

# Territory and Sustainability of Indigenous Peoples: A Legal Perspective in Colombia

Territorio y sustentabilidad de los pueblos originarios: Una mirada jurídica en Colombia

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## Abstract

For the natural peoples of the American continent, the territory is the environment where the life of the original families is developed. This comprehension conditions sustainability to balance and harmony with Mother Earth. However, it is possible to identify a dichotomy regarding the meaning of territory between the doctrinal and legal terms when considering that in countries such as Colombia, from the normative provision on the distribution and regularization of the territory in its Political Constitution of 1991, the right to its protection and use is guaranteed. But several historical events indicating sustainability and balance of these indigenous communities —name with which the Constitution recognizes them, have gaps that put these peoples at risk and threaten their existence. This work's purpose is to understand the meaning of territory and sustainability from the perspective of the original or indigenous peoples, also from the legal provisions in Colombia, providing an integral vision that contributes to critical analysis and allowing a view of the sustainability of the original territories at present. The analytical methodology employed was the documentary study of state of the art based on secondary sources and descriptions.

**Keywords:** ancestral knowledge, greater right, sustainable development, Mother Earth, nature, law of origin, territory.

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## INTRODUCTION

Colombia is a constitutionally recognized multicultural and multiethnic country, which places indigenous communities within a unique regime, where the administration and development of their territory are allowed under their uses and customs (Constitución Política de Colombia, 1991, Artículos 329, 330). It is a nation that comprises 115 indigenous peoples (hereafter IPs or indigenous peoples) [1], who represent 4.4 % of the total population. (Departamento Administrativo Nacional de Estadística, DANE, 2019). Each of these communities has diverse ways of understanding the world and relating to the tangible and intangible elements around them.

Diversity is the very essence of being and living of each of the first peoples. The language barriers they live with and the geographic variety have not prevented them from developing coordinated resistance and persistence processes throughout history, especially when facing the constant threats and violence to which they have been and continue to be exposed. Colonization and conquest implied for the indigenous peoples the loss and exploitation of their territories, slavery, displacement, deaths, the disappearance of many communities, the imposition of religious practices, the theft of ancestral knowledge and identity, and the involuntary mixing of races that marked the beginning of the constant struggle of the original peoples of America to recover what was once taken and legally belongs to them. In the Colombian historical and documentary record of the violent events in the indigenous territories, it is clear they have been subjected to ethnocide, political homicides, forced displacements, and power struggles for the territory that offers natural resources of potential economic exploitation, and which is a place of direct or indirect interference of the Colombian State, who omits and delays the pertinent actions for protecting these communities. Abandonment has threatened multiple peoples, exposing half of them to disappearance (Villa & Houghton, 2005) and the other half to political impositions and indeliberate cultural integration due to the lack of legal representation, effective participation mechanisms, inclusion in public policies of land-use plans, and the absence of a law defining indigenous territorial entities that, although ordered by the Colombian Constitution (1991, Artículo 329), is constrained to a transitory provision (Constitución Política de Colombia, 1991, Artículo 56), which suffers from imprecision regarding the distribution of resources, participation and functioning of the indigenous territories in synchrony with other territorial entities, and thus the violation of their rights continues over time. Today it is affirmed, however, that partially the violence has subsided in some of the peoples because of the intervention of entities such as the Commission on Human Rights of Indigenous Peoples, CDDHHPI, (2018) and the Special Jurisdiction for Peace (JEP, 2020b).

Population displacements, natural resource exploitation, intellectual property theft, and the murder of some of their leaders are still of concern, as well as the lack of equity in the resource distribution for the indigenous communities' social, environmental, cultural, and economic development. All of the above presupposes indigenous peoples' tendency to disappear since their progress is unfeasible.

The following analysis aims to establish findings and dynamics presented and persisting concerning the indigenous peoples' appropriation of the territory, especially those living in the department of Cauca. It will make it possible to determine the duality between the territory hegemonic ordering executed by the State and the market forces, and the configuration of resistances against this order built by the communities that occupy and use the land.

The indigenous peoples are iconic of the political, organizational, and resistance process and the differential and unique level of development of their economic, environmental, and social systems. A documentary review of the safeguard plans, life plans, and various documents on the situation these peoples have had to face was required to understand these particularities.

The analysis focuses on three emerging categories, which under the information gathered constitute a constant within the studied documents: the first concerns the conceptual approach to territory and sustainability from a doctrinal and legal perspective; the second approach is the exercise of formal self-government of ancestral peoples, and the last one describes the approach to the behavior and knowledge systems of these communities.

The first two approach the concept of territory from the exercise of governing by indigenous peoples' through an analysis of safeguard and life plans, mandates, territory, and traditional practices of the communities. Projects of the Yanaconas (Cabildo Mayor del Pueblo Yanacona, 2009), Ingas with their Safeguard Plan of the Inga People (Ministerio del Interior de Colombia, 2014a), Kokonucos (Asociación de Cabildos de Genaro Sánchez, 2013), Misaks (Cabildos del Pueblo Misak, 2009), as well as the Nasas and their Nasa Safeguard Plan (Ministerio del Interior de Colombia, 2014b), who represent more than 92 % of the total indigenous population in the department of Cauca (DANE, 2019) are depicted. The last category illustrates the indigenous peoples' systems and their impact on the sustainability of the territories with their own economic models.

Subsequently, a review of laws and sentences was made to contrast government exercise and the indigenous peoples' systems about sustainable development in their territories. Finally, an analysis of the legal gaps is presented, which will allow balancing the sustainability processes (Clayton & Radcliffe, 1996) in the indigenous territories to reveal protection mechanisms for their rights, as well as the demand for public policies aimed at ensuring the Government guarantees their social, economic and environmental development.

### METHODOLOGY

This paper starts from a contextual construction on evaporation, understood as a unit operation of relevance in the industry. The article addresses the different types of evaporators and describes them, listing their various applications. For this purpose, information was collected and processed from secondary sources from scientific databases (ScienceDirect, Virtual Pro, SpringerLink, ResearchGate) and university

repositories (Universidad Nacional de Colombia, Universidad de Córdoba, and Fundación Universidad de América).

## **GENERAL METHOD**

A qualitative approach was adopted; secondary sources were reviewed, of which 30 were selected to build a descriptive exercise in the analysis and academic review of the article. The research was complemented with laws and Court rulings consulted in Google Scholar. Next, an approximation exercise of the territory was carried out from the practice of government and the indigenous peoples' own systems as articulators of the sustainability of the spaces. The information was worked under the jurisprudence of Colombia, the safeguard and life plans of the native peoples. The result synthesized the inquiries in matrices, whose dimensions reveal the central intention, dominant legal conception, and threads of representation of the territory (social, economic, environmental, cultural).

## **Analysis of theoretical currents and approaches**

### **Conceptual approach to territory and sustainable development**

Currently, there are various theoretical perspectives to what is called sustainable development. In principle, both concepts are the same, but when defining an association to the territory. That is why the unified notion of sustainable development is proposed, which should integrate several elements, such as economic, social, and environmental (Zarta Ávila, 2018, p. 9).

Progressive visions—or cultural Marxism that critically study capitalism foster the concept of the so-called neoliberalism. For progressivism, the neoliberal order, at least what survives of the Washington Consensus in Latin America, implies developing capitalism that marginalizes the native peoples and their knowledge, the way of conceiving, recognizing the territory, relating to it and everything that inhabits it (Williams, 1977). Their ancient cultural practices, which are part of a millenary legacy, are sentenced to be diluted by capitalism and globalization (Ministerio de Planificación del Desarrollo de Bolivia, 2007). The millenary peoples' legacy is not exempt from being commodified, as David Harvey (2004) states from "becoming objects of processes of accumulation by dispossession, a modern and elaborate form of plunder" (p. 16).

For cultural Marxism, the capitalist and globalized model has generated an immense environmental crisis, threatening the existence of humanity on the planet (Fernández & Kohan, 2017). This is because capitalism is based on obtaining profits but without caring whether the resources are renewable or not. Contemporary Marxism proposes "bringing to consideration a solution based on the transition to a socialist society" (Fernández & Kohan, 2017, p. 1). A society directed or at least highly intervened by the States; where they lead humanity to become aware of the problems in which we are immersed. A development model that responds to what in the academic world has been called sustainability (Clark, 1997).

The so-called sustainable development must harmonize with planning practices that allow the efficient use of resources to preserve them in addition to recognizing them a social, ecological function, and align them with economic and community interests, promoting the preservation of historical and cultural values of the most vulnerable communities by giving prevalence to the interests of these populations, among them the indigenous peoples, even more, when their vital network depends on the resources they traditionally use and produce (Sentencia T-622, 2016).

In the case of the ethnic peoples of Colombia, constitutional jurisprudence recognizes the importance of pluralism in the configuration of the Rule of Law (ROL), taking into account the diversity of cultures and ethnic identities coexisting in the country (Sentencia T-063, 2019), so there is a need to ensure them equal treatment and respect, given that they form the Colombian identity and shape it. Therefore, their subsistence and permanence in the national territory must be guaranteed under dignified and fair conditions (Sentencia T-622, 2016).

It is clear that the anthropocentric approach responds to an antique philosophical and economic tradition where humanity is conceived as the only rational and complete being in the universe and achieving its subsistence is of utmost importance to protect the environment as granted by Stockholm Declaration and the Rio Declaration (Organización de las Naciones Unidas [ONU], 1972; ONU, 1992). There is also the biocentric vision, which points out that nature must be protected only to avoid a catastrophe that would extinguish the human being and destroy the planet; this is why, under this premise, it is not subject to rights but remains at the disposal of humanity (Sentencia T-622, 2016).

In contrast, the Constitutional Court Decree C-449 (Sentencia C-449, 2015) and C-220 (Sentencia C-220, 2011) give an ecocentric approach to the earth, clarifying that it does not belong to man and, on the contrary, assumes that this is the one who belongs to the planet as any other species. Thus, in Decree T-080 (Sentencia T-080, 2015), the same Court defined that "nature is not only conceived as the environment and surroundings of human beings but also as a subject with its rights, which, as such, must be protected and guaranteed".

Indeed, these rights result from the recognition of the deep and intrinsic connection that exists between nature, "its resources and the culture of the indigenous peoples" (Sentencia T-080, 2015), which according to the Constitutional Court in Decree T-622 (Sentencia T-622, 2016) are interdependent and cannot be understood in isolation.

In environmental matters, the biggest challenge of contemporary constitutionalism is to safeguard and offer adequate legal protection to nature and the ways of life and cultures built with it, not for the simple material, the genetic or productive utility it may represent for human beings but because they are subjects of individualizable rights. For this reason, only with an attitude of deep respect for nature is it possible to come to relations with communities in fair and equitable terms, leaving aside any concept limited to simply utilities, economy, or extractivism.

That is why indigenous have the right to protect what the West calls biodiversity and bioculture. These peoples own the right to autonomously administer and exercise protection over their territories, following their forms of government, laws of origin, major rights, cosmovision, and arranging the entire habitat (Bavikatte & Robinson, 2011).

Bavikatte et al. (2015) clarify that the concept of biocultural rights has been used to demonstrate a holistic relationship between nature and culture. In this way, biocultural rights reaffirm the profound link between indigenous peoples and other collectivities with the resources that comprise their territory.

In the Political Constitution of Colombia, natural resources are defined as a guarantee for the survival of present and future generations, this notion being assimilated as the legal definition of sustainability. Likewise, it is understood as one of the purposes of the Colombian State and is recognized as a contribution to improve the citizens' quality of life. This involves aspects related to the "management, use, exploitation and conservation of natural resources, the balance of ecosystems, the protection of biological and cultural diversity, and sustainable development" (Constitución Política de Colombia, 1991, Artículo 366), which allows the advance of life for peoples, understood as part of the ecosystem or natural world (Ángel Maya, 1996).

Regarding the philosophical foundation, the Sixth Review Chamber of the Constitutional Court in Decree T-622 (2016) interprets that the Colombian legal system must be configured with a holistic vision of nature with culture that encompasses biological resources and cultural diversity, and groups the traditions, uses and cultural and spiritual customs of the indigenous peoples since they are considered inseparable and interdependent elements (Sentencia T-622, 2016). Therefore, based on the analysis of the experiences of native peoples, who have lived through time, with successes and mistakes, it is possible to intertwine the concept of sustainable development (Brundtland, 1987) to keep the biocultural diversity of their territories for future generations and humanity as a whole (Chen & Gilmore, 2015).

Indigenous peoples are grounded in the community or collective ways of life; possess strong cultural and spiritual ties with their traditional lands and the resources that integrate the so-called ecosystem, for them, territory or life. They assert their rights with the precepts of conservation and sustainable use of biological diversity based on their lifestyle since this becomes fundamental for the conservancy, use, and tenure of the land because from there, they radiate the culture, knowledge, and different ancestral and vernacular practices (Zerda, 2003).

### **Territory for indigenous peoples**

For native peoples, territory means biological life and survival of the human practices that shape their identity (Martínez Alier, 1998). The conception of territory may vary among peoples, who claim that it is endowed with life and offers the opportunity for transformation, understood as using the territory's resources with a productive function.

In consequence, aggressions and the appropriation of nature for other purposes, such as exploitation or hoarding, are considered by native peoples as a short circuit to the flow of the "vital networks of the territory, which include walking, working, talking to it, visiting sacred sites, asking permission to the nature spirits, feeding them physically and spiritually to sustain the reciprocity of worlds, of cultural transmission" (Centro Nacional de Memoria Histórica [CNMH] & Organización Nacional Indígena de Colombia [ONIC], 2019, p. 125).

By interrupting the vital network, the territory becomes a victim, so having this status, the demand for reparation and restoration arises to achieve regeneration, healing, and territorial harmonization (CNMH & ONIC, 2019). This emergence also begs for a discussion around the political factors that direct economic decisions outside the boundaries of the territories of native peoples and ancestral territories (Decreto 2333, 2014).

In the capitalist world, nature is only the object of wealth production, whose aspirations need to deploy economic and political projects involving peoples and communities' expulsion. That is why the existence of these groups becomes an obstacle to the ill-defined development, an impediment given mainly by the physical presence in the places, the different understanding, and the logic they handle in the relationship established with the territory (CNMH & ONIC, 2019).

Development is related to territorial devastation, which interrupts vital networks and the possibility of life production, altering the natural order of the territory through the "corporatization of territories" (Houghton et al., 2008) that seeks the capture of resources, implementing mining, hydrocarbon, and agro-fuel exploitation and road, river, electricity, oil, and gas interconnectivity and superimposing an extractive logic on the territories, thus destroying all socio-cultural, economic and traditional dynamics (Martínez & Houghton, 2008).

It is also evident how ethno-tourism and ecotourism configure a bureaucratic, military, and institutional network breaking the vital network with administrative violence of the territory for the sake of promoting regional development: a situation that threatens peoples' permanence. Under the normalized scenario, it is clear that the Colombian development model responds to social demands that assist the materialization of the essential purposes of the State. Moreover, admitting "diverse economic policies" grants broad power to the Legislative and the Executive to intervene in the economy and make decisions regarding the economic design they consider pertinent, leaving to their free license the desired model to be developed.

As a consequence, the country's history has witnessed the liberal model corresponding to the minimum interference by the State in economic matters; then the Keynesian model, which proposes a minimal intervention in providing goods and services by government, and the last —current, the neoliberal model, which considers counterproductive the State intervention in social or economic matters, looking for the system efficiency. Now, with this summary, we can discuss the development models adopted by our country's native peoples.

However, it is necessary to begin to structure and explore other visions for maintaining the distinctive cultural heritage of the native peoples facing what is incorrectly named "sustainable development" (Naredo, 1996). Arturo Escobar (1995) conveys that the concept of development has always established a political, technocratic, centralist, and hierarchical approach with a low understanding of the populations' imaginaries and their culture, perceived as "abstract objects" or elements to be linked to a statistical exercise and, therefore, must be governed by priorities defined as progress or sustainable development. Cites Escobar:

Therefore, the development model is a system of technical interventions, framed in the management of resources, goods, and services for those who have more needs and has not been conceived as a cultural process but as an instrument of destruction of the territories in favor of the peoples' development. (1995, p. 44)

In an attempt to articulate other visions of development and protect indigenous peoples, in 1989 the International Labour Organization, ILO (Organización Internacional del Trabajo, 1989), adopted Convention 169 on Indigenous and Tribal Peoples in Independent Countries, which highlights the right of these to be consulted and to give free, prior and informed consent to any initiative affecting their territories and ways of life. The instrument was ratified by Colombia under Law 21 (Ley 21, 1991), and the Constitutional Court in 1997 defined it as a fundamental right aimed at preserving the integrity of indigenous life (Archila, 2015).

From that moment on, prior consultation became a tool for dialogue, discussion, pact, and interpellation, with many difficulties and possibilities; it is used arbitrarily and seen as a bureaucratic requirement or an administrative procedure, which must be included as part of the conditions for developing projects in the territories.

Often, the consultation is presented during the execution of the projects, so it is not prior, nor are the mechanisms guaranteed for the communities to know the dimension of the plan, and they are not informed. It is not for free because the spaces designed for equal deliberation limit community participation; consequently, it does not comply with the provisions of ILO Convention 169, according to which the affected communities must participate in the instances where a large-scale project may affect them (CNMH & ONIC, 2019).

Returning to the concept of sustainability for the original territories, three aspects of effective development are proposed: economic growth, social equity, and environmental sustainability to include them without delay within government policies and participation and protection mechanisms. With the knowledge the inhabitants have of the efficient management of the land, their traditions and culture can become protagonists and precursors of an exemplary model to provide solutions, mitigate and possibly eradicate many of the problems such as hunger, pollution, environmental imbalance, and social inequity, which today afflict the world's population and, of course, the native peoples.

We should not forget that the UN has done great work favoring sustainable development, defining some achievable targets (ONU, 2015) to eradicate the mentioned



problems. It has defined 17 goals, whose achievement Colombia (and 192 other countries) established from 2018 to 2030. However, since they belong to the special regime, it is worrying that indigenous communities have not been defined scopes for fulfilling these goals. Perhaps, the reason is that until today indigenous territorial entities have not been instituted, which would allow identifying their territories and taking them into account in the Land Use Planning for the allocation of resources to ensure progress in many listed aspects.

According to the above, it should be noted that the lack of economic resources and discrimination, intentional or not, make the development of these communities inequitable, depriving them of economic growth; if they do not have sufficient resources to manage and protect their territories, they will continue suffering indiscriminate exploitation of natural resources (Pearce et al., 1995) in their lands and repeat the cycle demonstrating in this sense that their development as indigenous peoples is unsustainable and consequently they would tend to disappear.

The synchrony between productive interests and the State through the Direction of Prior Consultation of the Colombian Ministry of the Interior is evident because it ignores territorial rights and often denies the presence of indigenous communities in the places where projects are planned to undertake. That is how the territory begins to be reconfigured and an arrangement is generated according to the needs of the economic and political model, giving continuity to the Conquest and causing genocides to the ways of life, a situation prolonged by the local elites, who succeeded the Crown authorities and have maintained the colonial principles in our country. Oslender (2008) mentions that "territory must be understood not so much as a material substratum or a discrete, delimited space, external and independent of people, but as a type of experience anchored in specific places and generating senses and meanings" (p. 14).

Williams (1977) states that the concept of territory can be compared to what he calls a "structure of feelings" made up of a set of perceptions, lived experiences, and shared values among those who partake in a profoundly localized place or experience. Therefore, the territory, in addition to being a social construction in which cultural, economic, and symbolic practices are developed, can also allow the generation of senses, embodied in those who inhabit the territory and manifest habits and sensibilities (Escobar, 2008; Nazarea, 2006).

### Legal and juridical review

Law 200 (Ley 200, 1936) was conceived to solve land conflicts; later, with rural modernization policies, Law 135 (Ley 135, 1961) (repealed) sought to "reform the agrarian social structure" due to an "inequitable concentration of rural property", and established in Article 29 that uncultivated territories occupied by indigenous communities would not be distributed, but only destined for the constitution of reservations.

Moreover, Law 31 (Ley 31, 1967) cataloged the indigenous as "societies in a less advanced economic stage", governed by their traditions; those considered Indians —

because they are descendants of settlers of the Conquest and live according to the social, economic, and cultural institutions of that era, are close to losing their cultural characteristics, disintegrated from the national society. Therefore, the struggle for land responds to discrimination and violence against communities, especially indigenous, because "this is the basis of rights and these are claimed in culture" (CNMH & ONIC, 2019, p. 244).

The territory of the original peoples allows configuring a system of relationships and places that founds life based on knowledge, traditions, and protection of sacred sites. The recognition of an alien way of conceiving the recoveries means the positioning of a differentiated mode of relating to the land, that is, with the knowledge of the indigenous peoples and the struggle to validate their habits of living in the territory, following the will of the communities and their government (Ley 89, 1890, Artículos 3, 4).

The expression Mother Earth matters since it appears as the representative of the object and scope of the law, specifically in the definition of a victim. "For indigenous peoples the territory is victim, taking into account their cosmovision and the special and collective bond that unites them with Mother Earth" (Decreto-Ley 4633, 2011), and the term conjugates a series of entities —human, non-human, superhuman, from the set of bonds they share and their manifestations. In the context of the law, Mother Earth is the concept for describing the spiritual, symbolic, or cultural ties that different native peoples conceive as what we generically call nature (Ruiz-Serna, 2017).

From the perception of native peoples, Mother Earth is referred to as the spiritual, cosmological, and affective relationships established with nature. It alludes to the connections that communities sustain with a tangled web of beings endowed with agency and will, of experiences with inhabited places or respectful, sustainable, spiritual relationships that they maintain with something that others tend to call nature.

In this same sense, the earth is the place of resistance of the commoner, where the physical relationship of the original peoples exists, the means of production, which sets the structure of individual and collective tenure and the common good. While nature is the one that organizes life and peoples, it is inscribed in the geography, in the river basins, in the voices of the taitas, and wise men who interpret its elements (water, air, wind, earth).

In this regard, the Inter-American Court of Humanitarian Law, IACHR, points out that "for indigenous communities, the relationship with the land is not merely a matter of possession and production but a material and spiritual element that they must fully enjoy and even to preserve their cultural legacy and transmit it to future generations" (Caso de la comunidad mayagna [sumo] awas tingni vs Nicaragua, 2001, p. 6). Finally, territory relates the material with the immaterial, humans and non-humans, which nature sends through the mandate of the law of origin or greater right (Rodríguez, 2017). These definitions are coupled to the living, feeling, and acting of ancestral peoples (CNMH & ONIC, 2019).

From a political ecology perspective, Ruiz-Serna (2017) mentions that establishing the term territory would generate disputes over its control, use, and defense, as well as contradictions regarding the property rights of collective lands and territorial resources, along with all the conflicts that emerge when nature is conceived and assumed in an extractive manner, especially by State agents.

Thus, through political and economic strategies, the different actors in the country sought to appropriate the territories due to their productivity, geographical location, and other characteristics that, according to the interest, propitiated historical territorial, political, and social disputes such as war crimes in indigenous areas, related to the Rome Statute (Corte Penal Internacional, 1998); in specific, those associated with vernacular lands and territories within the framework of the special justice and peace process, situations that also permeate and affect cultural and spiritual processes (JEP, 2020).

Decree-Law 4633 (Decreto-Ley 4633, 2011) dictates "measures for assistance, attention, comprehensive reparation and restitution of territorial rights to victims belonging to indigenous peoples and communities". It is intended that the territory is recognized as a victim, not only because of the incidence and impact of violent events on the geographical place but from the holistic conception that frames the interrelationship of human beings and the territory. That is why the territory takes the role of victim and plot of the vital network, which alludes to the destruction of ecosystems as a result of the armed conflict and all the relationships given in this, to the economic, political interests in which state institutions and bureaucracies, or legal and illegal private agents intervene (CNMH & ONIC, 2019).

For the indigenous, the birthplace, where they live or rebuild their life, is endowed with meanings that are the product of their experiences with the environmental, social, and cultural environment. In other words, beyond a material sense, the land becomes territory, understood as a social and historical product, a space materially and symbolically appropriated by its inhabitants. Consequently, the Constitutional Court of Colombia has pronounced itself intending to protect the rights established in favor of the peoples, issuing rulings that mark the route for their safeguarding:

All actions of reparation to the territory would also have to be oriented to the reestablishment of relationships between people, their territory, and other beings present, so what should be addressed is not simply the reestablishment of symbiotic relationships between animal and plant species but of relationships of exchange and reciprocity between spiritual owners. (Ruiz-Serna, 2017, p. 17)

Further analysis results from local land-use planning processes that have disregarded forms of self-government and culminate in the loss of ancestral territory. There are also cases of peasant colonization in their interior and ignorance on the part of the native peoples of the right to participate in social, economic, or security policy decisions that affect the territory and, therefore, the integrity of these communities in all its dimensions (ethnic, cultural, social, economic, environmental, political). Aspects that should be included without delay in local plans and programs.

**Table 1**

*International legal basis*

Normative	Description and legal approach
ILO Convention 169 on Indigenous and Tribal Peoples (1989)	Establishes a biocultural approach and allows the linking of indigenous peoples' ways of life with territories and their resources.
Convention on Biological Diversity (1992)	Addresses biocultural rights from a scientific perspective and from the relationship with the populations that interact with diversity.
Unesco Convention for the Safeguarding of the Intangible Cultural Heritage (2003)	Adopts measures for the protection and safeguarding of intangible cultural heritage such as traditions, oral expressions, language as a vehicle of heritage, social practices, rituals and festive events, knowledge and practices related to nature and space, and traditional handicraft techniques of ethnic communities; all closely related to biocultural rights.
United Nations Declaration on the Rights of Indigenous Peoples (2007)	Recognizes that respect for indigenous knowledge, cultures and traditional practices contributes to sustainable, equitable development and proper management of the environment.
American Declaration on the Rights of Indigenous Peoples (2016)	Underlines the right of native peoples to self-identification, self-determination, autonomy, organization and self-government, protection of their identity, integrity and cultural heritage, and control over their lands, territories and resources, among others, which strengthens the guarantee of their collective rights in the hemisphere and the recognition of other rights, including biocultural rights.

*Note.* Author's elaboration based on a review of the literature.

We could summarize that the right to self-determination of indigenous peoples depends on the control and maintenance of their ancestral territories that continue to be disputed through the imposition of economic, political, and social projects in regions where the communities remain unconscious and unaware of the organizational forms established within the indigenous territories, forms that do not respond to the State's logics or codes of territorial organization. Table 1 lists some legal and jurisprudential bases that contribute to the territorial analysis of native peoples; additionally, in the world, we find the following legal foundations that also add to the processes of consolidation and resistance of ancestral zones

According to the jurisprudence available for the protection of the territories, the current situation of social segregation and the spatial and symbolic configuration of the ancestral territories, the reduced areas of the reserves, and the scarce land tenure among indigenous families are insufficient for a guarantee to the survival of the original peoples.

This is how the claims for the process of struggle and resistance of the indigenous movement find support; specifically about the constitution, expansion, and sanitation of the territories, because due to the non-existence or disregard of colonial titles that allow the formalization of the territory—together with planning and execution of projects, programs or inconsistent State policies, a transformation is caused in the territory and all the converging actors.

Consequently, collective and individual rights are affected, such as ethnic identity, territory, autonomy, participation, and mechanisms for self-development. Institutions have adopted the naturalization of violence through indifference to the problems of native peoples. Institutional meanness is present in the attention and, at the same time, it is provided as a great favor when it should be the fulfillment of duty for the materialization of the essential purposes of the State.

This indifference has generated a high level of begging by indigenous children displaced to urban centers, an activity sanctioned by the dominant society as offensive and a product of parental irresponsibility. The community members are then internalized and stigmatized as incomplete beings, incapable of fending for themselves and to whom the State should take care of their children.

### **Approach to the territory from the perspective of indigenous peoples' exercise of self-government**

From the peoples' cosmogony, the connection between territory and the existence of life is linked to a whole system of values, determining a before and an after. Because for such a link to acquire value it is necessary to understand that all elements and beings inhabiting such soils are endowed with immeasurable value and strength and that they are determinant for the life cycle development defined within the life projects that transmit and constitute the written word of life (Cataño, 2020).

Although the sacred character of the spaces given by the native peoples is preceded by a symbolic and spiritual relationship for indigenous and territory, as responsible for the correspondence of worlds according to the cosmogony, this process excludes a detachment from the material since everything in the habitat is sacred, as it is the sustenance of life and the physical and cultural survival of the peoples. Thanks to this, there is a connection between the human and the divine (Capra, 1998).

In this sense, it could be thought that the territory is the system of relations between human beings and nature, which is constituted under the maxim of establishing a point of equilibrium and harmony. Consequently, it will function as a control mechanism, which would regulate relations amid inhabitants under the guidance of traditional authorities.

García (2002) mentions that the territorial thinking of the native peoples diverges from the vision of spatial planning managed by the rest of the Colombian nation because for the indigenous peoples territoriality extends beyond occupation and appropriation since the socio-cultural relations and imaginaries of the territory transcend the

environmental management of it: they cannot be understood without the symbolic and mystical aspects to which are associated, and which are articulated with other dimensions relegated by Western knowledge.

Regarding the systems that guide peoples' life, it is revealed that autonomy has a double connotation. On the one hand, there is the economic aspect, and on the other, the political one. Both give value to a whole system of self-government, which encompasses issues related to good living (Choquehuanca, 2010) such as food sovereignty (Andoque, 2011), education, health, cultural practices, among others, and issues associated with the territory and the economic aspect, which imply the free disposal of everything that coexists within it.

The development of the peoples will depend on the system of self-government each community has adopted within its life plans, based on the logic that it contains the tools and —it should be noted the procedures under which social or community life is regulated, conflicts are resolved and organized internally to survive as native peoples, heirs of a legacy that comes from the law of origin or word of life since not all peoples have a documented or written life plan based on the bioregional natural and cultural diversity (Guimarães, 2001), the particularities of the peoples, and the way of conceiving and seeing themselves in the world. For this reason, it has been insisted that exclusively are they who execute the power to propose and decide which priorities to include for the development of their life plans.

However, in the particular case of the peoples studied in the department of Cauca, the State has not adopted the necessary measures to advance with the implementation and development of life plans. Therefore, their self-government systems have not been established, making it even more difficult for the people to exercise their autonomy and self-determination.

Undoubtedly, there are legal and illegal economies practiced by external actors. On the one hand, there are programs and projects aimed at the exploitation of natural resources, promoted by the national Government without carrying out due consultation processes and convenience analysis; on the other hand, there are armed and civilian actors with economic interests that sometimes use those programs to carry out the dispossession of lands and exploitation of resources owned by the communities, which affects the natural and harmonious balance of life and implies open opposition to the development of their organizational systems. "A central space in all economic, domestic, and socio-cultural activities of the local inhabitants, including the river, constitutes the main factor of cultural identity in this region" (Oslender, 1998, p. 22).

The territory and its resources are intimately linked to the existence and survival of these peoples. For this reason, these elements do not constitute an object of domination, but an essential and complex element, related to ecosystems and biodiversity. Accordingly, for ethnic communities, the territory is not individually conceived but for the community that inhabits it, acquiring an eminently collective character.

### Native peoples and territory

The indigenous cultures of America consider the defense of their territory and have appropriated the legal and technical notions of their countries to, from the historical perspective, defend their rights, which converge in the greater right or law of origin (Rodríguez, 2017).

According to the CNMH and ONIC, indigenous peoples "used the text and the word to protect the land and life, and leave thought to their descendants, they left footprints in their territory, it is the encounter with the written letter" (2019, p. 61). Thus, the struggle for the land shows the path of the rights that are in it, not in the codes or the official law; in this journey, it is necessary to point out that earth belongs to the spiral of memory, for this reason, it was conceived that the struggle went beyond "the land for the one who works it" and "the land without bosses" (CNMH & ONIC, 2019, p. 251).

It is often assumed that recovering the territory only implies regaining tenure over land that belonged to the original peoples. But it is something much more vital and profound. It is "recovering the lost link with what shapes and nourishes"; something too difficult to understand for those who only see in the territory extensions that can be exploited for extraction.

Therefore, it is crucial to protect and revalidate the notion of autonomy that allows indigenous community members to designate themselves as originating from peoples such as the Yanakuna, Inga, Kokonuko, Misak, or any other, and at the same time enable indigenous authorities and elders to assume their role as communicators of the living word that makes the territory survive.

For this reason, their development model resists everything that imposes on their autonomy, which excludes and violates it. This voice becomes the expression of the law of origin, from where the greater right radiates (Rodríguez, 2017), which preceded the right of the State. With autonomy, the memory kept in the Earth, in Mother Earth, in Nature, in the Territory is being recovered; these elements belong to the natural law and that is why their implications are more significant since Laws such as 89 of 1890 and its Article 12 or 135, among others, have been reverted (CNMH & ONIC, 2019).

According to the information analyzed and captured in the matrix of threads of representation of the territories, the principal dimensions or threads of the territory fabric of each ancestral community elaborated with the reading of the safeguard and life plans of the most populated original peoples of the department of Cauca are related (Table 2) to come close to what can be called the economic model, the knowledge, and the ancestral practices of the indigenous communities; heritage already embodied and developed to a great extent in the chagra [2] (García & Roca, 2004).

## Conclusions

With the State policies developed on restricting the use of the territory of indigenous peoples, it is clear that these have changed their uses and customs, practiced new techniques for managing the land and disposing of it, and introduced new seeds; therefore, the traditional forms of planting and native seeds began to disappear.

These policies have also led to family conflicts, disputes over land inheritance or boundaries, increased indigenous discrimination, and even changes in traditional forms of organization, which have transmuted from their government —cabildo, to unions, cooperatives, and community stores.

The agricultural frontier, under pressure, expands indigenous production to the paramos and causes a reduction of transitory products due to permanent crops. The communities begin to "parcel" the territories and dedicate to livestock, leaving behind the formerly predominant agriculture; all of this is due to the change in land use.

Production needs to recover the training schools, the land, the community work, the government, and the administration, seeking a good life and not economic development. To achieve it, the central premise on which the conception of native peoples can be based must be that of biocultural rights, which allow a profound relationship of unity between nature and humans.

In light of the above, it is necessary to design solid and effective substantive and procedural legal instruments so that society, organizations, and indigenous peoples can intervene successfully before the authorities to defend the environment and ancestral territories. It is imperative to turn natives into protagonists, to integrate them without invading them, respecting what they are because they have the right.

The Colombian Government must demonstrate its administration includes these communities, so they can show themselves, teach us what they are, transmit their knowledge to us voluntarily, and contribute to solutions. Through the availability of resources and training, they will continue advancing and evolving without discrimination or symptoms of racism as has been happening throughout history.

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Table 2

Matrix of threads of representation of the territory

Indigenous peoples	Thread 1: social	Thread 2: economic	Thread 3: environmental	Thread 4: cultural
Yanacona people "Sumak kawsay kapak ñan". "Along the Rial path for the harmonization and balance Yanacona". 2009	<ul style="list-style-type: none"> <li>- Building links for coexistence.</li> <li>- Pedagogical territory: (education and research).</li> <li>- Intercultural indigenous health.</li> <li>- System for the care, prevention, protection, and reparation of Yanacona families.</li> </ul>	<ul style="list-style-type: none"> <li>- Own economic system, harmonious with the identity and the territory.</li> <li>- The chagra Yanacona: an exchange of knowledge.</li> </ul>	<ul style="list-style-type: none"> <li>- Community systems of environmental management to allow the return to balanced life cycles and territorial harmony.</li> <li>- Ancestral territories.</li> <li>- Management and utilization of the biophysical space.</li> </ul>	<ul style="list-style-type: none"> <li>- Cultural management system to strengthen ancestral wisdom, spirituality and cultural manifestations.</li> <li>- Indigenous communication system.</li> </ul>
Inga people Nukanchipa kausaita iuaaita mana sakisunchi uañungapa. 2013 "So that our life and thought may live on"	<ul style="list-style-type: none"> <li>- Identity.</li> <li>- Spirituality.</li> <li>- Integrality as a way of interpreting the world and building relationships.</li> <li>- Historicity.</li> <li>- Solidarity, cohesion, autonomy.</li> </ul>	<ul style="list-style-type: none"> <li>- Chagra and self-economy</li> </ul>	<ul style="list-style-type: none"> <li>- Territory and environment.</li> <li>- Autonomy for the management of the territories.</li> </ul>	<ul style="list-style-type: none"> <li>- Own medicine and health.</li> <li>- Interculturality.</li> <li>- Oral tradition.</li> <li>- Linguistic diversity.</li> </ul>
Ethnic Safeguard Plan for the Kokonuko Indigenous People. 2013	<ul style="list-style-type: none"> <li>- Indigenous health and intercultural system.</li> <li>- Own indigenous education system.</li> </ul>	<ul style="list-style-type: none"> <li>- Own system of intercultural economy.</li> <li>- Own forms of economy in the articulation of traditional wisdom and practices with Western technical knowledge and technological tools.</li> </ul>	<ul style="list-style-type: none"> <li>- Indigenous environmental authority in the territory.</li> </ul>	<ul style="list-style-type: none"> <li>- Autonomy in political, organizational, social and cultural processes.</li> <li>- Intercultural systems of their own.</li> <li>- Strengthening of research processes.</li> <li>- Indigenous court.</li> </ul>
Nasa-Paez "Baka'cxte'pa nasnasa nees yuwa". 2013	<ul style="list-style-type: none"> <li>- Respect for own actions of dialogue, coexistence and peace developed by indigenous authorities with social and political actors in the region.</li> <li>- Plan for the fulfillment of fundamental social and cultural rights.</li> <li>- Strengthening and respect for self-government and government systems.</li> <li>- Strengthening and recognition of the indigenous systems.</li> </ul>	<ul style="list-style-type: none"> <li>- Strategy for the fulfillment of economic and environmental rights.</li> <li>- Strengthening of the economic and productive base of the communities.</li> <li>- Plan for the strengthening and guarantee of economic rights.</li> <li>- Plan for the strengthening and guarantee of economic rights.</li> <li>- Indigenous financial fund for economic strengthening.</li> </ul>	<ul style="list-style-type: none"> <li>- Program for environmental protection and generation of environmental goods.</li> </ul>	<ul style="list-style-type: none"> <li>- Strategy for the fulfillment of cultural rights.</li> <li>- Program to support cultural and spiritual expressions.</li> <li>- Restitution, protection and respect for the territory of indigenous peoples.</li> <li>- Restitution, protection and respect for ancestral territory.</li> <li>- Program for the protection of ancestral territory.</li> <li>- Program for the protection of territorial rights.</li> </ul>



<p>Misak "Recovering the land to recover everything". 2009</p>	<ul style="list-style-type: none"> <li>- Food autonomy is a fundamental right to guarantee life in the territories.</li> <li>- Native seed production program.</li> <li>- Promotion of the consumption of traditional native products throughout the territory.</li> <li>- Recognition and application of native education.</li> <li>- Special spirals of the Nutrition and Health Plan</li> <li>- Historical memory as a center for research and learning in education.</li> <li>- Own health model based on ancestral knowledge.</li> </ul>	<ul style="list-style-type: none"> <li>- Recovery of productive soils and the natural environment.</li> <li>- Encouragement of policies to replace affected areas with new land for agricultural practices.</li> </ul>	<ul style="list-style-type: none"> <li>- Environmental authority and autonomy as they are from millenary times.</li> <li>- Environmental programs formulated by the authorities of a Nachak.</li> <li>- Environmental management of the territory.</li> <li>- Protection and conservation of ancestral heritages.</li> <li>- Water as a fundamental right of Mother Earth and life.</li> </ul>	<ul style="list-style-type: none"> <li>- Cultural and spiritual strengthening with a sense of belonging in all spaces and territories.</li> <li>- Strengthening of Nachak unity.</li> <li>- Protection of their own knowledge and wisdom as intangible and cultural heritage of humanity.</li> <li>- The Nachak as spaces for their own communication that guarantee growth and cultural permanence in time and space.</li> <li>- Art as one of the foundations of self-communication, which guarantees the transmission of ancestral knowledge to future generations.</li> <li>- Cultural and sporting events as a framework for strengthening and survival.</li> </ul>
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*Note.* Authors' elaboration based on the review of the Life Plans of the native peoples of Cauca, Colombia (Carmona, 1998; Chuji, 2009).

[1] According to the words of a taita: "Indian or indigenous is equivalent or synonymous with a colonial subject or dominated by another. The Yanakuna nation, cultural nations or ancestral peoples must be called by their antonym or ethnonym, therefore, being Yanakuna does not make one Indian or indigenous, it makes one belong to the original Yanakuna or Yanacona people. The Indian or indigenous is an external, pejorative, colonial qualifier, which belongs to the monocultural backwardness; it stigmatizes and "de-dignifies" being Yanakuna or native of an ancestral people".

[2] In the chagra, the native peoples express imaginaries, knowledge, technologies, ancestral practices; in addition, by accumulating experiences of its members in the continuous interaction of the spiritual, cosmogonic and human, a physical, spiritual and symbolic space is generated, with appropriate biophysical characteristics for the establishment and biological development of plants and animals: it creates and develops areas and necessary elements that consolidate the good living of the human, animal, spiritual and other communities that develop or establish themselves in the chagra in their environment.