

Protecting Indigenous and Afro-Colombian Rights in Post-Conflict Land Restitution: Constitutional and International Framework Failures

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ABSTRACT

This paper examines the challenges faced by Indigenous and Afro-Colombian communities in Colombia in reclaiming their lands in the post-conflict era. Despite constitutional and international frameworks, these groups face significant barriers due to bureaucratic inefficiencies, violence, and prioritization of economic interests over social justice. Using case studies, this study analyzes the impact of extractive industries and weak enforcement of free, prior, and informed consent (FPIC) on these communities. The findings highlight the role of powerful corporate interests and armed groups in obstructing restitution processes, revealing the need for stronger legal protections and institutional reforms. Efforts to achieve meaningful land restitution have highlighted the persistent need for stronger accountability mechanisms, effective enforcement of FPIC, and greater protection for human rights defenders.

Introduction

Colombia's long history of armed conflict has profoundly impacted its Indigenous and Afro-Colombian communities, particularly in the context of land rights. Decades of violence have led to widespread displacement, leaving marginalized communities struggling to reclaim their ancestral territories. The Colombian government made efforts to address these issues through constitutional guarantees and international frameworks, such as the 1991 Constitution and the Victims and Land Restitution Law (Law 1448). However, these frameworks largely fell short of effectively protecting the rights of Indigenous and Afro-Colombian communities. This paper explores the historical context of land dispossession, the challenges involved in implementing legal frameworks, and the barriers marginalized communities face as they attempt to regain their rights in the post-conflict era.

Historical Background

Colonial and Post-Colonial Dispossession

The dispossession of Indigenous and Afro-Colombian lands began during the colonial period when vast tracts of land were seized by Spanish colonizers and later by wealthy landowners. Land concentration, which favored powerful elites, persisted after independence, leading to the marginalization of these communities. Indigenous and Afro-Colombian groups were systematically excluded from land ownership, and their territories were often exploited for natural resources, leaving them with little control over their own lands.

During colonial rule, the Spanish crown established a system of *encomiendas* and *latifundios*, which concentrated land ownership among a few elites while displacing Indigenous communities. After Colombia gained independence, these systems largely remained intact, perpetuating the inequitable distribution of land. Throughout the 20th

century, successive governments failed to implement meaningful agrarian reform that would have benefited marginalized communities. Instead, policies often prioritized the interests of wealthy landowners and foreign corporations, leading to further displacement and disenfranchisement of Indigenous and Afro-Colombian groups.

Conflict and Displacement

The armed conflict that began in the mid-20th century exacerbated land dispossession, as various armed groups occupied and exploited Indigenous and Afro-Colombian territories. By 2018, more than 450,000 people had died due to conflict-related violence, of which 81 percent were civilians.ⁱ The conflict displaced over six million people, with Indigenous and Afro-Colombian communities disproportionately affected.ⁱⁱ Land restitution became a key component of the 2016 peace agreement, which promised to return stolen or abandoned lands to these communities.ⁱⁱⁱ However, implementing this promise has proven challenging.

The rise of paramilitary groups and guerrilla forces during the conflict further complicated land ownership. Armed actors seized land from Indigenous and Afro-Colombian communities to control strategic territories or exploit natural resources. These groups used violence and intimidation to displace local populations, creating a cycle of dispossession that has persisted into the post-conflict era. Despite the Victims and Land Restitution Law (Law 1448), which was intended to address these historical injustices, progress has been slow, and many communities are still waiting for their land to be returned.

Constitutional and Legal Frameworks for Land Restitution

1991 Constitution

The 1991 Constitution marked a turning point for Indigenous and Afro-Colombian rights, recognizing their cultural autonomy and territorial rights. It granted Indigenous authorities the right to exercise jurisdiction within their territories, established protections for communal lands, and recognized Indigenous languages as official within their territories.^{iv} Despite these provisions, enforcement has been weak, and the rights enshrined in the Constitution have often been ignored or undermined by government policies favoring economic development.

Article 7 of the 1991 Constitution recognizes and protects the ethnic and cultural diversity of the Colombian nation, while Article 63 establishes that the communal lands of ethnic groups are inalienable, imprescriptible, and cannot be seized. Furthermore, Article 246 allows Indigenous authorities to exercise jurisdiction within their territories in accordance with their own laws and customs.^v However, these constitutional guarantees have often been disregarded in practice, particularly when they conflict with powerful economic interests, such as mining and agribusiness.^{vi}

Law 21 and ILO Convention 169

In addition to the 1991 Constitution, Colombia ratified ILO Convention 169 through Law 21, which recognized the right of Indigenous communities to free, prior, and informed consent (FPIC) regarding activities affecting their territories. However, FPIC has frequently been disregarded, particularly in cases that involve extractive industries. The failure to adequately consult Indigenous communities has led to numerous conflicts and legal battles, with multinational corporations often prioritizing economic interests over Indigenous rights.^{vii}

The extractive industries, such as oil, mining, and logging, have been a major source of conflict between Indigenous communities and the state. Despite the legal requirement for FPIC, companies have often proceeded with projects without meaningful consultation, leading to environmental degradation and the displacement of local populations.^{viii}

Law 1448 (Victims and Land Restitution Law)

The Victims and Land Restitution Law, enacted in 2011, aimed to restore land to victims of the armed conflict, including Indigenous and Afro-Colombian communities. It was initially intended to operate from 2011 to 2021 but was extended to 2031 due to challenges in implementation.^{ix} Despite its ambitious goals, only 9 percent of land restitution claims filed by victims have been resolved by judges.^x

The law established the Land Restitution Unit to process claims and facilitate the return of stolen lands. However, the unit has faced significant challenges, including limited resources, a lack of political support, and threats from armed groups. Many claimants have faced intimidation or violence for attempting to reclaim their land, and the slow pace of the restitution process has led to widespread frustration. The ongoing presence of armed actors in many regions has further complicated efforts to implement the law, as these groups continue to resist efforts to redistribute land.^{xi}

Case Studies of Indigenous and Afro-Colombian Struggles

The U'wa Struggle

The U'wa people have been at the forefront of resistance against extractive industries, particularly oil exploration on their ancestral lands. Despite constitutional and international guarantees, the U'wa faced significant challenges in protecting their territories from oil extraction by Occidental Petroleum and later Ecopetrol.^{xii} Their fight underscores the shortcomings of existing frameworks in safeguarding Indigenous rights against powerful corporate interests, even when constitutional and legal protections exist.

The U'wa case is emblematic of the broader struggle faced by Indigenous communities in Colombia. In the late 1990s, the U'wa launched a high-profile campaign against Occidental Petroleum's plans to drill for oil on their land. They argued that oil extraction would not only harm the environment but also violate their cultural and spiritual beliefs. Despite international support and legal protections, the U'wa were ultimately unable to prevent Occidental Petroleum's exploration activities within their ancestral territory, highlighting the limitations of both national and international frameworks for protecting Indigenous territories.^{xiii}

Afro-Colombian Communities in the Pacific Region

Afro-Colombian communities in the Pacific region have faced systematic violence from corporations attempting to acquire their fertile lands, particularly for agribusiness and palm oil cultivation. Although the policy of *consulta previa* (prior consultation) is mandated by Colombian law, its implementation has been weak, and corporate interests have often bypassed consultation processes through violence or manipulation.^{xiv}

The Pacific region is one of the most biodiverse areas in Colombia, making it highly attractive to agribusiness and extractive industries. Afro-Colombian communities have been forcibly displaced to make way for palm oil plantations, often with the complicity of local authorities and armed groups. Despite legal requirements for consultation, companies have frequently ignored or manipulated the process, leaving communities without a voice in decisions that directly affect their livelihoods. The failure to enforce *consulta previa* has contributed to the ongoing marginalization and displacement of Afro-Colombian populations, with examples in Jiguamiandó and Curvaradó.^{xv}

El Nilo Massacre and CRIC Advocacy

The El Nilo massacre in 1991, which resulted in the deaths of 20 Indigenous people, highlights the inadequacy of state protection for Indigenous communities.^{xvi} Despite guarantees under the 1991 Constitution, the Cauca Indigenous

Regional Council (CRIC) has faced significant challenges in advocating for land restitution and justice. The massacre and subsequent legal battles illustrate the gap between constitutional promises and the reality of state inaction and violence against Indigenous leaders.

Following the massacre, CRIC launched a campaign to demand justice and the return of the El Nilo lands to the affected community. While the government eventually agreed to compensate the families and recognize their land rights, the process took years and was fraught with delays and obstacles. The El Nilo case demonstrates how state institutions often fail to protect Indigenous communities, even in the face of clear legal obligations.

Challenges in Implementation and Ongoing Barriers

Failures in State and Institutional Implementation

The discrepancy between constitutional guarantees and their implementation is a significant barrier to effective land restitution for Indigenous and Afro-Colombian communities. Although the 1991 Constitution and subsequent laws provide a legal framework for land rights, bureaucratic inefficiencies and a lack of political will have hindered their enforcement.^{xvii} The Victims and Land Restitution Law established a process for addressing historical injustices, yet the Land Restitution Unit has faced substantial challenges, such as insufficient resources, lack of political support, and intimidation by armed actors.^{xviii}

The bureaucratic process itself has been criticized for being slow and cumbersome.^{xix} Many victims seeking restitution must navigate a complex web of legal requirements, often without the financial means to hire legal representation. The lack of coordination between various government agencies further complicates the process, leading to delays in recognizing land claims and returning land to its rightful owners. As a result, many Indigenous and Afro-Colombian communities remain without access to their ancestral territories despite legal recognition of their rights.^{xx}

In addition to bureaucratic obstacles, corruption within government institutions has impeded progress in land restitution. There have been numerous cases where officials accepted bribes from corporate interests to delay or deny land claims.^{xxi} This corruption not only undermines the credibility of the restitution process but also leaves vulnerable communities without recourse to justice. The involvement of local elites and economic interests in the restitution process has further skewed the implementation of land rights in favor of those with political and economic power.^{xxii}

Violence and Security Challenges

The ongoing presence of paramilitary groups and other armed actors poses a significant threat to Indigenous and Afro-Colombian communities seeking to reclaim their lands.^{xxiii} Despite the 2016 peace agreement between the government and the FARC guerrilla group, violence against community leaders and human rights defenders persists. More than 1,466 social leaders have been killed since 2016, many of whom were advocating for land restitution or defending community rights.^{xxiv} This violence is often linked to the interests of armed groups and local elites who seek to maintain control over valuable territories.

Paramilitary groups and other criminal organizations continue to operate in many of the regions where Indigenous communities are attempting to reclaim their land. These armed actors are often involved in illegal activities such as drug trafficking, illegal mining, and land grabs, making it extremely dangerous for community leaders to assert their rights.^{xxv} The state has been largely unable or unwilling to provide adequate protection for these leaders, leaving them vulnerable to attacks and intimidation. The lack of effective security measures for those attempting to reclaim their land has created a climate of fear and insecurity, making it difficult for communities to pursue restitution claims.^{xxvi}

Economic and Social Inequities

Deep-rooted economic and social inequities also hinder land restitution efforts. Indigenous and Afro-Colombian communities face significant barriers to accessing resources, legal support, and political representation. These communities have long been marginalized, both economically and socially, and they lack the financial resources needed to navigate the complex legal processes associated with land restitution. In fact, 63% of the Indigenous population lives below the poverty line, while 48% live in extreme poverty.^{xxvii} The exclusion of these communities from meaningful decision-making processes, combined with the economic interests of multinational corporations, has made it difficult for them to benefit from restitution policies.

The economic disparity between Indigenous and Afro-Colombian communities and other sectors of Colombian society has also affected their ability to advocate for their rights. Many communities lack access to education, healthcare, and other basic services, which limits their capacity to engage in legal battles and assert their land rights.^{xxviii}

These communities are also located in remote areas, far from government institutions and services. The lack of infrastructure and basic services in these areas has further isolated these communities and limited their ability to participate in the political and legal processes necessary to claim their rights. As a result, nearly sixty-four Colombian Indigenous groups are at risk of extinction.^{xxix}

Foreign Companies and Government Collusion

Foreign companies have played a significant role in the displacement of Indigenous and Afro-Colombian communities. The extractive industry, particularly oil and mining, has been a major driver of land dispossession. Multinational corporations have often colluded with the Colombian government to bypass legal requirements for consultation and to exploit natural resources on Indigenous and Afro-Colombian lands. This collusion has been facilitated by a regulatory environment that prioritizes foreign investment and economic growth over the rights of marginalized communities.^{xxx}

Role of International Advocacy and Human Rights Organizations

Inter-American Human Rights System

The Inter-American Commission on Human Rights (IACHR) has played a significant role in advocating for the rights of Indigenous and Afro-Colombian communities. For example, the IACHR has issued precautionary measures aimed at protecting community leaders and has taken up individual cases, such as the El Nilo massacre.^{xxxi} However, the impact of these interventions has been limited, as state compliance with these measures has often been inconsistent. The lack of enforcement mechanisms at the international level has hindered the ability of these organizations to provide meaningful protection.

Despite the IACHR's efforts to bring attention to human rights violations, the Colombian government has frequently failed to implement the recommended measures effectively. The limited impact of international advocacy highlights the gap between the normative framework for protecting human rights and the political will necessary for its enforcement. While the IACHR has helped to raise awareness and provided a platform for marginalized voices, the structural issues within Colombia have constrained its effectiveness.

NGOs and International Solidarity

Various non-governmental organizations (NGOs), such as EarthRights International, have worked to support Indigenous and Afro-Colombian communities in their struggle for land rights. These organizations have provided legal assistance, documented human rights abuses, and raised awareness at international forums.^{xxxii} Despite these efforts, NGOs face limitations, including restricted access to conflict areas, limited resources, and the risk of reprisals from armed actors.

NGOs have played a crucial role in amplifying the voices of marginalized communities, providing them with legal and logistical support that would otherwise be unavailable. They have also acted as intermediaries between local communities and international bodies, ensuring their concerns are heard. However, the work of NGOs is often hampered by the challenges of operating in regions still plagued by violence, as well as by political resistance from those in power.^{xxxiii}

Community Resistance and Resilience

Nonviolent Strategies

Indigenous and Afro-Colombian communities have employed nonviolent resistance to reclaim and protect their lands. The Indigenous Guard, for example, has been instrumental in defending territories from armed groups without using weapons.^{xxxiv} Community blockades and protests have also been organized to prevent illegal resource extraction.^{xxxv} Despite these efforts, the gap between legal rights and practical enforcement has forced communities to rely on their own means for protection, often at great personal risk.

The Indigenous Guard represents a powerful example of community resilience. They have sought to maintain territorial control through peaceful means, even in the face of violent threats.^{xxxvi} Still, the reliance on community-led protection highlights the shortcomings of state institutions in ensuring the safety and security of marginalized groups.

Internal Community Issues

While Indigenous communities have shown resilience in the face of external challenges, internal governance issues have also affected their ability to utilize constitutional rights. Weaknesses in traditional governance structures, such as *cabildos*, have sometimes led to internal conflicts or authoritarian practices by leaders.^{xxxvii} These issues have hindered the effective mobilization of communities and have limited their ability to engage with state institutions to claim their rights.

The *cabildos* are the primary governance structure within many Indigenous communities, responsible for administering justice and managing communal resources. However, the lack of adequate support and capacity-building for these governance structures has limited their effectiveness. These internal challenges must be addressed to strengthen the capacity of Indigenous groups to advocate for their rights effectively.^{xxxviii}

Discussion and Analysis

Ineffectiveness of Policies and Frameworks

The failure of constitutional guarantees and international frameworks to protect Indigenous and Afro-Colombian communities can be attributed to several factors, including a lack of political will, entrenched economic interests, and systemic corruption. The 2016 peace agreement, while creating opportunities for land restitution, has not been effectively implemented due to the influence of powerful economic actors and ongoing violence. The gap between legal frameworks and practical enforcement reflects the broader challenges of governance in Colombia.

The lack of political will to enforce existing laws and policies is evident in the continued displacement of Indigenous and Afro-Colombian communities despite the legal recognition of their rights. Economic interests, particularly those of the extractive industry, have often taken precedence over social justice, leading to the erosion of legal protections for marginalized groups. The entrenched influence of multinational corporations has further complicated efforts to implement land restitution, as these companies have used their economic power to shape government policies in their favor.

Policy Gaps and Recommendations

Several measures must be taken to address policy gaps, including strengthening FPIC enforcement, improving institutional accountability, and bolstering protection mechanisms for community leaders. Enforcing FPIC must be prioritized to ensure that Indigenous and Afro-Colombian communities are adequately consulted before any development projects are undertaken on their lands. Strengthening state institutions and reducing corruption are also crucial steps in making the restitution process more effective.

The implementation of stronger protection mechanisms for community leaders and human rights defenders is essential to prevent further violence and ensure that marginalized communities can safely advocate for their rights. This includes providing adequate resources to state institutions responsible for land restitution and creating an independent oversight body to monitor the implementation of land rights policies. Additionally, international bodies and NGOs must continue to play a role in holding the Colombian government accountable and providing support to those on the frontlines of the struggle for land rights.

Conclusion

Summary of Findings

The challenges faced by Indigenous and Afro-Colombian communities in Colombia highlight the gap between legal guarantees and the practical realization of land rights. Despite constitutional protections and international frameworks, these communities continue to face systematic barriers to reclaiming their ancestral territories. Bureaucratic inefficiencies, violence, and economic interests have all contributed to the failure of restitution policies, leaving marginalized groups without meaningful recourse.

The promises made in the 2016 peace agreement have largely remained unfulfilled for many communities, as the continued presence of armed actors and the influence of powerful economic interests have undermined efforts to return stolen lands. The persistence of violence against community leaders and human rights defenders further illustrates the inadequacy of existing protection mechanisms, as well as the need for stronger enforcement of legal rights.

Broader Implications

The failure to protect Indigenous and Afro-Colombian land rights has significant implications for Colombia's post-conflict landscape. The inability to implement effective restitution not only undermines trust in state institutions but also threatens the stability of the peace process itself. Addressing these challenges requires a comprehensive approach that prioritizes social justice, institutional reform, and community empowerment to ensure that marginalized voices are heard and their rights respected.

The broader implications of this failure extend beyond Colombia, as the struggle for Indigenous and Afro-Colombian land rights is part of a global movement for environmental justice and cultural preservation. The inability to protect these communities' rights reflects a wider issue of marginalized groups being excluded from decision-

making processes that directly affect their lives and territories. This has important consequences for the fight against climate change, as Indigenous and Afro-descendant communities are often the stewards of some of the world's most biodiverse areas.

Future Directions

Future research and policy interventions should focus on exploring ways to strengthen the political representation of marginalized communities, enhance institutional accountability, and ensure the enforcement of existing laws. The role of international advocacy must also be expanded to hold the Colombian government accountable for its commitments. Further study is needed to understand the intersections between economic development and social justice, particularly in the context of land rights and resource management.

Strengthening the political representation of Indigenous and Afro-Colombian communities is crucial to ensuring that their voices are heard in policy decisions that affect their lives. This includes promoting their participation in national and local government, as well as supporting community-led initiatives for sustainable development. Additionally, further research is needed to understand how economic development can be pursued in a way that respects the rights of marginalized groups and ensures that they benefit from the use of natural resources on their lands.

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Notes

ⁱ Maria Rojas Morales, “Colombia’s Measures for Armed Conflict Victim Reparations and Land Restitution.”

ⁱⁱ “A Land Title Is Not Enough: Ensuring Sustainable Land Restitution in Colombia.”

ⁱⁱⁱ Mendoza, “The Ethnic Chapter of Colombia’s Peace Agreement Five Years On: An Independent Assessment.”

^{iv} M.A., *Collective Land Tenure in Colombia*.

^v University of Minnesota Human Rights Library. “Indigenous Peoples in Colombia.”

^{vi} Maria Rojas Morales, “Colombia’s Measures for Armed Conflict Victim Reparations and Land Restitution.”

^{vii} “U’wa Indigenous People v. Colombia.”

^{viii} Crews and Tepperman, “Indigenous Colombians’ Struggle for Land Rights Under a Negligent Government.”

^{ix} Maria Rojas Morales, “Colombia’s Measures for Armed Conflict Victim Reparations and Land Restitution.”

^x Maria Rojas Morales.

^{xi} National Center for Historical Memory, “BASTA YA!”

^{xii} “U’wa Indigenous People v. Colombia.”

^{xiii} Culler, “The U’wa Struggle to Protect Their Cultural Lands: A Framework for Reviewing Questions of Sovereignty and the Right to Environmental Integrity for Indigenous Peoples.”

^{xiv} Fuentes, “The Restoration and Protection of Afro-Colombian Land to Establish Equality and Mitigate Violence.”

^{xv} Fuentes.

^{xvi} University of Minnesota Human Rights Library. “Indigenous Peoples in Colombia.”

^{xvii} National Center for Historical Memory, “BASTA YA!”

^{xviii} “A Land Title Is Not Enough: Ensuring Sustainable Land Restitution in Colombia.”

^{xix} “A Land Title Is Not Enough: Ensuring Sustainable Land Restitution in Colombia.”

^{xx} Vallejo, “INDIGENOUS PEOPLES VERSUS PEASANTS: LAND DISPUTES IN COLOMBIA AND THE SEARCH FOR AN ALTERNATIVE APPROACH.”

^{xxi} Crews and Tepperman, “Indigenous Colombians’ Struggle for Land Rights Under a Negligent Government.”

xxii M.A., *Collective Land Tenure in Colombia*.

xxiii "A Land Title Is Not Enough: Ensuring Sustainable Land Restitution in Colombia."

xxiv Maria Rojas Morales, "Colombia's Measures for Armed Conflict Victim Reparations and Land Restitution."

xxv Ruette-Orihuela et al., "Necropolitics, peacebuilding and racialized violence."

xxvi "A Land Title Is Not Enough: Ensuring Sustainable Land Restitution in Colombia."

xxvii ABColombia, "Caught in the Crossfire"

xxviii Bauer et al., "Prevalence of Common Diseases in Indigenous People in Colombia."

xxix ABColombia, "Caught in the Crossfire"

xxx Crews and Tepperman, "Indigenous Colombians' Struggle for Land Rights Under a Negligent Government."

xxxi University of Minnesota Human Rights Library. "Indigenous Peoples in Colombia."

xxxii Culler, "The U'wa Struggle To Protect Their Cultural Lands: A Framework for Reviewing Questions of Sovereignty and the Right to Environmental Integrity for Indigenous Peoples"; "U'wa Indigenous People v. Colombia."

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xxxiv Benavides-Vanegas, "Indigenous People's Mobilization and Their Struggle for Rights in Colombia."

xxxv Velez, "Indigenous Movements in Colombia: Redefining Their Notion of Citizenship Through Social Demonstrations, Representative Groups, and Constitutional and Legal Reforms."

xxxvi Benavides-Vanegas, "Indigenous People's Mobilization and Their Struggle for Rights in Colombia."

xxxvii University of Minnesota Human Rights Library. "Indigenous Peoples in Colombia."

xxxviii Goyes et al., "Genocide and ecocide in four Colombian Indigenous Communities."

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