

## PUTCHIPU'UI ART AND LAW: FROM THE WORD TO THE IMAGE.

### ALTERNATIVE DISPUTE RESOLUTION AMONGST THE WAYUU PEOPLE

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#### *Abstract*

This article aims to identify how the palabrero (word messenger ) or pütchipü 'üi affects the symbolic efficiency of the Wayuu legal system in order to ensure that this mechanism of alternative dispute resolution is the foundation of a cultural entrepreneurship to turn the word into an artistic medium. The authors will show the elements that contribute to this alternative dispute resolution and the importance of art, particularly pictorial art as a means to the transmission of this message, the characteristics of the Wayuu culture and the demands of the public to which the final work will be presented.

**Keywords:** Alternative dispute resolution, Latin American art, symbolic language, Wayuu people, cultural entrepreneurship.

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## ARTE Y DERECHO: DE LA PALABRA DEL PÜTCHIPÜ'ÜI A LA IMAGEN.

### RESOLUCIÓN ALTERNATIVA DE CONFLICTOS

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#### *Resumen*

Con este artículo se pretende identificar cómo el palabrero o pütchipü'üi incide en la eficacia simbólica del sistema normativo wayuu y lograr que esta alternativa de resolución de conflictos sea la base de una propuesta de emprendimiento cultural para llevar la palabra (que actúa como esencia de esta alternativa) a un medio artístico. Se mostrarán los elementos que contribuyen a esta alternativa de resolución de conflictos y la importancia del arte, en particular el arte pictórico como medio para la transmisión de este mensaje, las características de la cultura wayuu y las exigencias del público al que será presentada la obra final.

**Palabras clave:** resolución alternativa de conflictos, arte latinoamericano, lenguaje simbólico, pueblo wayuu, emprendimiento cultural.

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## **Introduction.**

Laws are social constructions, and they are some of the constitutive elements of a population's identity, which develops from social representations and decisions made by the individuals that compose it. Identity is structured by rules and norms with the aim of reconstructing their activities in daily life.<sup>1</sup>

According to Guerrero Arias, identity as social construct is a system of relationships and representations, negotiations, and material and symbolic conscious interchanges made by socio-historically situated subjects. Identity is part of a theory of social representations that make sense of the process of symbolic configuration of the social world.<sup>2</sup>

Thus, symbols become transcendental to the social construction of the collective identity of a society's culture. Symbols become manifest through social representations of collective imaginary. In other words, some of these notions and actions determine relationships and mold an individual's or group's reality. The sense, or meaning, of human actions is orientated from these representations and symbolic efficacy is derived from them.<sup>3</sup> In turn, this concept can be understood as "an inevitable acceptance of laws, their social existence and the achievement of their objectives as a result of spreading concepts of legitimacy or authority."<sup>4</sup>

Based on the ideas above, symbolic efficacy becomes especially important in law theory with regard to indigenous normative systems like that of the Wayuu which is represented by el *palabrero* or *pütchipü'üi* (word messenger in English) Acceptance is achieved under the law of the community by appealing to the symbolic.

This research project seeks to demonstrate symbolic efficiency evident in the Wayuu normative system and consequently how the *palabrero's* role developed within the application of that system, therefore evidencing western Latin American art as a means to communicate to other culture the alternative conflict resolution systems possessed by the Wayuu.

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<sup>1</sup> Gerardo Porfirio Hernández Aguilar, "La construcción social del derecho, una perspectiva de pluralismo jurídico en los sistemas normativos de los pueblos indios en México", *Ciencia @ UAQ* 7, núm. 1 (2014): 1, [http://www.uaq.mx/investigacion/revista\\_ciencia@uaq/index.php?vol=7&coun=15](http://www.uaq.mx/investigacion/revista_ciencia@uaq/index.php?vol=7&coun=15)

<sup>2</sup> Patricio Guerrero Arias, *La cultura: estrategias conceptuales para entender la identidad, la diversidad, la alteridad y la diferencia* (Quito: Abya-Yala, 2002), 101.

<sup>3</sup> Guerrero Arias, *La cultura: estrategias conceptuales*, 101

<sup>4</sup> Mauricio García Villegas, *La eficacia simbólica del derecho* (Bogotá: Uniandes, 1993), 91-92.

## 1. The Wayuu Normative System

The Wayuu community live in their ancestral territory on the Colombian and Venezuelan peninsula. Their remarkable normative system comes from an ethnic and spiritual universe shaped by the oral traditions of the Wayuunaiki mother tongue.<sup>5</sup>

This normative system is part of Colombian legislation by means of the Colombian Political Constitution of 1991, which considers human dignity a principle of constitutional order.<sup>6</sup> In this constitution indigenous normative systems are recognized by “the fundamental principle of legal pluralism, as well as ethnic and cultural diversity”<sup>7</sup>

and “special indigenous jurisdiction, their authorities and legal developments that are in accordance with their customs and procedures, provided they do not contradict the Political Constitution and laws.”<sup>8</sup>

The Constitutional Court has stated:

The interpretation of the law as a limit to recognize customs and procedures cannot reach the point of making nugatory its content just because of the existence of a legal norm. The normative character of the Constitution demands weighing the relative importance of the values protected by the constitutional norm --diversity and pluralism-- and those guaranteed by the imperative legal norms. There is an intangible realm of pluralism as well as of ethnic and cultural diversity of indigenous people that cannot be subject of disposition by the law because it would risk their preservation and undermine their wealth, which is what lies in preserving cultural diversity. The special<sup>9</sup> jurisdiction and the functions of self-governance given to indigenous<sup>10</sup> councils must be exercised,

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<sup>5</sup> María Lopera López, “Aportes de la Fundación Cerrejón al fortalecimiento de las casas de justicia de la Guajira. Una mirada desde el enfoque de acción sin daño”, Tesis de Especialización para optar al título de especialista en Acción sin daño y construcción de paz. Universidad Nacional de Colombia, 2014), 25.

<sup>6</sup> Jheison Torres Ávila, “El sistema de derechos y libertades en la Constitución de 1991” en *Fundamentos con- temporáneos del derecho público: transformaciones necesarias*, Mónica Fernández, Vladimir Rodríguez Sanabria, Jheison Torres Ávila y Germán Vallejo Almeida (Bogotá: Universidad Católica de Colombia, 2016), 13-14.

<sup>7</sup> Marcela Gutiérrez, “Pluralismo jurídico y cultural en Colombia”. *Derecho del Estado*, núm. 26 (2011): 90. <http://revistas.uextornado.edu.co/index.php/derest/article/view/2880/3040> (acceso octubre 6, 2017).

<sup>8</sup> Gutiérrez, “Pluralismo jurídico y cultural en Colombia”, 90.

<sup>9</sup> República de Colombia, *Constitución Política* (Bogotá: Legis, 1991), art. 246.

<sup>10</sup> República de Colombia, *Constitución Política*, art. 330.

consequently, according to their customs and procedures, but it must respect imperative laws on the matter that protect superior constitutional values.<sup>11</sup>

The constitutional recognition implies the configuration of the indigenous normative systems --among them, that of the Wayuu-- in a real and legal form, to offer them more autonomy in terms of their decisions, provided they respect the Constitution and the laws.<sup>12</sup>

This process has become relevant with its incorporation and acceptance, guaranteed by Resolution 1741 of November 2 2004, as a national cultural asset and by its inscription in UNESCO in the representative list for the safeguarding of the intangible cultural heritage of humanity.<sup>13</sup>

The Wayuu normative system has customary, moral and ethical norms that derive from a cognitive system known as Wayuu law, which comes from oral tradition and indigenous customs. Furthermore, it has a set of norms with “cultural value, not written, and not codified within time”, also known as customary law or legal custom.<sup>14</sup>

Its aim is to guarantee respect for life according to “the principle of beneficial equality for all”, under the precept that “they are faculties that correspond to every person of the Wayuu family that has the same dialect, folklore, and customs and is truly committed to its social system”.<sup>15</sup>

Constructed around the collective law of culture and based on “mainly solving disputes by oral interactions, it is characterized by the lack of an institution that judges offenses. Instead, it uses legal principles such as compensations and a payment system.”<sup>16</sup>

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<sup>11</sup> Corte Constitucional, Sentencia T-254 de 30 de mayo de 1994, M. P. Eduardo Cifuentes Muñoz

<sup>12</sup> Nicolás Polo y Guillermo Ojeda, “Mirada a la cultura wayuu, base de su sistema normativo”, *Verbum* 9, núm. 9 (2014): 110-117

<sup>13</sup> *Observatorio Nacional de Paz [ONP], Propuestas populares de política pública para la construcción de paz* (Bogotá: Planeta Paz, 2012),

<sup>14</sup> Ricardo Colmenares Olivar, “Sistema de justicia penal formal y el derecho consuetudinario wayuu”, *Frónesis* 13, núm. 1 (2006, abril): 112. [http://www.scielo.org.ve/scielo.php?script=sci\\_arttext&pi d=S1315-62682006000100006](http://www.scielo.org.ve/scielo.php?script=sci_arttext&pi d=S1315-62682006000100006) (acceso octubre 6, 2017).

<sup>15</sup> Edén Vizcaíno, *Origen del derecho wayuu, normas consuetudinarias del indígena guajiro* (Barranquilla: Mejoras,

<sup>16</sup> 1991), 16. 16 Cris Velásquez y Edward Quintero, “La conciliación en el sistema normativo wayuu como expresión del poder de la palabra y la retórica mediada por el pütchipu o palabrero”, *Comunicación & Ciudadanía*, núm. 6

Within this normative system we find the right to life, which is held up as one of the most important and sacred rights for Wayuus and is one of the first rights inherent to all from birth. Likewise, there is the right to freedom, which is aimed at the protection from slavery; the right to honor, which covers the right to marry or divorce. Some of the reasons for the granting of divorce are “violence perpetrated by husbands, family feuds or the infidelity of the wife”.<sup>17</sup>

As it is described by the anthropologist Weidler Guerra, the Wayuu normative system has its origins in pre-Hispanic civilization and has gone on through time. It embraces modern elements such as money, but this does not imply any changes to their principles or procedures.<sup>18</sup>

As it has been pointed out, Wayuu laws and rights, passed down from generation to generation through the social organization of the clans, are oral<sup>19</sup>. Women are sacred, they are the source of life and the fundamental bases of the society. Due to their oral tradition, “The Wayuus teach rules by means of the Jayeechi, where they teach through song. Penalties are governed by principle of justice through ethical and moral values”.<sup>20</sup>

The alaü'layuu (maternal uncle, the traditional authority who has political power and possesses autonomy over ancestral land) is also known as pütchipala (spiritual peacemaker), which could be written as pütcheejana (traditional courier/mail man) or a pütchipü'üi (traditional spiritual peacemaker) depending on his performance, the way he manages and leads within his community. he is recognized as the ideal authority to deal with any conflict.<sup>21</sup> With a negotiation strategy, the spiritual peacemaker or pütchipü'üi achieves a sense of justice and an equity between the parties, when putting into practice the Wayuu normative system.<sup>22</sup>

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<sup>17</sup> Vizcaíno, Origen del derecho wayuu, 26

<sup>18</sup> Banco de la República, “Pütchipü'ü. El oficio de la palabra entre los wayuu”, video de YouTube, 11:03, 19 de junio de 2014, <https://www.youtube.com/watch?v=a-Ob8pcTPzg>

<sup>19</sup> “Se aplica al tipo de filiación u organización social que se funda en las relaciones familiares de la madre, transmite el nombre, los privilegios y la pertenencia a un clan o a una clase parentesco matrilineal. La línea de sucesión es transmitida por la madre”. Farlex, “Matrilineal” en The Free Dictionary, <http://es.thefreedictionary.com/matrilineal> (acceso octubre 6, 2017).

<sup>20</sup> Alejandro Cueto, La Guajira 35 años. Premio departamental de ensayos (Riohacha: Gobernación de La Guajira,

<sup>21</sup> Observatorio Nacional de Paz [ONP], Propuestas populares de política pública, 27.

<sup>22</sup> Fernando Andrés Pico Zúñiga, “Memoria, entre la jurisdicción indígena y el sistema normativo wayuu”, *Universitas Estudiantes*, núm. 7 (2010): 28-29.

The Wayuu normative system restates its identity by means of “the group of principles, procedures and rituals that rule or guide the Wayuus’ spiritual and social behavior”.<sup>23</sup>

Identity, as a part of social representation, gives sense to the symbolic efficacy, which through the ethnicity process:

[would depend on] the level of maturity and vitality of the conscience and the collective memory [...] a society that remembers, strengthened and revitalized habits, would find itself better placed to respond to new social historic situations, to adapt to globalization and the market, turning them into opportunities to for its own economic improvement, but above all, to strengthen and revitalize its culture, identity and future projects.<sup>24</sup>

With this in mind, the indigenous communities’ normative system efficacy, especially the Wayuus’, is founded on cultural constructions which are still in force, thanks to its capacity to incorporate new elements, adjust its traditions and respond by adapting to the effects of a domineering society.<sup>25</sup> As a reply to the affectations of the Colombian and Venezuelan governments, the Wayuu community has generated behavioral rules of self-regulation that accord with their autonomous status and cultural identity, allowing self-regulation of their normative system and maintaining their pütchipü'üi traditional activities.

## **2. The peacemaker or Pütchipü'üi: an intermediary, mediator, moderator or arbitrator.**

The palabrero, or Pütchipü'üi, is the Wayuu’s normative system’s most representative figure. It is laid down as:

[...] a moral, social and cultural institution [that acts] addressed to preserving the social harmony and the individuals’ vital principles, the Pütchipü'üi acts as social control agent to exercise justice, recreating

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<sup>23</sup> Ministerio de Cultura, “Plan especial de salvaguarda del SNW”, 7.

<sup>24</sup> Guerrero Arias, La cultura: estrategias conceptuales, 117.

<sup>25</sup> María Teresa Sierra, “Conflicto cultural y derechos humanos: en torno al reconocimiento de los sistemas normativos indígenas”, *Rebelión Cultura*, 28 de junio. [http://www.rebelion.org/hemeroteca/cultura/conflicto\\_cultural280601.htm](http://www.rebelion.org/hemeroteca/cultura/conflicto_cultural280601.htm) (acceso octubre 6, 2017).

the ancestral word and the knowledge which make up the fundamentals of the Wayuus' spiritual, mythological and social life.<sup>26</sup>

To be a palabrero or Pütchipü'üi people are required to master the spoken word; and to have shown interest in solving conflicts from a young age. For these reasons they are chosen when young to learn the ways of this role. Given the qualities and abilities required to perform this role, not every clan has a peacemaker; however, it is possible to find clans with more than one, which means that when there is a conflict they can be palabrerros for other clans.<sup>27</sup>

According to Pütchipü'üi Jorge Enriquez Asphana, a peacemaker is created by experience. It is a very complex labor to carry out, due to the fact that:

[...] every palabrero learns by looking and listening, it starts among the apajüshi (listeners to a conflict arrangement), he starts arranging weddings, dealing with drunk fights, even dealing with death, but not everyone specializes in these kinds of issues, some focus on minor issues.<sup>28</sup>

There are different types or categories of palabrerros or Pütchipü'üi, who will be able to be:

A council Pütchipü'üi who arranges minor arguments at indigenous rancherías, a wedding Pütchipü'üi, who take part in the wedding arrangements and, without a doubt the most prestigious of them all, a blood Pütchipü'üi, who deals with murders, long and particular family wars, they are the ones who the most experienced and developed intermediaries and the women such as the palabrero or Pütchipü'üi who take part in the interethnic context.<sup>29</sup>

A Pütchipü'üi must be a “man who knows the law, to be able to mediate among families, or community member who are involved in conflict. He must send the message orally and kindly, he must be fair-minded, responsible, a master of the spoken word and exercise authority”.<sup>30</sup>

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<sup>26</sup> Ministerio de Cultura, “Plan especial de salvaguarda del SNW”, 7.

<sup>27</sup> Pico Zúñiga, “Memoria, entre la jurisdicción indígena y el sistema normativo wayuu”, 27.

<sup>28</sup> Vizcaino, Origen del derecho wayuu, 96-97.

<sup>29</sup> Banco de la República, “Pütchipü'ü. El oficio de la palabra entre los wayuu”.

<sup>30</sup> Cueto, La Guajira 35 años, 31.

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Given its characteristics, the pütchipü'ui has been described as an intermediary, mediator or conciliator by different authors, which makes it necessary to clarify its true role.

For Vizcaino, the palabrero resembles a lawyer who takes the case, analyzes it and proceeds to defend the affected party; the power of representation is given by the affected family to the palabrero of a different and impartial family. Their action comes when there is a serious problem that endangers the social peace of the community, to such an extent that it could cause a dispute between two families. His performance transcends a council of elders, so his presence is necessary.

On the other hand, for the Ministry of Culture, the palabrero is one that “acts as intermediary and conciliator”. He is established as a traditional conciliator, aware of the entire normative system or Wayuu law.<sup>31</sup>

From another point of view, the anthropologist Weildler Guerra states:

The Pütchipü'ui are not judges, they are not arbitrators and they are not conciliators, the Pütchipü'ui are intermediaries who can be mediators, therefore, he does not produce any sentence, but rather leads the parties to reach the agreement themselves. He facilitates agreement based on messages and rhetorical resources that praise life, liberty and peace.<sup>32</sup>

Contrary to what has been said, Guerra<sup>33</sup> argues that the figure of the palabrero can adapt and take on a role different from that of intermediary. A similar position is that of Pico Zúñiga, who takes Saler as a reference to describe the pütchipü'ui as possessor of different facets: one of intermediary or mediator and another of conciliator, according to his degree of knowledge of Wayuu law and of his domain of the word.<sup>34</sup>

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<sup>31</sup> Ministerio de Cultura, “Plan especial de salvaguarda del SNW”, 9

<sup>32</sup> Banco de la República, “Pütchipü'ü. El oficio de la palabra entre los wayuu”.

<sup>33</sup> Weildler Guerra Curvelo, *La disputa y la palabra. La ley en la sociedad wayuu* (Bogotá: Ministerio de Cultura de Colombia, 2002), 332, citado en Sorily Carolina Figuera Vargas, “Sistema de justicia del pueblo indígena wayuu y su reconocimiento jurídico” en *Justicia: un enfoque transdisciplinar*, ed. María Lourdes Ramírez Torrado (Barranquilla: Universidad del Norte 2016), 414.

<sup>34</sup> Pico Zúñiga, “Memoria, entre la jurisdicción indígena y el sistema normativo wayuu”, 27

According to the concepts described by the authors, it is derogatory to say that the *palabrero* is an arbitrator. While it is true that the *palabrero* is pronounced according to the Wayuu law and in equity, founded on truth and justice, is subordinated to the parties for the resolution of the conflict;<sup>35</sup> on the contrary, in the arbitration, the parties submit their dispute to a third party and accept the decision, which is equivalent to a sentence and is binding.<sup>36</sup>

The *palabrero* is not conceived in one way, because he has the ability to fulfill roles according to his level of knowledge. First, he assumes the role of intermediary, by interceding between parties and acting as a messenger without suggesting a solution or settlement of the conflict.

Second, he plays the role of mediator, being the one that intercedes in the conflict. The parties have the power to intervene in the process to reach an agreement. Mediation implies impartial and neutral intervention, in which he lacks decision-making power, but helps the disputing parties to reach an agreement.<sup>37</sup>

Finally, the *palabrero* is conceived as a conciliator, since he has the faculty to suggest solutions and resort to persuasive arguments about the advantages and disadvantages of a good pact.<sup>38</sup> The *palabrero* Germán Aguilar explains that the good *palabrero* is one who exercises his function and reaches a conciliation.<sup>39</sup> In this process, the parties come to him as a neutral and qualified third party, because he knows the Wayuu normative system and, with his rhetoric and a complete procedure, seeks to reach an agreement to compensate for the damage caused.<sup>40</sup>

Because of his recognition, he is respected and enjoys a social position within the Wayuu community, as he is the messenger, mediator or conciliator who helps to maintain peace with the use of speech.<sup>41</sup> His intervention “implies guarantees of due process, equality, right to defense and restoration of social order”.<sup>42</sup>

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<sup>35</sup> Nicolás Polo Figueroa, “Reparación y reconciliación en el sistema normativo wayuu”, *Civilizar Ciencias Sociales y Humanas* 16, núm. 31 (julio-diciembre, 2016): 45.

<sup>36</sup> Enciclopedia jurídica, “Arbitraje” <http://www.enciclopedia-juridica.biz14.com/d/arbitraje/arbitraje.htm> (acceso octubre 6, 2017).

<sup>37</sup> Héctor Mauricio Mazo Álvarez, “La mediación como justicia restaurativa”, *Opción Jurídica* 12, núm. 23 (2013): 113.

<sup>38</sup> Polo Figueroa, “Reparación y reconciliación”, 45.

<sup>39</sup> Telecaribe, “El *palabrero* o *Pütchipü’üi Wayuu*”, video de YouTube, 2:01, 26 de agosto de 2013, <https://www.youtube.com/watch?v=wUcj9TH4-mU>

<sup>40</sup> Polo Figueroa, “Reparación y reconciliación en el sistema normativo wayuu”, 45. 41 Lopera López, “Aportes de la Fundación Cerrejón”, 27. 42 Lopera López, “Aportes de la Fundación Cerrejón”, 27.

<sup>41</sup> Lopera López, “Aportes de la Fundación Cerrejón”, 27.

<sup>42</sup> Lopera López, “Aportes de la Fundación Cerrejón”, 27.

### 3. Procedure applied by the pütchipü'üi

The procedure is framed in a compensatory system in which the jurisdictional authority of the palabrero acts for the solution of conflicts, in order to get the appraisal and the payment of the offense and thus “overcome the disturbance of the family world”.<sup>43</sup>

This procedure is provided in two scenarios: one in which the “pütchipala listens to the different versions of the parties and prepares to receive the word, and the space of the attacked one where the Pütchipü'üi listens to prepare and carry the word”.<sup>44</sup>

The palabrero acts only at the request of a party, that is, he must be called by:

[...] the family group that entrusts him with the task of carrying a message, that same family group can take away that mission if they see that his performance does not satisfy them or does not lead to a satisfactory settlement of the complaint, therefore, the parties in a Wayuu dispute always have control over their process.<sup>45</sup>

Later, the palabrero announces his visit with the local emissaries, who warn of the commitment with the authorized conciliator, to guarantee that:

[In] the audience are present the 'Alaülayuu or Pütchipala of the receiving clan. These, in turn, can extend invitations to be accompanied by the erajülüi akuai'pa (eyewitnesses), who participate as neutral members of other clans and considered as legitimate observers in the conciliation.<sup>46</sup>

With the presence of the palabrero the dialogue between the families is established. “[...] the palabrereros trace their expositions to take and bring the word that contains the propositions and the counter-propositions [according to] the most well-founded and consistent arguments, which are exposed with great prudence and diplomacy”, and discuss the facts and the behavior of families and individuals involved.<sup>47</sup>

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<sup>43</sup> Vizcaíno, Origen del derecho wayuu, 97

<sup>44</sup> Vizcaíno, Origen del derecho wayuu, 97.

<sup>45</sup> Ministerio de Cultura, “Plan especial de salvaguarda del SNW”, 9.

<sup>46</sup> Ministerio de Cultura, “Plan especial de salvaguarda del SNW”, 9

<sup>47</sup> Banco de la República, “Pütchipü'ü. El oficio de la palabra entre los wayuu”.

Through word and symbology (drawings in the sand), the *palabrero* rejects the argument of the opposing side through listening to reach an agreement and to set a payment for the damage caused.<sup>48</sup>

In this regard, the payment has a fundamental function, the repair of or compensation for the damage caused; therefore, the extent of the payment must be proportional to the damage caused with all its social implications, as its character is more moral than physical.

Due to the damage caused, the chief of settlements and family “sets a value to the case, so the affected party demands from the aggressor damages which are discussed by the opposing parties. The extent of the damages is presented to the *palabrero* in a consensus of families and he notifies it to the aggressor party. According to the previously mentioned, it must be mentioned that the quantification of the payment depends on multiple factors, such as, the social status of the person, the age, the wealth, among others, which clearly determine the amount to be paid for the damage caused. Without prejudice, it is also possible to notice the general rules, commonly used, for the quantification of harm.<sup>49</sup>

For every kind of damage caused, the wayuu have established a series of compensatory rates. For an offense it is necessary to pay with animals and for theft, three times the value of what was stolen.<sup>50</sup> The *pütchipü'üi* 's (the *palabrero*'s) service is acknowledged, in accordance with the amount of the compensation and it could consist of things like necklaces or cattle. The *pütchipü'ül* doesn't enrich, but acquires prestige and credibility; because he should not have any interest in profit or wealth, but safeguard the welfare of the community.<sup>51</sup>

As the *palabrero* is endowed with a persuasive discourse, he is recognized as a traditional authority and messenger of knowledge in the wayuu's common law, which is rooted in custom and oral traditions. For the reasons already stated, when he acts, he justifies the symbolic efficacy by introducing typical elements of his culture in the procedure that applies to the development the normative system by means of ritual, symbology and the word. It guarantees with symbolic efficiency

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<sup>48</sup> Banco de la República, “Pütchipü'ü. El oficio de la palabra entre los wayuu”

<sup>49</sup> Pico Zúñiga, “Memoria, entre la jurisdicción indígena y el sistema normativo wayuu”, 29.

<sup>50</sup> Vizcaíno, Origen del derecho wayuu, 23-24.

<sup>51</sup> Banco de la República, “Pütchipü'ü. El oficio de la palabra entre los wayuu”.

“the harmonic parallelism between myth and acts”,<sup>52</sup> which this authority can execute, in search of a satisfactory agreement to the dispute.

Cruz Rodríguez points out that symbolic efficacy transmits a social representation though legal discourse, which is legitimized in a community. He points out:

The phenomenon of the symbolic efficacy of law consists in transmitting, through legal discourse, an image or representation of the social in which some values and interests are placed above others, thus giving them legitimacy within the community.<sup>53</sup>

In this way, the procedure developed by the pütchipü'ül or *palabrero* in the application of the Wayuu normative system, transmits a legal discourse that starts from the symbolic, that is to say, from the ritual and from the language aligned with the art of rhetoric, with customary gestures and aesthetic elements, that helps them to persuade the parties, and brings them to the conflict resolution.

The procedure mentioned is framed by an effectiveness, which intentionality emerges in order to emit a legal text endowed with legitimacy that is also reinforced by ritual, where “interaction in the language structures and the influence of narrative genres in folklore is known as ‘verbal act’ operating in such a singular way, the symbolic efficacy”.<sup>54</sup>

For the pütchipü'ül, the traditional clothing is also relevant, which is characterized by “a cane that symbolizes the straightness of the behavior of being Wayuu. The cane is made from the stems of the plants known as Waraaralü and Paliisepai”.<sup>55</sup>

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<sup>52</sup> Jesús Nebreda, “Sobre hechiceros y curanderos o el antropólogo y su estrategia”, *Gazeta de Antropología*, núm. 11 (1995). [http://www.ugr.es/~pwlac/G11\\_04Jesus\\_Nebreda\\_Requejo.html](http://www.ugr.es/~pwlac/G11_04Jesus_Nebreda_Requejo.html) (acceso octubre 6, 2017)

<sup>53</sup> Michael Cruz Rodríguez, “Múltiples derechos, la misma desprotección: la eficacia simbólica de los derechos de las mujeres indígenas desplazadas en Colombia”, *Estudios Socio-Jurídicos* 14, núm. 2 (2002) [https://revistas.urosario.edu.co/index.php/sociojuridicos/article/view/2118#article\\_container](https://revistas.urosario.edu.co/index.php/sociojuridicos/article/view/2118#article_container) (acceso octubre 6, 2017).

<sup>54</sup> Guillermo Wilde, Pablo Schamber, comps., *Simbolismo, ritual y performance* (Buenos Aires: SB, 2006), 33.

<sup>55</sup> Centro Nacional de Memoria Histórica [CNMH], “Portete. El camino hacia la paz. El reconocimiento de nuestra diversidad”, [http://www.google.com.co/url?sa=t&srct=j&sq=&resrc=s&source=web&ccd=1&ved=0ahUKewjLt6Dku9LYAhXEtlMKHaAVCKAQFggkMAA&url=http%3A%2F%2Fwww.centrodememoriahistorica.gov.co%2Fdestacados-cnmh%2Fdownload%2F361\\_47991766d73bf725623f6936761c887e&usg=AOvVaw1AXt8gQWfyV\\_JcfLn75T38](http://www.google.com.co/url?sa=t&srct=j&sq=&resrc=s&source=web&ccd=1&ved=0ahUKewjLt6Dku9LYAhXEtlMKHaAVCKAQFggkMAA&url=http%3A%2F%2Fwww.centrodememoriahistorica.gov.co%2Fdestacados-cnmh%2Fdownload%2F361_47991766d73bf725623f6936761c887e&usg=AOvVaw1AXt8gQWfyV_JcfLn75T38) (acceso octubre 6, 2017)

This clothing also represents the trajectory of the pütchipü'ül and the necessary elements for the diffusion of rhetorical art of words, to be used to “mark people out and draw in the mother earth /mma/ as it is tying their arguments together. Besides the cane, they wear the traditional Wayuu hat, the /womü/ and the footwear of the region, the *guaireña*”.<sup>56</sup>

The *palabrero* uses rhetorical expressions and analogies for the solution of disputes and to show people peaceful solutions. The ideal of a normative system based on the sanctity of life; the pütchipü'ül's word, which resembles the song of birds, emerges as the supernatural and allegorical. “(P)ossessing in his discourses an aesthetic force directed towards persuasion, whose objective is to achieve the change of human behavior and peace among the beings in dispute”.<sup>57</sup> These features, the form of transmission and the development of the *palabrero*'s process share elements with western art thus allowing us to move from an indigenous people to our society. It is a connection point between two cultures (the Wayuu and the western) and between two disciplines (law and art).

The need arises to express into an artistic work the transcendence of the Wayuu normative system, represented by the pütchipü'ül. Art is the most appropriate means to transmit a message as a form of cultural entrepreneurship<sup>58</sup> and innovation of legal research as a foundation of knowledge, since it allows us to comprehend that which is addressed, and permits an impact on people's sensibilities, regarding the unavoidable relation between symbolic efficacy and the role accomplished by the *palabrero* implementing the Wayuu normative system.

#### 4. From the word to the image

Taking into account the fact that law is an essential part of a group social identity, and this identity is not constituted solely of rules and norms, but also by a system

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<sup>56</sup> Nicolás Polo Figueroa, “Pilares y valores de la cultura wayuu”, *Verbum* 11, núm. 11 (2016): 44.

<sup>57</sup> Banco de la República, “Pütchipü'ü. El oficio de la palabra entre los wayuu”.

<sup>58</sup> El emprendimiento cultural es la actividad de apropiación de los valores simbólicos e intangibles de una sociedad para crear diversas maneras de representación, plasmadas en bienes y servicios culturales, por medio de procesos económicos basados en el riesgo, la creatividad y la innovación; en su conjunto, deben permitir la consolidación de una idea de negocio, empresa u organización. Ministerio de Cultura, “Observatorio cultura y economía. 2017” [http://www.google.com.co/url?sa=t&rtct=j&q=&resrc=s&source=web&cd=2&ved=0ahUKEwjmj4K4vNLYAhXRsfMKHV8Gc88QFggqMAE&url=http%3A%2F%2Fwww.mincultura.gov.co%2Fplanes-y-programas%2Fprogramas%2Fprograma-nacional-estimulos%2Fdocuments%2FConvocatoria%25202018%2F15.Emprendimiento%2520cultural.pdf&usg=AOvVaw2ZLUwD\\_QmhtujzNLNY3-OD/](http://www.google.com.co/url?sa=t&rtct=j&q=&resrc=s&source=web&cd=2&ved=0ahUKEwjmj4K4vNLYAhXRsfMKHV8Gc88QFggqMAE&url=http%3A%2F%2Fwww.mincultura.gov.co%2Fplanes-y-programas%2Fprogramas%2Fprograma-nacional-estimulos%2Fdocuments%2FConvocatoria%25202018%2F15.Emprendimiento%2520cultural.pdf&usg=AOvVaw2ZLUwD_QmhtujzNLNY3-OD/) (acceso octubre 6, 2017).

of relationships, imaginaries and social representations, it is therefore possible to consider them as an effective way to reach different types of groups and societies.

In this particular case, it is necessary to consider that indigenous cultures have a great influence of the imaginary, through which different lines of connection between their social and cultural systems are established. In this way, with imaginary, aesthetic and symbolic elements, social and political structures are accepted. In the Wayuu culture, this type of imaginary forms founds its legal structure, that is, their normative system, which has total legitimacy to the point of being recognized outside of the Wayuu territory.

This link between law and symbolic efficiency offers the possibility to bring the Wayuu legal message to a more abstract field, and consequently, the individuals of other cultures will reach it in a sensory way, with elements of their own imaginary, notions and relationships from a concept that combines law and art.

In the following paragraphs the transition from the word to the image will be proposed as cultural entrepreneurship. The results of the research will be considered from the artistic field as well as bring a legal message to a work of art, in order to generate in a specific audience a deeper and more constant message. It will be clarified what type of artwork should be included and what elements are necessary to obtain the desired effect.

Why a work of art? As the goal is to display the concept of the Wayuu normative system and the procedure developed by the pütchipü'üi or palabrero in application of this system fueled by several factors, including its imaginary and symbolism, there exists the possibility of transferring these elements to the arena of art.

Art is an instrument, a means to transmit in a lasting and profound way what has already been proposed regarding the alternative form of conflict resolution used by the Wayuu people as part of their legal system.

The importance of removing the message from its usual context of transmission is given by the way it is perceived. When the same topic is approached from different perspectives, its understanding is more complete, which not only diffuses a concept, but a total image of the idea, which impacts the recipients of the message in a deeper and more lasting way.

At present, the general understanding of concepts covers all the senses; the new generations conceive the world and its narrative with other forms of communication that affect different areas, expressed in different languages and forms.<sup>59</sup> This makes it necessary to adapt means of spreading ideas through different methods.

#### 4.1 About the piece of art: particularities.

What is particular about this art is that it relates to people from a sensorial, not conceptual, point of view but also frames a social and cultural sense. As expressed by Sebastián Mauro,<sup>60</sup> the strength of art resides in the connection with reality and the non-conventional way to transmit this.

This leads us to think about the artistic message and how it relates to the individual in a way different from written language, because it touches them, due to the fact that its transmission involves more senses than reading does.

Professor Antonio Martín Araguz, an expert on neuroesthetics and art history, mentions that one of the reasons human beings return to the art is its endurance:

[...] art is a symbolic form of communication, but different from language [...] art, as the symbolic system it is, as an ability to transmit knowledge and as an ability to create pleasure, is a an evolutionary need [...] something that characterizes us as human beings is our ability to transcend.<sup>61</sup>

This concept leads us to think about art as a medium with not only symbolic characteristics, but also enduring characteristics. These features are assumed in culture as inherent to art, and thus to the piece of art, which takes us to the most important point: these two relevant characteristics (the symbolic and the transcendental) are passed on to the message of the piece of art.

The idea here is to bring to a piece of art; the descriptive message of a legal element used by the Wayuu culture, based on its symbolic effectiveness; and the use of

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<sup>59</sup> Antonio Ferrer, "Millennials, la generación del siglo XXI", Nueva revista de política, cultura y arte, núm. 130 (2010). [http://www.uca.edu.ar/uca/common/grupo83/files/Millennials\\_-\\_La\\_Generacion\\_Millennial\\_en\\_el\\_Siglo\\_XXI\\_-\\_2010.pdf](http://www.uca.edu.ar/uca/common/grupo83/files/Millennials_-_La_Generacion_Millennial_en_el_Siglo_XXI_-_2010.pdf) (acceso octubre 6, 2017).

<sup>60</sup> Sebastián Mauro, "La obra de arte como forma de conocimiento. La forma paradójica de la mimesis en Aristóteles y Adorno". A parte rei 41 (2005), <http://serbal.pntic.mec.es/~cmunoz11/mauro41.pdf> (acceso octubre 6, 2017).

<sup>61</sup> Antonio Martín Araguz, "Cuando el cerebro dice bello", video de YouTube, 21:45, 5 de junio de 2011,

imagery and aesthetics, as factors that conjoin concepts of Wayuu culture and the concept of western art. The hope is to create a piece of art that causes a deeper or longer impact on people who are not directly involved with the culture.

## **4.2 Painting as a medium of transmission**

Brassaï tells us that a conversation with his friend Henri Michaux, writer, poet and painter, creates a reflection around the arts (poetry, music, sculpture) and reaches the conclusion that painting is an ideal medium for communication

Henri Michaux: "I am sick of poetry!" [...] The word is just an allusion [...] referring to painters. "What they create has a visible, tangible, body, it's an echo. Something concrete that, separated from us, answers to us. A poem is mute, gives us back nothing."

Brassaï: Following that reasoning, you should discard music as well. As far as it is not played, what is it but a bunch of notes? Then you would reach the paradox that music is the art most deprived of echoes.

Henri Michaux: And it is as far as it is not performed. Evidently, when a hundred instruments repeat what you have imagined, created, it is an answer. But, will it be played? When and how? And this is precisely the question. Do you know that a young composer that writes a symphony today doesn't have more than a one in ten chance of hearing it in his life? Only fine arts have an immediate echo. They don't depend on the reciter, or the printing press or the performers, they depend on nothing. What is created with the hands is alive, it really is, evidently, that is why I paint now.<sup>62</sup>

This conversation between Michaux and Brassaï shows us that painting is more permanent than music or literary arts, not only because it can be observed or reinterpreted, but because, besides it serves as a means of expression and acts as an interlocutor with the audience.

We can consider painting as a good transmitter of messages, and, in this particular case, like the ideal technique, given that within wayuu culture there is an important

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<sup>62</sup> Gilberte Brassaï, *Conversaciones con Picasso* (Madrid: Turner, 2002), 80.

connection between the pictorial elements and those that nurture the oral tradition of this culture in the development of its system of rules.

Its bases not only focus on experiences, but on symbols and references to animals, that, along with the aesthetic and the use of what they represent, bring life to the way in which a person like the *palabrero* is characterized within the group in carrying out his leadership work.

It is the artistic, symbolic and aesthetic features what give legitimacy to this figure of *palabrero*, strengthen the ruling system in and out of the community, and reinforce cultural identity.

These elements, inherent to the Wayuu culture, make it possible to take an almost natural leap to the piece of art – in this case, pictorial –, given that not only a social impact is sought, but the transmission of aesthetic, symbolic and cultural factors, that represent the community.

Painting allows us to convey the message in a more sensorial way, through a physical structure, the painting. As Kandinsky would describe it,<sup>63</sup> painting acts as a facilitator of an experience different to the mere reading or explanation of a concept.

Communication's influence, these days, over all spheres is undeniable: "The arrival of new technologies has introduced big changes in humanity's social structure and has reshaped the relationships of all individuals".<sup>64</sup> Mauro Bianchi delves into the relationship between communication and arts and gives Aristotle as a referent, referring to communication as:

[...] a process in which all means of persuasion at hand are used to make us understand. And suggests that "Communication has evolved to a point, that nowadays we recognize as part of the professional communicators' excellence of communication, id. est., artists that work on and enjoy the different arts."<sup>65</sup>

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<sup>63</sup> Vasili Kandinsky, *De lo espiritual en el arte* (Barcelona: País dos, 1912), 29.

<sup>64</sup> Jairo Becerra, Lorenzo Cotino, Claudia García, Marco Sánchez y Jheison Torres, *La responsabilidad del Estado por la utilización de las tecnologías de la información y la comunicación (TIC)* (Bogotá: Universidad Católica de Colombia, 2015), 177.

<sup>65</sup> Mauro Bianchi, "El arte de comunicar", *Escritos en la Facultad* núm. 81 (2013): 18.

In this case painting, as means of the artist and tool of a legal message, works as a link that facilitates a more sensorial and communicative experience, that leaves the written context lawyers are used to.

### **4.3. The artistic proposal: How to make this work have an impact on lawyers?**

The artistic proposal is a creation project that acts through the aesthetic transformation of a space, first as an element to attract attention, and then to become a visual transmitter of a legal concept, to expose and perpetuate the message.

The work proposed is a large format pictorial, to change the aesthetic perception of the space where it is located and achieve the goal of informing people of the alternative conflict resolution of the Wayuu people, established in its normative system and embodied in the palabrero or püchipu'ui.

In the framework of cultural entrepreneurship and with the proposal of an artistic project to carry out the work, it is necessary to develop two elements: first, the capacity for creation based on the search for innovative elements that are dedicated to the processes of abstraction and, second, the knowledge of the artistic world taken to the field of aesthetics, which allows access to a type of communication that is not limited to verbal expression and overcomes language with other forms of expression. Other points to highlight are the exploration and research that make it easier to specify and apply what has been learned.

To make an impact on a particular viewer, the work becomes the message. If the elements mentioned thus far are taken into account, such as 1) the previous knowledge of the people; 2) the meaning given to artistic works; 3) the aesthetics; 4) the unsightly, and 5) the literary, they can be utilized through textures, colors and the schematics of the work to act as transmitters and provoke sensations and perceptions that capture the attention of lawyers and turn them into receivers of a message.

The technique used will be directed, mixed and interdisciplinary and, since the final purpose relates to the public that moves in the legal field, it is necessary to include literary elements that create cognitive and relational connections that support the development of the people's sensitivity. The aim is to encourage viewers to be interested in alternative conflict resolution proposed by the Wayuu culture.

The direction of the work will obey not only the artistic contribution and the personal interpretation of the artist but the final objective of achieving a transmission and reception of the concept; for this, it aims to promote aesthetic appreciation through artistic elements and direct the viewer to understand the idea through their reflection and conceptualization. The colors will be essential since they convey meaning, give a new spatial and sensory interpretation and sustain the message. The image works as the writing of a story that evolves and transforms so that, by uniting its parts, a personal conclusion is proposed.

The painting is the vehicle of transversal communication, not common, for the majority of the public with whom it will be related and will provoke in them a different impact, not only for the sense of the work and the technique used but also for the previous knowledge and the relationship of people with the subject. The artistic work is nourished by the preconceptions, knowledge, and feelings of the spectator, which make it the ideal medium to foster interest in people; in addition, it has inherent elements of cultural connotation, transcendence and sensation that unite people with their feelings; these distinguish it from the simple reading of a concept or oral or written transmission, without any other element that supports it.

## **Conclusions**

The pütchipü'üi has roles that are appropriate to the degree of knowledge that he has in the facets as an intermediary, mediator or conciliator for the maintenance of peace in the community and respect for life, in the application of a normative system that has remained current throughout the years. The pütchipü'üi uses the tradition of the Wayuu people and unwritten rules that, conjugated in ritual and language, transmit a text that is established in the symbolic and gives priority to symbolic efficacy as a representation of the legal speech of the palabrero and of the aesthetic defined in its performance in application of the Wayuu laws.

The transmission of the legal message in an artistic work is a way to achieve a different transcendence of the reading of the concept and its procedure. The inherent characteristics of art, such as its durability, its aesthetic or displeasing sense, its cultural connotation related to the creative act, human spirituality and its way of perceiving the world from a particular point, allow the effect of a concept diffused by this medium to impact the viewer more profoundly.

The Wayuu people possess traits that obey a collective imaginary and that is an essential part of their social, political and cultural structure. These traits strengthen their identity, conform their legal concept and provide a connection between the characteristics of this culture. These same aesthetic and symbolic notions allow a direct connection with the collective imaginary and lead us to think of artistic expression as an alternative means of communication of the message, to reach more people and make known elements of this culture that can significantly enrich ours.

In the framework of cultural entrepreneurship, this project talks about passing the results of research in the artistic field, whereby it is proposed to create a pictorial work that employs awareness, reception, creation, and socialization that give added value to the transmission of the results.

In this particular case, it is proposed to create a large format pictorial work that interacts with the space and delivers the legal message whose axis is an alternative to solve conflicts, in order to reach a specific audience in a different way, by taking advantage of common artistic traits shared by the palabrero and Western art.

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