

# The Water Rights-Based Legal Mobilization of the Wayúu against the Cercado Dam: An Effective Avenue for Court-Centered Lawfare from Below?\*

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**Abstract: Objective/Context:** In recent years, decreasing water availability, accessibility, and quality in the Upper and Middle Guajira has led to the death of thousands of Wayúu people. This has been caused by precipitation deficit and droughts and hydro-colonization by mining and hydropower projects. This study assesses the effectiveness of the Wayúu’s legal mobilization to redress the widespread violation of their fundamental rights on the basis of the enforceability and justiciability of the human right to water. **Methodology:** The study assesses the effects of the Wayúu’s legal mobilization by following the methodological approach proposed by Siri Gloppen,

\* This paper is result of two field studies conducted in the framework of my doctoral studies: firstly, a six-month research stay at the Research and Development Institute in Water Supply, Environmental Sanitation and Water Resources Conservation of the Universidad del Valle, Cali (2016-2017); secondly, the participation in the summer courses on “Effects of Lawfare: Courts and Law as Battlegrounds for Social Change” at the Centre on Law and Social Transformation (Bergen 2017). These field studies were financially supported by the European Commission scholarship program “Erasmus Mundus Action 2: Sud-UE” and the Chr. Michelsen Institute mobility grant. I would like to sincerely thank Professors Siri Gloppen and Bruce Wilson (CMI, Bergen), Gloria Amparo Rodríguez (Universidad del Rosario) and Ramiro Ortiz (Universidad del Valle) for their support throughout my research. Very special thanks also go to Professor Felipe Gómez, my Ph.D. supervisor at the University of Deusto, and to the Ph.D. researcher in Biology Ms. Lorena Cortés. Without their permanent support and complicity, this paper would not have been possible. Finally, from the bottom of my heart, I would like to thank my parents Toni and Luisa María for their unconditional love, my brother Eduard for offering me his help when I needed it the most, and Ms. Siwaporn Boonruang for her smile over the last five years.

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which addresses lawfare from below strategies from two dimensions: in the narrow sense of winning cases in courts, and in the broader sense of changing public policies, strengthening social protest and placing a social problem at the center of public debates. **Conclusions:** The effects of the Wayúu's legal mobilization paint a mixed picture: largely successful with regard to court responses, but largely unsuccessful in terms of government implementation of court decisions. Even if the Wayúu's legal mobilization has brought about public policy changes, the measures adopted have been insufficient and many Wayúu children are dying through reduced water availability, accessibility, and quality. However, strategic alliances forged by the Wayúu have opened a window of opportunity to redress the situation: the declaration of the unconstitutional state of affairs by the Constitutional Court. **Originality:** The study of the enforceability and justiciability of the human right to water from the conceptualization of lawfare proposed by Siri Gloppen, which enables a comprehensive assessment of the effectiveness of legal mobilizations.

**Keywords:** *Thesaurus:* Colombia; indigenous peoples; social and economic rights; water resources. *Author:* Lawfare.

### La movilización legal fundamentada en el derecho al agua del pueblo Wayúu contra la represa El Cercado: ¿un medio eficaz para la batalla jurídica desde abajo centrada en los tribunales?

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**Resumen: Objetivo/contexto:** En los últimos años la reducción en la disponibilidad, accesibilidad y calidad del agua en la Alta y Media Guajira ha provocado la muerte de miles de wayúu. Este escenario ha sido causado por las sequías, la reducción de la pluviosidad y el hidrocolonialismo protagonizado por proyectos mineros e hidroeléctricos. Este estudio analiza la eficacia de la movilización legal de los wayúu que ha buscado acabar con la violación generalizada de sus derechos fundamentales a partir de la exigibilidad y justiciabilidad del derecho humano al agua. **Metodología:** el estudio analiza los efectos de la movilización legal de los wayúu según el enfoque metodológico propuesto por Siri Gloppen, que aborda la eficacia de las estrategias de *lawfare from below* desde dos dimensiones: en sentido estrecho (ganar los casos en los tribunales) y en sentido amplio (cambiar las políticas públicas, fortalecer la protesta social e incrementar el debate público sobre un problema social). **Conclusiones:** el balance de los efectos de la movilización legal de los wayúu es mixto: en gran medida exitoso respecto a la respuesta de los tribunales y en gran medida fallido respecto al cumplimiento de las decisiones de los tribunales por parte del Gobierno. Si bien la movilización legal de los wayúu ha logrado cambios en las políticas públicas, las medidas adoptadas han sido insuficientes y los niños wayúu continúan muriéndose por falta de accesibilidad, disponibilidad y calidad del agua. Sin embargo, las alianzas estratégicas tejidas por los wayúu han abierto una ventana de oportunidad para revertir este escenario: la declaración del estado de cosas inconstitucional por parte de la Corte Constitucional. **Originalidad:** el estudio de la exigibilidad y justici-

ciabilidad del derecho humano al agua desde la conceptualización de *lawfare* propuesta por Siri Gloppen permite abordar íntegramente el análisis de la eficacia de los procesos de movilización legal.

**Palabras clave:** *Thesaurus:* Colombia; derechos sociales y económicos; población indígena; presa; recursos hídricos. *Autor:* movilización legal.

### **A mobilização legal fundamentada no direito à água do povo Wayúu contra a represa El Cercado: um meio eficaz para a batalha jurídica popular centrada nos tribunais?**

**Resumo: Objetivo/contexto:** Nos últimos anos, a redução na disponibilidade, acessibilidade e qualidade da água na Alta e Média Guajira provocou a morte de milhares de Wayúu. Esse cenário foi causado pelas secas, pela redução da pluviosidade e pelo hidrocolonialismo protagonizado por projetos mineiros e hidroelétricos. Este estudo analisa a eficácia da mobilização legal dos Wayúu que buscou acabar com a violação generalizada de seus direitos fundamentais a partir da exigibilidade e justiciabilidade do direito humano à água. **Metodologia:** o estudo analisa os efeitos da mobilização legal dos Wayúu segundo o enfoque metodológico proposto por Siri Gloppen, que aborda a eficácia das estratégias de *lawfare from below* a partir de duas dimensões: em sentido estreito (ganhar os casos nos tribunais) e em sentido amplo (mudar as políticas, fortalecer o protesto social e incrementar o debate público sobre um problema social). **Conclusões:** o balanço dos efeitos da mobilização legal dos Wayúu é misto: em grande medida bem-sucedido com respeito à resposta dos tribunais e em grande medida frustrado com respeito ao cumprimento das decisões dos tribunais por parte do Governo. Se por um lado a mobilização legal dos Wayúu alcançou mudanças nas políticas públicas, por outro lado as medidas adotadas foram insuficientes e as crianças Wayúu continuam morrendo por falta de acessibilidade, disponibilidade e qualidade da água. No entanto, as alianças estratégicas realizadas pelos Wayúu abriram uma oportunidade para reverter esse cenário: a declaração do estado de coisas inconstitucional por parte da Corte Constitucional. **Originalidade:** o estudo da exigibilidade e justiciabilidade do direito humano à água a partir da conceptualização de *lawfare* proposta por Siri Gloppen permite abordar íntegramente a análise da eficácia dos processos de mobilização legal.

**Palavras-chave:** *Thesaurus:* barragem; Colômbia; direitos sociais e econômicos; população indígena; recursos hídricos. *Autor:* mobilização legal.

“I was not aware of what they had done to the water from the Ranchería River; they dammed it and keep it here for the benefit of very few while leaving others to die of thirst.”

María Pana, Wayúu leader, Uriana caste<sup>1</sup>

## I. Introduction: A Lawfare Approach to Water Conflicts

**L**awfare is understood as the strategic use of rights, law, and litigation by different actors to advance contested political and social goals (Gloppen 2017, 6). This paper will focus on the notion of (water rights) lawfare from below; that is, the use by civil society actors of legal arenas and strategies such as litigation, rights-based lobbying and demonstrations in their struggle for policy change, ideological hegemony and social transformation (Gloppen 2017, 7).

This paper will mostly deal with the effects of court-centered water rights lawfare by the Wayúu, including strategic litigation before quasi-judicial bodies such as the Inter-American Commission of Human Rights (lawfare in the narrow sense). However, to a lesser extent, other strategies of water rights lawfare by the Wayúu will also emerge: i) societal lawfare, whose purpose is to change water social discourses, norms, and behaviors through demonstrations, water rights advocacy, and awareness-raising strategies; and ii) legislative strategies seeking social change through lobbying of political actors or engagement in policy and legal reforms (lawfare in the broad sense, Gloppen 2017, 8-13).

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## II. Theoretical Framework

In *Conceptualizing Lawfare*, Gloppen (2017, 4-7) shows how the notion of lawfare has been criticized on various grounds: for some, the term is perceived as the instrumental misuse of (human rights) laws to accomplish purposes other than, or contrary to, those for which they were originally enacted (Dershowitz and The Lawfare Project group); others remark that lawfare strategies have been used to reach negative goals such as military objectives (Rabkin 2004; Wheaton 2006, 5-12) or dominance and dispossession (Comaroff 2001, 306); yet others, consider lawfare from below a futile strategy and the result of the neoliberal capture of politics (Comaroff and Comaroff 2009, 53-59; Fay 2013, 171). Beyond this criticism, the lawfare from below approach provides a useful frame to study legalized political contestations, effectiveness of strategies to advance social and political goals, and a reconceptualization of legal institutions.

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1 Testimony of the documentary “El río que se robaron. El exterminio de la nación Wayúu” (Guillén 2015), one of the main pieces of evidence submitted by the legal team accompanying the Wayúu communities from Uribía, Manaure, Riohacha and Maicao to request the Inter-American Commission of Human Rights to implement protection measures (IACHR).

The usage of “from below” in this paper is not meant to be a spatial metaphor;<sup>2</sup> rather, it refers to voices of marginalized people such as the indigenous. This understanding entails a critique of existing political or legal paradigms (Goodale 2007, 22).<sup>3</sup> However, references to “from below” should not be understood in a narrow sense because voices of indigenous people are not exclusively channeled through community-based organizations. On the contrary, local and international human rights NGOs and domestic and transnational advocacy networks, including, among others, research organizations, the media, and parts of the executive and/or parliamentary branches of governments, might become allies of the most vulnerable, echo their voices, and reflect perceptions of local-level human rights needs (De Feyter 2006, 12-18. See also Epp 1998; Gloppen 2008b; Keck and Sikkink 1998; Ruibal 2014). The more cooperative and egalitarian these alliances are, the greater the possibilities for lawfare strategies from below to be effective (Barkan 1980, 948-952; Bernstein 2013, 25-26; De Feyter 2006, 16-18; McCammon and McGrath 2015, 135).

### III. Methodology

The study draws primarily on data gathered in two field studies: a six-month research stay at the Research and Development Institute in Water Supply, Environmental Sanitation and Water Resources Conservation of the Universidad del Valle, Cali (2016-2017); and participation in the summer course on the “Effects of Lawfare: Courts and Law as Battlegrounds for Social Change” at the Centre on Law and Social Transformation (Bergen, 2017). These field studies provided the research with consistent empirical and theoretical grounds. Specifically, the author used different research methods to examine the effects of court-centered lawfare strategies deployed by the Wayúu: first, the analysis of court decisions and litigative experiences to focus on the dimension of lawfare in the narrow sense. Second, content analysis of i) newspapers and NGO reports to address the coverage and support for the Wayúu mobilization, and ii) government documents and bills to identify potential changes within the public policies and domestic law (dimension of lawfare in the broader sense). Third, semi-structured, in depth interviews and informal dialogues with lawyers, journalists, political scientists, electric engineers and Wayúu leaders to obtain a better understanding of the challenges concerning the fulfillment of the Wayúu’s human right to water; and, finally, extensive revision of academic literature on legal mobilization theory and water justice to strengthen the theoretical foundation of this work.

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2 The global/local social theoretical literature is based on a vertical spatial metaphor and assumes that there are only two levels at which social processes can emerge or unfold: the local level at the bottom (“from below”) and the global level at the top (“from above”). These approaches may lead to confusion since social processes unfold across different boundaries and cannot easily be fitted into one of the two sides in the global/local binary. Specifically, human rights discourses unfold without a clear spatial referent and emerge as “between” the global and the local (Goodale 2007, 22-24, 33).

3 The same understanding of “from below” can be found in the works of Boelens (2015), Comaroff and Comaroff (2006), Domingo (2004), Epp (1998, 2016), Falk (1998), Gloppen (2017, 2008a), McEvoy and McGregor (2008), Merry (2012, 2010), Rajagopal (2003), Santos and Rodríguez (2005).

## IV. Selected Case Study: The Cercado Dam and the Extinction of the Wayúu in La Guajira

### A. Introduction

The words of the Wayúu leader María Pana are not uttered out of anger. On the contrary, they should be taken literally. The building of the Cercado Dam on Ranchería River in 2010 has given rise to a severe humanitarian crisis involving the Wayúu in the department of La Guajira, Colombia (DP 2015).<sup>4</sup>

The Cercado Dam was designed as a multipurpose hydraulic unit to i) provide water supply for aqueducts of nine towns in La Guajira department: Albania, Barrancas, Distracción, Fonseca, Hato Nuevo, Maicao, Manaure, San Juan del Cesar and Uribia; ii) provide water supply for irrigation purposes to the districts in Gran Escala de Ranchería and San Juan de Cesar; and iii) generate power to meet the population-al needs (Incoder 2010). However, the truth is that the dam has not met any of these goals.<sup>5</sup> Almost all of the water from the dam is allocated to supply El Cerrejón, the tenth largest opencast coal mine in the world, and the little that remains is used by few landowners for their rice and palm crops in the Lower Guajira. In the meantime, a few kilometers away from the reservoir, the indigenous people are dying of hunger and thirst because neither the company nor the government have bothered to build the aqueducts that should supply them with water.

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### B. The Parameters of the Humanitarian Crisis of the Wayúu

The fundamental causes of this crisis are of a structural and multi-dimensional nature. Firstly, there is the historical dimension, which refers to the effects of the armed conflict and territorial dispossession. During the armed conflict, the Wayúu were victims of massacres, selective and multiple homicides, enforced disappearances and displacement, and demolition of civilian properties. Violence in La Guajira was extreme given its strategic location *presa*; —in connection with access to the sea, the border with Venezuela, and the passages towards the Sierra Nevada de Santa Marta and the Serranía del Perijá—, together with weak State presence in the area, attracted many illegal armed groups, who struggled fiercely to gain control of all traffic of vehicles, persons, and trade flows.<sup>6</sup> Ultimately, the armed conflict became the instrument through which to achieve the enforced displacement of the indigenous population and complete processes of territorial control for the benefit of private and transnational companies that were then able to plan and implement large-scale

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4 The government itself declared the state of public calamity in 2014, which lasted until July 2015. Later, in February 2016, it was the Health, Social Security and Disability Delegate of the Colombian Office of the Ombudsman that reported on the persistence of the grave humanitarian situation in La Guajira.

5 Project audits from the PGN [*Boletín 594* (2014)]; the Supreme Court of Justice. The Criminal Appellate Division. Process 12990, M.P. Eugenio Fernandez; September 14, 2016, p. 6; and the High Court in the Judicial District of Bogota. Criminal Chamber. Court Record N. 103, July 27, 2016.

6 Constitutional Court: Judicial Decree *Auto A004/09*, p. 89-93.

mining and energy projects without the participation of the indigenous people concerned (Gómez 2014, 433-435; IACHR 2015, 169-170). The design (2002-2005), environmental license (2005), and construction (2006-2010) of the Cercado Dam took place during these cycles of violence affecting the Wayúu.

Secondly, there is the social and economic dimension, which points to the conditions of poverty in which 270,413 Wayúu people live in La Guajira.<sup>7</sup> According to figures from the National Administrative Department of Statistics, poverty in the department affects 55 per cent of the entire population while the extreme poverty level stands at 25.7 per cent. Poverty is particularly acute in the north and center of the department, where the majority of the Wayúu live. Moreover, water scarcity in the region is increasing and posing a serious risk for the sustainability of the Wayúu subsistence economy based on horticulture (corn, bean, yucca, cucumber and melon), cattle breeding (goats, donkeys, and cows), grazing activities, and traditional fishing and hunting.

Thirdly, there is the policy dimension, which is defined by the weak State presence in La Guajira. The lack of coordinated action among public entities and corruption in public administration means that government-backed programs and royalties collected by the Administration often do not reach their intended recipients in the land of the Wayúu. Consequently, the Wayúu are subject to insufficient availability, accessibility, and quality of health care and water provision services, an inadequate quantity and quality of nutrition programs, and a shortage of roads and means of transport. To bring solutions to these challenges, the Colombian State conceived the “Alliance for Water and Life” program but the outcomes of this program —as mentioned by the Colombian Office of the Ombudsman in February 2016— have unfortunately been insufficient to redress the dramatic conditions of the Wayuu.

Lastly, there is the water dimension, which is characterized by the critical conditions of the Wayúu regarding the accessibility, availability, and quality of water resources. To a certain extent, such critical conditions are not new. La Guajira is the country’s hottest and driest department. The traditional Wayúu territory covers 1,080,336 hectares of desert and tropical dry forest in the reservation of the Upper and Middle Guajira, there are further eight reservations in the south and Middle Guajira, as well as the Carraipía reservation. The demographic distribution of the Wayúu is not uniform; it is greater in Nazareth, Uribia, the mountain range of Jala’ala and the municipalities of Maicao and Manaure than it is in the rest of the region, and is intrinsically linked with seasonal changes: during the dry season, many Wayúu look for work in Venezuela or other villages, while during the rainy season, many of them come back to their “ranchería.”<sup>8</sup>

7 Figure taken from the DANE census of 2005, which represents 20.5 per cent of the national indigenous population.

8 A set of ranches inhabited by extended families of maternal relatives with a collective farmyard, a vegetable garden and a cemetery. Some of them have a mill to pump water or “jagueyes” (artificial wells) and “casimbas” (a hole in the river bed) to store water.

However, water scarcity has become even more acute in recent years as a result of i) the effects of drought and precipitation deficit, which reached the 70 per cent with respect to historical averages (Institute for Hydrology, Meteorology and Environmental Studies, IDEAM) and led the regional government to declare a state of public calamity on several occasions since 2014; and ii) the implementation of large-scale mining and energy projects. The open-pit coalmine “El Cerrejón” began operations in the Cesar-Rancheria basin in 1985. It consumes 34,903 cubic meters of water per day and significantly contributes to the desertification affecting the Rancheria basin and the depletion and pollution of streams and groundwater resources. In addition to this, the “Cercado Dam” turned a public good such as the waters of the Rancheria River into what is in practice, a private asset that only supplies water for the mining project and a few landowners. The Rancheria River is the main water source for the department; however, given the deprivation of this minimum vital water resource, the economy of the Wayúu is no longer sustainable and the population has become highly dependent on the provision of goods and services by the State. Eventually, “de facto” privatization of the water resource -theoretically, a national asset subject to the regime of public domain in accordance with Article 63 of the Constitution- is threatening the survival of the Wayúu.<sup>9</sup>

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### ■ C. The Consequences of the Humanitarian Crisis for the Wayúu

The lack of access to safe water has caused the death, acute and chronic malnutrition, and the proliferation of other preventable diseases of thousands of Wayúu, mainly children.<sup>10</sup> Official figures record 5000 deaths, while unofficial figures would stand at around 14,000 deaths. Given the absence of effective State institutions in La Guajira and the isolation and dispersion of indigenous communities, it is difficult to measure exact numbers of this tragedy and databases and population censuses are highly inaccurate. Moreover, most of deceased Wayúu are young children who are buried by their mothers without notifying State institutions. According to the Shipia Wayúu Association, 92 per cent of child deaths are not registered. Moreover, La Guajira presents the highest rate of maternal mortality in Colombia.

Secondly, according to figures from the National Health and Nutrition Survey, La Guajira presents the highest rates of global malnutrition in the country. The Colombian Office of the Ombudsman found that 59.1 per cent of the households were food insecure and identified the consequences of this for children under the age of five: 27.9 per cent of them suffered from chronic under nutrition, whereas 11.2 per cent suffered from global malnutrition. In absolute numbers, around 40,000 Wayúu suffer from malnutrition.

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9 The Colombian Office of the Ombudsman defined the conditions of the Wayúu in La Guajira as extinction conditions. The journalist Guillén claimed, “water was stolen from the people of the desert. So what are the consequences? They die!” (Guillén 2017a).

10 Preventable deaths and diseases are those produced by the lack of prevention or treatment in the health care system.



Finally, the lack of basic sanitation due to water scarcity forces indigenous people to live under deplorable sanitary and hygiene conditions, leading to the proliferation of diarrheal diseases and the identification of new cases of tuberculosis among the Wayúu. Reports also include cases of vision loss due to serious Vitamin A deficiency.

### III. The Court-Centered Struggle of the Wayúu for Water Justice<sup>11</sup>

Actions undertaken by legal teams on behalf of the Wayúu<sup>12</sup> have called to open the dam gates to ensure the fundamental right to water, life, and personal integrity of the indigenous communities. With the adoption of such measures, the river would flow its natural course again and the Wayúu would regain access to water.

The court-centered legal mobilization of the Wayúu for a more equitable water allocation has involved a number of battlefields.

#### Battlefield I: The Inter-American Commission of Human Rights<sup>13</sup>

Considering that the dramatic conditions of the Wayúu required actions with immediate effects, in February 2015, lawyer SÁCHICA requested a precautionary measure of protection from the IACHR. Specifically, the request claimed for i) the Wayúu's exclusive use of water from the Rancheria River until the existence of water surplus that could be used for economic activities would be proven unequivocally; ii) the adoption by the State of measures ensuring the rights of the Wayúu to food, health, and a safe environment (SÁCHICA 2015).

In December 2015, the IACHR considered that the matter met *prima facie* the requirements of gravity, urgency, and irreparability set forth in Article 25 of its Rules of Procedure and requested that Colombia took the measures necessary to allow Wayúu children and adolescents access to safe drinking water in a sustained and sustainable manner in the shortest term.<sup>14</sup> However, the IACHR found that, on the basis of available information, it was not possible to assess the impacts of the dam on the right to life, health, and personal integrity of the complainants, and thus resolved not to uphold applicants' claim to open the dam gates.<sup>15</sup>

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11 On the notion of water justice, see Rutgerd Boelens, Leontien Cremers and Margreet Zwarteveen, eds. 2011. *Justicia Hídrica: Acumulación, Conflicto y Acción Social*. Lima: IEP y Fondo Editorial PUCP.

12 This paper will focus on the actions taken by lawyer Carolina SÁCHICA (Jorge Tadeo Lozano University) on behalf of Wayúu leader Javier Rojas and the Shipia Wayúu Association, which brings together 900 communities and approximately 100,000 people.

13 The IACHR is not a judicial but a quasi-judicial body. However, bringing a case before the IACHR is the entryway to obtaining a judgment from the Inter-American Court of Justice, provided that the IACHR recommendations had not been met or an amicable settlement between the two sides had not been reached.

14 IACHR, Precautionary Measures: Children and adolescents of the communities of Uribía, Manaure, Riohacha and Maicao of the Wayúu People, in the department of La Guajira, Colombia. PM 51/15. Resolution 60/2015 (December 11, 2015): paragraph 26.

15 IACHR, Precautionary Measures: Children and adolescents of the communities of Uribía, Manaure, Riohacha and Maicao of the Wayúu People, in the department of La Guajira, Colombia. PM 51/15. Resolution 60/2015 (December 11, 2015): paragraph 23.

## Battlefield II: The Bogota High Court

In 2016, the Shipia Wayúu Association decided to institute a *tutela* before the Criminal Chamber of the Supreme Court to request the protection of their fundamental rights and compliance with preventive measures set out by the IACHR. Despite measures adopted by the State to honor the precautionary measures called for by the international organization, the Court observed that the Wayúu population still had no access to safe drinking water, affecting their right to a decent life, health, housing, and cultural identity. Consequently, in July 2016, the Court resolved to grant protection to the plaintiffs and safeguard their right to water, life, and health. However, the Court did not support the claim related to opening the floodgates on the basis that the absence of sound technical grounds did not allow the establishment of whether or not the measure was feasible. Finally, the Court recalled that in similar cases, the Constitutional Court had been responsible for laying down the procedures to meet the protection needs required by the IACHR.<sup>16</sup>

## Battlefield III: The Supreme Court of Justice

54 ■ Unhappy with the decision of the Bogota High Court, the Shipia Wayúu Association decided to challenge the ruling before the Criminal Appellate Division of the Supreme Court of Justice. However, in September 2016, the Supreme Court upheld the decision of the lower court. On the one hand, observing that the measures taken by the State had not been effective, nor had it responded with a sense of urgency to the grave circumstances of malnutrition, poor health and safe water shortage faced by the Wayúu children, the Supreme Court resolved to grant protection to the claimants and urged the State to fulfill its obligations in terms of i) formulating, coordinating and implementing an efficient and effective plan to find a comprehensive solution for the region's economic and social problems; ii) taking early and interim mitigation measures. On the other hand, though, the Supreme Court refused to release the dam water because of a lack of technical studies ensuring the viability of such measure to safeguard the Wayúu's right to drinking water.<sup>17</sup>

## IV. The Wayúu's legal Mobilization: An Effective Strategy of Lawfare from Below?

To assess whether or not the Wayúu's legal mobilization could be considered an effective strategy of lawfare from below, this paper will follow the approach set forth by Professor Gloppen, who proposes to measure the effectiveness of legal mobilization from two dimensions (Gloppen 2008b, 345-346): effectiveness in the narrow sense of winning cases; and effectiveness in the broader sense of changing social policies, raising human rights awareness, and strengthening social protest.

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16 The High Court in the Judicial District of Bogota. Criminal Chamber. Court Record N. 103, July 27, 2016.

17 Supreme Court of Justice. The Criminal Appellate Division. Process 12990 (M.P. Eugenio Fernandez: September 14, 2016), p. 34-37.

## IV.1. Impacts of the Wayúu Water Rights-based Lawfare in the Narrow Sense<sup>18</sup>

The effectiveness of court actions to advance the Wayúu's right to water will be addressed from the perspective of three components of the ruling: substantive content, remedies and monitoring mechanisms, and compliance with court orders (Rodríguez Garavito 2011, 1677).

### I) Substantive Content of Court's Decisions

Courts upheld water rights-based claims from the Wayúu, resolved that there had been a violation of a justiciable social and economic right, and mandated the State to ensure the protection of that right (strong rights approach). However, courts admitted that the State had decision-making authority concerning the selection of the most appropriate mechanisms to fulfill the Wayúu's right to water.

### II) Judges' Capability to Find Appropriate Remedies

On the one hand, courts did not uphold the applicants' principal claim to open the dam gates to safeguard the Wayúu's access to drinking water. According to the courts, they could not uphold that request because of the absence of technical reports ensuring the viability and effectiveness of opening the dam gates.

Instead, courts opted to release rulings that did not openly threaten the government's economic policy or the political power relations in which the courts are also embedded. The courts seemed to be aware that bold judgments may help to build social legitimacy for courts but pose a higher risk of political backlash. Consequently, they opted for judgments that represented a limited political challenge since they were not fundamentally at odds with the government's political orientation and ideology (Gloppen 2008b, 353). This also applied for the IACHR, which was aware of the turmoil caused by the Belo Monte Dam case in Brazil.<sup>19</sup> Ultimately, the increasing judicialisation of water conflicts responds to the fact that hegemonic elites and their political representatives carry out a delegation of power to the judiciary when they find strategic drawbacks in adhering to majoritarian decision-making

18 Narrow lawfare refers to legal mobilization strategies that include some form of litigation and that are motivated by an aim for social transformation that goes beyond victory in a court case. While litigation is a defining element of lawfare, a court case is not lawfare unless it forms part of a broader strategy to push for (or against) contested policy change and social transformation. Lawfare in the narrow sense is defined as 'litigation plus,' but we have to bear in mind the broader lawfare typology of which it forms part, where litigation may be related to battles in other arenas (Gloppen 2017, 11-13).

19 After the IAHR issued an injunction in 2011 instructing Brazil to cease construction of the Belo Monte Dam, Brazil's reaction included the recalling of its ambassador from the OAS and the suspension of its annual contribution to the OAS, which made the organization's financial position more precarious. Later, the IACHR softened the original precautionary measures by requiring only some measures to be fulfilled during construction work. The Brazilian government did not accept the new precautionary measures either. Tension between the OEA and Brazil lowered by the end of 2011, when the Brazilian government realized that its boycott was not supported by other countries and paid its annual contribution again (Sotero 2012, 101-111).

processes or when their policy preferences are challenged in such arenas more than they are in courts (Hirschl 2004, 9).

Despite the court rulings, in July 2016, Corpoguajira, the highest environmental authority in the department, issued an administrative act accepting to open the dam gates and mandating the release of 5-7 cubic meters of water a second to the river course from July to December 2016.<sup>20</sup> However, the purpose of this administrative act was not to ensure water provision for indigenous communities but to provide an appropriate response to IDEAM forecasts predicting the arrival of “La Niña” meteorological phenomenon and the high risk of flooding in the tropical Pacific. Therefore, the legal uncertainty for the Wayúu concerning their access to fresh water from the River Rancheria remained once “La Niña” was over.

On the other hand, the court’s decisions considered systemic remedies to provide a comprehensive response to the severe humanitarian crisis faced by the Wayúu, including i) ensuring adequate availability, accessibility and quality of health care services in the communities of Uribia, Manaure, Riohacha and Maicao, with a culturally appropriate and integrated approach to tackle child malnutrition and preventable diseases; ii) taking immediate steps to ensure that Wayúu children could have food in sufficient quantity and quality and in a culturally sensitive way to fulfill nutrition requirements; iii) establishing adequate mechanisms to identify cases of malnutrition and provide an immediate response; iv) agreeing on measures to be adopted in consultation with indigenous people and their representatives.<sup>21</sup>

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Overall, it is important to note the courts’ moderate approach in matters of remedies granted to the claimants, since i) the nature of court orders were declaratory, stating that the rights of the Wayúu to water, health, and food had been violated and urging the State to fulfill its obligations to protect these fundamental rights, while leaving concrete policy decisions to the elected branches of power; ii) court orders urged the State to provide periodic information on specific actions and timelines to measure the progress of these measures and ensure their implementation, but leaving the definition of these timelines to the government. However, the IA-CHR established the obligation of the State to submit a first report on the adoption of precautionary measures within two weeks from the issuance of its resolution; the Supreme Court observed that mitigation solutions should be timely and provisionally fulfilled before the programs conceived by the government were completely executed, while the High Court of Bogota threatened to charge the State with contempt if measures were not implemented.

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20 Resolución 01549, 2016 [Corporación Autónoma Regional de La Guajira]. “Por la Cual se levantan las restricciones para el uso y aprovechamiento del recurso hídrico en las cuencas del río Ranchería y Cesar en el departamento de La Guajira.” The environmental authority made this decision after meeting with representatives of other public bodies, disregarding the precautionary measures ordered by the IACHR mandating the State to consult indigenous communities before the adoption of measures that may affect them directly.

21 *Children and adolescents*, 11-12.

In addition to this, the IACHR adopted a supervisory role by requiring the relevant agencies to report back on progress of governmental programs. On the contrary, the High Court of Bogota urged the State to present progress reports to the Attorney General while the Supreme Court remained silent on this issue (moderate monitoring approach).

### III. Authorities' Compliance with Judgments and Implementation through Social Policies

Even accepting that compliance —particularly in declaratory rulings— is a matter of degree, rather than either-or (Gloppen 2008b, 359), this paper considers that as long as the Wayúu keep dying through being denied effective and efficient access to water, health, and nutrition services, it should be considered that court orders have been insufficiently implemented by the State. Unfortunately, the political will and capacity of the government to comply with court orders has been considerably poor.

First, the government tried to deny the magnitude of the problem and President Santos ventured to hold that less than 300 Wayúu people had died from starvation (El Espectador 2015).

Second, the government argued that measures adopted had been sufficient to ensure the protection of the Wayúu. On December 30, 2015, the government confidentially requested the IACHR to repeal the precautionary measures in favor of the Wayúu. This request was rejected on August 2, 2016, when the IACHR confirmed the precautionary measures once again.

Third, governmental agencies such as the Colombian Family Welfare Institute (ICBF) blamed traditional Wayúu practices as one of the causes for the high rates of child deaths, namely the alleged cultural tradition of giving priority to feeding adults instead of children and the rejection of western medical treatment. The Shipia Wayúu Association submitted an application for *tutela* to the Constitutional Court claiming that such statements constituted a violation of their fundamental rights to honor, their good name, and reputation, while requiring the government to provide an immediate rectification of these remarks. The Constitutional Court rejected this application on the basis of i) evidence supporting the existence of this tradition in the recent past (Fucai and Unicef 2015, 96); ii) the reasoning that the objective of these statements was not to neglect the responsibility of the State but to highlight causes that explained the limited effectiveness of measures adopted by the ICBF concerning food and medical care of Wayúu children. Nevertheless, the Constitutional Court resolved that State agencies had the obligation to protect and fulfill the right of the Wayúu to food and health. To ensure compliance with this judgment, the Court adopted a strong monitoring approach by i) establishing deadlines for the achievement of urgent and structural challenges (one and two years, respectively); ii) ordering the National Ombudsman, the Office of the Solicitor General, the Comptroller General's Office and the General Prosecutor's Office to take appropriate measures to guarantee the follow-up and compliance with this judgment; iii) compelling State

agencies to report back to the Constitutional Court on the advancement of urgent and structural measures—at least, every four and eight months respectively—so the Court itself could ensure verification of compliance with such measures.<sup>22</sup>

Fourth, the late response of the central government to tackle corruption within the local and regional public administration. Mismanagement of public resources aimed at the provision of water, health, and education services; exceeding public expenditure ceilings by more than 100%, and procurement frauds are some of the common practices that have ruined the effectiveness of public policies. Over the last six years, La Guajira has had 5 regional governors and four of them are now in prison. The executive only seriously confronted the problem of structural corruption in La Guajira when lawyer SÁCHICA exercised a right of petition to the president on November 4, 2016, asking for the declaration of a state of emergency in the region. If declared, the president could have extraordinary powers to safeguard the rights of the Wayúu. As the president did not provide an answer to her petition throughout the following two months, Ms. SÁCHICA lodged a *tutela* before the Bogota High Court in February 2017.

58 ■ The Court granted the president a 48-hour deadline to answer the petition. Finally on February 16, 2017, the president refused to declare a state of emergency on the grounds that the full range of ordinary measures still had to be entirely developed. However, the government called for a meeting of the National Council on Economic and Social Policy (Conpes), where an extraordinary decision was adopted: the national government would, for the next three years, take control of the management of resources that are transferred from the nation to the department in three key areas: drinking water (56,000 million dollars a year), health (\$216,000 million dollars a year), and education (\$513,000 million dollars a year). The reason for this extraordinary measure was that it had been identified that public services were not reaching the majority of the population in La Guajira as a result of serious weaknesses in the use and management of these resources by the receiving municipal and departmental authorities (DNP 2017, 9). For instance, La Guajira has a budget for water and sanitation projects for over 50 million dollars, but only one third of this has been implemented over the last ten years and none of it was implemented from 2010 to 2015.

Lastly, the government's poor implementation of the Court's decisions (PGN 2016) led lawyer SÁCHICA to lodge a second request of precautionary measures with the IACHR in July and October 2016. The request aimed to protect nine thousand pregnant and breastfeeding Wayúu women from the municipalities of Manaure, Ri-ohahca and Uribia, who were at serious risk because of a lack of access to drinking water, health, and food. Again, the IACHR granted precautionary measures for the Wayúu women and urged the State to ensure the availability, accessibility, and quality

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22 Constitutional Court of Colombia. Judgment T-466/2016 (M.P. Alejandro Linares: August, 30, 2016).

of drinking water, food, and health care services, and to periodically report back on the advances of such measures.<sup>23</sup>

Later, in July and November 2017, lawyer SÁCHICA required the IACHR to extend these precautionary measures in favor of three thousand elderly Wayúus living in the same area. On December 17, 2017, the IACHR again decided to extend its precautionary measures.<sup>24</sup>

Considering the impacts in the narrow sense, the litigation strategy proved successful in terms of the Court's recognition of the Wayúu's water rights, but unsuccessful in terms of opening the dam gates. Consequently, the end of hydro-colonialism and water dispossession in La Guajira seems to be an illusion. Today, the waters of the Rancheria River are still dammed, and dam gates are only opened when there is a risk of flooding. Despite three years having gone by since the Attorney General exposed that the dam was not fulfilling its original goals (PGN 2014), ducts to provide water supply for the municipalities and irrigation districts have not yet been built. As such, the State is paying 750 million Colombian pesos a month for the administration of a dam whose water is only being used by El Cerrejon and a few landowners, while the Wayúu population is dying of hunger and thirst. This is a clear sign that water scarcity in La Guajira is not absolute but relative. Even in a context of few water resources and high demand, some powerful actors are able to enjoy abundant water supplies, while the indigenous population is subject to water shortages.<sup>25</sup> With no access to water from the River Rancheria, water provision for the Wayúu population shifted to a full reliance on governmental water policies.

#### IV.2. Impacts of the Wayúu Water Rights-based Lawfare in a Broad Sense

Different effects can be identified following the litigation process and court decisions:

1) Promotion of changes in governmental water policies which are, theoretically, now based on the construction of pumping wells, water storage tanks, and drinking water treatment plants; water trucking; and training of Wayúu people in efficient water use<sup>26</sup> and solid waste management. However, as Governor Guerra recognized, "there has been an effort from the State but it has not been sufficient. More efforts are needed given that our infrastructure dates back to the 1950s" (El Tiempo 2017). The Conpes document also pointed out that measures implemented have not had the hoped for impact in terms of providing sufficient or good

23 IACHR, Precautionary Measures: Pregnant and Nursing Women of the Wayúu Indigenous Community, Colombia. Extension. PM 51/15. Resolution 3/2017 (January 26, 2017).

24 IACHR, Precautionary Measures: Elderly People belonging to the Wayuu Shipia Association from the Wayuu indigenous community in the municipalities of Manaure, Riohacha and Uribia, Colombia. Extension. PM 51/15. Resolution 51/2017 (December 17, 2017).

25 The Cercado Dam case shows how water scarcity is rooted in power imbalances, poverty and inequality but not in water availability, since water scarcity is created through political and institutional processes leading to the disadvantage of the most vulnerable (UNDP 2006, 2).

26 The fact that the Wayúu have to learn drip irrigation systems while the coal mine El Cerrejon is consuming 17 million liters of water a day clearly shows the government's priorities.

quality access to drinking water. In March 2017, the Centro de Estudios de Derecho, Justicia y Sociedad (Dejusticia) emphasized that 90% of La Guajira's inhabitants still consumed untreated water, leading to gastrointestinal diseases, parasites, and diarrhea (Dejusticia 2017, 9-11). For the indigenous communities, these figures are even worse: 97.7 % of the Wayúu communities do not have access to aqueduct services, while 95.6 % of them do not have access to sanitation services. Water contaminated with parasites and bacteria is the direct cause of most deaths because the immunological systems of the Wayúu, weakened by malnutrition, are not able to fight against them (Ávila 2017). Many Wayúu have also died of suffocation or been buried in landslides when searching for water in hand-dug wells (El Heraldo 2016b, 2016c).

2) Despite centralization in the management and execution of health and food policies, the results are still poor. In March 2017, the Human Rights Commission of the Senate carried out fieldwork with an interdisciplinary research team and concluded that the malnutrition level of the Wayúu reached 52% of the population, the same levels as the poorest country in the world, Rwanda.<sup>27</sup> Moreover, despite government promises that this centralization will ensure competitive hiring mechanisms, improve the quality of services, and accelerate investments currently underway, the reality is that in May 2017, 15,000 children were not attending school or being fed because neither teachers nor the school-feeding scheme had been implemented. And more serious still, the central government held that accountability lied with the contractors and temporary administrators and not with the Ministry of Education (Sanabria 2017).

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■ The picture is no better when we consider the provision of health care services. Existing health institutions are Level I institutions that lack the human resources and infrastructure necessary to provide appropriate health treatment. There is evidence that Institutional Health Service Providers and Health Promotion Agencies in the Upper Guajira are only present to register people but do not provide any specific service (Dejusticia 2017, 26). Another challenge concerns access to health care institutions. Hospitals and medical centers are located in urban areas while few health facilities can be found in ranch communities. The Ministry of Health concluded contracts with regional hospitals to guarantee the biweekly or monthly presence of medical teams on the ground but the number of beneficiaries of outdoor services is still very small. Consequently, the long distance between the Wayúu communities and medical centers and the lack of means of transport make it almost impossible for many Wayúu to access health services (Sáchica 2017). For many, the only option left is to walk for hours under an inclement sun and with no water while carrying their babies.

3) Throughout the legal mobilization process, journalist Guillén, lawyer Sáchica and documentalist Ángela Gómez, in cooperation with a network of in-

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27 Statement of Sofia Gaviria, Senator (March 7, 2017), available at: <https://www.youtube.com/watch?v=zoeM0xpgCOo>



ternational NGOs such as Human Rights Watch, Oxfam and the Foundation for Peace and Reconciliation, started to empower the Wayúu in audiovisual production and strategic litigation techniques. As a result of this training and network, indigenous trainees were able to start documenting and substantiating their own complaints. More than 200 *tutela* concerning children dying from hunger and thirst and mothers with tuberculosis were brought to courts and won (Guillén 2017b).

4) Over the last two years, increased concerns among political actors regarding the humanitarian crisis faced by the Wayúu has been one of the major reasons for the presentation of constitutional reform projects recognizing the human right to water.<sup>28</sup> Indigenous representatives have taken part in public hearings in the Senate to raise awareness and political pressure on legislators, but these legislative strategies have proven ineffective in terms of moving the projects forward and promoting greater enforceability and justiciability of the human right to water.<sup>29</sup>

5) The Wayúus' awareness of their rights has deepened and expanded over time with the partially successful litigation strategies, leading to an increased number of demonstrations claiming for the implementation of precautionary measures granted by the IACHR and courts (El Espectador 2016; Contagio Radio 2017).

6) Increased media coverage on the squalid living conditions of the Wayúu. The end of the armed conflict in Colombia provided a political momentum allowing the media to drag other topics into the spotlight (Morón 2016). After precautionary measures were granted by the IACHR, the effects of water injustice in la Guajira were covered, increasingly, by international and national media (Sáchica 2016b), though the echoes of such news have not been sufficient to raise public awareness on the causes of extreme vulnerability of the Wayúu. Much of this news overlooked the construction of the Cercado Dam and blamed drought, climate change, weather patterns like El Niño, and malnutrition as the root causes of the high mortality of the Wayúu (Dejusticia 2017, 17; MintPress News 2017).

7) Threats against the Wayúu from paramilitary groups who work for the mining companies have been on the rise since legal mobilization started. These groups have repeatedly sent death threats to the Wayúu's chief legal advocate Javier Rojas, pressuring him to abandon the litigation strategy. Killings of Wayúu activists have also been reported (El Heraldo 2015, 2016a; Guerrero 2016).

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28 Failed Draft Legislative Act 11 (2016) and 14 (2017) were presented by Senator Jorge Prieto to recognize the fundamental right to water in Article 11 of the Constitution. The jurisprudence of the Colombian Constitutional Court has recognized the human right to water as being incorporated into the constitutionality block (judgments T-760/2014, T-418/2010, among others), but it has also urged the legislative power to explicitly recognize water as a fundamental right. On the avenues for the recognition of water as a fundamental right in the domestic legal order, see Defensoría del Pueblo (DP), *Avance del derecho humano al agua en la Constitución, la ley, la jurisprudencia y los instrumentos internacionales 2005-2011* (DP 2012).

29 *Fundamental Right to Water Draft Legislative Act: Hearing before the Senate* (March 31, 2016) (statement of Rosa Iguaran, indigenous Wayúu).

## D. Conclusion

The legal mobilization of the Wayúu has shown mixed outcomes. It has been largely successful regarding the courts' responses, but largely unsuccessful regarding the governmental compliance with judges' orders. Despite the unlocking effects generated by the legal mobilization of the Wayúu, which prompted the government into action by drafting a new policy to protect their rights, a great diversity of actors continue to uncover the lack of political will and negligence of the State to protect the fundamental rights of the Wayúu to water, food, and health. But the court-centered lawfare carried out by the Wayúu has been able to forge strategic alliances with civil society organizations and representatives of public bodies. For instance, Senator Robledo who emphasized, "There has been a lack of political will. It is a lie that this is a natural disaster, what we have is a social, economic, and political disaster. Are they [the government] going to spend money on everything except the ducts? What usually seems to matter least are the lives of the most vulnerable, those who have struggled to do things right but end up being the victims of bad governments."<sup>30</sup>

These strategic alliances have led to further litigation strategies before courts. As a result of the *tutela* filed in May 2017 by Elson Rafael Rodríguez Beltrán, claiming for the implementation of precautionary measures granted by the IACHR in favor of Wayúu children,<sup>31</sup> the Constitutional Court declared, in June 2018, the unconstitutional state of affairs<sup>32</sup> regarding the fulfillment of fundamental rights of Wayúu

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30 *Fundamental Right to Water Draft Legislative Act: Hearing before the Senate* (May 8, 2017) (statement by Jorge Robledo, senator).

31 This request was supported by the Shipia Wayúu Association, sixteen Wayúu authorities, Dejusticia, the Comité Cívico por la Dignidad de La Guajira, the Comité de Apoyo a Comunidades Populares, the Organización Nacional Indígena de Colombia and the General Attorney, who acted as interveners before the court.

32 The unconstitutional state of affairs is a formal declaration made by the Constitutional Court by means of a *tutela* judgment in cases characterized by i) massive and widespread violation of fundamental rights; ii) several State agencies are sued as responsible for not adopting the necessary legislative, administrative, and budgetary measures to prevent the violation of fundamental rights; iii) judgment enforcement orders are complex since they require various government entities to take coordinated actions and significant additional budgetary effort to protect all affected population, not only the claimants (Rodríguez 2010, 435; Judgment T-025 of 2004).

This declaration has a practical purpose: prompting the State apparatus to design, implement, and evaluate the necessary public policies to end human rights violations. However, the nature of the unconstitutional state of affairs is exceptional because it entails a considerable intervention by the Constitutional Court in public policy making processes, which are the responsibility of the government and congress, and because it carries a political cost for the Court as long as the Constitutional Court has limited capacities to undertake monitoring processes and if monitoring processes extend for too long, public and private actors may consider the declaration ineffective (Rodríguez 2010, 438).

The landmark judgment concerning the unconstitutional state of affairs is Judgment T-025 (2004), which declared the unconstitutional state of affairs on matters of displacement. This judgment showed mixed results: first, it had a considerable impact on unlocking the State apparatus and placing the situation of displaced persons at the center of public policies and public debate; second, it empowered civil society organizations with legal personality with venues for participation and monitoring, though victims of displacement hardly had access to them; third, it significantly contributed to strengthening government institutions' cohesion at the national level, though it had a weak impact in terms of enhancing coherence between national, departmental and municipal government policies. Fourth, it was fundamental for the formulation of policies and the increased budget allocated to them. Despite significant progress in the implementation of fundamental rights to health and education, the implementation of these policies remains remarkably uneven (Rodríguez and Rodríguez 2010, 275-278).

children to drinking water, food and health. The Constitutional Court highlighted the persistence of massive, unjustified and disproportionate violations of the fundamental rights of Wayúu children to water, health, and food and remarked that the most relevant causes were the structural failures of public policies adopted by the national government, the department of La Guajira, the municipalities of Riohacha, Manaure, Maicao and Uribia and the indigenous authorities with jurisdiction in these municipalities.

The Constitutional Court's ruling orders the creation of a special follow-up and evaluation mechanism of public policies, which should fulfill minimum constitutional goals such as increasing water availability, accessibility, and quality; improving the effectiveness of food security programs and expanding their coverage; extending and enhancing immediate and urgent health care actions; improving the mobility of Wayúu communities; enhancing information available for the decision-making of public authorities; ensuring fairness and transparency for budget allocations and the hiring of contractors; safeguarding sustainability for all State measures and guaranteeing a genuine dialogue with legitimate Wayúu authorities. These minimum constitutional goals and specific orders mandated by the Court should be fully fulfilled by public agencies. However, the definition of concrete actions and indicators to fulfill and monitor these goals and orders is the responsibility of government bodies and other public and private entities in the framework of a permanent dialogue within the special follow-up and evaluation mechanism.<sup>33</sup> To overcome the unconstitutional state of affairs, the Court requires minimum child nutrition standards (whether the standard is set up by the special mechanism or by the national average).

The declaration of unconstitutional state of affairs opens a window of opportunity: a participative process of policy making and monitoring which has the potential to provide solutions to structural public policy problems and redress the widespread human rights violations suffered by the Wayúu. Whether the government seizes this opportunity or not is something that should be evaluated in the coming years. President Santos said, "the death of a single child from hunger or malnutrition would be a shame for our country" (El País 2016). Over one hundred Wayúu children have died since the IACHR ordered the precautionary measures in 2015. If present-day conditions persist, some sources are predicting the extinction of this ethnic group in about thirty years. The wounds caused to indigenous peoples' lives by hydro-colonialism cannot be healed with plasters (Sáchica 2016a), nor can they be mitigated with assistentialism. They require more resolute and sustained programs.<sup>34</sup> The time has come for the government to decide whether it wants to continue to play a functional role for the benefit of El Cerrejón by treating the Wayúu as a disposable community or to

33 The court gives some recommendations regarding the definition of indicators and the fulfillment of constitutional goals, but it is up to participants in the special mechanism to decide whether to apply them or not.

34 Statement of Rosa Iguarán during the public audience before the Senate (March 31, 2016).

break this hydrocracy<sup>35</sup> and resolutely engage itself as the guarantor of the common good. It is time for the government to apply appropriate action if it is to avoid being responsible for a chronicle of a death foretold.

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