economic use of the territories. On the Baudó River, the first property deeds were issued on May 23, 1996 and a violent attack by paramilitary forces forced the survivors to flee on June 4. Similarly, on the Lower Atrato River the first collective deed was issued in 1996 to the Peasant Association of the municipality of Riosucio, ACAMURI, following which the inhabitants were immediately and violently displaced.

On February 24, 1997 the Afro-Colombian population of the Cacarica, Salaquí and Truandó rivers was attacked for four days by a combined force consisting of Battalion 35 and civilian forces called the Peasant Self-defense Forces (Autodefensas Campesinas) of Córdoba and Urabá, ACCU. These attacks, carried out by land, air and water, forced the displacement of thousands of inhabitants. In Jiguamiandó and Curvaradó the inhabitants' application for property deeds coincided with violent aggressions by combined civilian and military forces, and once they had obtained recognition of their collective territories in 2001, the armed incursions, indiscriminate or selective homicides, disappearances, harassment and victimization of the leaders and coercions became a feature of daily life.

There is a long list of similar events along with detailed information found in diverse documents⁴. Similar situations have depopulated entire river basins while keeping the inhabitants of others in suspense.

The Inter-American Commission and Court⁵, which ordered precautionary and provisional measures for some of these cases, in several resolutions point to links between these aggressions and subsequent forced displacements with the clearing of areas for planting African palm and other agribusiness products. Murky property sales transactions and fraudulent resizing of lands acquired from supposed informal sellers enabled people linked to the paramilitaries⁶ to obtain thousands of hectares from these victimized communities⁷. The return and restitution of these lands to their rightful owners has been blocked by the fact that much of it has been put into production by African palm entrepreneurs.

The Attorney General's office is currently investigating numerous cases of these entrepreneurs associated with paramilitary actions. In fact, members of the affected communities have stated at the hearings that paramilitary harassment was

accompanied by grave threats to facilitate planting palm or other products that destabilize traditional economic self-sufficiency. This constitutes a criminal conspiracy to foster nutritional dependence and integration into the productive chains promoted by the government as a contribution to the modernization of Colombian agriculture.

The new Rural Development Statute (Law 1152 of 2007), along with the weakness of restitution procedures provided for in the Justice and Peace Law (Law 975 of 2005), seem destined to consolidate the usurpation of collective lands with economic arguments that would justify the “laundering” of irregular property deeds benefiting those who took over community lands. The legitimacy of this Statute has been questioned because a number of its principal promoters are currently being tried for links with the paramilitary forces; however, the Statute continues in effect based on acceptance of an objective that appears to be part of the economic agenda of the State itself: territorial uprooting and social disintegration of the peasant, indigenous and black communities of the Pacific region.

In any case, the communities still seek collective deeds for their lands as the only mechanism that would enable them to have a dignified future in their own territories. And, even though the new regulatory framework and explicit political will of the government is opposed to that desire of the Afro-descendent and indigenous peoples, the resolution of 27 applications for property deeds involving 454,152 hectares remains pending⁸. These are the most complex ones in sub-regions of the greatest economic interest. One of these, which possibly faces the greatest resistance, involves the Naya River.

The Naya River basin and its territorial proposals

Despite organizational efforts and enthusiasm, the Naya is one of the few basins for which property deeds were not issued, even though it is one of the enclaves with the largest population and settlement in the Pacific region.

The problem lies in a dispute involving the University of Cauca, which, against the right of more than 20,000 inhabitants, possesses a mining right awarded by General Santander in 1827⁹ as collateral for debts stemming from the use of University assets during the War of Independence¹⁰.

This right has not been used for two centuries¹¹ nor had it ever been claimed until the process of collective property deeds began in the Naya basin. The illogical claim by the University had to be ethically justified based on a supposed ecological

interest in creating a biological corridor that would join the national natural parks of Munchique in the department of Cauca and Farallones de Cali in the department of Valle by means of the Naya River.

If we consider that the local population associates the delay in legalizing their collective territories with the current situation of the inhabitants of the basin, which many view as bordering on genocide, the University's claim is not only unjust but irresponsible. However, for many, the University's interest is not ecological but instead, as is the case with the rest of the territories belonging to the black communities, relates to economic interests.

The territorial problem of the Naya is very complex and the proposal of the UTINAYA is not governed by a territorial agenda defined by a people or by a specific person. Instead, it is plural and thus places the problem in a context that is novel although increasingly common in regions affected by the intense demographical dynamic of the last 10 years. It involves defining territoriality in multiethnic terms. For the leaders of the four ethnic collectives, there is no value in a mosaic of independent pieces; they seek to build a spatial unit of coherent and useful coexistence for all of the inhabitants based on awareness that, under current circumstances, what happens to each group directly affects the others.

Description of the problem and activated legal proceedings

Until now, none of the collectives have collective property deeds except for the Eperara Siapidaara reservation of Joaquincito.

Almost the entire basin has been claimed as the property of the University of Cauca, a state university whose ownership claims are vulnerable from many points of view. Along with an area of 17,278 hectares in the upper zone of the basin, it also includes the Farallones de Cali national park.

Law 70 and its regulations do not provide a clear solution in terms of territorial integrity that is compatible with the traditional practices of the Afro-Colombian population, because it does not include the right to collective property over areas that are important from a cultural and economic point of view, namely mangroves and the fishing area off the coast, which in the best of cases are used by the neighboring communities.

The original territorial proposal of the UTINAYA is based on a concept of comprehensive territory for the basin consisting of the following components:

- Agreement on internal borders between the different collectives

- A collective deed on behalf of the community council of the black communities of the Naya based on procedures established in the regulations of Law 70 (black communities)
- Enlargement of the Eperara Siapidaara indigenous reservation of Joaquinquito, in accordance with Law 21 of 1991 and other administrative norms (indigenous territories)
- Constitution of the Nasa (Paez) indigenous reservation in the Upper Naya. Constitution of a peasant reserve zone for the peasants of the Upper Naya, in accordance with Decree 1777 of 1996 and Law 160 of 1994
- Establishment and enactment of an ordinance and a shared territorial statute to cover everyone and which would specify mutual agreements, regulations and rights-of-access
- Establishment and enactment of formulas for interethnic territorial governance
- Lobby to establish legal formulas to facilitate future legal system corresponding to the proposed comprehensive interethnic territory.

The total territorial claim was approximately 300,000 hectares.

In the Colombian legal system, there has never been, nor is there now, a system for collective deeds on behalf of collective legal subjects. Each population group must therefore make use of specific legislation to gain access to the right to land. Certain groups, such as peasants, lacked legal formulas for access to collective property, with the exception of the system for a 'peasant reserve zone', which had very limited application.

The legal procedure for access to lands that has been provided for each type of legal subject can become conflictive and produce unequal results because each specialized piece of legislation gives rise to an exclusivity that does not match the reality and internal rationality of the settlement and traditional uses of the land on the Naya River. Each procedure has its own difficulties, sources of financing, rhythm and duration so that the suspicions held by each group regarding progress made by others could foster conflict and lack of unity.

Because each legal institution (the collective territory of the black communities or a reservation) is related to a set of rights, opportunities or privileges for the specific groups involved, those less favored (mostly peasants) could view progress made by those in a more favorable legal position as risky to them; those who could gain access to certain benefits (such as transferences from the national budget, in the case of the indigenous reservations) might be interested in advancing their proposal on their own. These kinds of dissensions can be manipulated and could make unity fragile if there is no awareness of its very existence.

That is why UTINAYA proposed reaching agreement on joint efforts among all of the collectives in order to come up with one single cadastral proposal, while at the same time adapting the work on each component to whatever legislation would facilitate it. The process was therefore conceived as a single initiative, with all of the collectives working together before the diverse organisms with jurisdiction in order to work together and with no delays or advantages for any of them.

The proposal, a lesson for all Colombia and which could become a rational approach to the agrarian question in a jointly supportive interethnic context, faced many obstacles; Delays in carrying out this effort undermines its possibilities in relation to the increasingly precarious and insecure situation of landholding in the Naya and the progressive deterioration of the interethnic social fabric due to actions by outside actors.

In accordance with the decision to act jointly, the Community Council of the Naya presented its proposal for issuing property deeds to the INCORA (Colombian Institute for Agrarian Reform) in 1999; the Joaquincito Council applied for enlargement of its reservation. The La Paila reservation, despite its location outside of the Naya basin, applied for enlargement in the territory of the Naya. The members of the indigenous community of the Upper Naya began to set up their reservation and only the peasant population of the Upper Naya was left out of this process.

The INCORA carried out a prior technical-legal study in 2003. This study¹² found that, of the 117,750 hectares claimed by the University of Cauca, only 90,409 have been validly documented, so that the remaining 29,051 hectares were already eliminated by the INCORA in its Resolution 5593 of October 24, 1972. This resolution was subsequently upheld by the Council of State on June 6, 1976, which involved the Diago and Olano families and 17,278 hectares that cannot be the property of the University because of their legal nature (they are part of the Farallones de Cali national park). There are also 43,614 hectares confiscated from the Arroyo, Arboleda, Valencia and Rodríguez families along with an additional 23,469 hectares that were left out of Decree 2118 of 1944.

According to that body's official report, resolution 332, which ratified the University's right, nonetheless preserved the rights of "settlers and farmers" living in the basin. It is those so-called settlers and farmers who have now achieved constitutional territorial rights as indigenous peoples and black communities or ethnic groups. If we bear in mind that the modalities of collective deeds and the territorial concept now embodied in the Constitution, modern international law and rulings by the Colombian Supreme Court go beyond older concepts of private

property, the right to claims on the Naya should not be blocked pursuant to this exception to the norm.

The report also indicates that the lands owned by the University are fiscal property as opposed to property for public use and therefore the University, in exercising its administrative and financial autonomy, could cede them to another body constituted under public law, such as the organism responsible for issuing land deeds in the country, pursuant to currently-in-effect laws and regulations. In light of articles 58, 64 and 65 of the 1991 Colombian Constitution and article 52 of Law 160 of 1994, the competent organism could validly carry out a process to extinguish the University of Cauca's right of domain over those lands, due to lack of exploitation over a period of three continuous years, insofar as article 52 of Law 160 of 1994 extended the procedure for extinguishment to all types of property owners, including entities constituted under public law.

The report recommended the following procedure:

- Clarification of the property to resolve the objection under the terms of articles 48 numeral 1 of Law 160 of 1994 and 1 to 17 of Decree 2663 of 1994.
- Apply to the office for registry of public instruments of the municipality of Buenaventura to obtain cancellation of the pages of real estate registries for the properties whose domain by the Diago and Olano families was extinguished.
- Move forward with partial adjudication of the areas that are no longer the property of the University of Cauca.
- Issuance of a collective deed on behalf of the Community Council of the Naya River as soon as the objection has been resolved; while work would be carried out involving the issuance of deeds to lands in the river basin that would not belong to the University out of the 67,083 hectares already fully identified (23,469 hectares under decree 2118 along with 43,614 hectares that had been previously extinguished) and 29,051 hectares recently extinguished which should be located and measured in coordination with University; as the processes for clarification and extinguishment progress, these lands would be incorporated into the partial collective deed on behalf of the Community Council of the Naya.
- Enlargement of the Eperara Siapidaara indigenous reservation of Joaquinquito along the lower part of the river, which would not be a problem because the areas where this reservation was set up and regarding which enlargement is proposed are outside of the zone described by Decree 2118 of 1944 as the hydrographical basin of the Naya River and therefore are not part of the area that is the property of the University of Cauca.

- Constitution of the indigenous reservation of the Upper Naya, which could move forward in a partial manner and in cumulative processes such as those described on behalf of the Community Council of the Naya, starting with the 17,278 hectares corresponding to the Farallones de Cali natural national park, in that they are not part of the lands that are the property of the University of Cauca and are also part of areas that in the past were taken from private families through the process of extinguishment.

The Colombian State, in the wake of the resolution issued by the Inter-American Commission in January of 2002 ordering precautionary measures on behalf of the Naya, committed itself to compliance by means of a plan that would include the issuance of a collective deed as part of mechanisms to prevent further acts of violence, but then failed to show any subsequent interest in the matter.

Thus, in September of 2004, the Community Council filed an action seeking compliance against the INCODER that was rejected by the Contentious Administrative Tribunal of Valle del Cauca, a ruling that was appealed in 2005.

This ruling is currently under review by the Council of State.

In 2005 a procedure was carried out for clarification of the property according to expert opinion (based on Law 160 of 1994 and Decree 2464 of 1998), a process in which efforts by UTINAYA were a determining factor. Both reports laid the groundwork for extinguishment of domain, the resolution for which was issued in December 2006 but which was appealed by the University of Cauca.

In November 2007 the resolution was upheld and orders issued to continue with the process and to carry out a visual inspection to determine whether or not the property had been used by the University and to directly observe who had exploited or conserved the property and how they had done so. In early 2008, the attorneys hired by the Community Council to follow up on the process received death threats and were forced to flee the zone¹³, following which the inhabitants showed signs of discouragement in the face of a delay that seems to be based on economic and political reasons even though it is supposedly supported by legal, technical, social and financial ones.

Difficulties in continuing the process

For the leaders of UTINAYA and the Colectivo de Trabajo Jenzera, the main difficulties they currently face are as follows:

- ***The new political environment, new laws and regulations and institutional changes create growing difficulties for culminating the process.***

In effect, the modern package of laws and regulations of the Uribe administration, which is very similar in terms of its objectives to what Alan García has put forward in Peru in the wake of the signature of the Free Trade Agreement (FTA), is aggressively liberal and contrary to collective property based on recognition of ancestral rights; but above all, contrary to the food self-sufficiency and territorial attachment of the local population.

The new economic projection allocated to large spaces that are “uncultivated”, “untilled” or “abandoned” requires an interchangeable local population that is very dependent on the market for satisfaction of their basic needs, so that their employment conditions can be changed to benefit entrepreneurial profitability.

Norms such as the ‘Rural Development Statute’, the ‘Forestry Law’, which the courts ruled unconstitutional, the ‘Mining Code’ or Law 811 on ‘Productive Chains’, constitute proposals aimed at replacing the collective subjects of traditional attachment to the land with investment companies as the decisive actors in the region.

Very specifically, the new ‘Rural Development Statute’ creates devices to conclusively sow obstacles in the path of the proposal for issuing collective deeds, at least in the manner originally proposed by the inhabitants of the Naya River.

Among other things, and only as examples:

- It arbitrarily and unconstitutionally prohibits setting up or enlarging indigenous reservations on the Pacific coast and in the Atrato River region.
- Peasant reservations, in terms of systems to facilitate collective property for peasant communities, disappear and become a mechanism for individual adjudication of uncultivated lands. Other possible alternatives for these groups, such as their inclusion within indigenous reservations, are expressly eliminated.
- Certain alternatives recommended by the INCORA, such as renunciation and transference of property by the University, are eliminated, in providing that properties transferred to the State by any public or private entity must be adjudicated by means of a public invitation to private parties (although with the exception for those that arise from proceedings for extinguishment of domain and whose preferred destiny is specifically to go to landless peasants or ethnic groups).

- Uncultivated lands located 5 km from national parks or areas selected by public entities for carrying out planned roadways or economic or social projects cannot be adjudicated, which provides the government with a very wide margin for arbitrary decision-making.
- In short, peremptory time frames are provided for ongoing projects and the institutional apparatus is substantially changed, transferring jurisdictions to organisms that not only lack experience in this type of processes but which have also been specially created to carry out “another” land policy, with objectives very distant from those contained in Law 70 and which many people view as a true agrarian counter-reform.

In any case, the norms contained in the Rural Development Statute cannot deny constitutional rights and therefore leave open a wide margin for carrying out the issuance of deeds in the Naya by components. In the case of the Naya there are also specific conditions that would force the Colombian State to proceed to issue land deeds in accordance with initiatives to which the government itself made a commitment in the wake of the resolution by the Inter-American Commission ordering precautionary measures following the massacre of 2001; Failure to comply would empower admissibility of this case before that Court.

We must add that Law 21, which ratifies International Labor Organization (ILO) Convention 169, is very precise in ordering the adoption of special measures, including regulatory ones, if they are found to be necessary for recognition of the territorial rights of indigenous peoples (and, by extension, of black communities)¹⁴.

Finally, it should be pointed out that in a situation like that of Colombia, where, in the name of pacification and reconciliation the constitutional order is being trampled upon and laws and regulations are being exceptionally promulgated on behalf of groups and people who have perpetrated the gravest crimes against humanity, it is highly suspicious that minor administrative or legal obstacles are being placed in the path of recognition of the constitutional rights of one of the population segments that has most suffered from the conflict and whose security is currently the subject of follow-up by organisms of the Inter-American justice system.

- ***Linkage of the Naya and its territory to processes beyond its inhabitants control has a negative impact on recognition of their collective rights.***

The upper zone of the Naya is a strategic area because it is a corridor that connects the central zone of Colombia with remote regions of the Pacific jungles of difficult access; from a military point of view, control over it is extremely important¹⁵. It is thus a disputed region characterized by violence and retaliation from all sides; the

zone is also economically related to the violence because of illicit crops planted there. As a result, there are grave impacts on food security, social peace and the environment, because the population is used as an economic resource for maintaining the insurgency by planting coca. The longer the process of issuing deeds for the collective lands of the Upper Naya is delayed, the more this process threatens to progressively spread throughout the rest of the basin.

This fact could be used (and in fact is used)¹⁶ as an argument by the competent authorities to reject the issuance of deeds for collective lands. In effect, the terrible escalation of collective suffering in the region stemming from the presence of armed groups, particularly when they impose coca cultivation in the zone, introduces an element of great risk for the process of issuing deeds. This is because the lands used for illicit crops could be excluded from the collective right of the indigenous peoples and black communities because they do not fulfill a social and ecological function nor do they involve traditional practices, which are requirements contained in the law for issuing deeds.

In this way, this problem, one of the factors that causes the gravest damage to the human rights of the population of the Naya (and one that most urgently needs to be counteracted), far from encouraging speed in processes that could gradually weaken it, becomes an argument used to justify refusals to recognize the right to land.

The government needs to understand the situation of high risk affecting the indigenous, Afro-descendent and peasant population of the Naya along with the urgent need to avoid consummation of what for many people is tantamount to genocide. A genocide that fully satisfies the legal definition¹⁷, in so far as the national government has been made aware, through resolutions and recommendations formulated by the Inter-American Commission, of the level of risk to which the population is exposed and the existing association between violence in the Naya and the lack of legal protection for collective lands.

SOCIAL CONVULSION ON THE NAYA RIVER

Setting and general characteristics of the problem

The violence that has characterized the entire modern history of Colombia is linked to the exclusion of large sectors of the rural population in terms of access to the means of production, particularly land. In cases in which, because of the dialectic that characterizes those cycles, low income population sectors have gained access to property by virtue of legal reforms, the groups with power have encouraged or carried out, whether from the government itself or its periphery, a process of expulsion that, to be successful, has had to resort to violence. Each unresolved cycle leaves consequences of cumulative violence that intensify the forms of confrontation in the next cycle.

The virulence of the conflict in recent decades, and its complexity, influences how it is dealt with through military strategies of a territorial character, criminalizing not only the combat forces themselves, but also the zones of settlement or influence of those forces (gray zone); This includes the civilian population, which suffers the consequences of the conflict on all fronts and on a daily basis. The extremely grave effects of this concept of the human rights of the rural population in Colombia are devastating. The Consultancy for Human Rights and Displacement (Consultoría para los Derechos Humanos y el Desplazamiento – CODHES) classifies this situation as one of “massive violation” of the rights of the population; This has been confirmed by the Inter-American justice system and the diverse bodies for oversight and control of the United Nations system.

The figures on displaced persons over the last 20 years involve more than 4 million people and paradoxically 56% have resulted within the framework of the Democratic Security policy of the present administration¹⁸. In effect, despite the high level of underreporting, associated with the fear attached to being displaced from stigmatized zones, the official Sole Registry of the Displaced Population reports that it now totals 2,359,838 Colombians and increases by 160,000 each year. Colombia tops the list of countries with the highest number of violent deaths, ahead of Russia, Brazil and the United States¹⁹. One out of every four Colombians,

according to the same source, dies in that manner. The same could be said of other aspects such as disappearances, property destruction, violations of sexual freedom, threats, mass detentions, confinement, restrictions on free movement, etc.²⁰

While such events are nothing new in Colombia, the current cycle includes certain characteristics that aggravate the risk for the civilian population and diversifies it, thereby threatening to leave grave consequences that could foster future conflicts in Colombia. Some of these are closely related and mutually dependent:

- The growing importance of illicit crops as an indispensable guide for understanding the current nature of the conflict and its social, economic and political consequences. Drug trafficking has revealed the falsity of the discourses of the forces involved in the conflict, including in many cases the forces of public order, frequently making the interests of all of them coincide.²¹
- The growing implication of the role of drug trafficking in explaining the development of the Colombian conflict affects the type of oppression to which the local population is subjected and conditions possible alternatives for solution and their feasibility.
- The incorporation of civilian forces under military instruction and control to intervene in the armed conflict. These civilian self-defense groups, created and encouraged at that time by the State, became an out-of-control paramilitary criminal force that has committed some of the most execrable acts of the conflict, introducing a variant of greater confrontation and higher risk for the civilian population. For many people, this force has done the dirty work that the regular forces would not have been able to carry out without it becoming evident, while possessing a blank check for their outrages and with the certainty that their acts would remain in impunity. This has been subsequently corroborated during proceedings for application of the so-called Justice and Peace Law.

As in the previous case, this bloody confrontation between members of the civil society will lay the groundwork for future conflicts in Colombia.

- The rise of a new political and business class, which, using resources from drug trafficking in many cases and in many others with support from paramilitaries (on occasion already proven at the judicial level), has forcefully infiltrated the Colombian political and institutional sphere and has been generating a legal and regulatory framework on behalf of impunity and even working to award benefits for those involved in crimes against humanity. This has enabled them to conserve and strengthen a powerful economic structure, gain political opportunities and “legalize” the criminal acquisition of lands usurped through violence.

This new political class can create grave problems for Colombia once it has consolidated itself in power, because it is essentially corrupt, violent and a bitter enemy of the rule of law. One of its targets has been the judicial branch, one of the institutions that, amidst the country's institutional breakdown, are a source of pride for believers in democracy. As expressed by the Inter-American Court (case of la Rochela vs. Colombia, in which 15 members of the judicial branch were massacred when they attempted to perform their investigative duties associated with criminal acts by these paramilitary forces), there is an established systematic pattern of violations against members of this branch of the government, in which the security forces have been supporting, collaborating or showing their acquiescence²².

- The eviction and forced uprooting of the local peasantry as an objective of war. In effect, the urgent need to “launder” (legalize) economic resources obtained from drug trafficking has coincided with the State's interest in modernizing Colombian agriculture, providing the necessary conditions to carry out the project. The invitation to investors, domestic or foreign, to invest in modern highly profitable agribusiness projects (mainly biofuels) requires prior clearing (of the population) from large swaths of land to make room for those investments. The Colombian conflict, which arose from unfair land distribution, has paradoxically turned out to be the locomotive for a new system of large estates (latifundio). The forces in the conflict, particularly the paramilitaries, have “cleared” more than 6.8 million hectares²³. According to a survey ordered by the Constitutional Court²⁴, 73.4% of displaced persons who are officially registered were owners or maintained some kind of possession of rural properties. 91% of the displaced persons surveyed said they had no plans to return due to the lack of security conditions. The destiny of this rural population, which is culturally anchored in agriculture, are urban zones where there are no jobs nor any future for this immense mass of people uprooted from the countryside.

This cycle of drug trafficking-violence-eviction and usurpation of lands may be separate from the government's political will but not from its results, which imply clearing the population from their lands in order to implement a modern and liberal productive model. That is why the State's actions could even seem biased in favor of the perpetrators of the violence if we look at the exceptions made for their petitions for benefits and the stinginess, parsimony and extreme legal nit picking applied to claims made by the peasant, Afro-descendent and indigenous populations.

- The consolidation of “consummated actions” proposed by the norms of the Rural Development Statute could indicate an intention to delay processes for issuing collective deeds for population segments with territorial attachment, above all in zones of high strategic interest.

As stated in other points, the new configuration of the map of Colombia, cut by migration routes without a precise destination, indicates that the next cycle of violence could have even more desperate forms, if that is possible, than all of the previous ones.

Escalation of the violence in the Pacific region

Until the end of the 1980s, the Colombian Pacific region remained untouched by the armed conflict that characterized a large part of the Colombian geography. Having been a marginal region of little interest to the rest of the country, without a State presence and with few communications resources²⁵, starting in 1990 this “island of peace”²⁶ began to undergo accelerated processes of economic and social transformation that connected it to the violent atmosphere of the rest of the country. The “country's piggy bank”, as President Olaya Herrera called it in 1930, was opened up to exploitation of its natural resources, which were of great interest to investors in the interior of the country.

Beginning with the arrival of illicit crops in the zone and exploitation of its isolation for production and trafficking of drugs, and as a haven for the armed groups, the Pacific region became part of the scenario of violence but with particular harshness. This situation of violence became more acute in the Southern Pacific area due to aerial fumigations of the cocoa-growing zones in the Putumayo, which pushed the illicit crops into the coastal zone of Nariño, beginning a continuous advance towards the northern coast, caused by fumigations and massive displacement of the inhabitants of those zones²⁷. In the northern part of the Pacific region, the timber extraction and cattle-ranching settlements were the factor that connected the Pacific with the dynamics of the conflict afflicting Urabá and the Middle Atrato River region. This situation became increasingly violent with the clearing of territories for planting African palm.

In the Naya, as the cocoa growing areas advanced, the armed guerrillas of the FARC and ELN began to appear, controlling and fighting for control of zones considered to be strategic, mainly those with access to commercialization of products in the Upper Naya and in the mangroves at the river mouths.

The climate of violence progressively took over, impacting the enthusiasm of a population that had been organizing and planning its future based on the historical conquests achieved through the new Colombian Constitution of 1991.

By the mid 1990s, the Naya had attracted the attention of multiple economic and military interests due to its timber and mining resources along with its strategic geographical location for the armed groups. The living space thus began to be closed up for the native population that has been increasingly affected by the

crossfire from confrontations between forces that have their own interests, which were very different from the goals of the inhabitants of the river basin.

The arrival of new migrants, attracted by the bonanza in illicit crops, generated more drastic changes in the orientation of production. Coca was massively introduced in the Upper Naya, where the population suffered direct pressure from guerrillas interested in obtaining this raw material and where food production declined so that the region became a massive importer of food. This situation became even more complicated when guerrillas from the National Liberation Army (Ejército de Liberación Nacional, ELN) began to maintain a presence in the zone to exercise territorial control over the upper part of the basin, which it uses to maintain its kidnap victims from Valle department in captivity.

While the number of outsiders interested in acquiring lands for coca cultivation increased, many natives, disillusioned by delays in the issuance of collective deeds for the lands, the resulting weakening of their social organization and scarce food supplies, chose to cede their tiny farms for coca production.

Preludes to a massacre foretold

Indigenous and peasant leaders have had great difficulties organizing their communities around the need to protect their territories from the entry of outsiders attracted by profits from illicit crops, as well as to prevent entry by armed actors²⁸. And even though it is clear to all that the main obstacles to be overcome are coca and the presence of the diverse armed forces in the conflict, those presences became precisely the main argument for criminalizing the Naya basin and leaving its civilian population at the mercy of the guerrillas and repressive action by the Army.

In the midst of that altered environment, the ELN, enjoying a degree of territorial domination around 2000, made kidnapping a habitual practice, sending the population explicit threats, such as in the case of the municipal council members of Jamundí, who were paraded before the members of the community. Other notorious kidnappings occurred at the La María Church in Cali and kilometer 18 of the Cali-Buenaventura highway.

Although it was clear that the inhabitants of the Naya were the effective victims of all of these aggressions, their proximity to the zones of control of the diverse factions was viewed with suspicion by both the guerrillas and the Government Armed Forces. This was also the case with the paramilitary groups, who in early 2000 began to maintain a presence with the Huracanes Company of the Farallones de Cali Bloc and the Calima Bloc of the Autodefensas Unidas de Colombia (United

Self-defense Forces of Colombia), or AUC. The paramilitaries began to take part in the conflict in the Naya by setting up their base of operations in the jurisdiction of Timba and controlling the villages of the municipality of Buenos Aires on the outskirts of the Naya: La Esperanza, La Alsacia, El Ceral and the La Paila indigenous reservation.

The paramilitaries have exacerbated the violence to levels that are intolerable for the inhabitants by controlling the main access route to the Naya, limiting the entry of fruits, vegetables and medicine, levying taxes, subjecting the population to collaboration (destroying bonds of coexistence and trust among the peoples of the Naya), and by threatening, disappearing and killing many indigenous and peasant inhabitants.

The inhabitants speak of a time of terror, when over a period of six months, until early 2001, nearly 400 people were murdered or disappeared²⁹, most of whom were 'raspachines' (coca-leaf gatherers). Those killed included peasants and indigenous leaders such as Alcides Dagua, José Delio Yatacué, Ricardo Zúñiga and Alexander Aguilar, whose bodies were found with their throats cut and bearing evident signs of torture.

Inhabitants of the zone, interviewed by Ríos and Lectamo, narrated the reality they were experiencing as follows: *"If the Cauca River could talk, it would tell us how many people really fell and continue to fall into its waters". "Cadavers on the paths and in the canyons, many of them cut up into pieces, were part of the daily lives of travelers"*. The inhabitants tell how they were prohibited from burying the victims because *"it was a message that they sent us and no one could touch that message unless they wanted to be next"*³⁰.

*"Worst of all was that it was impossible to get the prosecutors from the Attorney General's office to come to Timba (a one-hour trip from Cali) to verify the murders, document the paramilitary violence or remove many of the dead bodies after judicial inspection"*³¹. Inhabitants say that during that time of terror, they were unaware of any actions taken by the governors of Valle del Cauca and Cauca to provide assistance to the population that had become isolated due to paramilitary actions, even though during that six-month period there were a number of early warnings issued by the Ombudsman's Office.

In October 2000 the people who had been kidnapped at kilometer 18 were rescued. Even though the authorities from the indigenous and peasant communities of the Upper Naya condemned the kidnapping and informed the State and public opinion that they were part of the civilian population and that, rather than bearing any responsibility for those events, they were victims of the situation of armed conflict afflicting their region, because of these events and their declarations they

were declared a military objective by the three armed actors with influence in the Naya: the AUC, the Government Armed Forces and the ELN.

In November of 2000, the ELN declared five members of the community in the region military objectives, including the governor of the indigenous council of the Upper Naya. One of those who had been threatened abandoned the Naya with his family. The Governor of the Upper Naya, Elías Trochez, set up a commission to try to prevent a situation that, from one side or the other, seemed ready to explode; however, he was murdered on December 12 under the accusation of collaboration with the paramilitaries. This crime led the other three leaders to flee.

The ELN during this period (November 2000-January 2001) was particularly aggressive towards the inhabitants of the Naya, mistreating community members and taking away their belongings. The AUC informed the inhabitants that they would have to abandon the zone.

In the Upper Naya region during that time the Jacobo Arenas mobile column and the XXX and VI fronts of the FARC were operating along with the José María Becerra front of the ELN, the Huracanes Company, the Farallones de Cali and Calima Blocs of the AUC, the Pichincha Battalion of the III Brigade of the National Army of Colombia and the Peasant Soldiers Unit as part of the first such contingent in operation in the country.

This conjunction of armed groups in conflict created insufferable living conditions for the population of the Naya. Practically all of the armed bands at one time or another carried out forced recruitment, control over supplies and local trade and charged “vaccinations”³² and extortions, made threats and forced people to take part in networks of spies, carried out confinement³³ and, in the case of the insurgent groups, kidnapped and murdered civilians.

Social tension reached its apogee in 2001, as will be narrated below.

The Massacre of April 2001

***“We were all tranquil,
without knowing what was happening,
but there in the Upper Naya
they were murdering people”.***
Manolibe (decimero of Las Pavas)

On December 24, 2000, personnel from the Ombudsman's Office and the Civil Defense of Santander de Quilichao went to the village of El Ceral and told the

community that they had to flee immediately, *“because the paramilitaries were going to enter the territory and this would cause armed confrontations with the guerrillas, with possibly disastrous consequences for the civilian population. They also said that those who refused to leave would be directly responsible for whatever happened. They brought in dump trucks and two buses. The people, amidst their uncertainty, desperately began to prepare to travel, bringing only the clothes on their backs plus two changes of clothing and some cooking utensils (as reported by some of the neighbors). At three in the afternoon, 266 people from 57 families had gathered. The governor of the council informed them that they would go to the Tóez Reservation in the municipality of Caloto, a Páez community that had been displaced from Tierradentro in June of 1994 due to the avalanche of the Páez River, in which more than 1000 people died (.....) most of those who remained were older or elderly people and a large percentage of the black population. They did so because they failed to find anyone to provide lodging or help among their organizations and neighboring communities in case of displacement”*³⁴.

On December 25 and 27, new threats forced other families to seek refuge outside of the Naya.

On April 9, approximately 400 paramilitaries from the AUC blocked the passage of a number of community members who had come from the Naya, some of whom had intended to take the “chiva” (bus) to Timba and Santander de Quilichao³⁵. They detained around 80 of them to permit “the entry of all of their men” into the Naya while notifying them that the following day they would also prevent anyone from passing through, which alarmed the community members. That night, additional forces from the AUC arrived at the entrance to the Naya and, starting at 8 a.m. on April 10, they began to intercept people and take their money, letting some of them go free while detaining 6 according to a list that they carried. 3 of these disappeared and the other three were dismembered while still alive using a chainsaw (one of them was the sheriff of the Nasa indigenous council of the Upper Naya, Cayetano Cruz).

After looting the ‘Patio bonito’ restaurant, 200 men remained in the village to control access. An additional 200 began to go down towards the village of Río Mina, killing any civilian they found and throwing them over the abyss. The survivors’ account of this “criminal excursion” as told to Ríos and Lectamo is chilling. At a place called ‘Alto Sereno’ they stopped, and after killing 3 community members, went down to a place called ‘Benjamín’ and then to ‘Río Mina’, which was a main settlement of the ELN, 20 of whose men were there at the time. Some of them escaped by firing shots into the air and did not fight but later on 4 dismembered bodies were found by neighbors from the area. The paramilitary contingent continued to go down the road killing others and looting dwellings until they reached the settlement of La Concepción, now in the Lower Naya.

The paramilitary contingent that had remained in 'Patio Bonito' returned to 'La Silvia' taking along hostages that they never returned and warning that they would come back and didn't want to see anyone the next morning and would not be responsible for the lives of those who refused to heed their warning.

On April 11, people near the places of the massacre began to escape from 'Río Mina', carrying only their basic utensils. More and more people joined them so that by the time they reached 'Alto Sereno' their numbers had increased to more than 300. *"The children started to cry from hunger while panic took possession of the adults when they found the dismembered bodies of family members, neighbors and friends along the path"*. At 12 midnight, they reached 'La Silvia' and from there the jurisdiction of Timba, where the displaced persons gathered.

In places where the paramilitaries had not arrived, massive displacements also occurred inspired by the terror caused by these events. On Thursday, April 12 a caravan of 60 people left the villages of La Playa, El Playón, Miravalle, El Edén, Santa Elena, El Sinaí, etc., until they reached a place called 'Feliciano', where there were around 400 other people fleeing towards Timba, Toez (Caloto) and Santander de Quilichao.

Seven days after the tragedy, no official commission had yet been able to enter and the governor of Cauca complained of the lack of a response by the Army, which at no time provided guarantees for the entry of a commission. Even worse, the commander of the III Brigade of the National Army, Brigadier General Francisco René Pedraza, in statements broadcast by TV newscasts on April 12 and 13, reported *"tranquility in the area, although there were reports of confrontations over control of the zone between irregular insurgent groups"*³⁶.

In contrast with this negligence and indolence on the part of the State, the population gratefully recalls the renowned pacifist Guillermo Gaviria Correa, who, in his capacity as governor of the Department of Antioquia, led humanitarian action to aid the inhabitants of the Upper Naya. Governor Gaviria personally coordinated, from Timba, the rescue the victims and the provision of fruits, vegetables and medicine. Paradoxically, one year later Guillermo Gaviria would be kidnapped by the FARC and months later killed by them in the midst of a rescue attempt.

The Ombudsman of Cauca blamed the National Government for what had happened³⁷ and said that this "military operation" by the self-defense groups against innocent and defenseless civilians, *"was a massacre foretold, (...) The massacre in the Naya had been warned of since November of the previous year, when the 1500 peasants and indigenous people who settled in Santander de Quilichao and Buenos Aires*

expressed fear over returning to their lands due to the permanent presence of the United Self-defense Forces of Colombia (Autodefensas Unidas de Colombia) and demanded that the Army not be withdrawn”³⁸.

On May 1, 2001, the newspapers reported combats between the Army and the AUC at various locations in the Lower Naya and the capture of 46 paramilitaries, which occurred because the paramilitaries could not return to the Upper Naya “because a front consisting of more than 200 men from the ELN and the FARC was waiting for them there. This situation forced a group of 60 men from the Pacific Bloc of the AUC to detour via the neighboring river of the Naya, the Yurumanguí, while another 60 fled to the zone between the jurisdictions of San Francisco del Naya and Puerto Merizalde. In that sector an armed confrontation occurred with the military, and where four members of the AUC were killed and an additional 46 captured”³⁹.

This tragedy, which caused the displacement of indigenous people, peasants and Afro-Colombians, came in the wake of actions by the ELN insurgent group, which, after leaving the region, came back to loot the homes and properties of the displaced population while authorizing other inhabitants to follow their example.

Four years later, in February 2005, the specialized judge sentenced the men of the Pacific Bloc who had had perpetrated the massacre and been captured, to 40 years imprisonment for the crimes of forced displacement, aggravated homicide and criminal conspiracy.

The Situation in the Naya 7 years later

Seven years after the massacre, these events have still not been duly investigated. According to the Attorney General's office, there were no more than 50 killed; however, the inhabitants say that the number was actually more than 100 and that there were many disappeared and unburied bodies that were thrown into abysses on both sides of the rocky road in the Naya.

In March 2008, paramilitary leader, Éver Veloza, alias “H.H.”, head of the Bananero and Calima blocs, in his preliminary statement before a Justice and Peace Prosecutor in Medellín, said that Army Colonel Jaime Alberto Vargas cleared the way for the massacre. The paramilitary chieftain said that he had been told that the Naya was a guerrilla zone where coca was cultivated and processed and where kidnap victims were held in the jungles. That is why agreement was reached with Colonel Vargas to withdraw his troops so that squadron heads alias “Chilapo” and “Sisas” could go in to perpetrate the massacre.

A serious and responsible investigation into the events in the Naya could provide elements to demand a process for comprehensive reparation as well as grounds for bringing a suit before the Inter-American Court if this reparation were denied to the affected inhabitants. The National Commission for Reparation and Reconciliation, CNRR, has already made an offer of individual reparations based on the provisions of the Justice and Peace Law, which has been rejected by the inhabitants as not satisfying their expectations.

Meanwhile, the population's social and economic situation continues to worsen. Local propagation of cocoa cultivation throughout the basin with its accompanying violence in the Naya is extremely harmful for those who practice an economy based on self-sufficiency.

According to a report by the United Nations Committee for the Elimination of Racial Discrimination (1998) *“illicit crops constitute a highly disturbing factor for social, economic, cultural and ecological conditions in indigenous territories, which comes on top of already existing factors of the conflict involving poverty and weak institutional presence”*.

In the case of the Naya, widespread hunger is one result, among others, of profound changes in the use of the soil and agro-ecological deterioration of the basin⁴⁰ and is currently a factor of unbearable tension for most of the families, mainly those who do not live off coca production⁴¹.

As in other locations, the enthusiastic political agenda of previous years, which began with inter-ethnic encounters and gave rise to the creation of UTINAYA, began to lose validity in the face of the widespread sense of unease and the search for individual reparation, which was faster, more feasible and cheaper for the State and more acceptable to the NGOs that processed settlements.

The situation of young people, in particular, reflected the lack of viability of local conditions, because they are the ones most frequently forced to enroll as armed actors, whether because they are drafted into the Army or due to pressures from any of the other forces in conflict⁴². The proportion of young people throughout the Pacific region in the statistics on violent deaths is alarming and the same thing occurs in terms of the ages of those displaced by violence.

For local leaders in the Naya, the aim of outside forces is not only to uproot the population by making daily life unbearable, but also to terminate any attempt by the inhabitants, once they have been expelled, to even think about recovering their personal goals at a later time. That is why, in their view, young people are killed or forced to join the ranks of one or another military force or armed group.

In many cases, displaced persons, the victims by virtue of these processes, end up being 'victimizers' or 'displacers' of the inhabitants of other basins, losing the sense of the identity of belonging to a collective and of solidarity among paisanos (people from the same country or area)⁴³. Carlos Rosero expresses it like this: *"The secret threads of the fabric of the war in Colombia, one of so many that the Afro-descendants have taken part in with flags that seem like their own, is turning them into murderers or murdered, displaced persons or displacers, but in any case victims, opening the possibility of new wounds and a constant and eternal recycling of hatreds"*⁴⁴.

Legal procedures that have been activated and difficulties of the process for comprehensive reparation

In the face of the massacre and constant violations of individual and collective rights of the citizens of the Naya, the Community Council and the diverse social organizations of the region have taken a series of steps.

It is worth citing the humanitarian missions (May of 2001), denunciations before the United Nations Commission on Human Rights or the holding of Ombudsman's Hearings to ascertain the facts. Also, through the organizations of the black and indigenous communities at the national level, visits by the United Nations Special Rapporteur against racial discrimination and the United Nations Special Rapporteur on indigenous peoples were requested and carried out. The report made by the latter⁴⁵, who officially visited Colombia in March of 2004 by invitation of the Colombian Government, is very harsh and makes no effort to avoid summarizing cases of massacres, selected homicides, dismemberments, forced disappearances, tortures, threats, displacement of communities, recruitment of children and young people of both genders and rapes of women perpetrated by paramilitary as well as guerrilla groups. In view of this situation, it affirms that the will of the State to validate the human rights of these populations is very weak and describes situations in which the armed forces have entered indigenous territories not so much as a force to protect the civilian population whose rights have been violated, but rather as a military force entering enemy territory, accusing the communities of supplying fruits and vegetables, medicine or logistical support to one or the other of the different armed groups (AUC, FARC, ELN)⁴⁶. The report makes recommendations to the National Government, to all of the armed actors and to the international community that are similar to demands made by indigenous organizations, including:

- The need to establish 'indigenous peace zones', free of any armed military presence;

- Prioritization of the displaced indigenous population, mobilizing international assistance to create emergency programs;
- The obligation of the State as well as the armed groups to respect International Humanitarian Law and human rights at all times;
- Suggests that the State cancel the network of informants, peasant soldiers and soldiers for a day programs, which constitute key elements in the Democratic Security policy of the administration of President Álvaro Uribe Vélez;
- The armed actors are urged to abandon the practice of recruiting minors and return them to their homes.

As an action to protect the inhabitants, the Community Council of the Naya requested precautionary measures from the Inter-American Human Rights Commission. These were awarded on January 2, 2002 on behalf of the community members of the 49 settlements and communities located in the Naya River basin, due to threats received from the approximately 300 paramilitaries located in the zone of northern Cauca and southern Valle del Cauca, municipalities of Timba, Suárez and Buenos Aires.

It is important to stress, as points in the request made to the Commission regarding measures to be adopted by the State, in addition to effective perimeter control measures by the security forces aimed at avoiding armed incursions into the Naya through the river mouths that empty into the ocean, in consultation with the Community Council, other measures for prevention. These should include the presence of entities such as the Procurator General's office and the Ombudsman's Office, with offices in Puerto Merizalde, as persuasive and preventive mechanisms; also the strengthening of the early warning system through implementation of effective communications systems and the investigation and punishment of those responsible for violations of the rights the population.

The Commission has continued to receive constant denunciations by the authorities and leaders of the Naya regarding criminal acts against the communities that are the beneficiaries of the precautionary measures. Both the recommendations of the Special Rapporteur is as well as the measures requested by the IACHR have essentially been ignored and the population remains under the same state of tension as before the massacre, with the violations surrounded by circumstances evermore terrifying and sinister.

The Community Council of the Naya and the other organizations of the diverse groups of inhabitants of the basin continue to work on measures to attain just reparation for the events that occurred during the massacre of 2001 by virtue of the imputation of the Government's responsibility by omission⁴⁷.

In effect, the basic principles on the rights of the victims of evident violations of international human rights norms and grave violations of International Humanitarian Law point to the States' obligation to ***“adopt legislative and administrative provisions and other appropriate measures to prevent the violations and provide victims with effective resources, including reparation”***⁴⁸. This involves obtaining effective reparation to remedy the violations and make amends for them ***“in the following forms: restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition”***⁴⁹.

It is clear that mere compensation does not cover more than a small part of the reparation process.

The constitution, after the massacre, of a civil association, namely the Association of Displaced Peasants and Indigenous Peoples of the Naya (Asociación de Campesinos e Indígenas Desplazados del Naya, ASOCAIDENA), set up mainly by people who were also disturbed by the intimidating acts of the paramilitaries prior to the barbarous acts of April 2001 and who no longer live in the territory of the Naya, could affect the form of the comprehensive reparation that the inhabitants of the Naya hope to obtain.

In effect, the Association is interested in collecting individual monetary compensation that would enable them to settle in other areas of the country.

For the State, these individual payments constitute a very simple solution to the problem. But for the inhabitants who continue to live there and are deeply attached to their ancestral territory, the solution is very limited and deprives them of the opportunity to rebuild some of the elements that could help to strengthen their resistance in the current context, reorganize inter-ethnic solidarity and the functioning of civil institutions and definitively reestablish conditions for a dignified life in the Naya.

Furthermore, for the leaders of the social institutions of the Naya, a position that exclusively favors individual compensation would introduce a new element of regional discord rather than contribute towards effective reparation.

A guarantee of non-repetition cannot be assured through individual payments to people who have been affected by the massacre. Without denying that right and while still viewing those payments as part of the reparation, the inhabitants of the Naya feel that comprehensive reparation that would contribute towards avoiding the sufferings of the population would have to cover five prioritized aspects:

1. ***Full, effective and rapid issuance of deeds for the entire basin based on the inter-ethnic territory proposal by the local organizations***

With the understanding that any other formula for the issuance of deeds that generates disadvantages or problems for the diverse groups or delays the effectiveness of their rights is a provocation to conflict, the inter-ethnic territory would provide stability to collective property while strengthening solidarity among the diverse groups along the river to enable them to deal with their shared problems.

Through the comprehensive issuance of deeds, all prior coerced sales could be frozen (because they would be nullified as a result of collective deeds) and then reviewed, or lands that have been abandoned out of terror and occupied by outsiders, who make up one of the new population contingents that facilitate expansion of the illicit crops, could be recovered.

The restitution of lands that have been illegally sold, abandoned or usurped and the relocation of people displaced from the river is an act of justice that cannot be blocked by mere administrative impediments. On the contrary, the State must provide special legislative and administrative measures, and even exceptional ones if necessary, to accelerate that process.

The United Nations Secretary General's Special Representative on the human rights of internally displaced persons stressed the importance of “rigorously dealing with the question of the appropriation of lands by third parties during displacement of the original population”⁵⁰ and recommended adopting measures to declare invalid all property deeds on lands acquired under coercion and to impede transactions involving those lands.

2. Collective identification and reestablishment of conditions to permit reconstruction of family economies

There is a very special need to introduce effective programs in consultation with the population to recover previous levels of agricultural and livestock-raising production that would strengthen an adequate level of food self-sufficiency, reviving the productive diversity that constitutes a very convenient traditional practice for local development. The inhabitants also need to have access to the river and marine resources restored to them, particularly fishing and food-gathering from the mangroves.

It is also necessary to recover the Naya's past freedom of trade, re-establish freedom of movement on the community river routes and free the population from confinement, food rationing and inflation.

Food is now a crucial problem that requires urgent solutions to avoid massive displacement of the population. While it may be necessary to activate food assistance programs as a transitory emergency solution, what is really required is to recover food sovereignty through long-term agricultural programs to gradually replace illicit crops, without destroying the soil or the environment, and to provide opportunities for families to implement alternative programs.

The illicit crops in the Naya are not the fruit of a collective criminal decision, but rather the product of marginalization and abandonment of the population to the actions of very unequal coercive forces, which the inhabitants can not deal with on their own because they are still in a process of organizational consolidation. This is not a problem that must be militarily combated but rather an oppressive situation that needs to be dealt with through a polyvalent strategy agreed upon with the population.

Another problem associated with reconstruction of family economies involves gradual restoration of the environmental conditions prevalent in the Naya before the conflict, and includes recovery of the mangroves, control over timber extraction, mining based on a sustainable logic, soil recovery and remedying water pollution.

3. Reestablishment and/or implementation of basic services and reactivation of the operations of the civil institutions of the State

The civil State needs to “reappear”: a State presence that is not conflictive, meaning that it should not be based on repressive military action against a “criminalized region” but rather on civic action in support of a population affected by a tragedy of huge proportions involving loss of life and of subsistence conditions, freedom, dignity and security; in other words, people who have been deprived of the basic guarantees that constitutionally justify the existence of the State and of society.

Specifically, there is an urgent need to create an effective plan to establish health and education services of the highest possible quality to avoid the displacement of young people to high risk urban zones such as Buenaventura.

4. Support for recovery of the inter-ethnic social dynamic and reconstruction of the social fabric, trust and solidarity among the citizenry

Success in obtaining the issuance of comprehensive deeds is considered a first step to reverse the current state of destruction of the population of the Naya, restore the vitality of civil organizations and institutions and contribute towards re-establishing local development processes that were truncated by the violence.

What the Naya most needs is confidence in its own organizational processes, to recover the ability to make collective decisions and obtain recognition of the right to define its development priorities in accordance with ILO Convention 169. This is an important step to re-establish, within the basin and in relation to the other neighboring rivers, the cultural, economic and political ties upon which coexistence and responsible and shared management of its territories has been based.⁵¹

The state authorities must once again consider the population of the Naya, along with its representative organizations, not as antisocial people under permanent suspicion but rather as citizens who require special support to enable them to surmount the terrible situation they currently face.

The process of interlocution, administration and implementation of comprehensive reparations measures can be a very appropriate sphere to enable these collective bodies along with the population to return to the tasks of local governance.

5. Security measures and processes aimed at normalization and progressive pacification of social life

A plan coordinated with the population to embark on solutions to the conflict that would not be traumatic or generate aggressions or criminal reactions against the families of the river. A plan whose priority objective would be to ensure the security of the people and their properties, restitution of their lands, safe return of their displaced persons and reconstruction of housing and family and community infrastructure.

The families of the Naya cannot continue to be criminalized for living in their own territory, even though it is currently fought over by outside forces. Nor can they be sacrificed as “collateral damage” as part of a strategy for democratic security, nor expelled to enable the implementation of a regional modernization project based on new economic actors.

As part of this plan, and among other measures, follow-up must be made on recommendations issued by the IACHR and the diverse special rapporteurs of the United Nations.

The population of the Naya seeks territorial attachment based on rights that the 1991 Colombian Constitution recognized after many centuries of denial.

Because of its geographical characteristics, of strategic value to some, or because of the quality and variety of its natural resources, which are desirable to others, the

inhabitants of this hydrographic basin of the Pacific region - peasants, Afro-descendant communities and indigenous peoples - have been involved in a war that seeks to replace them with outsiders who produce illicit crops or agribusiness crops or to expel them in order to gain access to natural resources of traditional use.

The **uprooting** of the population is being carried out by introducing economies that make the Naya basin impossible to live in, but also through systematic or massive extermination campaigns, such as the massacre of 2001.

The IACHR has awarded precautionary measures to the members of the communities of the Naya River in recognition of the high level of risk for the population due to violence from all parties to the conflict that has attacked its fundamental rights.

The Naya River and its inhabitants must not be the object of repressive treatment by the State because they are not a population that has voluntarily taken sides in the processes occurring around them. Their extremely narrow margin for decision-making amidst the terror is determined by objectives of survival.

On the contrary, they are people deeply affected by the systematic violation of their individual and collective rights to extremes that can be criminally classified as genocide, exactly as described by international criminal law.

The population of the Naya urgently needs to recover confidence in its future, for which purpose the solidarity of the society and of the State are indispensable. Rather than a “red zone”, the Naya is the habitat of people with much to contribute to Colombia's future. It is an inter-ethnic population that conceived of its development in inter-cultural terms and with tolerance among groups of different origins and cultures.

The inhabitants' tenacious resistance, amidst the insane conflict that they have had to experience, is an example of perseverance and territorial attachment that must be recognized by the Colombian society and State.

The existence of two legal processes whose resolution is pending, namely the issuance of comprehensive deeds for collective lands and the process of reparation for the massacre of 2001, constitute an exceptional opportunity to reverse the situation and begin a process that would make it possible to recover dignified living conditions for the inhabitants of the Naya.

The option for collective and comprehensive issuance of deeds for the lands and territories of the Naya and consideration of a mechanism for reparation of the

collective damages that, without discarding individual compensation that could be provided, include the issuance of collective deeds, recovery of family economies and reconstruction of the environment, along with recovery of the institutions and inter-ethnic solidarity, can open new horizons for the Naya.

FINAL CONCLUSION

The population of the Naya is seeks territorial attachment based on rights that the 1991 Colombian Constitution recognized after many centuries of denial.

Because of its geographical characteristics, of strategic value to some, or because of the quality and variety of its natural resources, which are desirable to others, the inhabitants of this hydrographic basin of the Pacific region - peasants, Afro-descendant communities and indigenous peoples - have been involved in a war that seeks to replace them with outsiders who produce illicit crops or agribusiness crops or to expel them in order to gain access to natural resources of traditional use.

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CONTACTS

Consejo Comunitario del Río Naya (Community Council of the Naya River).

Cabildo indígena eperara siapidaara de 'Joaquincito' (Eperara Siapdaara indigenous Council of 'Joaquincito').

Cabildos indígenas nasa del Alto Naya. (Nasa indigenous councils of the Upper Naya).

Juntas de Acción Comunal del Alto Naya (Community Action Boards of the Upper Naya)

Unión Territorial Interétnica del Naya, UTINAYA (Inter-ethnic Territorial Union of the Naya)

Consejos Comunitarios de Cabeceras, Cuellar, Malaguita y Cupica (Community Councils of Cabeceras, Cuellar, Malaguita and Cupica)

Cabildo Mayor Wounaan del Bajo San Juan, CAMAWA (Wounaan Higher Council of the Lower San Juan)

Organización Regional Indígena del Valle, ORIVAC (Indigenous Regional Organization of Valle).

Asociación de Cabildos Indígenas del Valle-región Pacífico, ACIVA-rP (Association of Indigenous Councils of Valle-Pacific region)

Proceso de Comunidades Negras, P.C.N. (Process of Black Communities)

Palenque 'El Congal' de Buenaventura. ('El Congal' Palenque of Buenaventura)

Comisión de Memoria Histórica (Historical Memory Commission)

Escuela de formación interétnica para la resolución de conflictos (Inter-ethnic training school for conflict resolution)

Colectivo de Trabajo Jenzera (Jenzera Working Collective)

NOTES

- * This is what Jorge Aramburu calls having “the curse of good luck”. Carlos Rosero: Los afrodescendientes y el conflicto armado en Colombia: La insistencia en lo propio como alternativa. *“The territory of the Pacific region is the last case in which lands belonging to blacks, or the ‘anteroom to hell’, are placed, because of their strategic location, natural resources and biodiversity, in the center of national and international interest”*.
- 1 Chocó Biogeográfico (Biogeographic Chocó) is another name for the Pacific region, in that it is a territory consisting of many regions. The Chocó biogeográfico is made up of seven departments: Chocó, Antioquia, Risaralda, Valle, Córdoba, Cauca and Nariño. Most of its territory is in the department of Chocó, from where it gets its name. Two of its important rivers (Atrato and Sinú) flow into the Atlantic Ocean.
 - 2 Of the approximately 920,000 inhabitants of the Pacific region, 85% are Afro-Colombians, 8% are indigenous peoples and 7% are whites and mestizos. Around 60% of the population lives in five urban centers: Buenaventura, Quibdó, Tumaco, Isthmina and Guapi. Almost all of the white-mestizo population lives in these urban centers. Almost all of the indigenous population lives in small communities along the rivers along with approximately 20% of the rural population (Colectivo de Trabajo Jenzera, 2004).
 - 3 Belligerent confrontation between the two traditional parties (liberal and conservative) that over a period of 10 years took the lives of approximately 300,000 peasants.
 - 4 Jesús Alfonso Flórez and Costanza Millán: Derecho a la alimentación y al territorio en el Pacífico colombiano.
 - 5 Case of Jiguamiandó and Curvaradó. Resolution by the Inter-American Court for Human Rights, March 6, 2003 and February 7, 2006
 - 6 Some of them have seats in the same Colombian Congress that authorized presidential re-election and have now been sentenced or are the subjects of ongoing court proceedings.
 - 7 Just in Jiguamiandó y Curvaradó reference is made to nearly 150 people killed and the forced displacement of an additional 1,500.
 - 8 Jesús Alfonso Flórez and Costanza Millán: Op cit. Bogotá, 2007.
 - 9 Confirmed, as adjudication, by Law 95 of 1944 and ratified by Resolution 332 of July 23, 1955.
 - 10 Fernando Castrillón: La tierra un derecho que cobra vigencia, Semillas, June 2007.
 - 11 The University has shown that it is ignorant of the situation in the Naya, as indicated by its letter of opposition dated September 11, 2000, in which the University's attorney, Dr. Jesús Hernán Guevara, stated *«(...) Gentlemen of the Valle regional office of the INCORA, the Naya River basin consists of 300,000 hectares, many of which are virgin forest and unexplored, with the additional problem of being the habitat of tropical diseases that make any human survival almost completely impossible »*. Clearly, the University is ignorant of the fact that the Naya is one of the most heavily populated river basins in the Colombian Pacific region.
 - 12 We use the summary made by the Colectivo de Trabajo Jenzera of the report drafted by Silvio Garcés, which is undated.
 - 13 Information supplied by the Comisión Inter ecclesial de Justicia y Paz.
 - 14 The Constitutional Court, in its ruling T-955/2003, found that ILO Convention 169 was fully applicable to the black communities. In 2006 the ILO Commission of Experts on the Application of Conventions made a similar pronouncement, including applications of the norms contained

in this Convention, among its recommendations to the Colombian Government in the case of the communities of Jiguamiandó and Curvaradó.

15 They are strategic knots for determining spaces of military hegemony « (for) two basic questions: 1. (They represent) a functional obstacle of a natural set; 2. (They favor) a process of structural control of the geographical space» Diego Henao: Extraños, nómadas y confinados, IWGIA, 2003.

16 The resolution that rejects the action requested by the Community Council of the Naya alleging noncompliance by INCODER specifically mentions the situation of conflict in the basin.

17 Convention for Prevention and Punishment of the Crime of Genocide

Article II

In this Convention, genocide is understood to be any of the following acts perpetrated with *the intention* to destroy, totally or partially, a national, ethnic, racial or religious group, such as:

- a) Killing members of the group;
- b) Grave injury to the physical or mental integrity of members of the group;
- c) Intentionally subjecting the group to conditions of existence that lead to their total or partial physical destruction;
- d) Measures aimed at impeding births within the group;
- e) Forced transference of children from the group to another group.

Article III

The following acts shall be punished:

- a) Genocide;
- b) Association to commit genocide;
- c) Direct public instigation to commit genocide;
- d) Attempted genocide;
- e) Complicity in genocide.

Article IV

People who have committed genocide or any of the other acts listed under article III shall be punished, whether involving members of the government, public servants or private individuals.

Article V

The contracting parties commit themselves to adopt, pursuant to their respective Constitutions, the necessary legislative measures to ensure application of the provisions of this Convention, and particularly to establish effective criminal sanctions to punish those guilty of genocide or any other of the acts listed under article III.

Artículo VI

Persons accused of genocide or any of the other acts listed under article III shall be judged by a competent state court in whose territory the act was committed, or before the international criminal court with jurisdiction over those contracting parties that have recognized its jurisdiction.

Artículo VII

For the purposes of extradition, genocide and the other acts listed under article III shall not be considered political crimes.

The contracting parties commit themselves, in such cases, to concede extradition pursuant to their legislation and to currently-in-effect treaties.

18 Source: Consultoría para los derechos humanos y el desplazamiento (CODHES).

19 Source: National Institute of Demographic Studies (INED) of France.

20 Information on the human rights situation in Colombia. The Reports by the United Nations Rapporteur for indigenous peoples and by the UN High Commissioner for Refugees, resolutions by the Commission and rulings by the Inter-American Court are other valuable sources of information.

- 21 There are many reports of alliances between the new forms of paramilitarism (organizations such as the so-called '*Águilas Negras*' and others) and the guerrillas themselves. *El Espectador* newspaper on January 25, 2008 reported the discovery of apparent links between the FARC and the paramilitary Autodefensas Unidas de Colombia, AUC, in the course of investigations by the Attorney General's office. The demobilized paramilitary leader Diego Fernando Murillo, alias "Don Berna", confessed during his Justice and Peace preliminary hearing, two days before his extradition to the US, that men of the 'Héroes de Tolobá' bloc under his command, along with military personnel, perpetrated the massacre at San José de Apartadó on February 21, 2005. This was corroborated by Captain Guillermo Gordillo, who told the Attorney General's office: "*They (the paramilitaries) went with us (...) they had been talking about this operation for a while and at a high level with top commanders*". *El Tiempo*, May 18, 2008. The sentence condemning military personnel who premeditatedly massacred 10 police officers in Potrerito, Jamundí who were from an elite unit that had been ordered to carry out an anti-drug operation, is one piece of evidence, among many others, of relationships between military commanders and drug-trafficking networks. But there are also cases in which the guerrillas do the 'dirty work' for businessmen: The U'wa indigenous people (tunebos), who have opposed oil exploitation on their territories, denounced that the FARC had murdered three of their advisers in February 1999, US citizens Terence Freitas, Laheenae Gay and indigenous Ingrid Washinawatok, as a favor for the Occidental Petroleum Co.
- 22 See rulings in the case of La Rochela vs. Colombia, and other rulings (Ituango, Pueblo Bello, Mapiripan, 19 merchants). It must be recalled that this intervention strategy in politics using coercive means is also practiced by the FARC. There have been numerous murders of members of Congress, local authorities and other public servants by one side or another, which makes political spaces highly risky for persons uncommitted to the interests of these criminal groups.
- 23 According to government estimates for 2004, cited by the investigative unit of *El Tiempo* on February 17, 2008. It must be kept in mind that forced displacement of the population may have increased over the last four years of violence. In fact, CODHES reports that in 2005 there was an 8% increase over the previous figure.
- 24 According to that same newspaper.
- 25 "*Some of the inhabitants of the region told us that the Colombian Pacific had been so neglected by the rest of the country that not even violence had reached it and felt that this was one of the few advantages of the region's segregation*". Carlos Efrén Agudelo. *El Pacífico colombiano: de «remanso de paz» a escenario estratégico del conflicto armado*.
- 26 Ibidem.
- 27 In recent years, displacement is linked, in proportionately very significant figures, with the fumigations of agricultural areas in zones of coca cultivation. See Flórez and Millán, op cit.
- 28 It is known that, due to its isolation and the steepness of the terrain, this region of the Pacific offers tremendous advantages from a military point of view: tactical redeployment, strategic corridor, supply zone, and even as a place of confinement for victims of political or extortive kidnapping.
- 29 "*Many people did not denounce out of fear; others simply gathered up their dead relatives and buried them in their places of origin, while others disappeared. In these two last cases, it was due to the fact that there was a large floating population (because the great majority of those killed were raspachines, or coca gatherers)*". Ríos H. Aparicio, Lectamo, Floresmiro. "Caracterización del desplazamiento indígena en el departamento del Cauca". UNHCR, ONIC, RSS. Popayán, December 2001.
- 30 Ibidem.
- 31 Ibidem.

- 32 In the version cited by Ríos and Lectamo the levy of “taxes on storekeepers, mule drivers, buyers and sellers of coca paste, the owners of illicit crops and anyone having businesses in the zone” is described as frequent.
- 33 *“They began to punish community members; some could only travel from home to work and from work to home, others received fines, and they began to go after traditional doctors, which are very scarce in the zone”*. Ríos and Lectamo, op. cit.
- 34 Ríos and Lectamo, op. Cit.
- 35 Most were members of the Nasa indigenous people who *“were going to spend Easter week with their families and friends on the reservations of the central mountain range, where they were from”*. One community member complained to two priests who were present, commenting that the massacre was committed while the Catholic world was commemorating the passion and death of Christ (Holy Thursday and Friday).
- 36 Communiqué issued by human rights organizations (Asociación Nacional de Ayuda Solidaria - ANDAS), Permanent Committee for the Defense of Human Rights [Comité Permanente por la Defensa de los Derechos Humanos], Corporation for the Promotion and Defense of Human Rights [Corporación para la Promoción y Defensa de los Derechos Humanos –REINICIAR].... Bogotá D.C., April 14, 2001.
- 37 On April 2, the Inter-American Commission for Human Rights, IACHR, urged the Colombian Government to guarantee the security of the civilian communities in the zone.
- 38 in March, diverse human rights organizations had alerted the authorities to the possibility of a massacre in the zone. At a public hearing on the Naya held by the Ombudsman's Office in Santander de Quilichao on April 11, 2003, the Ombudsman, Dr. Eduardo Cifuentes Muñoz (ex-magistrate of the Constitutional Court, from the Department of Cauca and knowledgeable about the zone) declared before the Colombian press that the local population had repeatedly asked the Colombian authorities for protection in December of 2000.
- 39 Diario El País de Cali, May 1.
- 40 This came from the increase in the area used to plant coca and gave rise to a decrease in subsistence crops (‘pancoger’) and caused chemical contamination of the river due to indiscriminate use of precursor chemicals and feed stocks used to process coca paste.
- 41 Fernando Castrillón: “Crisis de los sistemas productivos en los territorios colectivos del Pacífico” Colectivo de Trabajo Jenzera, 2007: *“Every morning in Puerto Merizalde, the main town in the Naya River basin, the children wait on line to buy flaky pastries (hojaldras) made of wheat flour. Despite the nearby ocean and their location on the very banks of a river able to support a large variety of fish, they depend on processed foods brought in from Buenaventura. Further upstream on the Upper Naya there is a serious food shortage. The inhabitants of the region, except for a few indigenous families, must bring in their food from outside. Along with the 10-12 hour-long footpath from the eastern slope of the western mountain range to the first towns along its western slope, the communities must bring in eggs and chickens of the Patterson species produced at industrial farms, along with calves, brown sugar, sugar, maize, chocolate, coffee, oil and many other products”*.
- 42 The recruitment of afro-descendants by all of the armed actors and their use for barbarous acts in regions with indigenous populations *“brings back to life the image of the «blacks» as demons and widens the abyss of the relationship between communities that historically have been subordinated”*. Carlos Rosero, op. cit.
- 43 Some of the paramilitaries who committed the massacre were recognized by the inhabitants. Some had been victims of the guerrillas and now returned as victimizers. Others had enrolled for salaries that ranged from 250,000 to 500,000 pesos, according to rank (Efraín Jaramillo. Anuario IWGIA 2002).

44 Carlos Rosero. Op. cit.

45 Human rights and indigenous questions. Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of the indigenous peoples, November 10, 2004.

46 This type of accusation against the inhabitants of the Naya is constant and similar to those made by guerrilla and paramilitary groups that accused the inhabitants of belonging to the enemy group.

A document issued by the Inter-ecclesiastical Commission for Justice and Peace (Comisión Intereclesial de Justicia y Paz) tells of detention by the DAS (Administrative Security Department - Departamento Administrativo de Seguridad) of human rights lawyer Diego Figueroa, whom they accused of having come in as an “accompanist of the Communities of the Lower Naya, to carry out support activities as part of the process for issuance of collective deeds to lands”; the DAS agents stated: “*Don't you know that that region is controlled by the guerrillas? Do you think that the guerrillas are going to believe that little story? You are lying, tell the truth*” (CIJP: Abuso de autoridad en Buenaventura contra integrantes de Justicia y Paz, 2005).

Another document of the Epidemiological Information System for the Population Displaced by Violence in el Valle (Sistema de Información Epidemiológica para la Población Desplazada por la Violencia en el Valle) (*«Hacia la construcción de un modelo piloto para el diseño e implementación de un sistema de información de salud pública y vigilancia epidemiológica en poblaciones desplazadas por violencia política»* 2002) that tells of the massacre of the Naya and the subsequent persecution and capture of paramilitaries involved in it, quotes one community member as giving the reason for the massacre as expressed by the victimizers: “*They have told us that we must leave the Naya, because we are helping the guerrillas*”.

Inhabitants and authorities of the Naya told us that the FARC had explained the reason for the massacre of three young people from the river, in Puerto Merizalde in 2007, as being the suspicious fact that they were able to easily move around zones controlled by the Colombian Navy.

In all of these cases, the Naya is viewed as an “enemy zone” by all sides and its inhabitants subject to high risk deriving from this assumption.

47 The delegate from the IACHR during his visit to Colombia in 2003 received leaders from the Naya, who expressed concern over the lack of effectiveness of the precautionary measures. On this occasion, the delegate expressed his concern over continuing denunciations regarding acquiescence or cooperation by members of the security forces with the self-defense groups, the commission of acts of intimidation and violence against persons or groups of persons covered by these measures and the lack of effective judicial investigation that has impeded clarification and reparation of many of these acts.

48 United Nations Resolution 60/147 approved by the General Assembly on December 16, 2005, annex ‘basic principles on the right of the victims of evident violations of international human rights norms and grave violations of the international humanitarian right to lodge appeals and obtain reparations’.

49 Ibidem.

50 United Nations, report presented by the Secretary General's Representative on the human rights of internally displaced persons, Mr. Walter Kälin, Addition to the Mission to Colombia, Human Rights Council, fourth period of sessions, topic 2 of the provisional program, A/HRC/4/38/Add.3, January 24, 2007, paragraph 54.

51 With a view to opening this path, diverse Afro-Colombian, indigenous and peasant organizations of the Pacific region have decided to implement the School for Inter-ethnic Education (‘Escuela de formación interétnica’) with accompaniment from the Colectivo de Trabajo Jenzera.

The violations of the fundamental rights of the black, indigenous and peasant populations of the Colombian Pacific region, which all of the armed forces, both regular and irregular, view as "collateral damages" endemic to all armed confrontations, could have their own objectives that are independent of the Colombian internal armed conflict. *The territorial uprooting* of these peoples is an additional objective, not a consequence, of the conflict. This can be inferred from the close connections between the armed actions, disposessions of lands and their legalizations tied to these usurpations.

In the 1980s a new entrepreneurial class came into the region intent on investing resources from drug trafficking in land, cattle ranching, agribusiness projects, resource extraction and other industries that contribute to uprooting the population. At the same time, the arrival of illegal armed actors, coincidentally interested along with these entrepreneurs in modifying the region's productive structure, further destabilized family economies and demolished the already weakened institutions of the region. More recently, the State established a presence in the region through its policies for interdiction of coca crops as part of the Plan Colombia, displacing these crops from the Putumayo towards the Pacific coast of the department of Nariño and from there towards the northern coast, which exacerbated the process of territorial uprooting. As a result, these diverse presences and operations have been changing the economic destiny of the Pacific region and together aggravate the economic situation of these peoples while endangering their survival.

All of these policies for uprooting the population are in marked contrast to the deep territorial attachment of the indigenous and Afro-Colombian peoples, who in the 1990s had achieved significant constitutional and legal recognition that held out the possibility of constituting and consolidating many collective territories. This gave rise to an internal reorganization along with their own policy agendas aimed at building new forms of organization and solidarity, with the goal of escaping from war and reversing centuries of exclusion.

This report deals with the overall problems of the Pacific region, based on the situation in the Naya River basin, one of its most important and emblematic watersheds where all of the problems characterizing the region are to be found. This is a multiethnic area where socio-cultural conflicts are intensified. It has received a torrent of settlers uprooted from other regions of the country, who experience great difficulties in adapting to the productive systems typical of the rainforest. The area of coca cultivation has increased. The population lacks deeds to its ancestral territories and a university claims ownership over them. The basin's geographical location provides strategic advantages to the armed groups. In April of 2001 it was the scene of a massacre perpetrated by paramilitaries. Finally, it is a sanctuary of biodiversity, whose natural resources appeal to the greed of economic interests hostile to the economies of its inhabitants.

The State, which is responsible for protecting these peoples and developing programs for existential compensation in the wake of the massacre, has not recognized these efforts by the inhabitants. On the contrary, it has glossed over the legal and illegal economic interests that have uprooted them. Today, with its consent, individual interests prosper to the detriment of collective ones. Paradoxically, this individualistic posture was strengthened by the massacre (in the words of a popular aphorism, 'from the fallen tree everyone takes a piece'), encouraged by private claims for compensation made upon the State due to its connivance in the massacre. These piecemeal settlements, easier and cheaper and now so attractive to intermediaries, benefit individuals more than families, communities or peoples. They also unleash frictions between leaders, fail to protect the Naya against future disposessions and uprooting (Urrá is a precedent), leave territorial integrity adrift, discourage return and weaken past enthusiasm for the agenda of the Inter-ethnic Territorial Union of the Naya, UTINAYA. This interethnic agenda conceives of the basin as a body whose integrity is fundamental for the cultural and biological survival of its communities. It also aims for compensations to contribute towards territorial, economic, political, social, environmental, and above all, intercultural reconstruction so that the Naya can once again be a place of freedom that is peaceful, tolerant and supportive of all forms of life.



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