Berghof Foundation

Interdependency and Interference:

The Wayuu's Normative System and State-based Conflict Resolution in Colombia

Katrin Planta

Colombia Case Study Report

Executive Summary

This report is part of a wider comparative research project generously funded by the German Foundation for Peace Research and implemented by the Berghof Foundation. Under the heading "*Peaceful Coexistence? 'Traditional' and 'Non-traditional' Conflict Resolution Mechanisms*", the project analyses the patterns of coexistence between 'traditional' (indigenous, local, community-based) and 'non-traditional' (imported, liberal, state-based, Western) approaches to conflict resolution based on field research in Colombia, Liberia and Northeast India. The main question of the research project is whether the coexistence of traditional and non-traditional mechanisms of conflict resolution leads to tension and competition between these mechanisms, thereby potentially furthering conflict, or whether the coexistence leads to more (or better) conflict resolution options for the population, thereby promoting conflict settlement processes.

This report addresses findings generated from the Colombia case study that centred on the coexistence between the indigenous system of conflict resolution of Colombia's most populous indigenous community, the Wayuu, and state-based intervention to solve conflicts over land within La Guajira department. Field research in Colombia was conducted in June and July 2015 in the capital city Bogotá and in various sites of La Guajira. While the Wayuu conflict resolution system is strongly rooted in Wayuu culture and is still applied today, it also faces a number of challenges related to the general decline of traditional values and authorities due to the process of deculturalisation, the emergence of new leaderships, and the conditions of structural violence within Wayuu territory. As a result of this situation, the *Junta Mayor Autónoma de Palabreros Wayuu*, an organisation founded in 2008 to preserve the cultural heritage of the Wayuu, including their ancient conflict resolution mechanisms, warns against the gradual loss of the ancestral notion of social order among the Wayuu and the replacement of their traditional compensation system by Western modes of justice administration (see Junta Mayor Autónoma de Palabreros Wayuu 2009).

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From a historical perspective, the coexistence between the Wayuu conflict resolution system based on the figure of the *palabrero*, which is a system of collective compensation payments and the state-based approaches to resolve conflict has evolved from a fairly independent parallel existence, to pragmatic ad-hoc arrangements, and then to an (imperfect) institutionalisation of coexistence and selective integration of indigenous elements into state-based conflict resolution processes. Despite the relatively strong legal institutionalisation of the practice of coexistence, conflict resolution pluralism in La Guajira is not without conflict. Challenges relate to conflicts over unclearly defined legal competencies between indigenous and state-based conflict resolution mechanisms and undue interference of one mechanism in the sphere of the other. More problematic than the challenges arising from coexistence as such though are the inherent weaknesses of both approaches individually, including the general inability of the Colombian authorities to adequately protect the population from the aggression of violent actors in the context of an internal armed conflict and the declining authority of traditional conflict resolution actors.

Hence, this study comes to the conclusion that coexistence per se is an accepted principle in both the indigenous and the non-indigenous community. During field research, neither state nor indigenous representatives denied the right of the other conflict resolution mechanism to exist. Rather, what was judged problematic is the discrepancy between the legal protection of coexistence in theory and its implementation in practice. Recommendations to enhance peaceful coexistence therefore include a clearer division of tasks, capacity building for staff within the justice sector, the establishment of institutional roadmaps to provide stronger orientation on the different steps and entities in the conflict resolution process, as well as capacity building and education regarding existing conflict resolution mechanisms for the indigenous population. The latter point is particularly relevant in regard to the insight that the availability of various conflict resolution mechanisms was particularly helpful for those segments of the population that had information on, and access to, both mechanisms, as they could use them simultaneously to tackle different aspects of a conflict. In addition, the improvement of the general living conditions of the Wayuu was considered another key factor to allow them to live according to their traditions in the first place, including their traditional conflict resolution mechanisms.

From a more critical perspective however, it can be argued that the challenges of both formulating and implementing mutually-beneficial coexistence arrangements relate to the underlying tension between the neoliberal practices of an elite-driven, state apparatus, on the one hand, and its constitutional obligations of protecting ethnic minorities, on the other –even if these obligations present a threat to the diffusion of 'Western' state-building norms, concepts and practices and puts at risk the implementation of strategic public policies, especially in the context of the sensitive issue of land exploitation. Resolving these tensions would require much more than finding better coexistence arrangements for conflict resolution but would mean fundamentally changing the state's engagement with indigenous communities at all levels, including local, regional and national.

About the Author

Katrin Planta is a project manager in Berghof's programme on Agents of Change for Inclusive Conflict Transformation and for the project "Peaceful Coexistence? – 'Traditional' and 'non-traditional' conflict resolution mechanisms". Katrin joined Berghof in 2009, first as a project officer in the Berghof Foundation's "Resistance and Liberation Movements in Transition" project, then as a project manager in the Agents of Change for Inclusive Conflict Transformation and the Dialogue, Mediation & Peace Support Structures programmes. In 2012/13, she served as an interim coordinator of the Berghof Handbook for Conflict Transformation. Katrin graduated in Social Science from Westfälische Wilhelms Universität

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[1] All photographs displayed here have been taken by the author of this report.

1 Introduction

From November 22 to November 27, 2015, the National Indigenous Organization of Colombia (*Organización Nacional Indígena de Colombia*, ONIC) called upon its members to participate in a large-scale mobilisation. Activists marched from different areas of the country towards the capital city of Bogotá (*Marcha y Audiencia Pública en defensa de la Jurisdicción Especial Indígena, Derecho a la Movilización y la Protesta Social*) in defense of the Special Indigenous Jurisdiction – the constitutional right of indigenous authorities to self-administer justice in their territories. Only a few months before, indigenous leader and activist Feliciano Valencia had been arrested by the Colombian state authorities. Valencia, an advisor of the Association of the Indigenous Leaders in the North of Cauca (*Asociación de Cabildos Indígenas del Norte del Cauca*, ACIN) and an important political leader of the Nasa/Paez community who had been awarded the National Peace Prize in 2000 for his leadership role in his community's peaceful resistance campaigns, was sentenced to 18 years in prison. He was charged for having participated in the kidnapping and detention of a corporal who had infiltrated an indigenous protest march in 2008 and who had been sentenced to 20 lashes by an indigenous council upon the discovery of his infiltration. While the Colombian state authorities judged Mr. Valencia's activities as a crime,[2] the indigenous (and international observer[3]) community saw themselves being within the framework of a legal customary justice process. They perceived Valencia's arrest as political persecution and criminalization of the indigenous movement, especially because indigenous representatives had won several municipalities under Valencia's leadership ahead of the October 2015 regional elections. This incident not only showcases the legal challenges of conflict resolution coexistence, but also highlights the power-political dimension underlying and influencing these frictions. Investigating how far these frictions undermine the potential positive effects of conflict resolution coexistence was an essential part of the overall research project "Peaceful Coexistence? 'Traditional' and 'non-traditional'[4] conflict resolution mechanisms" into which this case study feeds.

1.1 Rationale and contribution of the case study

Generously funded by the German Foundation for Peace Research and implemented by the Berghof Foundation, this comparative research project aims to generate knowledge about the patterns of coexistence between different conflict resolution mechanisms and the impact of the "simultaneous existence of distinct normative systems" (Van Cott 2000, 209) on conflict settlement processes based on case study research in Colombia, Liberia and India. To answer the overall research question of whether the coexistence of traditional and non-traditional mechanisms leads to tension and competition, thereby

[2] In 2010, Feliciano Valencia had already been arrested over the same charges but was eventually released. However, the sentence was annulled upon an appeal by Colombia's Public Ministry, opening the possibility for a resumption of the case.

[3] See Colombia, Europe, EEUU Coordination Group for Human Rights Defender 2015.

[4] The differentiation between traditional and non-traditional is made here for analytical purposes and not in order to describe a real-world dichotomy. Indigenous conflict resolution mechanisms were understood as being part of traditional approaches as defined below. The term indigenous will be understood according to the working definition of "indigenous communities, peoples and nations" suggested by the UN Special Rapporteur José Martínez Cobo in his report on the Prevention of Discrimination and Protection of Minorities that reads as follows: "Indigenous communities, peoples and nations are those which, having a historical continuity with pre-invasion and pre-colonial societies that developed on their territories, consider themselves distinct from other sectors of the societies now prevailing on those territories, or parts of them. They form at present non-dominant sectors of society and are determined to preserve, develop and transmit to future generations their ancestral territories, and their ethnic identity, as the basis of their continued existence as peoples, in accordance with their own cultural patterns, social institutions and legal system." (see UN 2004)

potentially furthering conflict or whether the coexistence leads to more (or better) options for the population, thereby promoting conflict settlement processes, three broad research questions were formulated at the beginning of the research:

1) How are traditional and non-traditional conflict resolution mechanisms constructed, and how do they function in a particular context?

2) What patterns of coexistence can be observed between the two approaches?

3) What effects do the various forms of coexistence have on the conflict settlement process and outcomes?

By answering these questions, the project aims to critically engage with the academic discourse on hybrid approaches to solving conflict and building peace (see Mac Ginty and Richmond 2015) and to produce practical insights into how the coexistence of different conflict resolution mechanisms can be carried out in a mutually beneficial way, ideally to "strengthen one another through legitimacy, effectiveness and capacity to support all citizens in resolving their conflicts" (Sentongo and Bartoli 2012, 36). Therefore, the project focuses not only on understanding how traditional conflict resolution mechanisms function in a particular context, as have many valuable studies before, but rather on their interaction with non-traditional conflict resolution mechanisms. In the framework of this project, coexistence is not conceptualised in a normative way, presupposing cooperation. Rather, it is understood as entailing different modalities, ranging "from positive interdependency to mutual deference to antagonism" (Galvanek and Planta 2015, 5). It is also understood as a dynamic process that evolves and changes throughout time and space as cultures mutually borrow and adapt to each other's practices and hence, often results in the formation of hybrid approaches, themselves characterised by constant change and a "lack of fixity between categories" (Mac Ginty and Richmond 2015, 5). While the 'hybrid turn' in peacebuilding has gained much interest for its potential for providing innovative and non-standard answers to conflicts, Mac Ginty and Richmond warn from a critical perspective against the instrumentalisation of hybridity by liberal agendas seeking to shift away responsibility and lower intervention costs by "getting local actors to work in the service of strategic and liberal internationalist goals", resulting in yet another form of (soft) hegemony (ibid., 2, 7, 10). Looking at the impact of international peacebuilding interventions in post-conflict contexts, Daxner et al. (2010, 11) in turn highlights the danger of interventions causing new conflicts.

In the context of this project, we therefore critically engage with the various forms of hybridity that exist and take a specific interest in instances where the simultaneous application of different mechanisms to resolve conflicts has triggered new conflicts. Analysing the coexistence between indigenous and state-based conflict resolution mechanisms in Colombia's La Guajira department bordering with Venezuela and the potential hybrid approaches that have emerged from this coexistence, this paper will provide a contextual analysis of both the risks and the opportunities of conflict resolution pluralism. This report only addresses findings from Colombia where research is centred on La Guajira department, the home of the Wayuu, Colombia's as well as Venezuela's biggest indigenous population group.[5] Similarities notwithstanding, Colombia's 102 self-identified indigenous peoples[6] have differing conflict resolution practices, display different organisational dynamics, and have built their own distinct historical relations with the state. This study will therefore not make any assessment of the coexistence

[5] The department is also populated to a much lesser extent by the *kogi*, *wiwa* and *arhuaco* communities.

[6] While the ONIC identifies 102 indigenous peoples, the UNHCR recognizes 87 indigenous peoples in Colombia. Information taken from UNHCR's website: http://www.acnur.org/t3/pueblos-indigenas/pueblos-indigenas-en-colombia/ [last accessed 25.11.2015].

between state-based and indigenous conflict resolution in general even though reference to other cases will be made where appropriate. The specific case of the Wayuu was chosen for a number of reasons. First of all, the Wayuu conflict resolution system is comparatively well-established and intact and fulfils the criteria for 'traditional' mechanisms for conflict resolution as defined for this project,[7] including:

- Considerable longevity (time)
- Locally inspired (location)
- Historical evolution within a society (context)
- Custom-based/informal & process-oriented (methodology)
- Non-state or pre-state: not enshrined in/controlled by state procedures (legal/political status)

Second, as the overall research project examined land conflicts in particular across all three selected case studies, the Wayuu case was especially interesting due to the number of land conflicts both within the Wayuu community and with external actors, enabling comparative analysis regarding the scope of the traditional conflict resolution mechanisms. Third, the Wayuu case is particularly interesting because it could be used in the future to 1) analyse the impact of different political frameworks (Colombia vs. Venezuela) on indigenous conflict resolution mechanisms and their co-existence with state-based conflict resolution and 2) to allow for in-country comparison to understand how one legal framework might impact various indigenous conflict resolution mechanisms differently.

The Wayuu's approach to conflict resolution consists of a system of compensation payments that are negotiated on a case-by-case basis through the mediation efforts of the traditional *Pütchipü'üi* (in Wayuunaiki) or *palabrero* (in Spanish), a term that can be translated as "he who carries the word" or literally "the legs that carry the word". The figure of the *palabrero* has its mythical foundation in the bird 'Utta' and designates somebody who is an authentic specialist for resolving conflict. In 2004, the Wayuu's conflict resolution approach headed by the institution of the *palabrero* was declared a good of national cultural interest by the Colombian Ministry for Culture, and in 2010, it was admitted to the UNESCO list of immaterial world cultural heritage. Today, this traditional system - based on customary law with a strong oral tradition and the principles of collective responsibility, reciprocity and redistribution - is also protected through the Colombian Constitution of 1991 but also complemented and challenged by a broad range of state-based instruments. State-based mechanisms relevant for this case study include:

- The ordinary justice system, including alternative dispute resolution mechanisms (ADRM) and specialised services to improve access to justice for marginalised communities such as local 'justice houses' (*Casas de Justicia*)[8]
- Activities of law enforcement institutions such as the national police under the Ministry of Defence;
- Land property registers
- Ministerial/executive interventions (mainly through the Ministry of Interior's 'Conflict Unit')
- Ombudsmen offices

In addition, there are also institutionalised dialogue platforms between the government and indigenous communities set up to discuss and resolve conflicts both on a national and regional level, such as the National Consultation Roundtable between the government and the indigenous people (*Mesa*

[7] These criteria were established in the concept note that served as a guideline for the elaboration of the individual case studies (Galvanek and Planta 2015, 15).

[8] There are more than 70 local Justice Houses in Colombia, three of them in La Guajira (Barranas, Riohacha, Uribia), Ministerio de Justicia y del Derecho 2012, see also a mapping at: http://www.casasdejusticia.gov.co/Casas-de-Justicia/Dependencias [last accessed 22.01.2016].

Permanente de Concertación Nacional entre el Gobierno y los Pueblos Indígenas) or the Dialogue and Consultation Roundtable of the Wayuu *(Mesa de Diálogo y Concertación para el Pueblo Wayuu).* Against the background of this multitude of instruments, this study aims to contribute to an improved understanding of the different challenges and modes of coexistence between indigenous and state-based conflict resolution mechanisms.

1.2 Research methods

The desk research phase for this case study consisted in a thorough review of secondary sources, including both academic writing on the culture, traditions, and socio-political system of the Wayuu community as well as specific literature on the historical and recent conflicts in La Guajira and the Wayuu's normative framework.[9] Specialised literature research was conducted in Berlin (*Ibero-Amerikanisches Institut*),[10] Bogotá (*Instituto Colombiano de Antropología e Historia,* ICANH)[11] and online. In addition to secondary sources, primary sources issued by conflict stakeholders and governmental authorities were consulted (reports, press releases, web-site content, etc.). Based on this solid background research, field research was conducted between 19th June – 19th July 2015 in Colombia, more specifically in Bogotá and various municipalities of La Guajira department (Riohacha, Barrancas, Uribia, Hatonuevo)[12]. Field research included qualitative, problem-centred interviews, participatory observation and archive research. Interview guidelines were clustered according to four broad sets of questions relating to 1) conflict analysis; 2) nature, scope and assessment of traditional and non-traditional conflict resolution mechanisms; 3) patterns of coexistence; and 4) effects of coexistence on conflict settlement processes and outcomes. In total, 36 interviews with one or several participants were conducted (see annex for a full list of resource persons). They were audio-recorded and selectively transcribed.

In addition, various observations were conducted in the field, including a day-long, conflict resolution meeting facilitated by a *palabrero* and involving about 60 members of the Uriana clan at the Manuyaro community in Carrizales, Uribia; a conciliation process at the Indigenous House in the city centre of the department's capital Riohacha; a kick-off meeting of the project 'Strengthening the normative system of the Wayuu community', partly funded by USAID (https://www.usaid.gov/) and the US-based NGO ACDIVOCA (http://acdivoca.org/) at the Cultural Centre in Riohacha; a conflict intervention by the Ministry of Interior's Indigenous Affairs Unit in an indigenous community in Hatonuevo; and a capacity-building workshop on land rights for indigenous authorities and community members in Uribia. Next to these observations in the Guajira department, I was also able to attend a meeting of the above mentioned *Mesa de Diálogo y Concertación para el Pueblo Wayuu* in Bogotá that involved approximately 20 representatives of the *Mesa* and various delegates from different Ministries, including the Ministry of Interior and the Ministry of Agriculture. The data gathered through interviews and observations was finally enriched by an analysis of conflict cases uploaded at the Information System of the Indigenous Communities in la Guajira (*Sistema de Información de las Comunidades*

[9] Anthropologists, linguists, political scientists, and sociologists have covered aspects of the Wayuu's socio-political, economic and spiritual life (Polo Acuña 2012, Mansen 1988, Saler 1986, Perrin and Machdo 1986, and Goulet 1981, the latter four cited in Guerra Curvelo 2002). Other writings have taken a more explicit interest in the particularities of the Wayuu approach to conflict resolution (see Martínez and Hernandez 2006, Guerra Curvelo 2002, Díaz-Bone 1997).

[10] http://www.iai.spk-berlin.de/bibliothek.html [last accessed 30.11.2015].

[11] http://www.icanh.gov.co/ [last accessed 01.12.2015].

[12] Please find a map of La Guajira department in the annex.

Indígenas de la Guajira)[13] and archived conflict cases that I was allowed to consult at the Indigenous House in Riohacha. The archive encompassed 60 pending and closed conflict cases that had been attended by the staff of the conciliation service throughout the year 2015 (January – June).

Despite the richness of the gathered material, a number of limitations are worth highlighting. First of all, the study has a certain bias with regard to the community voices included here. Partly for logistical reasons, most interviews were held in communities relatively close to urban centres where the population was mostly bilingual and had the possibility to interact frequently with state institutions. It is therefore important to highlight here that perceptions of traditional decline or certain knowledge about state services might have differed when talking to informants from more remote areas of La Guajira, such as the very north where part of the population lives relatively isolated, with little access to basic services (health, education, formal justice system) and partly in a situation of extreme poverty. It must also be assumed that there is a certain bias with regard to conflict topics addressed in the interviews. For instance, it was often only when directly asked for information that interviewees would mention conflicts implicating paramilitary violence in the department. On several occasions, this 'taboo' topic was referred to on a meta-level with interviewees referring to the reluctance of community members to address this issue because of fear. Another topic that was difficult to address related to the power hierarchies within Wayuu society and whether they could potentially affect the fair conduct of the conflict resolution process. Finally, it should not be underestimated that the whole research was conducted by a 'non-native' of both Colombian and Wayuu society whose own interpretation of traditional practices might not always capture and adequately reflect he lived reality of the community. This is especially worth highlighting as I lack Wayuunaiki language skills, a fact that was particularly challenging in a society that highly values the spoken word. To mitigate these caveats, meta-discussions on terminologies and the specific meaning of important words were a regular part of interviews. In that context, I noted that many interviewees referred to 'Western concepts' they thought I would be more familiar with to explain their cultural practices. For instance, the term *palabrero* was frequently translated as 'lawyer' which is, according to the *palabrero*s I spoke with, an entirely different concept. The question I am still struggling to answer is whether the different conceptualisations can be explained by my interviewee's effort of 'cultural mediation' or whether they, at least partly, reflect the misunderstanding of Wayuu community members themselves of their own system of conflict resolution. A reason to assume the latter is true relates to the complaints by the *palabreros* themselves that their work has been misrepresented (and literally 'sold') as the work of a lawyer by some of their own colleagues.

Despite these caveats, I hope that what follows can provide the reader with relevant insights and contribute to future research on this fascinating topic. Having introduced the general framework and research methodology for this case study, Chapter 2 will provide a brief panorama of the Colombian conflict and conflict resolution landscape. Chapter 3 then zooms into the particularities of La Guajira and the specific conflict resolution system of Wayuu society. Chapter 4 illustrates the various types of land conflicts that exist in Wayuu territory. Chapter 5 finally delves into the analysis of the coexistence patterns between indigenous and state-based conflict resolution mechanisms and provides an analysis of the factors that have shaped this coexistence over time. The case study report concludes with reflections and recommendations.

[13] http://www.sisaid-guajira.org/ [last accessed 26.01.2016].

2 Setting the scene: The national conflict (resolution) context

Since its independence in 1810 from Spanish Colonial Rule, Colombia has survived more than nine civil wars and over 40 regional rebellions (Santamaría Salamanca 2004, 463). While the country's protracted violence originated in the struggle between liberal and conservative parties (known as '*La Violencia*' from 1948-1958), it grew in complexity and became characterised by the multitude of involved actors committing gross political and social violence and human rights violations. Land issues, including a historically unequal distribution of land property, forced displacement by armed actors and private business, legal insecurity due to the informality of land possession, as well as distinct visions and approaches to how Colombia's enormous natural resource potential should be best used, are at the heart of Colombia's armed conflict. Against this scenario, the following section reviews the root causes and dynamics of conflicts over land in Colombia (2.1) with a particular interest in those land conflicts that affect the indigenous population (2.2) before turning to the legal framework in which conflict resolution coexistence is embedded (2.3) and a discussion of state-based approaches to tackle conflicts over land (2.4).

2.1 Land as a key feature of Colombia's internal armed conflict and indigenous peoples' struggle for their rights

Stretching over an area of 1,141,748 km² of land (approx. 3.5 times the size of Germany), Colombia has today been transformed from an overwhelmingly rural into an urban society, with three quarters of its citizens living in urban areas, nine million alone in Bogotá. In their day-to-day life, many citizens are not directly affected by armed conflict which is experienced much more strongly in the country's rural areas which are the main theatres for conflicts over land. Land distribution in Colombia is among the most unequal in the world, with a Gini co-efficient[14] of 0.874 according to the Geographic Institute Agustín Codazzi (Instituto Geográfico Agustín Codazzi 2012, 97). Structural problems date back to the distribution of land in a highly segmented society of 'whites', 'mixed', 'indigenous', and 'black slaves' under colonial rule and according to criteria of castes under the Spanish Crown. In the 19th century huge amounts of public lands were granted to the military, politicians, pawnbrokers or other politically influential people, partly in order to pay the country's debts from the War of Independence, accentuating the unequal access to land property. In the 20th century, the Colombian government tried to introduce a number of measures to counteract the concentration of land that started to affect both national security (due to various peasant revolts and later the emergence of guerrilla groups that rallied behind the land issue) as well as the economy of the country as a significant amount of arable land lay idle in the hand of a few individuals and was hence inaccessible for peasants wanting to generate an income for their families.[15]

[14] The Gini co-efficient is used to measure the inequality among values of a frequent distribution, in this case land. A Gini-coefficient of zero expresses perfect equality, whereas a Gini-coefficient of one expresses maximal inequality. With a Gini coefficient of 0.874, Colombia therefore figures quite close to the maximal inequality in land distribution.

[15] The most prominent measures proposed to solve the land issue included 1) issuing new land titles; 2) establishing peasant conservation areas (*Zonas de Reserva Campesina*) to prevent that the agriculture frontier from expanding into ecologically fragile or at-risk zones; and 3) introducing comprehensive agrarian reforms, with the three most important reforms being Law 200 of 1936, Law 135 of 1961, and Law 160 of 1994. As a result of the reform of 1961, a number of institutions were created that are, up until

While each of the reform attempts introduced new mechanisms, elements and institutions, none of them was able to bring about a satisfying result. On the contrary, the internal armed conflict which has been going on for more than half a century has further exacerbated the problem. As of November 1, 2015, the National Unit for Victims' Services and Integral Reparation counted more than seven and a half million victims of the conflict. The overwhelming majority - more than six million - are affected by forced displacement.[16] On May 26, 2013 the Colombian government and the FARC-EP (*Fuerzas Armadas Revolucionarias de Colombia –Ejército del Pueblo*, Armed Revolutionary Forces of Colombia - People's Army) guerrilla movement announced after six months of official peace talks held in Havana, Cuba, that they had reached an agreement on agenda item Nr.1 of their negotiations: the rural question. Under the title "Towards a New Colombian Country: Integral Agrarian Reform" (*Hacia un nuevo campo colombiano: Reforma rural integral*), the first in a series of agreements, is regarded by some as a window of opportunity to tackle one of Colombia's root causes for conflict. The agreement would introduce a number of transformations in Colombia's rural reality, including the set-up of specific conflict resolution mechanisms to regulate disputes about land use and a new 'agrarian jurisdiction' to protect land property rights.[17] However, whether these ambitious reforms will be implemented, and to what extent they will positively affect the indigenous population who represent 2.7 % of the overall national population (or approximately 1,380,000 people), is still to be seen. Analysts warn about the ambivalence between progressive agrarian reforms and laws in the area of victims' rights and land restitution (*Ley de Víctimas y Restitución de Tierras*, Law 1448, 2011), on the one hand, and their slow implementation in combination with the advancement of neo-liberal policies related to the five 'development drivers' and 'projects of national strategic interest'[18], on the other hand. The largely informal land ownership in Colombia is another difficulty. The country does not have an up-to date rural land register, which leaves room for manifold conflicts over land ownership. According to a study, only one out of three displaced peasants possesses a formal title to his (former) lands, making it difficult to legally reclaim access to the 'lost property' (León 2013). As a result of these dim prospects for 'agrarian peace', it is all the more important to analyse if and how the different conflict resolution mechanisms that exist in the country can work together to reduce the tensions arising from conflicts over land, including in indigenous territories.

The size of the different indigenous groups ranges from a few families to more than 200,000 community members, with the Wayuu population constituting the biggest indigenous community. Analysts have estimated that the indigenous population that inhabited the territory of what is today the Colombian state amounted to ten million people at the time of first contact with the Spanish Crown (Arbelaéz de Tobón 2004, 12). Compared to today's figures, this demonstrates the disastrous diminution and extermination of the indigenous people through war, subjugation and structural violence as well as imported diseases (see Villa and Houghton 2004, 16). Therefore, compared to other countries in Latin America such as Bolivia or Guatemala, the indigenous population in Colombia is today a minority, and a

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today, still relevant for handling land issues in Colombia, including: the Colombian Institute for Land Reform (*Instituto Colombiano de la Reforma Agraria,* INCORA) – today called Colombian Institute for Rural Development (*Instituto Colombiano de Desarrollo Rural*, INCODER) - whose function was to administer and allocate the waste lands owned by the state and to manage the exploitation of new lands.

[16] According to Amnesty International (2015, 2), between 6.6 and 10 million hectares of land (6-9% of Colombia's overall territory) have been abandoned or forcibly appropriated as a result of the conflict.

[17] The agreement also foresees updating the land register, the creation of a land fund for peace (*Fondo de Tierras para la Paz*) to improve the access to land titles, and a formalisation of all land titles that are in the hands of Colombian peasants.

[18] The National Development Plan of 2015 has re-phrased the five drivers (infrastructure, agriculture, housing, mining and innovation) into the three main development pillars 'Peace, Equity and Education'. Displaced inhabitants of the areas declared as strategic interest zones were denied the possibility of reclaiming their lands. However, this regulation was recently overthrown by the Constitutional Court, together with a number of other regulations favoring companies over local communities. See El Tiempo, 09.02.2016.

minority at risk. The ONIC claims that 18 out of the 102 self-identified indigenous peoples in Colombia are in danger of ethnic and physical extinction.[19]

According to the last national census of the Colombian National Administrative Department of Statistics (*Departamento Administrativo Nacional de Estadística*, DANE) in 2005, roughly 80% of the indigenous population is living in one of the 710 indigenous reserves, the so-called *resguardos*. The introduction of the *resguardo* dates back to the 16th century and refers to the collective territory of an indigenous population, which was often created as an attempt by the state to control and limit the areas inhabited by indigenous people by concentrating them in clearly defined zones (see CINEP/PPP 2016 for a more detailed analysis of this process in La Guajira). *Resguardos* constitute a very peculiar type of territory with distinct legal characteristics, recognised as inalienable, non-forfeitable and without statute of limitations (Article 63 of the Colombian Constitution). The indigenous reserves cover up to 30% of Colombia´s national territory, a percentage that is expected to rise in the future according to some analysts as numerous indigenous settlements have requested that their territory be declared a *resguardo* in the coming years.[20] While these collective territories are spread all over the country, they are most often located in peripheral rural areas (see map in Annex).

Researchers have suggested two commonalities in the perception of land by different indigenous communities: the collective character of the land and the fundamental relation most indigenous cultures maintain to their land that they refer to as their 'mother earth'. For the indigenous population, access to land is not only seen as a necessity to guarantee their survival in rural areas, but also as a cultural and spiritual matter of highest importance:

> *"An indigenous person without land is like a bird without a nest. The essence and the origin of life for us is in the land, there is no life without land, there is no dignity without land, there is no culture without land; there are no customs; there is no survival without land, therefore we consider it [the land] our mother."* (Feliciano Valencia, former member of the CRIC directorate (2007-2009) quoted in Useche Aldana 2011, 132, own translation).

The fundamental relation the indigenous population maintains with their land has been threatened historically by multiple incursions and expropriations, starting with Spanish colonization. In the 20th century, the declaration of large parts of ancestral lands as 'waste land' or 'forest reserves' and their later distribution to third parties by the INCORA and INCODER (Tobón 2015) further diminished the indigenous territory. Today many indigenous territories have come under stress through the implementation of large-scale extractive activities under the framework of the above mentioned 'development drivers' and the so-called 'projects of strategic national interest' (*Proyectos de Interés Nacional*, PINES) and 'strategic mining areas' (*Areas Estratégicas Mineras*, AEM) that are located within—and threaten the integrity of—indigenous territories. As highlighted by Hritov (2005, 92), "many of the economically most valuable resources [in terms of extractive industries] in Colombia are found in areas inhabited by indigenous populations." Finally, indigenous territories have also been disproportionally affected by the internal armed conflict as stated by the Colombian Constitutional Court in its Resolution 004 of 2009 which highlighted that the indigenous groups in Colombia are particularly defenceless and exposed to the armed conflict and its consequences, especially displacement.[21] In a public audience held

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[19] In its resolution 004 of 2009, the Colombian Constitutional Court has effectively confirmed this risk, referring to no less than 30 indigenous peoples facing a high risk of extinction.

[20] According to a December 2014 report of the INCODER, there are 368 requests to constitute new indigenous reserves and 297 claims to enlarge existing *resguardos* (Tobón 2015).

[21] According to Villa and Houghton (2004, 16) between 2000 and 2004 the indigenous population was three times as much affected by political homicide than the national average.

in September 2015 at the Colombian Congress (Tobón 2015), indigenous representatives emphasised the following problems:

- Ancestral territories are occupied by settlers instead of being returned to the indigenous community by the state;
- *Resguardos* have to buy and enlarge their (former ancestral) territory to recuperate the original dimension of their territories;
- Indigenous communities lack collective land titles because the land they are settling on has been declared national wasteland;
- Ancestral territories with existing indigenous populations have been awarded to non-indigenous third parties who are not living on the territory;
- Ancestral territories have been integrated into natural reserve zones.

These challenges underline the centrality of the struggle for the recuperation of ancestral land as part of the agenda of the various regional and national indigenous movements[22] which have increasingly demonstrated their capacity to mobilize their members against governmental policies in the last few years, not least by forging alliances with other social movements, including peasants and Afro-Colombian minorities. Their struggle essentially centres around three major issues: the recuperation of ancestral land, the constitution of new or the amplification of existing *resguardos*, and the defence and protection of their territories against those private and public (mega) projects that are considered harmful to the community. The last two points are particularly salient in the case of the Wayuu population as we will discuss after a brief introduction into the legal framework that regulates the self-administration of justice in indigenous territory.

2.2 The constitutional principle of legal pluralism and its implications for indigenous justice autonomy

In Colombia, indigenous people have long been considered 'backward savages' in need of being 'civilised', a task mainly left to the civilising missions of the Catholic Church which were given legal, political, and judicial power in various agreements between the Vatican and the Colombian government.[23] Against this background, the 1991 constitution, in the elaboration of which indigenous representatives participated for the first time, marked an important turning point with regard to the recognition of the indigenous right to self-governance. The making of this new constitution, which is, according to legal anthropologist Sanchez Botero (2011), the most far-reaching in the world regarding

[22] The emergence of the first indigenous organisations as distinct social actors took place in the context of an ascending peasants' movement for land rights in the 1970s (Villa and Houghton 2004, 15). The most well-known example and precursor is the regional organisation of the Nasa/Paez community (*Consejo Regional Indígena del Cauca*, CRIC) whose successful struggle for land recuperation in the Cauca department started in the early 1970s (Cárdenas Sarrias and Planta 2015, 160). Only ten years later, the indigenous umbrella organization ONIC was born to pursue the recuperation of expropriated land on a national level, together with other aims, such as promoting the right to governmental autonomy and to apply indigenous justice. Following a time of consolidation of different organisations on the regional and national level, the indigenous movement has started to make use of the increasing opportunities for participation in mainstream politics through the creation of indigenous political parties such as the Social Indigenous Alliance (*Alianza Social Indígena*, ASI) or the Indigenous Authorities of Colombia Movement (*Autoridades Indígenas de Colombia*, AICOASI), both founded in 1991.

[23] Law 89 of 1890, "which determines the manner how the savages will be governed", turned designated areas of the Colombian territory over to religious missions who then governed the indigenous tribes, which were not considered part of the mainstream criminal justice system (see Benavides Vanegas 2008, 183). According to Article 5 of Law 89 indigenous authorities called *cabildos* were solely allowed to apply sanctions for moral offenses. The full text of the law can be read here: http://www.laguajira.gov.co/web/attachments/1259_Ley%2089%20de%201890.pdf [last accessed 13.01.2016]. See also Defensoría del Pueblo 2014.

the recognition of the right to indigenous self-administration of justice, took place in the framework of a new 'pluralist' paradigm which gained ground in the last decade of the 20th century. This paradigm shift occurred in the context of the adoption of Convention 169 by the International Labour Organisation (ILO), the strengthening of movements for the restoration of the rights of indigenous people, and constitutional reforms in more than 15 Latin American countries (Yrigoyen Fajardo 2004, 33). This new context has also contributed to a renewed interest of the indigenous communities themselves in studying and applying their ancient mechanisms of social control (Guerra Curvelo 2002, 32; Martinez and Hernandez 2005).

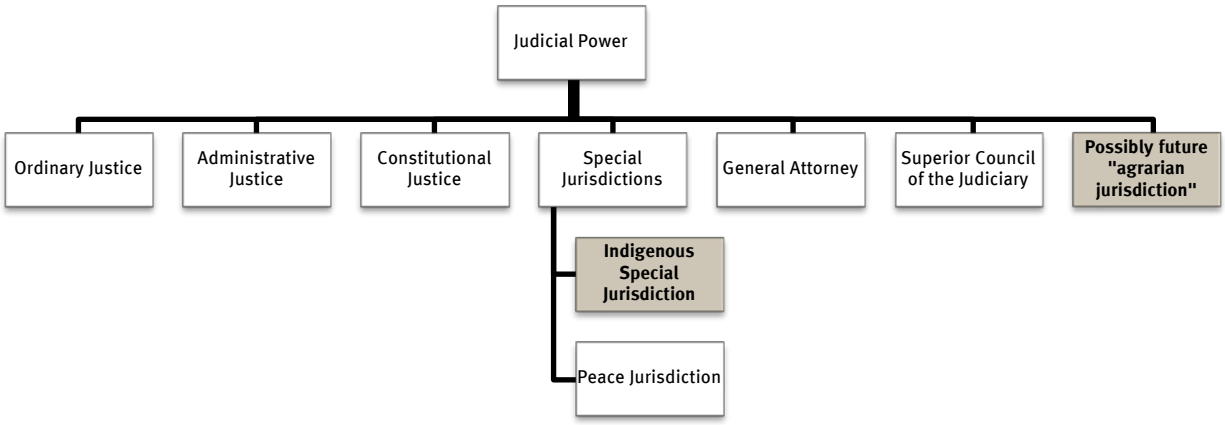
Understanding the practice of legal pluralism in Colombia requires understanding national and international legal norms as well as the heterogeneous character of indigenous mechanisms for conflict resolution within the country. The most important international regulations are Convention 169 of the ILO from 1989 and the United Nations Declaration of the Rights of Indigenous People (2007). Ratified in 1991 by the Colombian state, the convention provides indigenous people with a number of rights. Regarding indigenous justice mechanisms in particular, Article 9 obliges ratifying states to respect the methods chosen by indigenous people to administer justice within their communities and to take into account indigenous traditions when dealing with indigenous community members within the ordinary justice system (for a more detailed analysis see Yrigoyen Fajardo 2004). The United Nations Declaration of the Rights of Indigenous People stipulates in Article 34 that "Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards".

Colombia's constitution in turn defines the country as a multi-cultural and pluri-ethnic state, thereby laying the basis for the strengthened recognition and protection of ethnic minorities.[24] In Article 246 the constitution creates the special indigenous jurisdiction next to constitutional, ordinary and administrative branches of the justice system. The special jurisdiction includes both indigenous authorities as well as the so-called '*jueces de paz*', peace judges, that are a very peculiar Colombian figure and constitute another break with the state's monopoly of justice.[25] With the creation of these special jurisdictions, the Colombian state originally aimed to alleviate the overburdened ordinary justice system. However, over the course of the years, their most important function has turned out to be providing access to justice for marginalised population segments (Ministerio de Justicia y del Derecho 2012, 5).

[24] Besides the indigenous population, other recognised ethnic minorities are the Rom and the Afro-Colombian population.

[25] The figure of the peace judge goes back to the traditional role of eminent community leaders who were responsible for administering justice in areas without state services. Until today, they are nominated by the population because of their status and social recognition and offer their services free of charge after having received a special training (Interview, Ministry of Justice, 17.07.2015, Bogotá).

Graph 1: The Structure of the Justice Branch in Colombia



Graph adapted from Ministerio del Interior y de Justicia 2009.[26]

It is important to note that the special indigenous jurisdiction does not refer to one homogenous indigenous justice system across the country but refers to a whole range of heterogeneous indigenous justice systems within Colombia (Mora Torres 2003, 159).[27] As a result, we have on the one hand a national justice system that has been established for a national social conglomerate, structured within a body of clearly defined and specifically written norms and implemented by a specialized body (ibid.). And on the other hand, we have a plethora of different justice systems that function for a specific part of the population, mostly based on oral traditions according to the particular worldview of each indigenous group and implemented by specific authorities that vary across indigenous communities.[28] In addition, the indigenous special jurisdiction can be understood in a twofold dimension: as a collective right of the indigenous communities to administer justice and as an individual right of community members to be judged according to their own customs and traditions (Sentence T-496 of 1996 and T-728 of 2002 of the Constitutional Court). Finally, in practice both the national justice system and the indigenous special jurisdiction are challenged or overruled in certain areas by the justice imposed by illegal armed actors operating in and controlling specific territories.

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[26] The High Council of the Judiciary (*Consejo Superior de la Judicatura)* is relevant here as one of its tasks is to resolve conflicts over the competency between ordinary justice and the special indigenous jurisdiction. However in practice, the Constitutional Court has often taken over this role, and its decisions are superior to those of the Council. Being accused of inefficiency, the Council's replacement by a new body (*Consejo Judicial de Gobierno*) was planned in 2012 but was not implemented (Inteview, *palabrero,* 30.06.2015, Riohacha).

[27] See USAID 2010 for the accounts of various indigenous justice systems in Colombia and their differences with regard to the authorities that are responsible for conflict resolution, the organisational structure of the justice system, the scope of the system, its degree of independence from and collaboration with state-based conflict resolution mechanisms and its internal strength and legitimacy within the community.

[28] Despite the highly diverse character of the indigenous conflict resolution mechanisms, four broad operating modes have been identified and recognized by the Constitutional Court in its Ruling C-139 of 1996 (see Mora Torres 2003, 160-161):

- Segmentary systems whereby sub-groups (e.g. family units) create and enforce binding behavioral rules;
- Systems of permanent community authorities whereby the administration of justice is the task of an institutionalized body within the community according to its traditions and norms;
- Religious or magic-religious systems whereby political and religious functions are merged in one body that administers justice according to the community's traditions, norms, and religious beliefs and whose coercive power is based on the representation of certain Gods through community authorities, such 'the wise-men' etc.;
- Compensation systems that, based on the principle of reciprocity, centre on the negotiation of compensations payments for offenses (as in the case of the Wayuu community under scrutiny here).

Having clarified the overall panorama, let us turn to the specific regulations as laid out in the Constitution.[29] Constitutional Article 246 establishes for all indigenous people that:

> *"The authorities of the indigenous people can exercise their jurisdictional functions within their territorial area and conform to their own norms and procedures as long as they are not contrary to the Constitution and the laws of the Republic. The law shall establish the forms of cooperation between this special jurisdiction and the national justice system."* (own translation)

Three fundamental but ambiguous aspects are worth highlighting in more depth: the restriction of indigenous law to indigenous territory, the maximalist approach to indigenous justice autonomy, and the need for cooperation mechanisms between indigenous and state-based interventions.

First of all, with regard to the restriction of indigenous law to indigenous territory, a number of judicial decisions have enlarged the understanding of what actually constitutes indigenous territory. Namely, indigenous territory does not refer only to the *resguardos* or the territories where indigenous people have settled, but it also includes those spaces "that constitute the traditional area of their cultural or economic activities".[30] This way, disputes among indigenous people in urban areas, such as traditional market places that are used by the indigenous population for trading, can also be considered 'indigenous territory' and fall under the special indigenous jurisdiction.

With regard to the scope of indigenous justice autonomy, Colombian jurisprudence has developed a 'maximalist' approach whereby only "truly intolerable" attempts against the "most precious goods of mankind" put a limit to this autonomy (Ruling T-349 of 1996, own translation). More concretely, it establishes only a few fundamental constitutional rights as boundaries for the indigenous jurisdiction, namely 1) the right to live; 2) the prohibition of torture, slavery, cruel, inhuman or humiliating treatment; and 3) the right to due trial (Martínez and Hernández 2005, 88), thereby providing for a wide range of autonomy.

Finally, the establishment of a cooperation mechanism was meant to regulate the manifold encounters between the two systems such as 1) the exchange of information and evidence in conflict cases where both indigenous and non-indigenous people are involved; 2) the provision of state instruments of justice/conflict resolution if the indigenous community requires this (e.g. implementation of specific investigatory procedures which the indigenous community does not have access to such as forensic testing); 3) the monitoring of the application of due indigenous justice decisions by the ordinary justice system and vice-versa (Santamaría 2010, 12). However, this mechanism has not yet materialized, thereby challenging the coexistence between indigenous and state-based approaches to conflict resolution which the next section looks at in more detail.

2.3 State-based approaches to conflict resolution

The implementation capacity of the justice sector in Colombia is limited, especially when it comes to land conflicts. This is not only due to the lack of technical and human resources but also due to the inefficiency and corruption of relevant state institutions, such as the Colombian INCODER (see below), and the delicate nature of decisions concerning land properties. As reported by the press, justice sector staff in Colombia dealing with land issues is often exposed to high security risks as their decisions might affect the properties of regional elites who are at times linked to the activities of illegal armed groups[31].

[29] Full text available at http://www.alcaldiabogota.gov.co/sisjur/normas/Norma1.jsp?i=4125 [last accessed 01.03.2016].

[30] Decreto 2001, 1998, Article 2.

[31] Verdad Abierta, 15.08.2015.

As a result of this situation, conflicts over land are often regulated de facto by the armed actors controlling the territory, for instance the FARC-EP, highlighting again the perforated character of the state's 'monopoly of justice'. As noted by León (2013, own translation), the

> *"Justice administered by the FARC is arbitrary because it depends on the mood and the skills of the guerrilla-judge and not on objective and predictable rules. But it is always effective. And because the guerrilla is able to deliver justice, they end up gaining certain social legitimacy in the areas under their influence."*

The vulnerable economic and educational situation of a large part of the Colombian population and their poor chances of claiming justice in the first place further aggravates the problem. In order to improve access to justice despite these problems, the Ministry of Justice has created a national 'Justice House Programme', establishing more than 70 so-called Justice Houses throughout the national territory (three of them in La Guajira) to attend to the justice needs of local communities in an integral manner. They gather in one physical place the offices of representatives of national entities (including the Public Prosecutor, the Ministry of Social Protection, Forensic Institute etc.), local level institutions (such as the police inspector, the mediation centre, the local development office and the indigenous affairs unit) as well as community justice services including the 'peace judges' and community mediation in the form of the '*conciliación en equidad*'. The Justice Houses' aim is to facilitate the access to justice of the community offering conflict resolution services through the application of formal and informal justice mechanisms thereby avoiding the further escalation of conflicts and to strengthen the legitimacy and the presence of the state in marginalised population sectors. The objective of creating an Indigenous Affairs Office within the Justice House is to "guarantee the recognition of ethnic and cultural diversity" and "to liaise between the local indigenous community and the ordinary justice".[32] However, there is inconsistency between written norms and formal procedures and every-day practices. Officially, the 'preferential competence' of the indigenous authorities is recognised and the Justice House has even developed some information material to explain the conflict resolution roadmap for Wayuu communities within the House of Justice (see picture on the right), which clearly indicates the traditional authorities as the first go-to instance with regard to conflict resolution.[33] *Palabrero* organizations, however, complain that in reality, public functionaries take on the responsibility of conflicts without consulting

© Katrin Planta. Poster displaying the conflict resolution process for the Wayuu population at the Justice House.

[32] Information taken from the Ministry's website: http://www.casasdejusticia.gov.co/Casas-de-Justicia/Dependencias [last accessed 22.01.2016].

[33] According to the information on the poster, the steps to follow are:

1. Communicate the issue to the traditional authority who will proceed according to the principles and procedures of the Normative System of the Wayuu;
2. The decisions taken by the traditional authority must be respected by the representatives of the Justice House as long as they do not go against the minimal fundamental principles such as the right to life, individual guarantees [to due process] and human rights principles;
3. The representatives of the Justice House guarantee the necessary accompaniment and support. In any case, the traditional authorities can claim support and can ask the case to be transferred to the ordinary justice system. In that case, the Justice House receives the case, identifies the causes for the conflict, and determines which functionary is responsible for the case within the Justice House who then opens and attends the file.

the traditional authorities and at times even fail to consider their intervention. This fact has further promoted the increasing power of the police authorities over the traditional authorities of the Wayuu (Junta Mayor Autónoma de Palabreros Wayuu 2009, 58).

Besides the formal justice sector, there are a number of other state-based entities that engage with indigenous justice systems and whose mandate includes safeguarding the ethnic diversity in the administration of justice and ensuring that conflict resolution takes place in the framework of the community's own norms and procedures and that indigenous authorities are given 'preferential competence' (Junta Mayor Autónoma de Palabreros Wayuu 2009, 58) to solve conflicts in their territories. In the context of this study, a number of institutions are particularly relevant, including the Ministry of Interior and the Departmental and Municipal Indigenous Affairs Units, the Ombudsman Office and the INCODER. The Ministry of Interior plays a very important role with regard to conflict interventions related to indigenous people. It has a well-staffed (at least compared to other public entities) directorate on indigenous affairs and a specialised 'conflict unit'. Within the conflict unit, 12-14 staff members cover the national territory. According to the Ministry's staff, this area of work was created several years ago as a response to the increasing demand on the Ministry by the indigenous population to attend conflicts they were involved in. However, the Ministry also intervenes at the request of private companies or sub-national state institutions. The most important role of the Ministry is to serve as a 'guarantor' of a conflict resolution process within the normative framework of the concerned indigenous community. The intervention of the Ministry is usually accompanied by local staff or consultants who serve not only as interpreters, but also as 'cultural mediators'. Within La Guajira department for instance, the Ministry has been working alongside local *palabreros* to facilitate access to communities and make the whole process more culturally acceptable (see Chapter 4 for examples). In those departments that do display a high density of indigenous population, the Indigenous Affairs Unit is represented through the Departmental and Municipal Indigenous Affairs Units. The role of this representation is among others to provide assistance to the indigenous population regarding the conflicts that arise within their territory or among indigenous people that relate to land issues.[34]

On a regional and local level, another important institution is the local Ombudsman Office which is also called upon to serve as a guarantor of the indigenous conflict resolution process. In general and relating to the right to self-manage conflict resolution in their territories, the Ombudsman Office is among others tasked to "mediate internal and intra-ethnic conflicts of the communities if they so wish".[35]

Finally, regarding land conflicts in particular, the INCODER would theoretically also be an important institution. Even though not tasked with conflict resolution, it should ideally provide technical expertise and data to help settle conflicts over land ownership. However, the inefficiency and corruption of the institution has led to a loss of credibility of the institution. According to the self-critique of the Ministry of Agriculture, the INCODER failed in its mission as it was born as "an unspecialized institution, without funds, weak, and without response potential" to citizens' claims for land redistribution. These problems were further exacerbated by heavy staff cuts and the perception that many regional offices of the INCODER are serving the interests of local political elites more than the interests of the communities.[36]

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[34] Other functions include directing programmes targeted at the indigenous population in the department, including those executed by public institutions such as the municipalities. Information taken from the website of the Departmental Indigenous Affairs Unit in La Guajira: http://www.laguajira.gov.co/web/index.php?option=com_content&view=article&id=520&Itemid=121 [last accessed 12.01.2016].

[35] Other tasks include informing the public about the fundamental rights of different ethnic groups in the country, training public servants in the laws and regulations concerning ethnic groups, and documenting the human rights situation of ethnic groups. See information provided on the Ombudsman Office's website: http://www.defensoria.gov.co/es/public/defensoriasdelegadas/1283/Para-los-ind%C3%ADgenas-y-minor%C3%ADas-%C3%A9tnicas.htm [last accessed 12.01.2016].

[36] Verdad Abierta, 07.12.2015.

Having outlined the manifold problems of the Colombian justice sector, particularly when it comes to land issues, and the challenges state-based conflict resolution approaches are facing, the following chapter delves into the principles, strengths and weaknesses of the normative system of the Wayuu community.

3 Understanding indigenous conflict resolution: The normative system of the Wayuu community

This chapter will provide an overview of the living conditions and the socio-political organisation of the Wayuu community residing in La Guajira (3.1) which is one of the most impoverished and marginalised departments of Colombia, despite the high amount of royalties that the extractive industry, particularly coal[37] and gas, should have generated for the department.[38] It then outlines the most relevant and frequent types of conflicts over land involving the Wayuu community members (3.2) and how they are addressed through their traditional system of conflict resolution (3.3), making use of both secondary literature and the findings generated during field research.

3.1 The Wayuu: Socio-political and economic characteristics of a heterogeneous people

The Guajira peninsula is located in the extreme north of the South American continent and is divided between Colombian and Venezuelan territory, with the biggest part of the peninsula on the Colombian side. Stretching over approximately 23,000km² (Caicedo Delgado 2011, 27), the Guajira department, which has a total population of 681,575 people (DANE 2005), is divided into three administrative sub-regions: lower, middle and high Guajira with the latter two containing the highest number of Wayuu population.[39] According to the last census of the Colombian National Administrative Department for Statistics from 2005, 270,413 Wayuu are living in Colombian territory, principally in the department of La Guajira, with minor numbers in neighbouring departments of Cesar and Magdalena. Together with the Wayuu population in neighbouring Venezuela, they comprise approximately half a million people. However, the Wayuu themselves rarely think in national categories. Their ancestral home, which they are physically and spiritually attached to, is the whole Guajira peninsula, disregarding national borders. In fact, belonging to the Wayuu nation is for many Wayuu the prime identity marker[40], only followed by

[37] Energy and mining related activities make up for 7% of Colombia's gross domestic product (GDP) and represent more than 50% of Colombia's overall export (see CINEP/PPP 2013). La Guajira is home to Latin-Americas biggest open-pit coal mine El Cerrejón owned in equal parts by BHP Billinton, Anglo American and Xtrata. Generating up to 32 million tons of coal per year, El Cerrejón makes up 40.5% of Colombia's total coal exportation (see CINEP/PPP 2016, 11).

[38] Part of the desperate situation of the department was related to a change of policy regarding the royalties generated from the activities of the extractive industry which feed today to an overwhelming extent into the national, not regional, budget (Interview, citizen initiative representative, 01.07.2015, Riohacha).

[39] Despite their relative concentration in middle and high Guajira, organized Wayuu settlements are to be found in two thirds of the 15 municipalities of the department (Martínez and Hernández 2005, 63).

[40] In one of the mediations I was able to attend during field research, the *palabrero* highlighted four central criteria for self-identifying as a Wayuu: knowledge about the names of their maternal uncle; the site of origin of the clan (ancestral territory); the site of the cemetery; and the symbol of the clan.

being a citizen of the Colombian or Venezuelan (or often both) states. The roots of the Wayuu go back to the *Guajiros* or *Gojiros*[41] as they were called in colonial writings. While the term *Guajiros* was first reserved for the indigenous population, it became used to describe the inhabitants of the whole La Guajira department, including non-indigenous people in the 20th century. Successively, the indigenous population started to become known by their self-nomination: Wayuu, which means 'person' (Jaramillo 2014, 13). Today, the large majority of the Wayuu population live in one of the 21 *resguardos* within La Guajira department and a number of non-registered indigenous settlements. In addition, the Wayuu population has settled in urban areas such as Riohacha, Uribia and Maicao (and Maracaibo in Venezuela). The *resguardo de la Alta y Media Guajira* is the biggest contiguous *resguardo* of Colombia and comprises 10,675 km² (or 1,067,505 hectars, Caicedo Delgado 2011, 28).

Anthropologists have described the Wayuu as 'polirresidencial' (a term that can be translated as "having more than one home"), , acephalous, and egalitarian pastoral people, characteristics that are essential in order to fully grasp the emergence of conflicts over territory and their solution within this ethnic group. The term 'polirresidencial', rather than nomadic or semi-nomadic, refers to the Wayuu's management of their natural environment: a semi-desert with poor water supply where they have traditionally circulated between different places to find aliments and water for their animals and themselves according to the seasonal climate circumstances. This lifestyle helps explain why conflicts around the control of territory can emerge in the first place. The term *acephalous* refers to the decentralised socio-political organisation of the Wayuu people who are organised in (theoretically egalitarian) matrilineal clans.[42] Even within the clans, there is no central power established, nor do clans group or settle closely together. Therefore, clans have been described as "non-coordinated categories of people who share a social condition and a common mythical past" but who do not act as a collective (Guerra Curvelo 2002, 66, own translation).

The specific social organisation of the Wayuu people also explains why attempts to create a common platform/representation of the Wayuu people on the regional/national level face serious challenges.[43] While in theory, no one clan has authority over another, some clans are stronger in terms of economic wealth and political influence. Especially those clans that inhabit the inner part of the Guajira (contrary to those that live at the coast) and who possess a large number of cattle are also regarded to be of higher 'social status'. This highlights another aspect of the Wayuu society: the high degree of stratification among clans (ibid., 51-52) and provides us with first insights into the type of conflict resolution mechanisms established by the Wayuu people: a decentralised system whereby conflict resolution specialists (inter)mediate among the clans that are engaged in conflict on a case-by-case basis.

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[41] The term *Guajiros* referred to indigenous tribes that had migrated from the Amazonas region, particularly the Guiana Highlands (in Spanish: Macizo Guanyanés, a region that covers Venezuelan, Colombia, Brazilian as well as Guinean territory) and belonged linguistically to the Arawak family. When the first Europeans arrived at the peninsula, it was still inhabited by a diverse set of indigenous tribes. However, many of these tribes were diminished by colonial intervention and then incorporated or fused with the *Guajiros*, who established themselves as the predominant group.

[42] Research from 2005 has identified 27 'active' (out of 36 historical) clans (Martínez and Hernández 2005, 62). The matrilineal organization means that belonging to a clan can only be passed down by the Wayuu mother. A child born from a Wayuu man and a non-Wayuu woman therefore is no longer regarded a Wayuu, but only 'son of a Wayuu' (Informal conversation/observation, 28.06.2015, Manuyaro). Matrilineal, however, should not be mistaken as 'matriarchal' as the traditional authority of the Wayuu community is - with rare exceptions - a man, namely the oldest uncle of the mother.

[43] The consultation roundtable of the Wayuu (*Mesa de Diálogo y Concertación para el Pueblo Wayuu*) was created in 2010 after massive public demonstrations against the lack of consultation with the Wayuu community regarding the national development plan. However, the legitimacy and representatives of the roundtable have been questioned throughout the Wayuu community (Interview, women representative 04.07.2015, Barrancas).

With regard to their economy, the Wayuu are often referred to as pastoral people.[44] Herding (most importantly goats, but also cows) plays an important role in Wayuu culture and is a central economic activity of the Wayuu. In addition, the Wayuu are also a trading people, an economic activity that emerged upon the arrival of foreigners or non-natives, also called *ali'junas* (Polo Acuña 2012, 6), on the peninsula.[45]

In trying to provide a number of general characteristics of the Wayuu, it is also important to highlight the degree of heterogeneity within this ethnic group in terms of economic wealth, social status, language literacy (monolingual in either Wayuunaiki (predominant) or Spanish, or bilingual), and the different degree of integration into national society (Guerra Curvelo 2015, 30). While some indigenous community members do live in relative isolation from national society, others are fully immersed and have themselves served as public functionaries, politicians and in the framework of other professional careers. As one interviewee put it "the capacity of the Wayuu community lies in adapting to and making use of 'western' innovations. One can be an indigenous person and at the same time, drive a 4x4, have a cell phone and have a professional career" (Informal conversation/observation, 28.06.2015, Manuyaro[46]). What still proves that one is a Wayuu according to that conversation is the attachment to the ancestral territory, "the permanent contact the Wayuu maintain with their territory even if they live somewhere else" (ibid.).

Finally, it is important to note that Wayuu society – despite its location at the very periphery of the national territory – is not an isolated society but is linked to the national history by the same manifestations of direct and structural violence as the rest of the country, including illegal trafficking of all kinds of goods, the intrusion of armed actors, corruption[47] of state institutions and the centrality of conflicts over land (CNRR 2010, 41). Having analysed key socio-political and economic features of the Wayuu society and how they relate to conflict resolution mechanisms, the next two sections explore the modalities, strengths, and weaknesses of the normative system of the Wayuu in more depth.

3.2 Conflict resolution through the Wayuu system of norms: Objectives, principles, actors

According to Wayuu anthropologist Guerra Curvelo (2002, 29), Wayuu culture does not regard conflicts as something undesirable but rather perceives them as inherent and cyclic events in community life that offer opportunities for adjusting social relations. The objective of the 'normative system' of the Wayuu, as

[44] However, it must not be forgotten that the Wayuu have traditionally been hunters, farmers and fishers. Inhabitants of a peninsula, they enjoyed incredible access to the sea, and those families living close to the sea developed their own fishing capacities and relations to the ocean.

[45] The first European 'discoverers' of the Guajira peninsula arrived around 1499 – 1550, at a time when the Colombian territory was part of the Virreinato del Perú (1542-1824). At the beginning, those discoverers had little interest in the region because of the hostile climate and little resources that were of interest for the Spanish Crown such as gold and the 'belligerent' character of the Wayuu people (Martínez and Hernández 2005, 56; Polo Acuña 2012). However, with the increasing colonization of the Caribbean Sea, the *Guajiros* started to establish growing commercial relations, most of them illegal in nature, with various European merchants that had installed themselves in the Caribbean Sea. With an increasing commercial exchange with European settlers, cattle-breeding transformed into an important activity, as well as the smuggling of goods, particularly pearls from the Caribbean Sea and salt, which has remained until today an important primary product in La Guajira and is exploited mainly through the salt mines of the city of Manaure. These smuggling activities enabled the indigenous population to get hold of weaponry early on, a fact that enhanced their self-defence capacities against foreign intrusion and subjugation but also aggravated the consequences of inter-clan wars which were then fought with guns (see CNRR 2010, 41).

[46] All quotes from interviews were translated by the author herself.

[47] Interviewees complained about the 'patronising approach' ('*asistencialismo*') whereby especially local state functionaries frequently present mandatory public spending as 'personal gifts' to specific communities to influence electoral dynamics (Interviews, women representative, 04.07.2015, Barrancas and Ombudsman Office, 30.06.2015, Riohacha).

they call it, is to repair any (physical, emotional, or mental)[48] damage done to a human being and to establish peaceful relations and prevent inter-clan war and acts of revenge. In a way, such an understanding of maintaining social order goes well beyond resolving conflicts between individuals or groups and takes care of protecting the integrity of every community member in any kind of social interaction. Basic elements of this mechanism are the underlying idea of personal integrity, the belief in the possibility to repair all damage through a system of compensation, and the intrinsically collective character of the compensation system. With regard to the scope, the indigenous conflict resolution mechanism is widely applicable, including to cases of crime and even murder. The conflict archive at the Indigenous House in Riohacha contains a wide range of conflict themes spanning from petty offenses to conflicts over debt arrangements and tenants' rights, theft, traffic accidents (including with lethal consequences), to intra-family violence and conflicts over child custody and divorce issues, accusations for assassination and various types of territorial disputes, clearly crossing the boundaries of the classic differentiation between 'civilian' and 'criminal' justice in ordinary justice systems.

The Wayuu approach to conflict resolution is closely interwoven with other spheres of community life. First of all, it is worth highlighting the interlinkages between conflict resolution and the economy. The compensation system is closely interlinked and interdependent with the economy of the Wayuu society. From a historical perspective, the shift to pastoralism led to a significant stratification within the indigenous tribe (2002, 51-52) whereby 1) cattle became a symbol of status and power of the family/clan and 2) the exchange of cattle became an important – however not the sole – aspect of the compensation scheme applied in dispute settlement processes (ibid., 53). With the increasing difficulties to the herding economy caused by the expansion of extractive projects (especially in the South of the department as a result of the expansion of the Cerrejón coal mine), monetary payments are increasingly accepted and acceptable.

Secondly, there is an important link between conflict resolution and the promotion of cultural identity: interviews confirmed that those who are in the driving seat of defending the traditional conflict resolution approach, namely the *palabreros,* understand themselves as overall guardians of the culture and traditions of the Wayuu nation as the following passages show:

> *"to maintain the normative system as long as possible is one of the tasks of the Junta and this is also why it is important to keep on teaching our language. And for us, the challenge lies in defending the idea that when a conflict involves a Wayuu, it needs to be resolved through our own justice system, in our own language, and within our territory."* (Interview, palabrero, 30.06.2015, Riohacha)

> *"We are still alive [as a people, as a culture] because the palabreros still exist, because we know how to solve our own problems. This is why we have to organize ourselves and teach our children at school so that they can follow our traditions."* (Sergio Cohen, cited in El Tiempo, 12.12.2007, own translation)

The importance of the *palabreros* as cultural guardians was also salient during field observation. In one of the mediation sessions, the *palabrero*, after having clarified the conflict in a satisfactory manner, took about one hour's time to educate about 60 gathered community members about the history of the

[48] From a Western perspective, the range of damages for which a compensation payment can be claimed for seems enormous and highlights once more the centrality of compensation payments as an element of social order. Examples from the archive of the Indigenous House in Riohacha included for instance cases in which somebody got 'frightened' or suffered psychologically from a dispute among neighbors. Another interesting case is the suffering of a mother giving birth. In that case, her family (as a collective) must be compensated for her suffering by the father of the child's family (Polo Acuña 2012, 95). In addition, reciprocal compensations or material exchange is a central element of Wayuu society that goes also beyond conflict situations but is part of the general culture and habits of interaction (ibid.).

Wayuu, the different clans, the history of conflicts among them and a number of important conflict resolution attempts by various well-known *palabreros*. In that sense, the *palabrero* is not only an expert in mediation, he is also a true historian and educator, which is particularly relevant if we consider the lack of access to basic education in Wayuu territory. In order to defend and protect their cultural heritage, a number of *palabreros* have started to organise themselves. In 2007, the *Junta Mayor Autónoma de Palaberos* was founded both in Colombia and Venezuela to tackle the process of deculturalisation. As of today, a second (competitor) organisation has evolved which calls itself *Consejo Superior de Palabreros* and which pursues the same goals but on a slightly more conservative agenda. In sum, these developments show how deeply conflict resolution is linked to identity and cannot be regarded simply as a way of technical law enforcement.

Finally, conflict resolution is intrinsically linked to governance, as was highlighted by the link interviewees drew between the autonomous administration of justice in their territory and the overall capacity of self-governance:

> *"many Wayuu think that the non-Wayuu [the ordinary justice system] will solve their problems. That is what the Junta is doing, and we say: if you run to a judge or to the inspector to have them solve your problem, you lose your autonomy. We have to solve our problems ourselves, demonstrating our capacity to govern ourselves, to solve our problems ourselves."* (Interview, *palabrero,* 30.06.2015, Riohacha)

Against this background, how does a 'typical' conflict resolution process look like? Who are the actors involved? What are the principles?

Box 1: Conflict resolution according to the normative system of the Wayuu

As outlined by Guerra Curvelo (2002, 111-124), a typical conflict resolution process within the Wayuu community starts with a careful investigation of the committed offense and related facts by the family of the offended individual or group and a collective decision under the leadership of the maternal uncle and other (most often male) authority figures within the family on how to further proceed. For instance, the family of the offended person could well decide not to take any action, e.g. because they feel their chances of success are low or because they consider that their family member was behaving in an inadequate way in the first place. They could also decide to take revenge and respond in a violent way against the aggressor, thereby opening a war between the families.[49]

However, the most often used third option is to engage in a conflict resolution process, whereby the family's representative (the maternal uncle) will typically search out the service of a *palabrero* to help the family negotiate a material compensation for the wrongdoings. It is important to know that it is never the victim neither the aggressor him or herself but the family as a collective who steers the process. The *palabrero* can be described as a mediator or 'go-between' appointed by the offended party of a conflict that seeks to reach a compensation payment agreement through persuasion instead of sanctionary power or authority. According to Guerra Curvelo (2002, 117), the *palabrero* is ideally not closely related to any of the conflict parties but very knowledgeable about the history of the relation among the involved parties. Ojeda Jayariyu (2013, 74) outlines that the *palabrero* is characterised by his (rarely her) ability to solve conflicts through his speech and his moral and ethical literacy (see also Junta Mayor Autónoma de

[49] The Wayuu have experienced severe intra-clan wars throughout their history which have not only further coined their image of being a ruthless nation of warriors but have also resulted in long-term and severe affectation of inter-clan relations (Guerra Curvelo 2002, 55-61). According to Saler, cited in Guerra Curvelo (ibid.), there are four scenarios where a group of offended Wayuu would seek revenge, including 1) when an offense is a particularly serious one in a whole series of offenses by the same group of people; 2) when the act of offense is particularly emotional; 3) when the other conflict party is weak and might not be able to pay a compensation; or 4) when revenge is of strategic interest, e.g. in order to oust the other conflict party from their territory. Again, these scenarios demonstrate the extent to which conflict resolution is more than a question of 'law and order' but deeply entrenched within governance and power-political strategic interests.

Palabreros Wayuu 2009, 11). Being a (successful) *palabrero* used to be and still is a socially prestigious position, and heroic tales are told in La Guarjia about those who manage to solve deadly vendettas between clans.

Once the *palabrero* is informed about the conflict and the demands of his 'clients', he can reject or accept the mission given to him. Once he accepts, the next step will consist of visiting the counterpart and conveying his clients' message to them. In that scenario, the role of the *palabrero* is to serve as an intermediary. He only conveys the message of his client and sticks to the message he has been entrusted with. Also, he does not suggest any solution. However, Guerra Curvelo highlights that, should a conflict get very complex and a solution difficult to find, the *palabrero* might also move towards a position of a mediator, suggesting options for peacefully resolving the conflict and preventing further escalation (ibid., 138).

The counterpart might also work with a *palabrero* and a negotiation might start between the two of them which can end in a negotiated payment settlement or in a failure, thereby opening the door for revenge and in the worst case open war. Throughout the negotiation process, which can involve shuttle-diplomacy, the whole affected family is involved as they come together to listen to the *palabrero*. This is also the moment where we can observe the distinct roles of the family members in the process. For instance, while the elder male representatives of the family are those who participate most; women's role and participation is often restricted to leading the 'softening' of the argument, reminding the others of the responsibility to take care for future generations.

If both sides can agree on compensation, the payment is usually made in several instalments under the principle of 'Nothing is agreed upon until everything is agreed upon'. Only once the last instalment has been paid (which can in cases of gross offenses take several years) will the conflict parties consider themselves reconciled, a fact that they will celebrate with a ceremony after the last payment, thereby building the basis for a new relationship between the previous conflict parties.

3.3 Convergence and divergence with state-based approaches

Having outlined the ideal-type of a traditional procedure for solving conflicts in the previous section, it is important to highlight that there are variations to this system, especially when applied in the urban context. A case in point is the conflict resolution service offered by the Indigenous House in Riohacha. Here, two traditional *palabreros* are hired by the Departmental Indigenous Affairs Office to attend to conflicts involving the Wayuu community within the framework of the process of *conciliación en equidad*. A number of differences between the conflict resolution process applied within the Indigenous House and the traditional mediation were highlighted by the *palabrero* in charge (Interview, 06.07.2015, Riohacha), including the mode of payment (money instead of goods); the limited number of persons attending the meeting (opposed to meetings involving the whole community); and the written (and sometimes also visual) documentation of the case. The need for the latter was explained not only by the requirements of the process as a *conciliación en equidad*, but also by the decline of cultural values among the Wayuu community. This decline of cultural values has also affected the value the Wayuu community traditionally attached to the spoken word ("the word was sacred", ibid.) which is not replaced by written documents that are regarded necessary to ensure the implementation of agreements. Both pragmatic and conflict-

© Katrin Planta. Intervention of a *palabrero*.

related reasons explain why indigenous community members make use of this institutionalised setting within the Indigenous House instead of organising a traditional conflict resolution process within their territory. Involved conflict parties might all reside in the city or be spread out all over the territory turning the centrally located Indigenous House into a convenient and pragmatic meeting place. In addition, it was highlighted that the urban space was at times felt to be safer. Especially when families or clans are involved in (at times historical) conflicts, the Indigenous House provides a 'neutral space' to resolve minor conflicts outside the already heated atmosphere within the ancestral territory. At best, such conflicts can be solved without broader involvement of the antagonising opponents so as to avoid further escalation of their dispute (ibid.). Despite the adaptations outlined above, the Wayuu conflict resolution process has largely preserved its original form. Contrary to other indigenous communities that have introduced 'Western-orientated' sentences to deal with 'new crimes' such as drug trafficking or participation in illegal armed activities, the Wayuu community takes pride in the preservation of their own conflict resolution system which differs quite substantially from conflict resolution as promoted by most justice systems in a Western tradition.

First of all, the indigenous approach highlights the collective (vs. the individual) responsibility for wrongdoings and hence the responsibility of the collective to compensate any damage done.[50] Next, the decision-making authority does not lie with an external third (judge) but with the very community itself. We can also observe the difference between written and oral tradition. While state-based approaches follow standardised rules of procedure/sanctions, the indigenous community practices a case-by-case procedure as was highlighted by one interviewed *palabrero* who emphasised that the Wayuu system is based on an oral tradition, where "you can't refer to a text book" (Interview, 30.06.2015, Riohacha). Regarding sanctions, the Wayuu society only knows economic sanctions, there is no prison sentence foreseen in their normative framework. In addition, sanctions are formulated according to the severity of the crime, the offender's family's economic possibilities, *and* the social status of the offended individual (e.g. the offense of an elder or a traditional authority would require a higher compensation than one of an 'ordinary' community member), a principle that is unknown to the ordinary justice system. Another remarkable difference is that between the priority of having a result and the process-focused approach as practiced by the Wayuu and expressed for instance in the different stages of the compensation processes. One of the interviewees highlighted that the principle 'nothing is agreed upon until everything is agreed upon' (which is in Western negotiation literature mostly attributed to Martti Athisaari's mediation efforts in the Aceh conflict) and which has been applied for the peace negotiations between the Colombian government and FARC-EP is actually borrowed from Wayuu culture (Interview, *palabrero* 05.07.2016, Maicao). Finally, the integral character of the normative framework, which is strongly connected to the economy, governance and cultural issues, including spirituality, is also distinct from the state-based justice system. As a result, concerns were often raised as to whether ordinary justice staff can at all understand and tackle conflicts within the Wayuu community:

> *"In general, all problems among Wayuu should be resolved through the normative system of the Wayuu, because a judge, as much as he might have studied, doesn't have the capacity to understand and solve the problem. Because there are other factors that play a role such as spirituality. The conflict resolution process needs to take into account the spirituality of the people …. as well as their experience because our system is based on an oral tradition, nothing is written down. And a judge*

[50] The responsibility to 'share' with the collective is also expressed in a traditional Wayuu saying: "A rich Wayuu who does not share his wealth is like a cactus in the desert: alone and without shadow" (Informal conversation/observation, 28.06.2015, Manuyaro community).

has no access to this. He will just look at the law and treat the Wayuu as any other Colombian citizen." (Interview, palabrero 30.06, Riohacha)

Against the background of these differences, what are the strengths and challenges of the Wayuu approach to conflict resolution?

3.4 Assessing strengths and challenges of a partially fractured, yet practiced normative system

With regard to the advantages of traditional mechanisms in any society, Boege (2011, 444-449) asserts that they are generally more process-oriented, considered more legitimate by the communities on the ground, focus more on the psycho-social dimension of conflict and its transformation, and provide for more inclusion and participation than externally imposed approaches. Furthermore, they are less cost-intensive, as they draw only from the resources of the community involved and that "the outcomes they produce are more likely to be internalized by the parties" (Murithi 2008, 27-28). Research in Colombia seems to confirm many of these underlying advantages, without however masking the challenges related to the traditional approach. In general, informants provided quite diverse assessments of the strengths and weaknesses of the traditional mechanisms. These divergent views might be partly explained by the individual resource person's overall adherence to Wayuu culture and tradition, their own function within the conflict resolution process and their own experience, but also by their desire to 'defend' specific cultural practices in the eyes of a foreign researcher, possibly perceived to have stereotypes or prejudices against 'non-Western' conflict resolution approaches. Positive assessments were not exclusive to indigenous interviewees. Some state representatives also held very positive views of the system as the following quote from an interview with the Director of the local Ombudsman Office demonstrates:

"The normative system of the Wayuu is a very superior system compared to the ordinary system. It is based on reconciliation and dialogue and differs fundamentally from the Western system of justice administration that is based on the figure of the 'judge'. The palabrero is nothing like a judge. On the contrary, within the normative system of the Wayuu, it's the conflict parties themselves who decide on the solution of their conflict and obviously, if a solution is based on my own decision, I am much more inclined to accept the solution. Each case has this connotation that it is "my problem", not the state's or the judge's problem. In addition, the system is quick and leaves less room for revenge. In many cases, the result is a win-win for both parties. It doesn't have any costs – not even for the country - because it is a very effective 'private justice'. Looking at statistics, the caseload of unresolved cases is minimal compared to the amount of cases that are solved. The ordinary justice system in turn has thousands and thousands of unresolved cases that generate latent problems between conflict parties." (Interview, 30.06.2015, Riochacha)

Indigenous representatives referred to the following assets of their own conflict resolution system:

- **Legitimacy**: Respect for agreements is strong as people are committed to agreements that are based on their tradition and culture;
- **Certainty** of implementation: If an agreement has been reached, the chances are very high that it will be implemented, allowing people to "be in peace" and not have to worry about acts of revenge (Interview, 04.07.2015, Barrancas);
- **Shared knowledge**: The traditional conflict resolution approach is well understood. On the other hand, there are communities that are not all informed about their rights within the ordinary justice

system as citizens of the Colombian state, including their access to justice, which is partly due to the 'absence' of the state in the territory (ibid.);

- **Fast and therefore effective** as it leaves less room for acts of revenge to occur and is better at preventing the escalation of conflict than the ordinary justice system. A *palabrero* working at the Indigenous House proudly explained that a conflict that would take a year within the ordinary justice system would be resolved at the Indigenous House "within an hour" (Interview, 06.07.2015, Riohacha);
- **Flexibility and adaptation** to individual cases: The Wayuu system is based on an oral tradition whereby decisions cannot be generated from a systematised written source of knowledge even though they are guided by previous experiences with conflict cases the *palabrero* and the community are knowledgeable about. Therefore, it is more flexible and allows greater leverage for case-based decisions;
- While the system does not exclude violence, it manages violence through a **code of conduct**, e.g. existing rules of war regulate that women cannot be targets of violence;
- **Non-repetition/prevention function:** the traditional conflict resolution system avoids recidivism through the system of collective compensation. Compensation agreements do not only affect the individual perpetrator, but his whole family which elevates the social pressure to abide by the rules.

However, with regard to other – often assumed - advantages of traditional conflict resolution mechanisms, the assessment was more cautious. For instance, it is often argued that traditional conflict resolution mechanisms are less costly. This is also true for the Wayuu system of norms as it does not involve any resources from outside of the community. However, the compensation scheme – even though it adjusts to the possibilities of the offender and his family – can consist of severe economic sanctions not only for the offender but also for his or her family. In that sense, the 'non-punitive' character of traditional conflict resolution mechanisms is also disputable. With regard to inclusiveness and participation, it is true that the Wayuu system builds on a system of collective decision making and involves much more than just the individual 'aggressor' or 'victim'. However, there are marginalised groups who do not participate on an equal footing in the process. Various interviewees criticised the lack of equal-opportunity-participation for some segments of the Wayuu population in conflict resolution, especially women and youth. Interviewees referred for instance to changes within the Wayuu society linked to the emergence of 'new leaderships', especially among younger people with higher education, language skills etc. who question the traditional authorities and position themselves as leaders of their community. A letter written by a traditional authority to the Departmental Indigenous Affairs Unit complaining about the undue behaviour of younger community members illustrates this generational conflict:

> *"The authority in our community is regulated and maintains itself on the basis of a hierarchy between elder and younger people. The older people, those who are grandparents are respected by the community because of their age. These are persons above the age of 50 who possess wisdom, knowledge, patience, experience and seriousness. … The young people are generally those who generate conflicts because they don't have the capacity, or the understanding, or the interest to provide a solution."*[51] (own translation)

[51] Documentation available under the title *Legitimidad en la herencia del territorio ancestral de Punta Gallina* on the website of the Information System of the Indigenous Communities in La Guajira (*Sistema de información de las comunidades indígenas de la Guajira*): http://www.sisaid-guajira.org/ [last accessed 26.01.2016]. Throughout the observation of a conflict intervention at a community within the Hatonuevo municipality, I heard similar complaints about younger people not being able to adequately address community conflicts.

With regard to women, it was frequently explained to me that women and men have different, complementing roles in conflicts and their resolution. While men are in charge of the conflict in terms of fighting, women enjoy a kind of 'immunity' that allows them to pass through 'enemy territory', be it to pick up wounded or dead community members (a task that can only be carried out by female community members) or to engage in economic activities. Having women participate less visibly in the often heated conflict resolution process was portrayed as a strategic decision to preserve their specific, more 'neutral' role. However, individual women representatives mentioned that women were getting more self-assertive and more demanding in terms of being active and visible participants in conflict resolution processes while making clear that cultural adjustments should be steered from within the Wayuu society:

> "*We Wayuu women have received a lot of criticism from our peers because we think that cultures are dynamic and there are cultural practices that go against individual rights. But if you start to be critical and talk about things that need to be revised, for instance the way in which the traditional system handles rape cases, you are attacked In our culture, men hold socio-political power positions and women are silenced. The contribution of women within the families and the community must be recognised. Within the Wayuu culture, people say that women are very relevant and important, even men say that, but in reality there is a serious lack of recognition of women in the political arena and in decision-making processes. We cannot talk about political participation if women do not even get this space within their family. But for many people it is difficult to hear and accept this self-criticism towards our own culture. However, we don't want to change the traditional system per se. But we just want the important space of women to be recognized.*" (Interview, women representative, 04.07.2015, Barrancas)

The biggest threat to the survival of the traditional conflict resolution approach was seen in the process of deculturalisation (*desculturalización)* resulting from external factors such as migration, evangelisation[52], mixed marriages, the impact of the various 'bonanzas' (e.g. gold exploitation or smuggling that flush not only money but also alcohol and arms into the region) and today's increasing operation of multinational companies within Wayuu territory. This process has resulted in the weakening of the Wayuu language - a fundamental threat to a culture that places so much emphasis on respect for the oral tradition, the loss of territorial ownership according to maternal lineages, and increasing frictions within the community as to the value of the traditional social order, including the traditional approach to conflict resolution. According to the *Junta Mayor Autónoma de Palabreros Wayuu* (2009, 56), the new generation of urbanised leaders working towards the acquisition of community development projects or the forging of alliances with local politicians, have transfigured the very Wayuu identity they are claiming to defend through the incorporation of socio-economic models erstwhile foreign to the ethnic group. They have thereby contributed to the loss of spirituality and the selling-off of ancestral territory – the basis of the very existence of the Wayuu. As a result of the decline of the traditional culture as a whole, the indigenous authorities are slowly losing legitimacy and authority, reducing their ancient decision-making role to the promotion of Wayuu culture. It was highlighted that both community members and the very *palabreros* themselves are contributing to the distortion of the traditional normative system.

Some interviewees criticised for instance that the compensation scheme itself has turned into an income generation opportunity for some,[53] thereby losing its original function of preserving peace and becoming a mere market place. On the other hand, the 'commercialisation' of the normative approach

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[52] As of today, an estimated 90% of the Wayuu community is Christian, both Catholic and Protestant (Junta Mayor Autónoma de Palabreros Wayuu 2009, 52).

[53] This was particularly the case with regard to the increasing numbers of traffic accidents (due to an increasing circulation of cars and motorcycles in the region) and resulting damages (Interview, *palabrero* 06.07.2015, Riohacha).

also touched upon the figure of the *palabrero*. According to Mansen, the most important reward for a *palabrero* is non-financial in nature if we understand conflict resolution as an arena where social status is negotiated, lending itself to the social ascent of successful *palabreros* (Mansen 1988, 5-6). During field research, it was highlighted that being a *palabrero* is per se a non-paid activity, which is considered an important element to increase the perception of the *palabrero* as an actor without any financial stake in the process.[54] However, the *Junta Mayor Autónoma de Palabreros Wayuu* (2009, 55, own translation) reports that a number of *palabreros* have started to sell their services as 'lawyers', doing harm to the institution:

> *"This new image of the Pütchipü'üi as a lawyer is another factor that weakens the traditional formation of the Pütchipü'üi within the community because the new palabreros are establishing pay scales to defend individual interests thereby misrepresenting the institution of the traditional Pütchipü'üi."*

In addition, it was also mentioned that the poor knowledge of many *palabreros* regarding the state's legal framework has weakened the traditional system as some *palabreros* are themselves unaware of the specific rights conferred to indigenous justice through the Special Indigenous Jurisdiction and connected jurisprudence (ibid., 92).

Next, interviewees noticed the limits to the Wayuu conflict resolution approach in the context of third actor intervention, and especially in the case of illegal armed actors. While the Wayuu community's conflict resolution mechanism works well within their own culture, the intrusion of powerful armed and unarmed third actors unwilling to submit to the rules of the game puts the system in danger and increases the state's responsibility to intervene (Interview, women representative, 04.07.2015, Barrancas) .

Finally, one last challenge of the traditional conflict resolution approach is linked to the Wayuu's notorious situation of poverty and lack of most basic resources. Data from the National Planning Department (*Departamento Nacional de Planeación* 2010) suggests that the level of poverty in La Guajira (64.9%) is twice as severe as the national average (37.2%) (see Caicedo Delgado 2011, 29-30). According to the same data, 37.4% of the population of La Guajira lives in extreme poverty. The dire geographical conditions, climate change-related drought, environmental pollution due to extractive mining, in combination with a lacking water supply infrastructure, have led to an extreme water shortage in the department, and especially in the Alta Guajira. Increasing national and international media coverage has therefore called attention to the rising numbers of (avoidable!) child mortality due to the lack of water supply – a mortality that disproportionally affects the indigenous population.[55] According to the *Junta Mayor Autónoma de Palabreros Wayuu* (2009, 61) the most affected population group next to children are the elderly and among them many traditional authorities. As a result of the lack of the most basic resources for survival, many traditional authorities are no longer able to promote organisational processes, thereby further weakening their authority within the community.

By way of conclusion, we can say that the Wayuu conflict resolution system is still practiced but not unchallenged. The majority of interviewees draw a balance between hinting at challenges and emphasising the relevance and strengths of the Wayuu conflict resolution process, especially if used

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[54] However, it was also highlighted that *palabreros* should at least be compensated for their efforts and sometimes even monetary investments (e.g. travel expenses etc.). Other interviewees therefore explained that the *palabrero* sometimes receives 'gifts' from the conflict stakeholders for his services or even – if the conflict is mainly about financial matters - a percentage of the compensation payment finally negotiated between the conflict parties.

[55] See for instance infographic in El Tiempo 2015. Las cifras del drama en La Guajira. Available at http://www.eltiempo.com/multimedia/infografias/infografia-las-cifras-del-drama-en-la-guajira/14357996 [last accessed 01.12.2015]; El País, 22.05.2015; The Guardian, 18.06.2015.

within the Wayuu community. However, a wide range of factors is currently weakening the traditional approach, including external factors such as processes of deculturalisation and direct and structural violence and internal factors such as the emergence of new leaders and a generational turnover. Against this background, the *Junta Mayor Autónoma de Palabreros Wayuu* (ibid., 50, own translation) draws a sceptical balance:

> *"The traditional work of the Pütchipü'üi still functions effectively in the resolution of diverse conflicts that emerge within the Wayuu community, despite the fact that new problems have emerged as a result of multiple external factors and foreign actions in our ancestral territory. However, the institution of the Pütchipü'üi is seriously threatened by the strong interference of cultural projects and guidelines imposed through the laws and the public policies of Colombia and Venezuela which damage the validity of the tradition and forecast its disappearance in the cultural future of the wayuu."*

At a moment during which the legal framework for the autonomous indigenous conflict resolution mechanisms is more comprehensive than ever, the real space for applying a 'pure' indigenous conflict resolution approach is shrinking, making space for a stronger interaction with the non-indigenous institutions in charge of addressing conflicts. The following chapter looks at these interactions in the context of land conflicts.

4 Solving increasing conflicts over land: Cases and examples for different coexistence arrangements

According to interviews, conflicts over land in Wayuu territory are increasing. This was explained by 1) the increasing self-assertiveness of and access to information by indigenous communities who more proactively defend their rights, 2) the increasing operations of multinational companies in La Guajira and 3) the increasing penetration of Wayuu territory by non-Wayuu.[56] The chapter will start looking at the root causes of conflicts over land in Wayuu territory, provide details on the various actors involved in these conflicts, and illustrate how conflicts have been solved (or at least tackled) using both indigenous and state-based conflict resolution mechanisms.

4.1 Intra-ethnic conflicts over land precedence and illegal land sale

As explained by Guerra Curvelo (2002, 90), the most important elements for establishing land ownership within Wayuu culture are the principles of:

- **Precedence,** which means that a group of people has been using a territory over a long time and has established important ownership markers on it, such as cemeteries;[57]

[56] What interviewees did not regard as a problem though was the increasing population size of the Wayuu community. Asked whether they thought that land itself was becoming a scarce resource, thereby leading to sharpened conflicts, they usually referred to the size of the La Guajira department that still offers enough space to accommodate a growing population.

[57] With the cemetery playing a central role as physical testimony of a family's ownership of a specific land, the frequent destruction of indigenous cemeteries through large-scale extractive projects such as the Cerrejón coal mine in the early 1980s particularly

- **Adjacency**, which defines that a group of people is the rightful user of the land and water sources that have a border with its traditional territory;
- Finally, land ownership is fomented by **the recognition** of both precedency and adjacency by other members of the Wayuu community.


©Katrin Planta. Wayuu cementery.

It is especially the first of these principles that is related to disputes over territory. Conflicts over territory could easily emerge among the Wayuu because lands are often abandoned for a considerable amount of time by their rightful owners (testified by the presence of their cemetery on the territory) and 'lent' to other migrating groups of Wayuu passing through these territories (themselves displaced by conflicts in their original area or looking for new grasslands or water sources for their cattle). The tradition of 'lending' territories was often regarded as a way of creating political alliances. However, this has also sometimes turned out to be a risky endeavour, with the newcomers wanting to establish themselves as the new 'owners' of the land, building up their own cemeteries and hence creating precedency facts. This type of conflict is still relevant today. A community leader explained that part of the problem was that many community members were themselves not aware of the traditional rules and do not understand that even if they are living on a territory, they do not own the territory (Interview, community leader, 10.07.2015, Uribia). In addition, the root cause of many conflicts over land is the desolate economic situation of many families which have no revenue other than their land. Illegal land sale is hence one way that Wayuu community members try to earn a revenue, even though this is prohibited by the constitution that protects the 'inalienable' character of the *resguardo* (Interview, staff local Justice House, 03.07.2015, Riohacha). This situation not only leads to conflicts between Wayuu vendor and non-Wayuu buyer but can also spur conflicts within the community. An increase of such conflicts was anticipated with regard to the (commercial or public) use of strategically-located territories**.** Interviewees referred to the slowly growing tourist sector and the possible future (even if small-scale) exploitation of the various beach zones of the department and mentioned the threat of expanding urban centres against indigenous territories. An example is the recent dispute about the construction of a new prison on the outskirts of Riohacha. Here, a piece of land was sold to the departmental authorities who were planning to use this land to build a new prison building. However, these plans are now put into question as indigenous complaints have arisen that the land was illegally sold by an apparently non-authorised community member. To further complicate the matter, the case also entails a property dispute between two different Wayuu clans. At the time of research, the case was still pending with media reporting that the Ministry of Interior had been called upon to intervene and, together with departmental authorities and indigenous representatives, find a solution to the problem (Interview, Departmental Indigenous Affairs Unit, 09.07.2015, Riohacha and media reports[58]). To illustrate conflicts over land ownership and illegal land sale that can arise within the Wayuu community, let us turn to the observation of a family mediation in Manuyaro community in the Media Guajira.

affected the Wayuu community. In indigenous belief, removing the body of the ancestors means also losing ownership of the place (Interview, citizen initiative representative, 01.07.2015, Riohacha).

[58] See also press articles in El Heraldo, 21.05.2014 and La Guajira Hoy, 10.04.2015.

Box 2: A family mediation over land conflict facilitated by the *palabrero*

In this case, a dispute over land had emerged between different family members belonging to the Uriana clan. The part of the family who, according to Wayuu tradition, owned the land – as proven by the cemetery – was no longer living within the territory but had moved to the city while another part of the family was taking care of the land that desperately lacked water infrastructure. Rumours arose that a representative of a development company had been offering money to some of the family members living on the ancestral territory in return for their permission to build a wind park on the territory. To further complicate the matter, the company representative acted in alliance with one of the 'indigenous authorities' of the community who was (falsely) registered with the Ministry of Interior.

The family members based in the city were worried that the family branch living on the land would eventually sell the land and therefore called for a family reunion facilitated by a *palabrero* to clarify the situation. The meeting took place next to the cemetery with the family members sitting together in a circle to discuss the issue while food and coffee was served. The *palabrero* then summarized the main points that should be raised with the other family members not (yet) present. In the meantime, and behind the scenes, a person with strong ties to both family lines held a smaller meeting with those accused of 'selling the land' who were then subsequently brought into the larger meeting which was now attended by approximately 60 family members. After about an hour of facilitated talk, the dispute was resolved. The family members being accused of being about to sell the ancestral land had assured the 'other side' that this was by no means their intention but rather a misunderstanding. The branch of the family living in the city in turn realized that their family members were experiencing an existential threat due to the water shortage and promised to mobilise water resources to enable the family members to keep on living on and from the land. Once this compromise was found the meeting transformed into a discussion about the memories of the family, including passed conflicts, important deceased family members etc. This exercise of remembering also entailed a number of pedagogical elements, including inputs by the *palabrero* of the clan structure of the Wayuu etc. The meeting ended with a small celebration - beer was distributed and music was turned on once tensions had been clarified and settled.

The observation and ensuing informal conversations with family members highlighted a number of elements mentioned before. For instance, family members asserted that conflicts are helpful as they have the potential to 'strengthen' unity when they are managed in a good way. The most interesting aspect though was the appearance of the case as a 'pure' case of indigenous conflict resolution. At first sight, there was no visible involvement of state-based mechanisms. However, conversations revealed that this family meeting was only part of a broader strategy. While unifying the family through the traditional conflict resolution process within their territory, some of the family members from the urban areas were simultaneously engaging in a legal dispute with the person claiming to be the legitimate representative of the community under the figure of the 'traditional authority' registered with the Ministry of Interior. While this demonstrates the ability of a community to 'play both cards' to their convenience, it also reveals a necessary condition to do so: access to relevant institutions and knowledge about state-based justice opportunities. As a result, we can assume that for some segments of the population, namely those who possess certain conflict resolution literacy and who can make use of both approaches, the existence of various mechanisms to choose from can lead to more options for conflict resolution. However, it is precisely this 'conflict resolution literacy' that many communities still lack. In other cases, families have not been able to solve their internal conflicts through the *palabrero* system but have called the local and regional state authorities to help them as the following example illustrates.

Box 3: State-intervention to solve disputes over land ownership

In a 2013 conflict involving members of the Gouriyu Gouriyu clan,[59] the traditional authority of the clan, in this case a woman, informed the Departmental Indigenous Affairs Unit about a hereditary conflict that had emerged around a wildlife protection project sponsored by the Cerrejón Coal Mine on the territory of the community. In her letter, she reports about abusive practices whereby *ali'junas* were offering small gifts (e.g. sweets and drinks) to some community members to gain their trust and "use them by putting them against our laws, customs and authorities, without informing them about the real purpose of their visit and activities in our Wayuu territory." In her letter, she also accused the responsible project manager at the mining company of purposefully addressing the "young people" of the community in particular who had, however, no authority to make any binding decisions. She concluded that:

"*the presence of foreign professionals who represent associations, corporations, or national or multinational foundations and hold meetings with disrespectful members of our community who lack the leadership and the service spirit that is dear to our clan, has only given birth to conflict within our family. … The acceptance of projects [proposed by these people] only brings conflict to our community members, puts the existing stability, unity and social harmony at risk and affects the traditional respect for our elders, thereby generating the disintegration of our clan and furthering the [process of] deculturalisation through cultural contamination and future displacement.*" (own translation)

The letter concludes reiterating that it is the traditional authorities that need to be addressed with any project proposal or request and highlights the community's fierce and clear decision "not to accept any project that interferes with our traditional authority and puts at risk our territorial sovereignty - food security, work – to the detriment of our customs through cultural contamination."

Finally, this situation resulted in the Ministry of Interior and Justice being asked to participate in a community assembly to clarify the ownership of the ancestral land. In the community's letter to the Ministry, this intervention was deemed necessary to:

"*avoid severe conflicts among families and to prevent unscrupulous people from taking the territory for their own and individual advantage, thereby putting the rest of our community at the risk of displacement and misery because of these individualistic practices that do not contribute at all to the preservation of our culture and ancestral customs.*" (own translation)

This example illustrates the risk of abusive practices of interested third parties who manage to divide communities—often living in situations of poverty—for their own purposes, by collaborating with 'new leaders' or making profit out of misinformation and through their lack of education, including that concerning indigenous (land) rights. On the other hand, the example also hints to the fact that some community members have their own vested (financial) interests in collaborating with external investors who they hope will bring investments and projects if not for the community, at least for themselves. The example further showcases the generational conflict between the traditional authorities and elders and the younger generations or 'new leaders'. This generational turn-over also affects the institution of the *palabrero* as noted by the *Junta Autónoma Mayor de Palabreros* (2009, 55, own translation) whereby the traditional figure of the *palabrero* is increasingly replaced by *"new types of intermediaries who act based on their personal interests and organise themselves in the form of lawyers' chambers, thereby ignoring the very essence of a traditional mediator."*

[59] Documentation available under the title *Legitimidad en la herencia del territorio ancestral de Punta Gallina* at: http://www.sisaid-guajira.org/ [last accessed 26.01.2016].

4.2 Public resources as a trigger for conflicts over land and leadership – the state as conflict driver and solver?

Another type of conflict among the Wayuu community is closely interlinked with the creation of the so-called 'territorial entities' in 1991 and the introduction of an administrative reform, the General System for Participation (*Sistema General de Participación*, SGP) that was designed to transfer resources from the central state to the territorial entities, including municipalities and indigenous territories on a per capita calculation. For the indigenous territories, these resources are channelled through the municipality on the basis of projects (e.g. investment in cattle, provision of water, provision of equipment for agricultural activities, etc.) requested by the community through their 'authority',[60] a term introduced by the regulation that has led to some confusion and conflict. Actually, the traditional leaders - the elders- most often do not have the technical, financial and language capacities to write a project proposal and hence delegate this task to younger members of the community who possess both these skills and, at times, also have the personal connections to public functionaries or local politicians. At times, these younger community leaders bypass the community's elders and end up being registered as the authority with the municipality. This leads to competition with the older traditional leaders due to the technical knowledge and language skills that they possess as well as their connections with the local political elite, who also use this situation to forge alliances through corrupt practices. As various interviewees highlighted, corruption is a serious problem at the local level, especially when it comes to the resources distributed to the indigenous territories, which helps to explain the lack of trust many communities express vis-à-vis the local municipalities (Interview, Departmental Indigenous Affairs Unit, 09.07.2015, Riohacha).

As a result, the SGP, even though well intentioned, has been used in a quite manipulative and conflictive-generating way. In addition, the multiplication of territorial entities, which now all seek individual small-scale, mini-projects, puts in danger more comprehensive solutions to community challenges. In 2009, 3,214 traditional authorities were registered with the Ministry of Interior. As explained by the *Junta Mayor Autónoma de Palabreros* (2009, 55), the SGP has thus resulted in a fragmentation of the traditional social organisation of the Wayuu community and has led to an increase of state intervention in previously internal conflicts, downplaying again the role of the traditional authorities.

Box 4: Intervention by the Ministry of Interior's 'Conflict Unit'

During field research, I had the opportunity to observe a conflict resolution intervention conducted by the Ministry of Interior in a community belonging to the Hatonuevo municipality. The Ministry of Interior had already conducted a number of conflict resolution interventions to solve this problem. None of them, however, were successful. In this new visit to the community, the representatives of the Ministry (a senior representative and two assistants) were accompanied by a representative of the Ombudsman Office, a *palabrero* working for the Departmental Indigenous Affairs Unit in charge of facilitating the process, and two additional *palabreros* from the *Junta Mayor Autónoma de Palabreros Wayuu* and the *Consejo Superior de Palabreros* who were hired to 1) provide the process more leverage and exert more

[60] Various interviewees highlighted that those people who are now administering the resources should not be called 'authorities' but rather 'managers' so as to help separate different roles within the community. In addition, one interviewee also claimed that the term 'authority' was wrong altogether and did not have an equivalent in Wayuunaiki (Interview, *palabreros* 05.07.2015, Maicao). Rather, the very set-up of these 'traditional authorities' was based on the social organization of the Nasa/Paez population in the Cauca department which have a quite vertical power structure whereby resources are distributed by a centralized authority to participating communities. In comparison, as explained earlier, the Wayuu population is highly decentralized and characterized by horizontal power relations between the different clans that do not represent each other, therefore rendering the implementation of this system more difficult (Interview, Anthropologist, 30.06. 2015, Riohacha).

pressure on the community, 2) create a situation close to Wayuu tradition, and 3) to provide the Ministry with knowledge about the historical disputes and family issues.

The meeting involved about 40 representatives of the Uriana clan. A fierce dispute about the legitimacy of the authority registered with the Ministry of Interior, which entitled them to manage the funds channelled through the SPG, was splitting a family in two. As a result of the dispute, the Ministry of Interior had to freeze the funds the community should receive through the SGP which was disadvantageous for the entire community.

The starting point of the dispute was the death of the recognized traditional authority and a dispute about his successor. The side of the family supporting the authority registered with the Ministry was claiming that the registered person had been nominated by the deceased elder through his written last will. The other side, who was unsatisfied with the allegedly unfair management of the funds by the registered authority, argued that independent from this written will, the correct successor would be another person, namely the next-oldest parent. One of the *palabreros* partly supported this argument, reminding the community that a 'written testimony' was not necessarily in accordance with Wayuu oral tradition, thereby highlighting the distinctiveness of Wayuu traditions to 'Western' or 'state-based' written traditions.

After a brief summary of previous gatherings aimed at solving the conflict by the Ministry's representatives, the two sides of the family reported their perspectives on the conflict. Throughout the meeting, interventions were given both by male and female representatives with various women intervening to appease tensions and encourage participants to find a peaceful solution of the conflict. However, one woman was also particularly outspoken in addressing the reasons and consequences of the conflict. In informal conversations following the session, she was later labelled as a 'trouble-maker' acting in disrespect of her appropriated gender role by a number of male participants. In addition, one of the *palabreros* criticized the absence of 'elders' (who had passed away) in representing the family's case and complained about the participation of too many 'young people' – with young being a relative concept as most of the people who intervened during the meeting where heads of families.

Despite various interventions from the *palabreros* and the urgent call from the Ministry's representatives that the non-resolution of the conflict would lead to further freezing of the community's funds, no solution could be found. The dispute remained unresolved, with the official delegation leaving the community after one-half-day of consultations.

This example demonstrates fairly well the role of the state in both creating a problem (because of its lack of awareness about indigenous particularities) and then attempting to solve it. One could argue that the state has become a truly inherent participant in indigenous internal affairs, thereby reducing the very indigenous autonomy that the introduction of the SPG was meant to promote in the first place. The attempt of the state to increase indigenous autonomy by the provision of self-administered funds has created a certain dependency by the indigenous community on the state to at least help to resolve conflicts that have originally been caused by the poor design of public policies by the state itself. At the same time, the capacity of the state to deal with these conflicts is limited. This limitation has been carefully designed by the constitution which has opted for protecting the autonomy of indigenous communities by only allowing those external interventions whose 'mediation' has been authorized by the community and who do not aim to 'impose' decisions on the community but aim to facilitate a dialogue among the conflicting parties (see T-1253 of 2008 and T-514 of 2009). This explains why many indigenous interviewees referred to the state intervention as 'witnesses' or 'guarantors' but never as 'problem-solvers' or 'decision-makers'.

4.3 Traditional approaches at the service of third parties?

The biggest risk of conflicts within indigenous territories relates to the implementation of extractive (mega) projects with large-scale impact on the population which can often pose a threat to their security. As highlighted by a recent CINEP/PPP report (2016, 21), the increasing presence of multinational companies has led to an increase in collective social mobilisation and protest. In this process, indigenous leaders have not only become a voice for their communities' demands, but also a target for repressive measures, ranging from threats to homicides. This type of conflict is especially important if we consider that the government has granted concessions to (multi)national companies with an interest in the exploration and exportation of natural resources (Junta Mayor Autónoma de Palabreros Wayuu 2009)[61] for a large part of the territory within La Guajira department. The so-called '*consulta previa*' (ex-ante consultation) mechanisms, enshrined in Convention 169 of the International Labour Organisation (ILO) from 1989 and translated into Colombian law demands that government conduct previous consultation with indigenous communities whenever legislative or administrative actions are planned that affect them directly. Such consultation processes must involve the representatives of the community and be conducted with the objective to reach an agreement regarding the planned actions (see Semper 2006, 774). Regarding ex-ante consultations in the framework of extractive projects, this does not necessarily mean that communities have a veto right against these activities, but the degree to which these activities will affect their territory must be evaluated and possible compensation schemes elaborated. Also, ways in which the community itself can benefit from the project must be thought through (e.g. job opportunities). While Colombia has subscribed to this procedure, in practice the consultation process is often flawed – to say the least - with the state leaving (its prime) responsibility of implementing the consultation process to the private investors whose interest in generous compensation schemes is generally low[62] and whose consultations do not conform to decision-making formats and procedures of indigenous communities. Among many things this is partly due to the logic of 'quick negotiation' (Interview, Ombudsman Office, 30.06.2015, Riohacha): investors seek to engage with a single 'interlocutor' to ease the consultation process, reduce complexity and save time and money. However, in many cases, such an individualised approach further increases internal divisions and power struggles over representation within the community. To facilitate the negotiation process between investors and communities, the former have also tried to incorporate 'traditional elements' of conflict resolution into the process as highlighted by one interviewee from the Tamaquito community (ibid.).

Box 5: The *palabrero* – a cultural mediator for third parties?

Within La Guajira, the most notorious case of large-scale extractive industry projects affecting indigenous territories is that of the El Cerrejón coal mine. The case of the Tamaquito community has become a well-known example for community negotiation processes with the Cerrejón coal mine through the 2015 documentary '*La buena vida*' (The Good Life).[63] Settled in the area since 1946, the community started to feel the pressure of the expanding coal mine in the mid-1990s when the people's freedom of movement and their access to the *Ranchería* river became restricted by the expanding private property of the company.[64] With only ten hectares of officially registered land left, the community's territory soon became too small to practice the traditional economy (herding, agriculture) and eventually forced the community into the decision to negotiate a resettlement with the company. During field research, a

[61] For instance, mining concessions only covered 1.1 million hectares of the overall national territory in 2002 and covered 8.4 hectares in 2009. See CINEP/PPP 2013.

[62] See CINEP/PPP 2015 and 2016 for more detailed analysis of the irregularities in the acquisition of land by the Cerrejón coal mine, gross violations of community rights in the mine's expansion process, and failures of the consultation processes.

[63] '*La Buena Vida*', a documentary by Jens Schanze, 97 minutes. Germany/Switzerland 2015.

[64] See CINEP/PPP 2016 for more information on the impact of restricted access to infrastructure and public services as well as environmental degradation due to the expansion of the coal mine.

community leader explained how the Cerrejón Company had also hired a *palabrero* to assist and facilitate the meetings between the company's and the community's representatives (including the community's own *palabreros*).

"*Of course, when we started to discuss the land issue, they hired a palabrero in order to better understand our perspective, but also because they wanted the palabrero to explain the benefits of their offer so that we would accept the deal. He attended about six Cerrejón meetings here in Barrancas. And he acted in a traditional manner; he brought us the "words" of the company, but we knew that his objective was to earn a salary and therefore he would only defend the interests of the company. We discussed the issue with our palabreros, and as we understood what his interests were we didn't want to talk to him again. After that, the company had to dismiss him. For us, this person has lost his reputation as a palabrero, he acted as a functionary of the company."*

The example demonstrates the risk of co-option of traditional elements into 'modern' negotiation processes and how this can negatively affect their reputation and acceptance within the very community. The case also serves to illustrate the notorious absence of the state in those situations in which indigenous rights put projects of strategic national interest at risk, such as extractive mega-projects that are one major source of revenue for the central government, thereby highlighting again that conflict resolution coexistence is – rather than a 'technical endeavour' – a deeply political one. From the perspective of interviewees, 'improving' conflict resolution coexistence might be of little help to improve the overall living conditions of the population particularly in the case of the implementation of large-scale extractive projects without proper consultation processes. What is rather needed is a general change in public policy. As was highlighted by one interviewee: "The state has a responsibility to act here, but how do we deal with a situation where mining is a state policy? As long as the state policy doesn't change, there is nothing we can do." (Interview, women representative, 04.07.2015, Barrancas). A recent study on mining and related environmental and land conflicts in the south of La Guajira consequently recommends that the national government's public policies in the context of mining should be redesigned in favour of local communities in order to ensure that their rights are prioritised and protected (CINEP/PPP 2016, 9).

4.4 Illegal armed actors and territorial conflicts

A last conflict scenario involves the operations of armed actors within the indigenous territories.

While guerrilla presence in La Guajira has been historically weak**,** paramilitary incursion started in the late 1990s to control strategically important places of the department such as harbours, allowing for smuggling activities through the Caribbean Sea and into Venezuela. From 1998-2006, paramilitary units operating in the region managed to get hold of both illegal and legal businesses located in strategic points and to build up alliances with local actors, including indigenous community members. Their interest in collaborating with the paramilitaries was often driven by the desire to increase their negotiation (or war-making) capacity so to be better prepared for intra-clan conflicts. The most emblematic case for such a situation is the Bahía Portete massacre (April 18 – 20, 2004). Starting with a dispute over the control of the local harbour in Bahía Portete, this violent event resulted in the extremely cruel assassination of at least six defenceless community members and the forced displacement of over 800, with most of them fleeing across the border to Venezuela (see CNRR 2010). The fact that most of the victims were women (or girls) had a deeply disturbing impact on the Wayuu community's physical safety and environment because they were forced to flee. It also negatively affected the community's psyche. In Wayuu culture, as was mentioned earlier on, women are 'untouchable' or even 'sacred' and must not be hurt physically in a conflict under any circumstances. The impossibility of the male 'warriors' to protect

'their women' was therefore also associated with shame, and actually continues until today as there are still threats against women community leaders that escaped the 2010 attack (ibid., 212, 213). Following these events, public institutions responsible for investigating the events and attending to the affected population completely failed to 1) understand what actually happened and 2) protect the population, a procedure judged by some as 'emblematic' for the institutional ignorance towards Wayuu society and culture. As outlined by a publication by the National Commission for Reparation and Reconciliation (*Comisión Nacional de Reparación y Reconciliación*, CNRR 2010, 154-160), a first reaction of various state representatives as well as the press was to explain the brutal events as being related to a 'family conflict' and 'drug issue'. The false interpretation of the massacre and the inability of the authorities to respond to it have also been highlighted by the Constitutional Court (Resolution 004, own translation):

> *"The impact of the armed conflict on the Wayuu has been rendered invisible by the cultural characteristics of the Wayuu which have led to false interpretations. On the one hand, homicides and massacres of those who have become victims of illegal armed groups have been interpreted within the framework of inter-clan wars and conflicts. And on the other hand, forced displacement has been mistaken with the predominant lifestyle of having multiple homes"* (ibid., 160, own translation).

As a result, state response to those conflicts where it would have been most needed – namely those triggered by armed actors or other powerful third actors, and which cannot be solved by the normative system itself - has been disastrous and characterised by 1) the priority that is given to the vested interests of the state and 2) an institutionalised lack of understanding of and respect for indigenous culture and procedures. Having outlined the variety of coexistence arrangements through examples and concrete cases, the following section provides an analysis of the evolution of coexistence and the factors that have shaped the different arrangements.

5 Analysing coexistence

One aim of our comparative research project was to find out more about the processes that shape different coexistence patterns over time: How have the different mechanisms come to be the way that they are today? Have they remained independent or have they merged together? Is there a dominance of one mechanism over the other? Against the backdrop of these questions, Chapter 5 analyses whether and how the Wayuu conflict resolution system has been adapted and transformed in the context of an increasing rapprochement with non-indigenous influences and traditions. It argues that while indigenous and state-based conflict resolution mechanisms have remained largely independent, we can observe an increasing complexity of mutually influencing relations and selective integration.

5.1 From pragmatic cooperation to mutual interdependence and interference

It is reasonable to argue that the peripheral geographic situation of their homeland, their 'belligerent'[65] character and the hostile climate conditions that have made investments unattractive favoured the continuity and the survival of the distinct culture and tradition of the Wayuu, including their political autonomy and the implementation of their own conflict resolution mechanisms. Throughout the 20th century, indigenous and non-indigenous life worlds moved closer together. Growing commercial relations, migration of indigenous populations to urban centres, and a stronger state presence multiplied the spaces of encounter between the indigenous and non-indigenous population. Demographic changes related to the growth in communication roads between La Guajira increased the influx of people from neighbouring departments and - to a lesser extent - from the country's centre, thereby furthering the homogenisation of the population (Guerra Curvelo 2002, 60). In combination with an emerging legal framework mediating the interaction between both indigenous and state-based conflict resolution mechanisms, ad-hoc arrangements tackling the growing conflict scenarios involving indigenous and non-indigenous people became institutionalised. This report therefore argues that the type of coexistence we find today in La Guajira has evolved from a system of rather separated worlds with ad-hoc articulation into a much more complex network of (imperfectly) institutionalised relations immersed in a legally-binding framework not free of grey zones. Practices of requested and mutually-accepted intervention as well as complementarity between indigenous and state institutions alternate with undue interference from both sides and processes of integration and co-option of indigenous practices by the state and third parties.

Mutually requested and accepted intervention and complementarity

There are different forms of state-based conflict resolution intervention in land conflicts in La Guajira. Next to the undue interference of public institutions disrespecting the 'preferential competence' of indigenous authorities, there are also necessary interventions to protect the population (e.g. in the case of displacement by armed actors) as well as requested interventions by the population. From most indigenous interviewees' perspective, the Wayuu conflict resolution approach was the first 'address' to go to when a conflict arises even though state institutions are regarded at times as a useful complement. As highlighted by a staff member of the local Ombudsman Office in Riohacha:

> *"There is no scale of conflict that couldn't be treated by the traditional conflict resolution mechanism, including cases of death or violence against women, who are sacred in our culture. Therefore, the [conflict resolution] competence must always reside within the community's own conflict resolution system. However, this doesn't mean that we should discard the participation and accompaniment of state institutions, but their interventions must always be conducted with profound respect for the Wayuu normative system. Otherwise we will lose our cultural identity."* (Interview, 01.07.2015, Riohacha)

According to both interviewees from the Ministry of Interior and community representatives (Interviews with Ministry staff, 23.06.2015 and with women representatives, 04.07.2015, Barrancas), indigenous community members are increasingly asking for the accompaniment or support of public institutions.

[65] Apart from the commercial exchange with foreigners as outlined above, the *Guajiros* were confronted with various pacification campaigns, religious and military in nature, which were, however, not successful. This is the reason why the *Guajiros* have ever since been described as an 'ungovernable' people of warriors (for more detailed historical information on the evangelisation and the military campaigns in La Guajira refer to Polo Acuña 2012).

The Departmental Indigenous Affairs Unit has documented a number of conflict cases on their website[66] that help us understand under which circumstances community members decide to call on state-authorities to help resolve these conflicts. Letters by community members requesting support in the resolution of a dispute usually justified the need for assistance by previously failed internal attempts to solve the conflict (e.g. a party to a conflict does not even receive the *palabrero* in the first place or the parties in conflict do not manage to come to an agreement) or by the perceived need for external public witnesses to be present when important decisions related to a conflict are taken, e.g. in the event of the election of traditional authorities or if parties feel that external pressure is needed to ensure parties will stick to the agreements. According to a representative of the *Consejo Superior de Palabreros* public institutions such as the Departmental Indigenous Affairs Office can play the role of "guarantors" in cases of murder, crime, or robbery. In such cases, public institutions are invited to participate in the traditional process to "make an impression on the parties" and ensure that the agreed upon compensation will be paid and parties will stick to the agreement (Interview, 30.06.2015, Riohacha). Finally, the increase in requests was related to the increase of knowledge about conflict resolution opportunities – other than the traditional approach – or supportive interventions in the first place (Interview, women representative, 04.07.2015, Barrancas).

On a meta-level, public institutions were also asked to intervene to protect the Wayuu community's right to their own conflict resolution approach in the first place. In that sense, the ordinary justice system was seen as helpful for the population "to get the recognition of their rights" (Interview, staff member Justice House, 03.07.2015, Riohacha). Especially public institutions such as the local Ombudsman Office were regarded as protecting the Wayuu community's right to be 'judged' according to their own normative framework. As highlighted by one staff member. One interviewee described the Defensoría del Pueblo as a "protection mechanism" in the case of local customs and traditions not being respected by state institutions, e.g. because somebody gets falsely registered as 'authority' disrespecting the traditional election process (Interview, staff Ombudsman Office, 01.07.2016 and staff Justice House, 03.07.2015, Riochacha).

While a preference still seems to be given to the indigenous normative framework, community members call on the state to provide answers to their problems if the traditional approach does not bring about results. However, in this context it was criticised that some community members were strategically opting for the conflict resolution approach that best served their own personal interest, thereby undermining themselves the principle of 'preferential competence' (Interview, Departmental Indigenous Affairs Unit, 09.07.2015, Riohacha).

On the other hand, the documentation of conflict cases at the Indigenous House in Riohacha also included cases involving both Wayuu and non-Wayuu individuals and corporations, demonstrating that the normative system can and has been used to solve conflicts involving non-indigenous conflict parties who might readily accept the indigenous compensation system as a manner of pragmatically and quickly solving disputes, thereby complementing what the state has to offer in terms of justice administration and dispute resolution.

Undue interference

Undue interference in terms of both conflict resolution mechanisms in 'foreign terrain' includes, on the one hand, the application of 'double sanctions' to indigenous community members who are judged once

[66] For an example see documentation of the case *Invasión y expansión indebida del territorio ancestral de la comunidad amalina* at: http://www.sisaid-guajira.org/ [last accessed 26.01.2016].

by their traditional authorities and then again by the ordinary justice system, or public institutions such as the police who unduly meddle in indigenous affairs. As was highlighted by one of the *palabreros:*

> *"The ordinary justice system should only intervene temporarily. For instance, if a problem arises between two Wayuu here in the city, in Riohacha, the ordinary justice should maybe find out which authority they respond to and send them to their authorities so that they then solve the problem. But in reality, the justice system tends to intervene, and it's difficult to make public functionaries understand that this is not their business, that we have jurisdiction, autonomy and competence."* (Interview, 30.06.2015, Riohacha)

In the same line, the *Junta Mayor Autónoma de Palabreros Wayuu* (2009, 58, own translation) highlights that

> *"judges in the territory of La Guajira still have a very restricted interpretation of indigenous rights and particularly of the normative system of the Wayuu. … Police stations, mediation centres and even the very judges ignore the preferential competence of the Special Indigenous Jurisdiction."*

On the other hand, interference can also imply forcing *ali'junas* into accepting imposed ad-hoc 'mediation' and ensuing compensation payments in Wayuu territory. Typical cases in point are traffic accidents that occur within the large territory of the *resguardo* and often result in the harm or death of animals crossing the road. In an interviewee at the Ministry of Interior, Ministry staff referred to local state officials or justice functionaries being scared of 'meddling' with Wayuu community members and hence allowing for such situations to happen (Interview, 23.06.2015, Bogotá).

Selected integration and co-optation

Next to practices of undue interference, we can, however, also observe the selected integration of useful or functional institutions and actors (less so with norms and procedures) as they enhance the legitimacy of intervention and increase pressure on the conflict parties to come to an agreement. One case in point is the integration of *palabreros* as advisors in conflict resolution processes involving public institutions or private companies. As was outlined by staff at the Ministry of Interior, the accompaniment of public functionaries by *palabreros* serves to bridge cultural, and at times language, difficulties but also to enhance the legitimacy and the trust in the process and also to make state-based services more attractive to the indigenous population. One interviewee at the local Justice House in Riohacha highlighted the need for the institution to collaborate with the *palabreros* as they bring in a certain "cultural weight" representing the respect for the spoken word (Interview, 03.07.2015, Riohacha).

The negative flipside of this was highlighted by more sceptical interviewees who warned against a situation in which the traditional authorities are 'contracted' by the state (or third parties) as this might undermine their legitimacy with the very community in the long run. Specifically criticising the incorporation of *palabreros* within the Justice House, *the Junta Mayor Autónoma de Palabreros Wayuu* (ibid., 59, own translation) explains that in their view: *"The Justice Houses are a way to integrate the normative system of the Wayuu into the procedural logic of Western law"*, thereby not necessarily protecting the normative system in its singularity but rather trying to co-opt it into the existing national structures. These attempts to co-opt traditional institutions for the service of private or public interests resonate with the notion of instrumentalised hybridity introduced by Mac Ginty and Richmond (2015). Contrary to what was anticipated at the beginning of the research, there are few instances of 'hybrid coexistence'. If hybridity occurs, it mainly refers to actors and institutions (e.g. *palabreros* being incorporated or co-opted into non-traditional interventions) and less so to norms or behaviours.

To summarise, the general flaws of the justice system, especially regarding land conflicts, the slow implementation of important laws regarding land restitution, the inherent strategic economic interests of the state in indigenous territories, and the failure of the state to protect indigenous communities against conflict-related violence in their territories make the various state-based institutions for conflict resolution a not equally-trusted address for indigenous community members. In addition, ill-designed public policies were often regarded as a trigger for inter-community conflict in the first place. As a result, one interviewee also asserted that in her opinion, the intervention of public institutions to help resolve conflicts was 'partial' and often driven by the 'self-interest' of the involved institution (Interview, community leader, 10.07.2015, Uribia). On the other hand, indigenous representatives were also aware of the opportunities for complementarity with state-based interventions, especially in situations where the traditional approach is not working for one reason or another. In addition, interviewees also highlighted examples of public institutions serving as 'guarantor' and 'witness' to enforce indigenous decisions, especially if they relate to state regulations. Regarding the assessment of indigenous representatives of state-based answers to conflicts, a clear 'hierarchy' of institutions and a differentiated assessment of governance levels and institutions was visible. While local municipality services were not particularly trusted, regional or national services (Departmental Indigenous Affairs Office or the Ministry's 'conflict unit' at the National Level) were frequently mentioned as "go-to" institutions, as well as the local Ombudsman Office.

To conclude, we can note that while most interviewees referred to the constitutional framework of 1991 as a real advancement and protection ("For us to disappear, the constitution would have to disappear", Interview, ibid.) for indigenous rights, more critical voices referred to the overall process of shifting power from the indigenous people to the state. While it is undeniable that the rights of indigenous people are now better protected, this protection takes place against the background of striking structural violence and in the framework of the state that has taken over the responsibility to protect indigenous rights, thereby also acquiring more intervention functions. From such a perspective, the 1991 Constitution can be regarded, at least partly, as a 'trap' (Informal conversation/observation, 28.06.2015, Manuyaro).

5.2 Factors that shape co-existence over time

The concept note for the overall comparative research project established a number of preliminary factors that we assumed would shape the constant process of (re)negotiating conflict resolution pluralism or, in different words, patterns of coexistence over time. In analysing the Colombian case, the following factors seem salient for understanding how coexistence has evolved in La Guajira department: power relations between indigenous and state-actors; a legally 'enabling environment' combined with political will and the technical capacity to implement it; the conflict context; and the role of influential individuals.

Historically, the relative independence of Wayuu society from state interference, based both on its military strength and the remoteness of its territory, has helped to conserve its age-old system of conflict resolution and to uphold conflict resolution dualism. While the process of subsequent deculturalisation and a context of structural violence has weakened the Wayuu community, the Constitution of 1991 and a broader consensus in Colombian society that indigenous cultures, including cultures of conflict resolution, are of value and need to be preserved and protected, has provided them with a new tool of 'self-defence' against national interference. However, the weaknesses in the implementation of laws and regulations highlight the asymmetry in the power relations between the state and the indigenous community which, in the case of the Wayuu community at least, tends to favour the former.

The notion of an "enabling environment" for traditional mechanisms to be practiced was introduced by Bronkhorst (2012, 139). In the Colombian case, the constitutional framework has established such an enabling environment in the form of a strong and (at least on paper) binding framework for indigenous conflict resolution autonomy to evolve within. The importance of the 1991 Constitution and the attached rights to self-governance and the administration of justice were mentioned throughout all interviews. But the lacuna in its implementation was mentioned as well, e.g. the lack of a proper coordination law, the interference of state institutions into indigenous affairs, or the lack of knowledge about indigenous justice mechanisms, etc. Hence, the Colombian case demonstrates that while a legally-enabling environment might be beneficial as it provides some 'ground rules' for coexistence, it needs to be combined with political will and the technical capacity on all state levels, from local, regional to national, to implement what is on paper. While technical capacity can be enhanced through training and information dissemination to relevant implementing institutions, political will might be more difficult to generate and might not be distributed equally across all levels of the state. As highlighted above, conflict resolution dualism was historically accepted more readily by the central state than the local administration that had to deal with citizens' complaints regarding the perceived advantages of the indigenous population. Research in Colombia also hints to cleavages within the justice sector. While the Constitutional Court has been one of the public institutions putting most emphasis on the respect for the rights of indigenous people, local representatives of the justice branch, such as prosecutors, are not always fully aware of the rights of the indigenous people.

Studies focusing on traditional mechanisms for conflict resolution have highlighted their potential limitations in addressing large-scale violence, a finding that was also confirmed in the Colombian context. Here, the indigenous system was judged incapable of dealing with atrocities or massacres committed by external armed actors that brutally violate Wayuu codes of conduct. Interview partners, particularly from the indigenous communities, claimed that the state needs to take over more responsibility for solving these types of conflicts involving armed third actors, mainly paramilitary units still present in the region, in order to protect the indigenous population. Potentially, such a scenario could lead to a strengthening of state intervention over indigenous conflict resolution. On the other hand, however, the poor role of the state in addressing violence against the (indigenous) population is striking in Colombia, leading to the question of whether the state itself is at all able to provide justice for the victims of these violations. This also leads to the question of how much the shape of coexistence also depends on the strengths and weaknesses of each approach and their ability to provide effective conflict resolution and protection to the population. While the decline of indigenous traditions through the processes of urbanisation, mixed marriages, the rise of new leadership, increasing intrusion of private and public investment/actors in indigenous territory, and increasing familiarity of indigenous communities with state services have all led to an increased demand for ordinary justice or other conflict resolution services of the state (from the side of the indigenous population), the ordinary justice system has yet to prove its efficiency to respond to conflicts on indigenous territory.

Finally, it is also important to have a look at the micro-level of coexistence and the role of individuals in shaping coexistence patterns. As it was outlined above, the role of the *palabrero* has been of high reputation among the Wayuu society, providing the successful *palabrero* with possibilities of social ascent. However, in a society where traditional conflict resolution institution is in decline, possibilities for such ascent are restricted, and it might well be that not only new emergent leaders are looking for other ways for social ascent, e.g. through positions in the public administration or (local) politics. It is not uncommon for Wayuus to work for public institutions, including those in charge of handling conflicts. For instance, representatives of the Indigenous Affairs Unit of both the Department and the Municipality of Riohacha, local functionaries of the Justice Sector, as well as local staff at the Ombudsman Office interviewed for this study were themselves Wayuu community members. But also the

palabreros themselves might be inclined to use their specific knowledge and skills outside their traditional role – serving as a type of remunerated 'lawyer' for both the local indigenous population and state entities and private companies.

To conclude, we can observe that what started as a fairly independent side-by-side arrangement with pragmatic cooperation between the different approaches in the past, has evolved into a more complex set of relations following the increasing rapprochement of the worlds of indigenous and non-indigenous society. Today, this has resulted in an unfinished process of institutionalisation of coexistence mainly driven by the national level through the formulation of laws and the new constitution of 1991, taking place in the framework of an increasing (inter)national recognition of cultural diversity and indigenous rights. While the process of institutionalisation has spurred a stronger coordination and selective integration between indigenous and state-based conflict resolution institutions and actors (such as the Justice Houses, Indigenous Houses, and the inclusion of *palabreros*), it has not resulted in a rapprochement of processes or norms.

6 Conclusions and recommendations

Our comparative research project set out to find if:

a) the coexistence of traditional and non-traditional mechanisms of conflict resolution leads to tension and competition between these mechanisms, thereby potentially furthering conflict;

   or whether

b) the coexistence of traditional and non-traditional mechanisms leads to more (or better) options for the population, thereby promoting conflict settlement processes.

Summarising the findings from this case study, three points should be highlighted:

1) **Conflict resolution coexistence frequently triggers tension and competition, thereby furthering conflict.** Looking at the impact of international peacebuilding interventions in a post-conflict context, Daxner et al. (2010, 11) explicitly refers to a reality whereby intervention often causes new conflicts or shifts the focus of the original conflict towards new conflicts. While we are not dealing with an international intervention scenario in La Guajira department, we can still take this observation and reflect upon instances where the (uncoordinated) simultaneous application of traditional and state-based mechanisms to resolve conflicts has triggered new conflicts. One example for such a scenario mentioned throughout field research relates to cases where indigenous communities seek to resolve their conflicts through the 'ordinary' justice system thereby creating new conflicts with those community members who do not accept non-traditional ways of administering justice and might take revenge for the damage caused by sanctions imposed upon them by the state system.
2) **Conflict resolution coexistence has in some instances also led to improved justice access for community members.** However, this depends on the effective functioning of both approaches and the degree of conflict resolution literacy of the population. As highlighted above, for some segments of the population, namely those who possess certain conflict resolution literacy and can make use of both approaches, the existence of various mechanisms to choose from can lead to more options for

conflict resolution. However, it is precisely this 'conflict resolution literacy' that many communities still lack.

3) **Whether conflict resolution coexistence turns out to have positive effects very much depends on first, the quality of each approach individually and second, the quality of the norms and practices that regulate their interaction.** Regarding the latter, findings from the Colombian case hint to the conclusion that tensions arising from conflict resolution coexistence have been tackled through different strategies over time, including pragmatic cooperation, institutionalisation of coexistence, and selective integration.

While neither state nor indigenous representatives denied the right to exist or the usefulness of the other conflict resolution mechanism, they had a number of recommendations for implementing coexistence in a non-conflicting, mutually-beneficial way. According to Yrigoyen Fajardo (2004, 45), the need for coordination includes not only the establishment of rules to solve conflicts over competencies but also the set-up of mechanisms for cooperation and mutual aid. In the field, many of these points were taken up. For instance, interviewees asked for a clearer legal framework and an institutional roadmap on the local, regional and national level that establishes competencies and rules for coordination. In addition, it was highlighted that the correct implementation of existing laws needs to be improved. Interviewees referred to the "institutionalised ignorance" and disrespect of public functionaries regarding basic rights and laws of the indigenous population, especially at the local level (Interview, women representative, 04.07.2015, Barrancas). As a result, interviewees highlighted the need for capacity building for staff in public administration and especially for staff of the justice sector, including judges, so that they understand the normative framework, the cultural particularities but also the very legal framework that exists in Colombia and protects indigenous justice autonomy. One interviewee mentioned that one way of improving this situation would be to have more Wayuu representatives serving as justice functionaries, including judges themselves (Interview, Departmental Indigenous Affairs Office, 09.07.2015, Riohacha). On the other hand, capacity building for community members, indigenous authorities and the *palabreros* themselves (e.g. training and education in the application and functioning of the Wayuu normative system, human rights, specific indigenous rights, ordinary justice system) was also deemed necessary to both enhance the community members' knowledge about the distinct opportunities for conflict resolution, and especially their own traditional system (see Junta Mayor Autónoma de Palabreros Wayuu 2009, 92) and to avoid 'forum shopping' from the side of indigenous community members themselves (Interview, Departmental Indigenous Affairs Unit, 09.07.2015, Riohacha). More problematic than the challenges arising from coexistence as such though are the inherent weaknesses of both approaches individually, including the general inability of Colombian authorities to adequately protect the population from the aggression of violent actors in the context of an internal armed conflict and the declining authority of traditional conflict resolution institutions.

In conclusion, the inhabitants of La Guajira department are experiencing parallel and contradictory processes. With regard to their own communities, the decline of the traditional authorities goes along with the emergence of new leadership, while the increasing call for state intervention clashes with the processes of cultural re-affirmation which are driven forward by the main representatives of the Wayuu normative system themselves, the *palabreros* and their organisations. On the side of the state, the theoretically strong legal foundation providing for indigenous conflict resolution autonomy clashes with the poor practical implementation of this autonomy and risks being undermined in the case of political convenience as demonstrated in the introduction. Thinking about future scenarios, both the decline of the Wayuu conflict resolution system as well as a revival of the system seem possible but will depend on both the state's willingness to protect indigenous autonomy, even if it clashes with national strategic interests, and the capacity of the normative system itself to provide an efficient service to the Wayuu population and to adapt – if not to state-based approaches – to its own internal challenges. While the

conflicts around land that surface in La Guajira are not a direct theme of the negotiation agenda between the FARC-EP and the national government in Havana, their solution is nevertheless an important piece of Colombia's overall peacebuilding puzzle. Solving these conflicts also requires restoring relationships between the state and its citizens, enhancing the protection of human rights, and improving the due participation of citizens in the political decisions that directly affect their lives (see CINEP/PPP 2016).

Zooming out of the particular case of the Guajira department and picking up on where we started our discussion, Mr. Valencia's arrest might well serve to highlight one of the fundamental tensions underlying the coexistence between indigenous and state-based conflict resolution mechanisms in Colombia: the tension between the threat that indigenous autonomy poses to the diffusion of 'Western' state-building norms, concepts and practices, including individualisation, private property, party politics, universal human rights, and neoliberal policies (Sánchez Botero 2011) and the official mandate of the state to serve as custodians or 'guardians' of precisely this autonomy. As outlined by Van Cott (2000, 213), the articulation between indigenous and state law has "been negotiated and renegotiated in practice since colonial times in response to changing political conditions." Essentially, observing conflict resolution coexistence is therefore also one way to analyse and understand the dynamic character of (asymmetric) power relations between the state and indigenous people.

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List of Abbrevations

ACIN	Asociación de Cabildos Indígenas del Norte del Cauca, Association of the Indigenous Leaders in the North of Cauca
AEM	Areas Estratégicas Mineras, Strategic Mining Area
AICOASI	Autoridades Indígenas de Colombia, Indigenous Authorities of Colombia Movement
ASI	Alianza Social Indígena, Social Indigenous Alliance
CINEP/PPP	Centro de Investigación y Educación Popular/Programa por la Paz, Centre for Research and Popular Education/Peace Programme
CNRR	Comisión Nacional de Reparación y Reconciliación, National Commission for Reparation and Reconciliation
CRIC	Consejo Regional Indígena del Cauca, Regional Indigenous Council of Cauca
DANE	Departamento Adminstrativo Nacional de Estadística, National Administrative Department of Statistics
FARC-EP	Fuerzas Armadas Revolucionarias de Colombia –Ejército del Pueblo, Armed Revolutionary Forces of Colomia - People's Army
ILO	International Labour Organisation
INCORA	Instituto Colombiano de la Reforma Agraria, Colombian Institute for Land Reform
INCODER	Instituto Colombiano de Desarollo Rural, Colombian Institute for Rural Development
ONIC	Organización Nacional Indígena de Colombia, National Indigenous Organization of Colombia
PINES	Proyectos de Interés Nacional, Projects of Strategic National Interest

8 Annex

8.1 List of interview partners

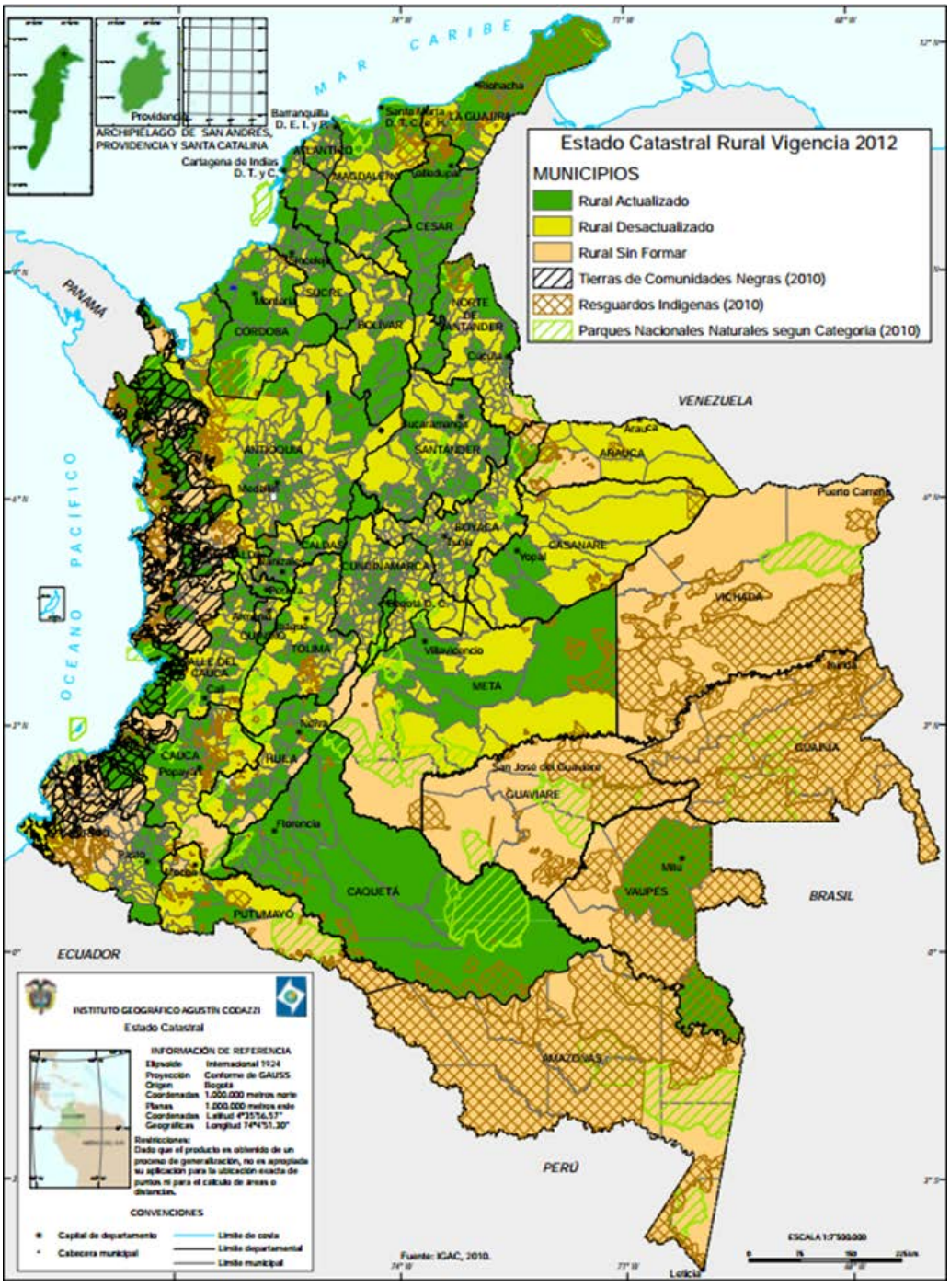
Interviews and informal conversations with one or several resource person		
Function and Organisation	**Date(s)**	**Site**
Subdirector, CINEP/PPP	22.06.2015	Bogotá
Staff member, Ministry of Interior, Indigenous Affairs Department	23.06.2015	Bogotá
Director, Universidad Nacional Abierta y a Distancia (UNAD)	25.06.2015	Riohacha
Anthropologist Wayuu	26.06.2015, 28.06.2015, 11.07.2015	Riohacha
Founding member, Citizen Initiative *Comité Cívico de la Guajira en Defensa del Rio Rancheria y el Manantial de Cañaverales*	01.07.2015	Riohacha
Member, *Palabreros*' Association *Junta Mayor Autónoma de Palabreros*	30.06.2015; 05.07.2015	Riohacha and Maicao
Member, *Palabreros*' Association *Consejo Superior de Palabreros*	30.06.2015	Riohacha
Director, Local Ombudsman Office	30.06.2015	Riohacha
Staff member, Local Ombudsman Office	01.07.2015	Riohacha and Hatonuevo
Member, *Palabreros*' Association *Junta Mayor de Palabreros*	01.07.2015; 05.07.2015	Riohacha and Maicao
Member, Citizen Initiative *Comité Cívico de la Guajira en Defensa del Rio Rancheria y el Manantial de Cañaverales*	02.07.2015	Riohacha
Staff member, Association *Wayuu Arauayu/Asociación de Jefes Familiares de la Zona Norte de la Alta Guajira*	03.07.2015	Riohacha
Staff, Municipal Ethnic Affairs Department	03.07.2015	Riohacha
Representatives, Tabaco community	03.07.2015	Riohacha
Representative, women's organisation *Fuerza Mujeres Wayuu*	04.07.2015	Barrancas
Palabrero working at the Indigenous House	06.07.2015	Riohacha
Member, *Palabreros*' Association *Consejo Superior de Palabreros*	06.07.2015	Riohacha
Staff member, Indigenous House	06.07.2015	Riohacha
Staff member, Indigenous House		
Regional Director, INCODER	06.07.2015	Riohacha
Staff, Ministry of Interior, Indigenous Affairs Department	07.07.2015	Hatonuevo
School teacher, ethno-educative school, Barrancas	04.07.2015, 08.07.2015	Barrancas
Representative, Roundtable *Mesa de Diálogo y Concertación para el Pueblo Wayuu*	08.07.2015	Barrancas
Community member, *Resguardo* San Francisco	08.07.2015	San Francisco
Community leader, Tamaquito community	08.07.2015	Barrancas
Director, Departmental Ethnic Affairs Department	09.07.2015	Riohacha
Staff member, Departmental Ethnic Affairs Department	09.07.2015	Riohacha

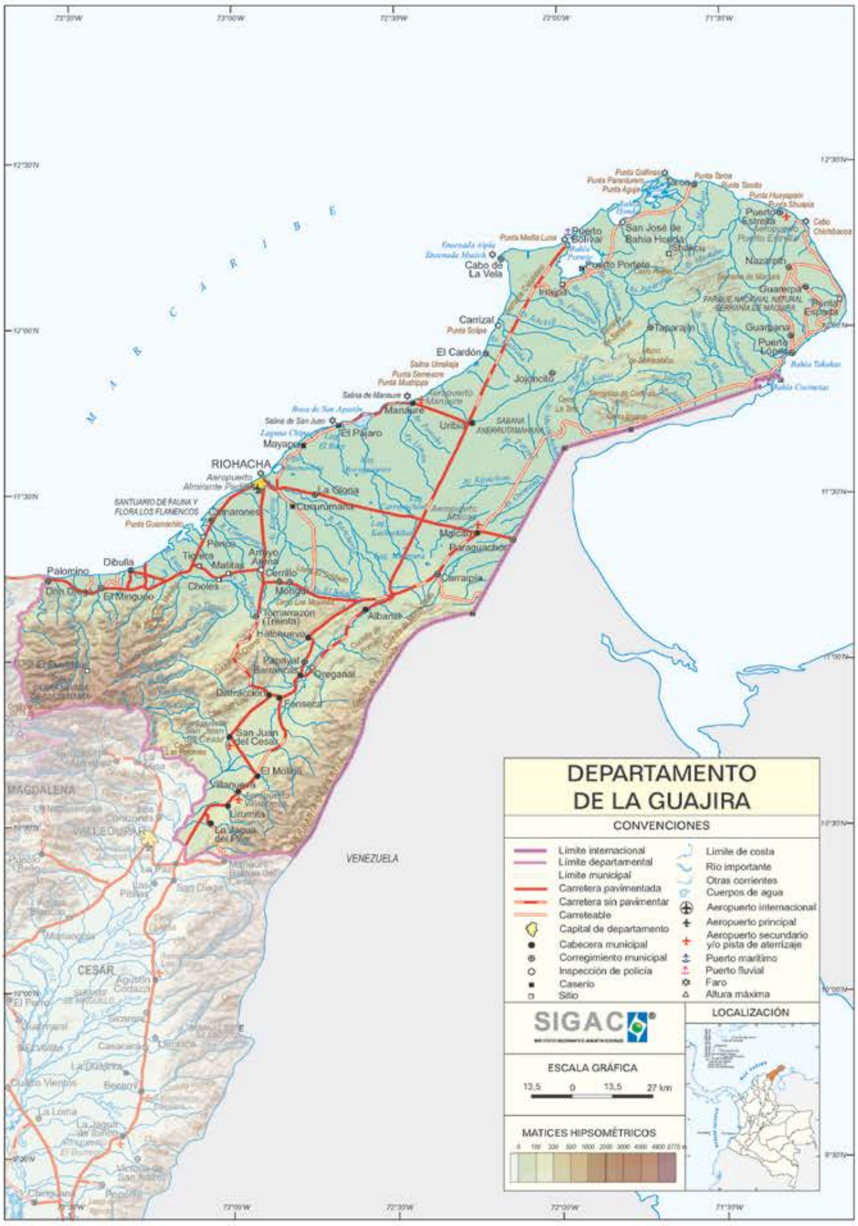
Public prosecutor	09.07.2015	Riohacha
Founder, EINAA Foundation	10.07.2015	Uribia
Community leader, Carrizales community	10.07.2015	Uribia
Palabrero	10.07.2015	Uribia
Young professional	11.07.2015	Riohacha
Family member, Manuyaro community	16.07.2015	Bogotá
Director, ADRM direction, Ministry of Justice	17.07.2015	Bogotá

Observation and informal conversations			
Activity	**Participants**	**Date**	**Site**
Intra-family dialogue/mediation process facilitated by a *palabrero*	About 60 participants: members of the Pana Uriana clan involved in a territorial dispute (Manuyaro community, Carrizales)	28.06.2015	Manuyaro, Carrizales, Uribia
Mediation process at the Indigenous House	About 8 participants: disputants, *palabrero* and staff members of the Indigenous house	06.07.2015	Riohacha
Project kick-off event "Strengthening the Normative System of the Wayuu Community"	About 60 participants: community representatives, *palabreros,* departmental functionaries, local media	06.07.2015	Riohacha
Conflict intervention by the Ministry of Interior, Hatonuevo	About 50 participants: representatives of the Ministry of Interior, the local Ombudsman Office, the departmental Indigenous Affairs Unit, *palabreros*, community members/disputants.	07.07.2015	Hatonuevo
Roundtable discussion *Mesa de diálogo y concertación para el pueblo Wayuu Colombiano*	About 30 participants: Wayuu representatives, staff of the Ministry of Interior, participants from other ministries.	17.07.2015	Bogotá

8.2 Maps

The first map displays the indigenous reserves as of 2010, marked with red crosses. The South-Eastern Amazonas region represents by far the largest indigenous area which is, however, sparsely populated. The map is taken from the Atlas de la Distribución de la Propiedad Rural en Colombia published by the Instituto Geográfico Agustín Codazzi (2012, 103). The map on the following page displays La Guajira department (Copyright Instituto Geográfico Agustín Codazzi. Available at http://geoportal.igac.gov.co/mapas_de_colombia/igac/mps_fisicos_deptales/2012/Guajira.pdf [last accessed 26.04.2016]).





DEPARTAMENTO DE LA GUAJIRA
CONVENCIONES
Límite internacional
Límite departamental
Límite municipal
Carretera pavimentada
Carretera sin pavimentar
Carreteable
Capital de departamento
Cabecera municipal
Corregimiento municipal
Inspección de policía
Caserío
Sitio
Límite de costa
Río importante
Otras corrientes
Cuerpos de agua
Aeropuerto internacional
Aeropuerto principal
Aeropuerto secundario y/o pista de aterrizaje
Puerto marítimo
Puerto fluvial
Faro
Altura máxima
SIGAC
LOCALIZACIÓN
ESCALA GRÁFICA
13,5 0 13,5 27 km
MATICES HIPSOMÉTRICOS
MAR CARIBE
RIOHACHA
VENEZUELA
MAGDALENA
CESAR
VALLEDUPAR
Manaure
Uribia
Maicao
Cabo de La Vela
El Cardón
Carrizal
Dibulla
Palomino
Camarones
La Gloria
Albania
Hatonuevo
Barrancas
Fonseca
San Juan del Cesar
El Molino
Villanueva
Urumita
La Jagua del Pilar
Puerto Bolívar
Puerto Estrella
Nazareth
Jojoncito
Paraguachón
Distracción
Oreganal