

# The Dispute for Land in Colombia over the Resguardos: Concepts, Analytical Angles and Standpoints\*

## La disputa por la tierra en Colombia sobre los resguardos: conceptos, ángulos analíticos y puntos de vista

Germán Andrés Mora Vera\*\*

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### Abstract

For over 400 years there has been a conflict between the governments and the indigenous peoples in Colombia over the lands of *resguardos* that still goes on today. Through a comparative study carried out within what is denominated as the *Upper* and *Lower* angles, this article attempts to show the differences and similarities between the interests and beliefs of these two parties over these lands. The academic discussions involved in this study reveal also that there is not only a lack of consensus between the authors that study this topic, but also demonstrate that there is a gap between the principles enacted in the rule of law and the reality, which keeps prolonging this conflict.

### Resumen

Por más de cuatrocientos años ha existido un conflicto entre los Gobiernos y los indígenas en Colombia por las tierras de los resguardos y que aún hoy en día sigue vigente. Este artículo intentará demostrar, por medio de un estudio comparativo realizado dentro de lo que se denomina los ángulos superior e inferior, las diferencias y similitudes entre los intereses y las creencias que estos dos actores tienen sobre estas tierras. Las discusiones académicas que se mencionan en este estudio revelan que no solo hay una falta de consenso entre los autores que estudian este tema, sino que, a su vez, demuestran que hay una brecha entre los principios establecidos en la ley y el contexto real que sigue prolongando este conflicto.

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\*\* Graduated from the Pontifical Xaverian University in Bogotá, Colombia and holds a Bachelors' Degree in Political Science. He is a Master of Arts in International Development and is a current Ph.D student at Nagoya University in Japan. He has been working as a teaching and research assistant at the same university. For further contact: andreskurachi@gmail.com



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**Palabras clave**

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## Introduction

Over four hundred years ago Colombia was colonized by the Spanish crown and since then, a struggle begun between the native ethnic groups and governmental regimes over land, lasting until the present date. This scuffle has become more complex throughout the years because the parties involved - the government and the indigenous groups - have different conceptions over the meaning of the land, especially after the Spanish crown created the so-called *resguardos*.

The *resguardos*, or indigenous reservation areas, as it could be translated to the English language, are special geographical zones designed by the Spanish crown during the colonization period for the safeguarding and protection of the rights of the indigenous communities, specifically from any possible dominance, usage, and invasion from third parties, including governments themselves. After its enactment, this political and legal measure gave the indigenous communities collective property rights to own and use these areas for living and developing their traditional activities, while at the same time preserving the cultural background of the territory. In other words, no one different to the indigenous peoples belonging to the community assigned to live in a specific *resguardo*, not even the government, was allowed to enter the *resguardos* without permission of their members. However, gradually the *resguardos* became the reason behind a conflict between the indigenous peoples and the governments that has been prolonged for over a century. This scuffle has been caused because, on the one hand, the indigenous peoples argued that they have continuously experienced intrusions into their *resguardos* by the government itself and also by third parties that have neither considered the politics, laws, or their rights to previous consultation to enter into these zones. On the other hand, the government claims that the policies, laws, and rights to previous consultation are by all means being respected, protected, and, at the same time, the *resguardos* are not under the intermission of unauthorized parties.

Hence, this article will explain the conflict between these groups through some relevant academic standpoints that have attempted to study this dispute. I divided this analysis in two formulated categories called the *Upper* and *Lower* angles in order to simplify these standpoints, considering that one of the factors which has made this scuffle more complex is the intricacy in the analyses performed and variety of opinions. The purpose of this article will be focused on demonstrating the existence of a gap between these perspectives – which did not coincide in the past and still do not coincide now – and the lack of a consensus to be used as the future starting point for a fixed position between the parties involved in order to reduce the intensity of the current existing conflict.

## The Origins of the Land Dispute in Colombia

Taking a look back in the history of Colombia, we can find that most of the constant conflicts occurred in this country have land as a common factor; one of the most important

and necessary basic resources for life and development, and one of the main reasons for the commencement of confrontations between groups which, in this case, are the indigenous peoples and the government.

After the Spanish crown invaded, occupied, and colonized this territory between the 15<sup>th</sup> and 19<sup>th</sup> century, specifically from 1490 to 1819, the indigenous peoples who were dominated, forced to work the land in favor of the Spaniards' interests, and almost extinguished while the colony lasted, gradually started to receive some special privileges given by the higher governors of the crown. Their intention was not only to avoid their extinction but also to maintain control of the remaining natives in concentrated and organized parcels through these political and legal measures in order to preserve their lives for future generations.

When the Spanish crown abolished slavery in 1542, along with the enactment of what is known as the New Laws (*Nuevas Leyes* in Spanish), the Spanish crown gave these indigenous peoples some freedom and privileges as long as they remained loyal to the crown without committing revolutionary acts (Newson, Linda. A; 2008, p. 178). The *resguardos* were perhaps the most evident and notable change in the relationship between colonizers and indigenous peoples, since with this reform the *resguardos* came to be understood as geographical areas owned by the indigenous peoples that they could use freely without the intervention of the government or third parties. In the words of Copland Aaron, “the *resguardo* is characterized by being a land assignation, according to the indigenous tradition of property, to a group of aborigines. The originality of the system was based on the fact that the sale of these respective areas was not permitted...” (Copland, Aaron; 1978, *El resguardo*). Both authors, Newson and Copland, consider in their studies the crucial role played by the crown after the promulgation of the New Laws in the attempt to modify the relationship between colonizers and indigenous peoples; however, unlike Newson, Copland affirms that *resguardos* were a “*sui generis* land ownership form, some kind of discrimination, which was prolonged a clear demographic policy that prevented the mingling of Spaniards, indigenous, half-caste, and African peoples” (Copland, Aaron; 1978, *El resguardo*).

### **The Ambiguous Concepts of Resguardos**

The *resguardo* will be defined as a specific land area given by the crown, during the colony, and the government, in the times of the republic, to indigenous peoples, according to their beliefs. It aims to protect and preserve these native groups by collectively granting them a space where they can live, organize, and develop their own traditions, customs, and lifestyle without paying tributes or being subject to the intervention of the government or other parties. For a *resguardo* to exist, it must be comprised by a territory and an indigenous community, and they are catalogued by all means as

inalienable, imprescriptible, and indefeasible<sup>1</sup>. These principles and concepts are also found in Law 21, 1991(Law 21/1991, March 4th) and Article 21 of Decree 2164, 1995, which define *resguardos* as

a collective property of the indigenous communities, which are constituted in favor and in accordance with Articles 63 and 329 of the Constitution, being inalienable, imprescriptible, and indefeasible. These areas are a legal and sociopolitical institution of special character, conformed by one or more indigenous communities, under the titles of collective property that also has guarantees of private property, possessing a territory and governed, for management and internal lifestyle purposes, by an autonomous organization supported by the special indigenous legislation and their own normative system (Decree 2164/ 1995, December 7th).

Even though *resguardos* have a single legal concept, the constantly changing legal, political, and economic history of Colombia has made scholars re-define them time after time as they perceive the real, practical application of *resguardos*. Therefore, scholars do not have a common position which can describe these lands completely and they understand *resguardos* from multiple standpoints that have generated constant contradictions and debates in time. This confusion is highly noticeable when we focus in how different are the conceptions of land for the indigenous groups and the government: On the one hand, the indigenous peoples have argued during several decades that the land belonged to them even before the creation of *resguardos*. Their perspective suggests that these areas given by the crown and the government are neither respected nor protected because, firstly, policies and regulations are not functioning properly and, secondly, because there seems to be an ambivalent position from the government, as it does not act coherently according to what is established in the laws and policies designed for these lands. On the other hand, for governors the lands of *resguardos* are the property of the indigenous groups; they cannot be interfered with without the authorization of these peoples, and are subject to constant protection by policies and laws.

At the present date, the concept of *resguardos* has a varied set of different meanings generated from continuous debates and contradictions through time; but, give or take, there are two points of view that separate the opinions stated by all parties: everything is settled under the rule of law, quoting the words of the government, or nothing is solved yet and the government is demonstrating an ambivalent position, citing the perceptions of the indigenous groups. Still today, these contradicting positions remain and the scenario

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<sup>1</sup> In this sense, inalienable means that a property cannot be sold; imprescriptible means that a property or a possession is not lost in time; and indefeasible denotes a situation in which a judge cannot dispose a property or wealth completely. For more information regarding these concepts, see also: The Colombian Constitution of 1991, Articles 63, 329, and 330.

of the conflict is becoming gradually more unclear because scholars, the indigenous groups, and the government have dissimilar standpoints and have not created agreements or a fixed common view. Observing this situation, the analysis in this investigation will consider the perspectives of authors from several different backgrounds and it will categorize them in what I have decided to denominate as the *Upper* and *Lower* angles.

### **The Upper and Lower Angles**

This new scheme in the form of angles is the result of the analysis of the works of several different authors, who in their studies defined in different ways the land of *resguardos* in Colombia. After years of multiple ongoing debates, we have come to the point where these varied arguments will be separated and cataloged according their tendencies in order to contrast them and find whether they have shared characteristics. Therefore, in order to begin, allow me introduce the meaning of these angles and how the authors shall be catalogued.

#### **The Upper Angle**

In one hand, we have the *Upper* angle that conceives *resguardos* as a category of lands given by a supreme power, the crown, in the times of the colony, and the government, in the republic. This angle conceives these lands as geographical areas that these supreme regimes can give, modify, and remove through legal and political amendments. The authors of this angle argue that the governments have given these lands – currently protected under the rule of law – to the indigenous population and that the communities living there hold two types of rights: 1.) to be consulted before entering or developing industrial activities in these zones; and 2.) to the ownership of the land and its resources by the entire community assented there. Another characteristic of this angle is also observed when the authors assert that *resguardos* mainly serve in favor of the interests and benefit of the governments.

#### **The Lower Angle**

On the other hand, the *Lower* angle argues that *resguardos* were mainly designed to benefit the interests of the indigenous communities. It also asserts that the government is not demonstrating its commitment to respect the laws, policies, and the indigenous peoples' collective rights to own and use these zones according to their traditions. Consistent with the standpoints of authors under this angle, the rights of these peoples are neither considered nor respected, as these areas are incessantly becoming the subjects of mining expeditions, sudden occupations, and similar unauthorized activities that: 1.) do not consider the right to previous consultation of the indigenous groups, and 2.) these actions, when performed by other actors and the government itself do not reflect coherence and concordance with the principles established in the legal and political framework designed specifically for these lands.

## The *Upper* and *Lower* Angles, and the Standpoints Over the Land of the *Resguardos*

As we saw in the previous sections, from a legal point of view, the current concept of *resguardos* is still the one consigned in writing. Little can be done to change this condition but, in practice, the definition varies and there have been several authors through time who have searched the reasons behind this in the political and economic backgrounds. When speaking of the *resguardos* from the political and economic standpoints, the *Upper* and *Lower* angles demonstrate a sharper contrast.

### The *Upper* and *Lower* Angles and the Political Standpoint

The political standpoint examines the reasons behind the creation of *resguardos* and, simultaneously, it studies the transitions in the governmental regimes and levels of authority that governments and indigenous groups have over these lands. For this reason, let us go deeper into the analysis of the angles examining the variety of arguments and how *resguardos* were created.

In this standpoint, the *Upper* angle asserts that *resguardos* were the result of a strategy designed by the Spaniards, who acted following – and in favor of – the Catholic Church, who throughout the conquest dominated the natives, secularized them, and finally assigned them to live in these areas which accounted for: 1.) an increase in the profits of the crown; and 2.) ensuring the establishment of Catholicism as a dominant religion.

It has come to the attention of Ismael Sánchez that, during the colonization process, the indigenous peoples were socialized in a way consistent with the principles of the Catholic Church. This had been an important authorizing and politically influent organization in the colony and some years at the beginning of the time of the republic (Sánchez, Ismael; 1993, pp. 371-388). In the perspective of this author, through the well-known Papal bulls<sup>2</sup> or official ecclesiastical documents, the Church created, authorized, and legitimized not only the conquest activities but also the expansion of the Catholic influence in the territories conquered by the Spaniards (Sánchez, Ismael; 1993, pp. 371-388). One of the most notable Papal bulls that served to justify the Spanish actions, the appropriation of the indigenous territories, their subjugation, and eventually their aggrupation in the *resguardos*, is the well-known *inter caetera* (Among Other [Works], in English), dated May 3rd and 4th of 1493. This document establishes, constantly invoking God, that all the territories discovered were meant to become part of the crown for their profitable benefit and that the natives found living there had to be put at the

<sup>2</sup> The Church through the power invested on the Popes, was the political actor responsible for the influence over several crowns to act and proceed according to its holy interests. These spin around the attempt at saving the world from pagan religions and demoniac beliefs by expanding its range of influence through conquest activities mostly carried out by Spain. For further information about the Papal bulls and their characteristics and consequences, please refer to: Papal Encyclicals [Online]. Available From: <http://www.papalencyclicals.net/all.htm>

disposition of the principles of the church in order to be converted into Catholics and saved by the Church, the organization in charge of delivering humanity from evil.<sup>3</sup>

At the time of the colony more Papal bulls were enacted allowing the conquest missions to obtain more lands and generate more revenue for the colonizers, the crown, and, of course, the Catholic church. In this sense, the standpoint from the *Upper* angle mentions that the crown did indeed give the indigenous peoples the *resguardos*, but the purposes were directed towards the maximization of the profit of the crown and the domination of the indigenous communities living there under the principles of Catholicism, religion that still today has a vast majority of followers in Colombia.

In the same *Upper* angle and standpoint as Ismael Sánchez, David Bushnell also argues that, in the colonial time, Spaniards were always accompanied by representatives of the Catholic church, who, simultaneously with the conquest missions, began to forcefully evangelize the 'savages', in exchange of the payment of tributes to their colonizers (Bushnell, David; 2010, pp. 4 and *passim*). Therefore, as a starting point, this reveals that there are two authors who share similar views regarding the creation and the origins of the *resguardos*. These two perspectives, those of Sánchez and Bushnell, not only indicate that these lands were indeed given by the crown but also demonstrate another supreme power was present, aside from the crown itself: the Catholic Church. Through ecclesiastical methods, the Church settled its presence, dominated the indigenous peoples, and ensured the expansion of its ideology in the territory. In this sense from the *Upper* angle, the *resguardos* can be considered as the result of a strategy carried out by the Spanish crown and the Catholic Church in which the indigenous peoples were gathered in some areas that facilitated: 1.) the increase of the profits of the colonizers; and, 2.) the expansionism of the religion.

Sánchez focuses his study more on the presence of Catholicism and its expansion in Colombia; unlike him, Bushnell, in a different study performed along Rex Hudson, deepens his analysis on the examination of the meaning of *resguardos*. According to them, these areas are conceived as artificially formed land centers that the indigenous peoples could neither sell nor possess (Bushnell, David, and Hudson, Rex. A; 2010, p. 83). Their logic suggests that these areas cannot be sold or owned by the indigenous peoples and indeed, at the time of the colony, these peoples had few freedoms and privileges, which impeded them from using their lands as they desired. Actually, as stated above, the Constitution of Colombia, Law 21, 1991, and Decree 2164, 1995 (among others) are some of the most important legal instruments that recognize the rights of the indigenous peoples to own and use *resguardos* in a collective way.

<sup>3</sup> Alexander VI. May 4, 1493. Inter Caetera. In: Papal Encyclicals [Online]. Available From: <http://www.papalencyclicals.net/Alex06/alex06inter.htm>



Bushnell and Hudson's arguments have perhaps problematized the prolonging disputes and debates over *resguardos* because, in their conceptions, the indigenous peoples seem to have limited rights over these areas given by the crown and the governments. Therefore, these limitations reflect that, what started as an expansionist strategy of both the crown and the Catholic Church, gradually confined the indigenous groups in *resguardos*, which seen from this *Upper* angle, are areas that fully belong to these supreme powers.

In contrast with these perspectives, the *Lower* angle, asserts that *resguardos* are the property of the indigenous peoples and were given by the crown for their protection and, regardless of some failures in their functioning, these lands originally belonged originally to them even before the creation of these areas. It is also important to highlight in this angle that some of the authors who could have associated to it have a contradicting perception about the functioning and purposes of these lands.

In the first place, Ocampo López arguments that *resguardos* are defined as a socio-economic institution which was designed for the protection of the indigenous peoples who officially started to hold their property rights over them after the agrarian reform of 1591, as it assigned them to live in land areas which became inalienable and communally owned (Ocampo, López. Javier; 1994, pp. 105). Sharing the same point of view, Orlando Fals-Borda says that these lands were indeed given by the Spanish Empire for the protection of the rights of these minorities, who were assigned to live in the rural parts of the country surrounding the cities and newly-formed towns. His argument also affirms, similarly to the authors associated to the *Upper* angle, that this measure was derived from a congregation policy of the Spanish crown, gathering the indigenous groups in special areas. However, and differently to the aforementioned authors, Fals-Borda thinks that through the creation of the *resguardos* the crown also gave the indigenous peoples the rights to own and use these fragments of land according to their beliefs and traditions, and, most importantly, the protection from future abuse from colonizers (Fals-Borda, Orlando; 1957, pp. 331-332). Complementing this viewpoint, and in the same angle, Herreño Hernández argues that the lands of *resguardos* overlap their existence with legal and political principles in Colombia. In his concept, these areas seek the establishment of a "political affirmation process against institutionality and a differentiation process against other social groups that starts with the delimitation of a territorial domain in which sovereignty, power, and autonomy can be exercised" (Herreño, Hernández. Ángel Libardo; 2004, p. 252). Unlike Ocampo and Fals-Borda, Herreño's argument is focused on the role that these areas play in differentiating the indigenous peoples from the rest of the population by living in a delimited zone where autonomy and sovereignty are present.

These three authors, Ocampo, Herreño, as well as Fals-Borda, coincide in their studies when they explain that these lands given by the crown were designed for the protection of the indigenous peoples, and because of this natives should hold collectively the complete

rights over *resguardos*. At the same time, Herreño, Ocampo, and Fals-Borda contradict the point of view of the *Upper* angle that sees these areas as the result of a strategy created by the crown and of the Church, designed to increase material wealth and religious followers. Both angles coincide when making reference to the crown as the main giver of these areas. However, the *Lower* angle does not consider the role of the Catholic Church in this creation process because the authors see *resguardos* as spaces that were conceded according to the beliefs of the indigenous peoples for their protection against abuse from colonizers. Hence, in the standpoint of the authors of the *Lower* angle, the Catholic Church is left aside. On the other hand, unlike Sánchez, Bushnell, and Hudson (authors associated to the *Upper* angle), who argue that *resguardos* are zones where indigenous peoples have somewhat limited rights, both authors from the *Lower* angle (Ocampo and Fals-Borda) contradict this point by asserting that these lands are collectively owned by the communities living there and, therefore, they have complete rather than limited rights over them.

Regarding the discussion regarding up to what extend the indigenous peoples and the supreme powers have authority and rights over these areas, authors from the *Upper* angle, such as David Wallbert, affirm that at the time of the colonization the indigenous peoples neither had a previously established legal system nor a formalized conception about property in order to lawfully claim and having their rights over the land recognized (Wallbert, n.d)). The Spaniards who conquered the Americas refused the possibility to return these whole areas back before the creation of the *resguardos* for the indigenous peoples and, interpreting Wallbert's argument, these lands belong to the responsible authorities, the crown and the governments, who created the *resguardos* and gave them to the indigenous peoples. For this author the problem lies on the clash of perceptions because, on the one hand, the indigenous peoples have kept arguing that a vast amount of lands they owned were stolen by the Europeans in the colony and these lands were kept by the governments after the birth of the republic of Colombia, while, over the decades, the indigenous peoples have considered them as not only indigenous traditional property but also as the given *resguardos*. On the other hand, the colonizers say that from the very moment they conquered the Americas, the lands became their property and eventually were distributed to these natives. The Spaniards also argued that there was no legal system or documents that proved these lands belonged to the natives before their arrival to the Americas. This argument came at a time when the colonization by the crown imposed a legal system, which remains up to certain extent even today, to legitimize their actions, allowing governors to determine the allocation process of indigenous communities in *resguardos*. In his own words,

European ideas about land and property differed from those of Indians in two important ways. First, under European law, land was a commodity that could be bought and sold, and

individuals who “owned” a tract of land had, for the most part, exclusive rights to its use. Second, ownership was determined by formal means, recognized by deeds and contracts, and enforced by courts of law...Europeans [then] took several approaches to obtaining land (Wallbert, n.d).

In this line of thought, Wallbert conceives *resguardos* as belongings of the crown and the governments who devised them, while the indigenous peoples do not share this point of view. According to Wallbert, the rights and, in this case, the authority over the lands of *resguardos* is determined by the presence of agreements, contracts, laws, policies, etc. However, Wehrmann summarizes this concept in in three points: 1.) the property rights, 2.) the land registration procedures; and, 3.) the reference in the rule of law as the tools that the crown and the government have to determine the owners of the lands. (Wehrmann, Babette. Germany; 2006, Figure. 1: Constitutive and Regulative Institutions of the Land Market, p. 2). Unlike Wallbert, Wehrmann affirms that both parties, the crown in the colony and the governments in the republic, constructed an organized legal and political system which made easier for the indigenous peoples to have the rights granted by the concept of *resguardos* fully recognized and protected. Therefore, speaking in terms of authority over the lands, Wehrmann’s logic is more complete than Wallbert’s, as she considers the past facts, proofs, and, especially, the presence of a political and legal system as the tools that the supreme powers have to allow or deny the possibility to obtain lands. Complementing this information, Martínez asserts that even the “Organization of American States (OAS) has catalogued Colombia as one of the most advanced countries in regards to having well defined legislation for indigenous peoples” (Martínez, Martínez. Yovanny; 2003, p. 6), because the Colombian legislation has allowed indigenous communities who have their *resguardos* registered in the *Instituto Geográfico Agustín Codazzi* (Geographic Institute Agustín Codazzi), having more than 30,050,215 million hectares distributed across the whole territory, as seen in the following chart.

**Table 1.**  
**Amount of Land Titles Registered in the Geographic Institute Agustín Codazzi (IGAC)**

Total Area of the Registered Lands in the Geographic Institute Agustín Codazzi (IGAC) According to Land	
Owner	Area (Ha)
Government	28,590,815
Individuals	67,859,588
Afro Communities	3,786,826
Indigenous Communities	30,050,215
Parks and Forestal Areas	8,003,291

Source: IGAC. Instituto Geográfico Agustín Codazzi. See Also: Martínez, Martínez. Yovanny (2003). “La tenencia de la Tierra en Colombia” Cuadro 5. Área total de predios inscritos en el IGAC según tenencia. p. 6. [Online]. Available From: <http://www.sogeocol.edu.co/documentos/09late.pdf>. Retrieved: 26/12/2013.

In the perspectives of these authors, in order to give the *resguardos* to the indigenous groups there is a constructed legal and political machinery that responds to the needs of these peoples and works properly to address their claims. According to this standpoint, the existence of: 1.) institutions with capacity invested by the governments in Colombia; and 2.) land registration procedures, contracts, property titles, official agreements, and decrees and laws, accounts for the existence in Colombia of a functioning process to determine the assignation of *resguardos* to the indigenous peoples. These authors affirm that still to this date, these organizations<sup>4</sup> and processes are operating properly.

While the authors of the *Upper* angle assert that the crown and the governments established the legal and political machineries that have permitted the indigenous peoples to have their *resguardos*, the authors of the *Lower* angle discuss that these machineries and processes do not seem to be working efficiently because: 1.) there is no clarity regarding how many communities have their lands registered; and 2.) the rights that these communities hold have been ignored by the crown and the governments themselves throughout history. This *Lower* angle standpoint affirms that the organizations, ministries, and similar dependencies over which the government has invested its power are constantly contradicting each other, ignoring in unison the indigenous rights and authority over *resguardos*.

One of the most notable authors from the *Lower* angle and standpoint is Martti Koskenniemi who affirms that “there can be no real doubt ... of the superiority of the Spanish [and governments] over the indigenous peoples, as well as over their right to penetrate indigenous territories for the purpose of trade and proselytizing” (Koskenniemi, Martti; 2009, p. 5). The *resguardos*, in his perspective, have always been flexible land areas easily penetrated by the supreme powers that, without any previous consultation to the indigenous peoples to enter into their territories, violate their authority and their property rights. Koskenniemi, as well as the natives, argue that the concept of *resguardos* has always been unclear and misconceived, even by the authorities of the government (Koskenniemi, Martti; 2009). The government, according to the indigenous peoples, enters into these zones without acknowledging the presence and rights of these minorities, destroying their environment and putting their lives under risk, while simultaneously developing unstoppable mega infrastructure

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<sup>4</sup> Organizations such as the ministries, official dependencies, and delegated corps such as: Catastro (Real-Estate Registration Central Agency), the Instituto Geográfico Agustín Codazzi (Geographic Institute Agustín Codazzi (IGAC)), the Departamento Nacional de Planeación (DNP) (National Planning Department), the Departamento Administrativo Nacional de Estadística (DANE) (National Statistics Administrative Department), the Instituto Colombiano de la Reforma Agraria (INCORA) (Colombian Agrarian Reform Institute), currently known as the Instituto Colombiano de Desarrollo Rural (INCODER) (Rural Development Colombian Institute), among others, are the most notable and important official authorities established by the government to determine the owners of the land.

projects, mining activities, and military operations in these lands. For Fabio Alberto Ruiz these areas are conceived as:

an institution...[which] at least in legal matters meant an important recognition of the political rights of indigenous groups as subjects owners of the land, that also allowed them a space to preserve their cultural traditions. However, this principle was reduced to be only on paper because, in a more specific area, one of its effects was to confine the indigenous communities in terms of space,, ridding them of the best lands, situation that constructed...the land tenure tendency towards latifundium-smallholding that characterizes the country even today (Ruiz García, n.d).

Ruiz's opinion of *resguardos* deals with a very important topic related to the reduction of the nature, function, and purpose of these lands to some lines written in paper, since the original intended purpose of these areas is not evidenced in reality. Unlike Koskenniemi, who focuses his attention on the frailty of the authority of the indigenous peoples over their *resguardos*, and how they were degraded to being considered as tools used by the crown and the government for the generation of income, Ruiz argues that the governments have used the concept of *resguardos* to project an illusion of protection over the indigenous groups, while actually taking away their best lands and establishing an unequal land tenancy pattern that privileges private companies and big landowners instead.

Alberto Chirif and Pedro García Hierro, who based their study on official information of the INCODER, argued that the number of hectares of land given and registered in the form of *resguardos* to the indigenous peoples is 31,207,978 million hectares, as it can be seen in the graphic following these lines (Chirif, Alberto., and García, Hierro. Pedro; 2007, p. 70). This total number exceeds by 1,157,763 million hectares the total stated in the *Upper* angle by Martínez, who based his information on the data of the IGAC. However, Ruiz, who based his conclusions on the data obtained from the DANE, contradicts Martínez from the *Upper* angle, and Chirif and Hierro from the *Lower*. According to his study "currently there are 710 assigned *resguardos* located in 27 departments and 228 municipalities of the country, occupying approximately 34 million hectares, equivalent to the 29.8% of the total extension of the country" (Ruiz García, n.d.). His results surpass by more than 3 million hectares the total presented by Chirif and Hierro, and by around 4 million hectares the result of the study of Martínez.

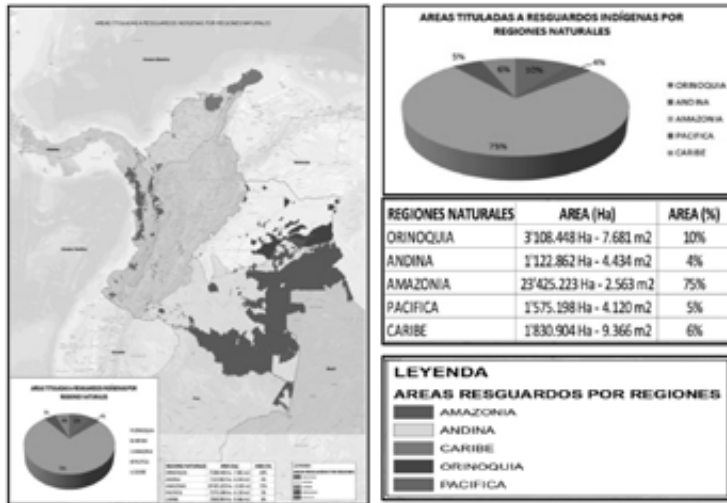
**Table II.**  
**Lands Assigned to the indigenous communities**  
**by Departments. 1966-2006**

Entitled Lands to the Indigenous Communities by Departments 1966-2006				
Department	Number of <i>Resguardos</i>	Population		Area
		Persons	Families	Has
AMAZONAS	21	21,930	4,137	9,209,244
ANTIOQUIA	43	11,174	2,148	343,404
ARAUCA	26	1,926	420	128,171
BOYACA	1	3,582	707	220,275
CALDAS	4	20,861	4,782	5,820
CAQUETÁ	42	4,205	805	680,196
CASANARE	8	3,424	644	148,477
CAUCA	47	74,237	16,580	181,967
CÉSAR	8	7,177	1,473	58,767
CHOCO	116	23,119	4,824	1,271,570
CÓRDOBA	3	17,372	3,211	117,932
GUAÍÑA	28	9,836	1,866	7,129,244
GUAJIRA	20	101,466	18,646	1,083,906
GUAVIARE	22	4,027	774	1,892,207
HUILA	14	4,815	967	6,340
MAGDALENA	3	16,678	2,131	577,546
META	18	3,755	744	200,559
NARIÑO	45	36,380	6,811	361,734
NORTE DE SANTANDER	2	1,433	428	122,200
PUTUMAYO	52	10,145	2,232	186,205
RISARALDA	5	8,345	1,566	28,079
TOLIMA	68	16,884	3,110	23,142
VALLE	21	5,608	1,110	33,625
VAUPÉS	2	12,935	2,231	3,639,925
VICHADA	31	19,484	3,947	3,557,432
<b>TOTAL</b>	<b>650</b>	<b>440,798</b>	<b>86,294</b>	<b>31,207,978</b>

Source: Instituto Colombiano de Desarrollo Rural (INCODER) [www.incoder.gov.co](http://www.incoder.gov.co). 2006. See Also: Chirif, Alberto., and García, Hierro. Pedro (2007). "Capítulo 2. Territorios Indígenas. Una utopía inconclusa-El estado de la Cuestión". *Tierras tituladas a las comunidades indígenas por departamentos 1966-2006. Marcando territorio. Progresos y limitaciones de la titulación de territorios indígenas en la Amazonía*. Grupo Internacional de Trabajo Sobre Asuntos Indígenas. Denmark, Copenhagen. 2007, p. 70.

Every author, from both angles, does not agree on the total number of hectares assigned in form of *resguardos*. Each dependency from the government may have different data and for this reason the results may generate more contradictions among authors, and of course, between the indigenous groups and the government. In the most recent geographic update of the *resguardos*, carried out by the INCODER in December of 2013, the total number of hectares of *resguardos* was approximately 31,062,635 million hectares, out of which the Amazonia region holds the majority of *resguardos* with a 75%, and the Andean region the lowest with 4%, as it is can be see in the following map and data:

**Figura 1. Areas Assigned for Indigenous Resguardos by Natural Regions**



Source: Official Cartography of the Geographical Information System of the the Rural Development Colombian Institute (INCODER). Soils Study, Geographical Institute Agustín Codazzi (IGAC). Scale 1:10.000. December of 2013.

These contradictions are making the scenario for understanding *resguardos* ambiguous for scholars, indigenous groups, and the government. The endless debates among authors regarding the analysis of *resguardos* are becoming more complex, considering the different amounts of standpoints and, as shown in the next section, the opinions of writers as well as those of the indigenous peoples and the government remain divided. Meanwhile, from the *Upper* angle, *resguardos* are seen as mere potential zones for generating development and revenues and, contradicting this argument, the *Lower* angle sees them as spaces not for the generation of profit, but for the preservation of the patrimony, the traditional roots of the country, and the indigenous peoples.

**The *Upper* and *Lower* Angle and the Economic Standpoint**

As a starting point for this category, Germán Colmenares affirms that *resguardos*, as seen from this standpoint, were created as a strategy of the Spanish crown, who gathered the natives in some concentrated and specific areas all over the territory, in order to stimulate the economy and the extraction of natural resources (Colmenares, Germán; 2001, p. 117). His perspective is similar to the arguments of Sánchez, one of the authors mentioned at the political standpoint in the *Upper* angle, who argues that these lands were created by the crown and the Catholic Church in order to get more revenue by making the indigenous peoples their slaves and religious followers.

When the Spaniards arrived to the Americas, they searched for precious stones, such as emeralds, and metals such as silver, gold, and copper in order to increase the material income of the colonizers, using the indigenous peoples as workforce. The Spaniards not only sought to ensure complete profit and gather more natural resources by making indigenous peoples exploit the territory but also made them harvest the land in order to generate progress by incentivizing a market economy based on farming and the extraction of raw materials.

In this sense, Colmenares sees these lands as strategic points that the crown and, currently, the government, have been using to develop the economy. As a complement to this idea, one of the most recognized authors in Colombia, well-known for his economic background and reflective position towards *resguardos*, Salomón Kalmanovitz, argues in one of his several studies about the economy of the colony and the republic that *resguardos* were considered as indigenous peoples confinement zones “that were adequate land extensions that provided ways to gather sustenance for the indigenous communities, from which available working labor force was “distributed”” (Kalmanovitz, Salomón; 2008; p. 46). Colmenares and Kalmanovitz both see that the existence of these lands provided not only resources but also working force for the interests of the crown and the government. At this point, Absalón Machado, another well-recognized Colombian economist, refutes Colmenares and Kalmanovitz’ ideas because, in his perspective, *resguardos* seem to be inexistent after, during the colony and several years of the republic, diverse parties like farmers, landowners, and others, assumed control of the areas and the resources, making this type of land barely visible even today. In his own words, “*resguardos* disappeared all across the country since 1850, even though in the south area of Colombia they still exist ...due to the presence of a poor capitalist development and an agricultural economy that did not manage to generate exportation crops due to the lack of communication roads” (Machado, Cartagena. Absalón; 2009, p. 49). Machado’s arguments suggest that the lands of *resguardos* seem to have completely vanished from Colombian soil and perhaps this is because, despite the presence of some indigenous communities, the parties which appropriated these areas, or that still have them under their power, have already used them completely, depleting their resources, converting them into unusable geographic areas for the indigenous peoples.

Machado’s position reflects in some way a part of the reality that is currently present in Colombia, even years after becoming an independent country from Spain; a reality in which land is seen as a powerful wealth and those who have it under control hold the capacity of generating more income. The current economic model in the world highly values and constantly demands non-renewable resources, such as precious stones and metals such as emeralds, gold, silver, copper, among others. In the following charts we can observe some interesting data that is relevant for this study and especially for the standpoint of



this angle. In the first chart we can observe how non-renewable resources, such as metals, gradually became relevant for the economies and especially when examining the share of the global copper output, which had a 19% increase between 1990 and 1999.

**Table III.10 Latin America: Ore and Metal Production (Average annual rates and percentages)**

Table IV. 10  
LATIN AMERICA: ORE AND METAL PRODUCTION  
(Average annual rates and percentages)

	Share of world output (%)		Growth rate 1990-1999
	1990	1999	
Ore			
Bauxite	23	27	2.9
Copper	25	44	10.6
Tin	27	25	-1.3
Nickel	7	15	11.2
Lead	13	13	-0.2
Zinc	17	21	3.3
Refined metals			
Aluminium	9	9	1.8
Copper	16	26	9.2
Tin	23	15	-3.8
Nickel	7	11	7.4
Lead	8	7	0.2
Zinc	7	7	2.7

Source: World Bureau of Metal Statistics (WBMS), *World Metal Statistics*, various issues.

Source: World Bureau of Metal Statistics (WBMS) *World Metal Statistics*, various issues. See also: Ocampo, José Antonio., and Martín, Juan. (Ed.) (2003). *A Decade of Light and Shadow. Latin America and the Caribbean in the 1990s*. "Chapter IV Structure and Performance of Goods-Producing Sectors" Table IV.10 Latin America: Ore and Metal Production (Average annual rates and percentages). Economic Commission for Latin America and the Caribbean (ECLAC). United Nations, Santiago, Chile, July 2003, p. 145.

The following graphic presents how the economic behavior of the colony is similar to the one of the republic. In both periods land is conceived as a potential source of income in which the presence of the indigenous peoples and their rights over *resguardos* come after the profit obtained from natural resources.

**Graph I.**  
**The Cycle of the Economic Behavior. The Shared Interests of the Colony and the Republic for Natural Resources**



\*Graphic based on the perspective of the author.

The authors defending the *Upper* angle seem to privilege the economic growth over *resguardos* and the rights of indigenous peoples. These lands, possessing abundant non-renewable resources, are considered to be potential zones for the generation of profit and development. However, these areas still exist and it is because of this that Machado's argument is not shared by the authors of the *Lower* angle. For this reason, the writers presented in the final section of this analysis as part of the *Lower* angle not only contradict the arguments given by Colmenares, Kalmanovitz, and Machado but also attempt to demonstrate that the economic behavior of the government is another of the reasons causing the conflict with the indigenous peoples, who defend their lands and are opposed to these economic behaviors.

### The Lower Angle and the Economic Standpoint

Opposed to Colmenares and Kalmanovitz, whose idea of the creation of these land areas highlights an economic strategy, and supporting the conception of the indigenous groups, Shelton Davis, Enrique Sánchez - with the collaboration of María Valdés - argue that *resguardos* are the living territories of the indigenous peoples and are not limited to be the places of vital importance for development due to the allocation of natural resources and variety of soils. In these authors' perspective, *resguardos* are geographical portions which are vital for the patrimony because they not only preserve the cultural roots of the nation but also the ecosystem through the management indigenous peoples have given to them (Davis, Shelton., Sánchez Enrique., and Valdés, María; 2003, p. 804 and *passim*). These lands, in the perspective of these authors, hold a religious and spiritual conception<sup>5</sup> that the communities allocated there use to define their customs and traditions, which do not seek the generation of revenue based on the exploitation of natural resources such as emeralds, gold, silver, copper, and oil<sup>6</sup> as the government would. Opposing to Colmenares, Kalmanovitz, and Machado, Arango and Sánchez argue that *resguardos* "for some of the indigenous communities have a very deep cultural meaning. It is not simply a *productive factor*, neither a good for trading... it is a topic related to the ancestral territory, their own territory" (Arango, Ochoa. Raul., and Sánchez, Gutierrez. Enrique; 2004, p.103). For the authors of the *Lower* angle, *resguardos* as same as the

<sup>5</sup> The religions of the indigenous peoples are very challenging to define in general terms because each community in every *resguardo* have their own beliefs, and even though those are shared up to certain extent, they diverge according to the perspectives of each group. For the indigenous peoples, every natural resource and element of the territory has its purpose, essence, and reason to exist according to their beliefs.

<sup>6</sup> The groups conceived inside a *resguardo* strongly believe that there is a supreme force that cannot be disrespected by exploiting territories as the colonizers and governments have done. This force that rules and defines their existence emanates from the environment which surrounds them and when this ecosystem is preserved, it maintains alive the essence of the indigenous peoples along with their lifestyle, based mostly on the agriculture, stockbreeding, and harvesting.

resources that do not have an economic value because, in the logic of the indigenous peoples, these elements are part of an ecosystem where their deities are also manifested.

In comparison to the *Upper* angle, García Hierro and Surralés manifest that, in order to understand the conception of the land for the indigenous peoples, multiple elements come into the picture. According to the arguments given by these authors, the territory where the natives live, aside from being considered as an area established for their preservation and protection, providing them with the necessary elements for their daily lives, is also considered as “a space for social relationships with each one of the elements of the ecosystem. Relationships, networks, channels, paths, etc.; the territory is not a finite area shaped by the inherent limits to its existence but a fabric in the process of constant constitution and reconstitution” (García, Hierro, Pedro., and Surralés, Alexandre; 2005, p. 20). All the authors presented in this angle share a common standpoint related the land of the indigenous peoples as areas that work to preserve the ecosystem, as it was highlighted by Shelton, Sánchez, with the collaboration of Valdés. Also, different to the three previous researchers, authors like Arango, Sánchez, Gutierrez, García Hierro, and Surralés attempt to demonstrate that in the lands of the *resguardos* there is a presence of a divinity that gives a spiritual rather than economic value to the indigenous peoples, who consider these lands as the givers of life.

The current government has given priorities to the preservation of these areas in the National Development Plan (National Planning Department (DNP). National Development Plan (2010-2014). Santos, Calderón. Juan Manuel. “Prosperity for Everyone”). Nonetheless, the actions towards them reflect the fact that there is a gap between what is stated in the law, along with the political principles, and the actions performed by the government, such as unauthorized invasions, carrying out mining activities, construction of infrastructures in the search for development, and the destruction of the ecosystem when the government does not previously consider the rights of the indigenous over these lands.

## Conclusions

In this article we examined the reasons and arguments presented by the government, the indigenous groups, and different authors from several backgrounds over the lands of *resguardos*, diving them in two angles, the *Upper* and the *Lower*. After contrasting these opinions, it is evident that there are few shared points over which authors coincide but, overall, there is neither a consensus among scholars nor between the indigenous peoples and the government about *resguardos*. The political and economic standpoints were understood as the elements that change and have an impact on the creation and the enactment of the law, the component which establishes rights, equality, and fairness for the whole population.

This conflict over *resguardos* is presented not only because of the clash of interests between the indigenous groups and the government but also because there is an evident gap between what is enacted in the political machinery and reality. As mentioned

throughout this document, the actions performed by the governmental authorities are not considering the rights of the indigenous peoples over these lands, which were originally created for the protection of these communities and the preservation of the cultural roots of the country.

Therefore, as long as this gap persists, along with the differences in the perspectives over the land between the indigenous peoples and the government, the absence of agreements and the lack of a common position that integrates these perspectives and interests into one, will continue to prolong this conflict that still is present after it began over 400 years ago.

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