

Law and Globalization: the “multi-sited” uses of Transitional Justice by Indigenous Peoples in Colombia (2005-2016)

MÓNICA ACOSTA GARCÍA*

Acosta García, M., 2018. Law and Globalization: the “multi-sited” uses of Transitional Justice by Indigenous Peoples in Colombia (2005-2016). *Oñati Socio-legal Series* [online], 8 (5), 760-787. Received : 30-01-2017 ; Accepted : 27-09-2018. Available from: <https://doi.org/10.35295/osls.iisl/0000-0000-0000-0960>



Abstract

This paper focuses on the link between Transitional Justice (TJ) and Indigenous Peoples in Colombia. The aim is to identify and discuss how Organización Nacional Indígena de Colombia (ONIC) has used and appropriated the Transitional Justice in Colombia during the past 10 years. Thus, the main argument is the Colombian TJ, which is a social process of interactions involving diverse types of agents and multiple levels of law. This implies that Indigenous Peoples have engaged in a *TJ from below* through multi-sited uses of the discourse. This case study is analysed through a socio-legal and the sociology of social movements approach that articulates Law and globalization perspectives and, the diffusion and uses of law. The action-research perspective, the qualitative approach of ethnography and the methods of non-participant observation and in-depth interviews of some activists and social actors are used. In addition, qualitative content analysis of laws, policy papers, NGOs and indigenous organizations reports.

Key words

Transitional Justice from below; indigenous peoples; uses of law; diffusion of law; Colombia; ONIC

Resumen

Este artículo se centra en la relación entre la Justicia Transicional (JT) y los Pueblos Indígenas en Colombia. El objetivo es identificar y debatir cómo la Organización Nacional Indígena de Colombia (ONIC) ha utilizado y se ha apropiado de la Justicia Transicional durante los últimos 10 años. El argumento central es que la JT colombiana es un proceso social de interacciones que involucra diversos tipos de agentes y niveles del derecho. Esto implica que los Pueblos Indígenas se han

This article pays homage to all Colombian indigenous peoples, those who live daily life in armed conflict and, who have changed their “warm” territories for the “cold” of the cities and their people.

* Mónica Acosta García: PhD candidate of Sociology of Law, Basque Country University (Spain). Lawyer and internationalist, Universidad del Rosario (Colombia). Master of Arts in Sociology of Law, Oñati International Institute for the Sociology of Law. Pre-doctoral Researcher at the Basque Country University. Lecturer of the educational program *Escuela Intercultural de Diplomacia Indígena*, Universidad del Rosario (Colombia). Experience in action-research, qualitative and interdisciplinary research with Colombian Indigenous Peoples. Contact: Facultad de Derecho. Paseo Manuel Lardizábal s/n. 20018 Donostia-San Sebastián (Gipuzkoa) Spain. Email address: monicanatalia.acosta@ehu.eus. ORCID: orcid.org/0000-0002-5612-4964



involucrado en una *JT desde abajo* a través de los usos del discurso en múltiples lugares. Este estudio de caso es analizado a través de un enfoque socio-jurídico y de sociología de los movimientos sociales que articula las perspectivas del Derecho y la globalización, y la difusión y los usos del derecho. Metodológicamente usa la perspectiva de la investigación-acción, el enfoque cualitativo de la etnografía y los métodos de observación no participante y entrevistas en profundidad, y el análisis de contenido cualitativo de leyes, de documentos de políticas públicas, de ONG y de informes.

Palabras claves

Justicia Transicional desde abajo; pueblos indígenas; usos del derecho; difusión del derecho; Colombia; ONIC

Table of contents / Índice

1. Introduction	763
2. Methodology	764
3. The “diffusion” of Transitional Justice: global emergence and national consolidation.....	765
3.1. Transitional Justice in Colombia: a “legal transplanted” category?	767
4. ONIC and its struggles.....	769
4.1. The emergence of ONIC	769
5. The Transitional Justice uses by ONIC	770
5.1. Uses, lobbies and TANs (transnational level)	771
5.2. Uses, appropriation and translation (national level)	774
References.....	781
Appendix. The research methods and sampling	787

In our culture, peace is not a synonym for war; it's a quality of life. It's the strongest inspiration for happiness among people. Unfortunately weapons, arms, racism, war, oppression of human beings turn peace into a synonym with war. The cause has turned out [to be] (...) social inequality. That inequality affects all levels of peoples' rights and the environment. (Rigoberta Menchú Tum, Nobel Laureate)

1. Introduction

At the time of writing this paper, after four years of negotiations, the Fuerzas Armadas Revolucionarias de Colombia (FARC) and the Colombian Government agreed to a ceasefire – “a final and definitive agreement”. In retrospect, peacebuilding should have started when citizens voted in the October 2016 plebiscite, however, the results saw 50.21% of votes against the agreement while 49.78% in favour. After reworking and concluding some changes by the end of 2016, the Congress endorsed the agreement in its current form. Nevertheless, Colombia has faced an armed conflict for more than fifty years, with a history characterized by failed political negotiations. Colombia would seem to have a comprehensive system of truth, justice, and reparation arising from its history with the Justice and Peace process and its most recent peace agreement, based on the Transitional Justice (TJ) paradigm. However, Colombian TJ has been built and “transplanted” with the implications described at the global level, that is, in terms of a gender-ethnic neutral category. This implies that Indigenous Peoples (IPs) have been absent since the beginning of the debate, and, during the last decade, have been struggling to be a part of current one.

While TJ usually is best understood through “top-down” perspectives of rulers, legislators, judges, and elites (Gómez 2014), the goal of this paper is to provide a perspective *from below* to describe the IPs resistant and mobilising struggles. As Santos emphasizes, a *subaltern cosmopolitan legality* implies a “shifts from the North to the South, with the South expressing not a geographical location but all forms of subordination (economic exploitation, gender, racial oppression, and so on) associated to neoliberal globalization”. It demands “a conception of the legal field suitable for reconnecting law and politics and reimagining legal institutions from below” (Santos and Rodríguez-Garavito 2005, pp. 14-15). Without forgetting the complexity of the interactions at all levels, *from global to local*, including many intermediaries, not only states and international organizations (Twining 2003, p. 256). Also cosmopolitan activities *from local to global*, such as transnational advocacy networks (TANs) (Keck and Sikkink 1998, 1999), NGOs' roles (Sikkink 2002) and new social movements or subaltern actors in the periphery (Rajagopal 2003, 2005), as a result from the arena that human rights' discourse brings (Hampshire, cited in Twining 2009b, p. 56).

Reviewing TJ and IPs literature, Buckley-Zistel and Zolkos mention there were changes in the “neutral” liberal idea of the TJ subject because of the rise of human rights on the international agenda in the 1990s. Along with the emergence of nationalist and violent ethnic conflicts in Yugoslavia, Rwanda, Sierra Leone, and elsewhere, highlighting the importance of gender, age, race and ethnicity to understand the patterns of specific victimization (Buckley-Zistel and Zolkos, cited in Buckley-Zistel and Stanley 2011, p. 5). In this way, TJ offers an opportunity to rethink and revise a society's historical processes in relation to mass harm. This is the transformative potential of political transitions (Balint *et al.* 2014). Arthur argues that, in societies with histories of exclusion, racism, and nationalist violence, there is often such deep division that dealing with past atrocities is seemingly impossible. Therefore, TJ analysis through an “identity” lens addresses different ways in which TJ may act as a means of political learning, promoting citizenship, trust and recognition, and breaking down the myths and stereotypes in societies with ethnic, religious, and linguistic divisions (Arthur 2011).

These analyses, linking TJ and decolonization, “are based on two levels of justice, which are necessary to be adopted where political demands and patterns of violence

characteristic of identity conflicts are strong: justice for past human rights violations and, justice for systemic institutional marginalization on the basis of one's identity" (Arthur 2011, p. 4). This is the case of IPs and its link to TJ. However, a deep and critical analysis on it is scarce because most authors focus on describing Truth Commissions in countries with IPs (Guatemala, Maine, Canada, and Australia) [Littlechild and Stamatopoulou 2014]; or on the dialogue between institutional vision and indigenous organizations (International Center for Transitional Justice –ICTJ – 2010, 2013); or give emphasis on the right to reparation of indigenous peoples (Rodríguez and Lam, cited in ICTJ 2013) by past historical injustices and marginalization (Oré Aguilar and Gómez Isa 2011). At the international level, this issue recently arose. In 2013, the United Nations Permanent Forum on Indigenous Issues (UNPFII) experts made a report on the links between the rights of IPs and Truth Commissions, some organizations participated in a 2012 side event and, in 2016, the session of the UNPFII on peace, resolution, and conflict.

But, even though the subaltern actors are a critical part of processes whereby global legal rules are defined (Rajagopal 2003) and, in recent years some authors refer to TJ in relation to mass harm, and, address the otherwise invisible wounds from the past and present of IPs. There is a particular lack of knowledge when it comes to analysing case studies on the relationship between TJ initiatives and IPs in a post-conflict. Hence, this paper aims to address the complexity of this analysis in order to add a case study to the literature and, to contribute to the research agenda on *TJ from below* (Santos 2002, Rajagopal 2003, Santos and Rodríguez-Garavito 2005, McEvoy and McGregor 2008, Díaz cited in McEvoy and McGregor 2008, Uprimny and Guzmán 2010, Shaw and Waldorf 2010, Gómez 2014). Regarding the current Colombian TJ context, the Organización Nacional Indígena de Colombia (ONIC) is the only organization within the five national organizations (Confederación Indígena Tayrona –CIT–, Autoridades Indígenas de Colombia –AICO–, Organización Nacional de los Pueblos Indígenas de la Amazonia Colombiana –OPIAC– and Autoridades Tradicionales Indígenas de Colombia-Gobierno Mayor) that leads on a consistent basis the struggles on the protection of rights to land and the defence of collective rights.

Therefore, the paper's research question is *how ONIC has used and appropriated the TJ in Colombia during the past 10 years*. Hence, some sub-questions arise: how did the TJ discourse originate in Colombia? What is the link between TJ and the rights of IPs on multiple levels? This paper will argue that the Colombian TJ is a social process of interactions, involving diverse types of agents, such as State actors, NGOs, international organizations, indigenous organizations, lawyers, among others, and, different kinds of levels (local/national/global/transnational). The Colombian TJ exemplifies a type of "legal transplant" or, in Gómez's words (2014) a "field of dispute" that has operated in a cross-levels interaction and, has also led resistance movements to struggle. This implies that IPs have engaged in a *TJ from below* through different TJ uses. For this reason, this paper also will state that, on one hand, IPs aims to make the situation of the IPs visible and bring pressure on the Colombian government by building legal/political strategies at a transnational level. On the other, IPs strategically uses the TJ discourse in normative terms to empower them politically at a national level. Thus, they receive the protection of rights to autonomy and land. These are the "multi-sited" uses of TJ.

2. Methodology

Theoretically, this case study is analysed through a socio-legal and the sociology of social movements approach that articulates Law and globalization perspectives and, the diffusion and uses of law to highlight the conditions for the emergence, uses, and/or appropriation of the TJ discourse by ONIC. The Law will be defined as a social practice "concerned with ordering relations between subjects or persons at a variety of levels or relations and ordering, not just relations within a single nation state or society" (Twining 2009a, p. 117, 2009b, p. 42). The study of the *diffusion of law*

introduced many labels, including “reception, transplants, spread, expansion, transfer, export and import, imposition, circulation, transmigration, transposition and transfrontier mobility of law” (Twining 2004, p. 5) in order to understand and describe how the TJ discourse has been constructed at a global and national level. The *uses of law* bring about a new perspective on law “as it is practiced in everyday life, focusing on ordinary people as well as legal elites” (Merry 2006, p. 975). That perspective is important in analysing how ONIC has engaged in TJ uses.

Regarding methods, this research is conducted as a part of the International Master’s Program in Sociology of Law (2015-2016), the PhD thesis, and of the Intercultural School of Indigenous Diplomacy (EIDI, for its acronym in Spanish) since 2011. This popular education initiative, founded in 2007, based on Fals Borda’s participatory action research, Paulo Freire’s critical pedagogies, and the dialogue of knowings engagement in co-construction processes using participatory, intercultural, and intersectional research methods. In addition, the use of interviews¹ and non-recorded interviews, along with qualitative content analysis of laws, policy papers, NGOs, and indigenous organizations’ reports from 2003 to 2016 (see Appendix). The research team implemented pedagogical and artistic methodological tools, such as personal and collective narratives (oral and written), life histories, social cartography, participatory social mapping of places, and body maps. Moreover, since 2012, following the internationalization policy of the Universidad del Rosario, the research team accompanied the participation of some EIDI students in the UNPFII, which takes place every year in NYC. Through our research, we found multi-sided ethnography as a useful perspective for data analysis; it is a strategy of following people, discourses, ideas, connections, and relationships as they travel. As Marcus recognises, this kind of methodology “moves from its conventional single-site location to multiple sites of observation and participation that cross-cut dichotomies such as the ‘local’ and the ‘global’, the ‘lifeworld’ and the ‘system’” (Marcus 1995, p. 95, Merry 2006).

This case study is presented by dividing this paper into three sections: first, it will put into context and address the background of TJ at a global and national level. A deep analysis of TJ as a legal transplant is not one of the main objectives of this paper, however, a comprehensive presentation of it is necessary to begin understanding it. Second, despite there being some literature on IPs and TJ as mentioned, this paper will focus on a Colombian case. Therefore, the historicization of ONIC and its struggles will be described. Finally, the third part will combine the TJ context and Colombian IPs within a *subaltern cosmopolitanism* to analyse the “multi-sided” uses by ONIC: the way in which IPs have used, lobbied, and appropriated the legal discourse at the transnational and national level.

3. The “diffusion” of Transitional Justice: global emergence and national consolidation

TJ is understood as “the conception of justice associated with periods of political change” (Teitel 2000, p. 6, 2003, p. 1), it refers to the way societies after periods of dictatorial regimes or armed conflicts undertake a set of measures related to criminal prosecution-trials, purges, truth-seeking, reparations, and institutional reform (Kritz 1995, Elster 2004, UN Secretary-General 2004). Due to TJ being a very “broad”, “heterogeneous”, and “normalized” field of study (De Greiff 2011, Teitel 2014), it is often conceived as a “toolkit” for use all over the world (Shaw and Waldorf 2010). Globally, discussions on it began towards the end of the twentieth century (Kritz 1995, Minow 1998, Reátegui 2011).² This new normative conception “emerged”,

¹ All the quotations taken from the interviews, which appear in the current document, were translated into English by the author.

² In 1995 Kritz made a compilation of several articles on how societies should confront dictatorial governments in the context of post-Cold War and new processes of democratization – related to mechanisms still considered central to TJ inquiries today (Kritz 1995), nevertheless, Teitel first coined the

known as “the principles of Joinet” (1997), and updated with the report of Orentlicher (2005). This turn towards concern in the impunity of human rights violations was incorporated into various United Nations’ (UN) and human rights organizations’ agendas. Thus, TJ “became a label under which NGOs worked and university courses, centers, and institutes were established in the 2000s” (Bell 2009). Additionally, it appears as a response to the various transitions from authoritarian regimes to democracy in the late 1980s, promoting an interdisciplinary debate on how a society should either punish its former regime or forget its past (O’Donnell and Schmitter 1986, Elster 2004, Arthur 2009), based on a specific kind of “justice”: retributive justice and/or restorative justice.

Hence, following this global logic, the TJ “process consolidation” began in Colombia in 2005. The normativity to facilitate the reincorporation of the United Self-Defence Forces of Colombia (AUC, for its acronym in Spanish) into the civilian life fostered the discussions on TJ for the first time. As Jon Elster (2004) points out, TJ has become a laboratory for the “empirical study of justice,” referring to how the normative conceptions of justice are developed in real historical circumstances of political transition. Thus, emphasizing *retributive justice* at first, the adopted measures predictably focused on the establishment of a special prosecution model that included alternative sentencing, mainly through the reduction of penalties (Law 975/2005; Decree 4760/2005, Decree 3391/2006, Decree 3570/2007 and Decision C-370/2006).³ In Gómez’s (2014) words, the TJ reception took place in a politically polarized context and under the hegemony of a “security and war against terrorism” discourse.

The Law 975/2005 also included some victims’ rights measures such as the creation of the National Commission for Reparation and Reconciliation (CNRR), the Group of Historical Memory (currently the CNMH), and the establishment of preliminary reparation programs, excluding state victims (Decree 1290/2008). However, although more than 31,000 combatants of AUC demobilized between 2003 and 2006 under international supervision, many paramilitary structures re-emerged as new armed groups, known as BACRIM (CCJ 2007 and CNRR 2011, cited in Centro Nacional de Memoria Histórica 2015, p. 33, Verdad Abierta 2015). These, along with the ELN and the Autodefensas Gaitanistas, are currently present in 27 of the 32 Colombian departments, exacerbating violence and forced displacements in indigenous territories (Human Rights Watch 2015). In fact, during this process of a “TJ without transition” or “failed transition” (Uprimny *et al.* 2006, Uprimny and Saffon 2007, 2008, De Gamboa 2007), Alvaro Uribe’s government refused to recognize the existence of armed conflict.

Then, following the process of “consolidation”, and focusing on *restorative justice* principles, the government created Truth Agreements (Law 1424/2010), a non-judicial mechanism for truth-finding and historical memory. Yet, due to its failure and the consequent demands of social movements and NGOs, Congress enacted the Victims’ Law and its Decrees in 2011. For instance, in alliance with victims and feminist organizations and NGOs, they pressed the expedition of the Constitutional Court Decision 004, Decision 092, and the Indigenous Victims’ Decree (4633/2011). After the declaration of an unconstitutional state of affairs regarding forced displacement, these mechanisms respectively addressed the protection of the

term of “TJ” in 1992 and 2000 (Bell 2009, pp. 7-8, Arthur 2009, p. 329). Then Teitel (2003) proceeded to talk about the genealogy of TJ.

³ These measures generated various tensions between the government and its supporters, a highly sceptical international community and a well-mobilised NGO and civil society sector, particularly national victims’ organizations, national human rights NGOs and their networks, and part of the media (Díaz, cited in McEvoy and McGregor 2008, Summers 2012, Gómez 2014, Centro Nacional de Memoria Histórica 2015). As Díaz recognised, in Colombia the deployment of explicitly international rights discourses was an important mobilising point for grassroots actors in seeking to either curtail state power, in particular, the prohibition of amnesties for crimes under international law and the “right to reparations” (Díaz, cited in McEvoy and McGregor 2008).

fundamental rights of displaced IPs. Leading new institutions to implement these programs, specifically the Victims' Unit, the Land Restitution Unit, and the CNMH. Notably, victims' Law is an innovative start to a TJ process, namely, as a method to address the conflict and its effects through legal mechanisms within a context where no significant political or social change has occurred (Uprimny and Saffon 2008, Summers 2012).

Furthermore, to reach a negotiated solution with other armed groups, the dialogues between Juan Manuel Santos's government and FARC began in Oslo in 2012 and were developed in Havana, with six important points on the agenda (Statement 18th October, 2012). Based on this, Congress approved the Legal Framework for Peace, which sets forth a series of integrated TJ mechanisms to facilitate the negotiation and achievement of stable and lasting peace (ICTJ 2011). Finally, after four years of peace negotiations the Colombian government and the FARC agreed to a bilateral and "definitive" cease-fire in November 2016. This agreement should have been ratified in a referendum, but lost by a small difference and with 60% abstention rate. After including some changes, the Congress endorsed the agreement by the end of 2016 and the implementation began in 2017 with the creation of the Special Jurisdiction for Peace (SJP) and the Truth Commission, in addition to other institutional measures. This motivated a continued debate in Colombia. In fact, in accordance to the global debates regarding TJ, *transformative justice* is currently emerging. This is how indigenous leaders continue to redefine their political claims following the national political agenda.

3.1. *Transitional Justice in Colombia: a "legal transplanted" category?*

The establishment of such "off-the-shelf" measures (McEvoy and McGregor 2008) operates as a kind of "legal transplant" (Watson 1993, Twining 2003, 2004, 2009a, Merry 2006a, 2006b, Bonilla 2009) of the global TJ discourse in the Colombian context. There is a legal importation and exportation of TJ technology-legal rules, institutions, practices, and expertise on the subject. Traditionally, legal literature has been based on some simplistic assumptions, "the moving of a rule or a system of law from one country to another, or from one people to another – a common case since the earliest recorded history, not restricted to the modern world" (Watson 1993, p. 21). Nevertheless, this was challenged by the impact of globalization. As Twining recognises, the above "naïve model" is much more diverse and complex. Therefore, this diffusion process, as an aspect of interlegality, takes into account three features: the "agents", the "object", and the "dynamics of transplantation" (Twining 2004, 2009a).

In relation to the *agents*, there is not an identifiable "single" exporter or importer in TJ. Many state and non-state actors have been immersed in TJ establishment at a global level (Arthur 2009, p. 325, Gómez 2014, p. 25), and in the TJ measures consolidation at the national level. They claim those measures through the human rights discourse as a *global value package* (Levitt and Merry 2009), such as the defence of the rights to indigenous autonomy and land via the category of "victims", but also through the category of "peace". This implies particular *dynamics of transplantation*. TJ transplant occurs between many kinds of legal orders and across different geographical levels. Also, a wide "object" importation and exportation. Apart from legal rules, actors and any legal phenomena on TJ is transplanted into Colombia. In fact, a common terminology related to societies in armed conflict such as "justice", "the rule of law", and "TJ", is structured for understanding the international community's efforts to enhance human rights by the Report of the UN Secretary-General (2004, p. 2). Nevertheless, in the same way as it happened globally, the implications of "transition" in Colombia are not discussed. Actually, Colombia is an atypical case in which TJ measures are applied in a political and legal context of partial transition. Indeed, it seems inappropriate to discuss a transition from war to peace in Colombia, because the different peace negotiations have not included all armed actors (Uprimny and Saffon 2008, p. 171). As Gómez (2014) argues, TJ is a

“field of dispute” in which different social actors fight to impose their “peace” or “justice” versions or persuade with them. Needless to say, this Colombian legal transplant has specific features, which are briefly explained in the following table:

TABLE 1

Variables	Features	Colombian Case
Agents	Diffusion may take place through informal interaction (without formal adoption or enactment) and do not assume one or more specific reception dates (long drawn out processes). There is not an identifiable “single” exporter or importer in the paradigm (Twining 2004, p. 35, 2009a, p. 292).	In Colombia non-state actors have also played an important role in importing TJ, due to the continued human rights violation and, a lack of a comprehensive human rights protection (Gómez 2014). International scrutiny further bolstered their claims (Summers 2012, pp. 224-225) such as the UNHCR, some States at the Universal Periodic Review and some UN Special Rapporteurs having pressured to reform some TJ measures. As well, the Colombian Constitutional Court has played an increasingly important political role, particularly in the judicialization of politics. The process by which the Constitutional Court has dominated the making of public policies (Sieder <i>et al.</i> 2005) through relevant judicial decisions about victims, internal forced displacement, TJ measures, and peace frameworks.
Object	The pathways of diffusion may be complex and indirect and influences may be reciprocal, in which neither governments nor legal rules and concepts are the only main objects of diffusion (any legal phenomena and actors) (Twining 2004, p. 35, 2009a, p. 292).	There is an importation and exportation of TJ legal rules about truth, justice, and reparation, along with the transplantation of institutional designs and measures based on retributive and/or restorative justice, as well ideologies regarding the type of transition. Models of compensation and restoration establish themselves globally as “legitimate approaches to justice after mass atrocities” (Hoogenboom 2014). This has been applied in Colombia since 2005 and into the present. The current TJ mechanisms are the Special Jurisdiction for Peace (SJP) and the Truth Commission. They are part of what Castillejo-Cuéllar (2009, p. 301) calls “transition technologies”.
Dynamics of transplanted	A relation between exporters and importers implies that the sources of a reception are often diverse. Diffusion may take place between many kinds of legal orders at cross-level interaction. Moreover, the ideas that transplants retain their identity without significant change and imported law fill a vacuum or wholly replace prior local law are recognized to be outmoded (Twining 2004, p.34, 2009a, p.291).	While the debate of Colombian TJ is only a recent debate, and its importation to the Colombian legal system may be interpreted as a way to fill a legal vacuum, the construction and institutionalization of TJ measures in Colombia might serve as a model for the discussion of TJ in post-conflict transitions in a democratic country. There are reciprocal influences between international organizations, NGOs, governments, and non-state actors. TJ is a long drawn out process that has also shaped resistance movements (Gómez 2014, p. 24).

Table 1. Colombian TJ as legal transplant.

In the midst of institutional discussions at all levels, the intersection between the categories of gender and ethnicity has hardly been analysed. As shown above, the debate surrounding TJ and IPs is related to the transformative potential of transition. The government, in order to correct the indigenous rights violations, allowed the participation of indigenous leaders in some meetings in Havana and in the current implementation of the agreement, still, there are some important political debates regarding their remarkable absence. As Latour expresses, “there is no transportation without transformation”. The reception, in some cases, implies an interaction

between “the imported law” and “local conditions” (Twining 2004). This is how IPs have been involved in a *TJ from below*, through different uses of TJ discourses in the Colombian context.

4. ONIC and its struggles

Colombia is a Latin American country where IPs benefit within the national political system, even though they are the 3.4% of the national population. The Colombian state recognizes and protects the cultural and ethnic diversity of the Colombian nation. There are 102 indigenous communities, who apart from the constitutional right to be represented in the Colombian Parliament, have a constitutional right to self-government. This political model instituted in the 1991 Colombian Constitution, granted local indigenous authorities (*cabildos*), the right to exercise legal jurisdiction in their own territories (*resguardos*), according to their own norms and procedures. Recently, the indigenous councils were granted the right to design and implement development plans, to promote public investments, to receive and administer public funds, to preserve natural resources, to cooperate in the maintenance of public order, and to represent their own territories.

The legally recognized indigenous territories cover 30% of the national territory, however, the extremely unequal distribution of productive resources, especially land, has been the basic axis of their longstanding marginalization and the Colombian armed conflict. It is widely understood that about 80% of land in Colombia is in the hands of 14% of landowners. Beside this, between 6.6 million and 8 million hectares have been taken from their owners, a phenomenon, which exacerbated the historical hoarding of land by large landowners, drug traffickers, paramilitary forces, and big business (Oxfam 2013). Thus, land concentration and use, the lack of citizenship in rural areas, and the dispossession of illegal groups have intensified the conflict during the last decades. IPs, as a minority group, are the most affected by human rights violations, particularly internal forced displacement and dispossession of land due to the armed conflict, and economic actors.

The change in environment, often from rural to urban areas, poverty conditions and serious crimes, all contribute to the cultural, social, and physical destruction of IPs. The internal armed conflict “disproportionately” affects them (Constitutional Court, Decision 004/2009, Rodríguez-Garavito and Rodríguez Franco 2010), not only as individual, but also as a collective. Therefore, as a result of all this historical mass harm suffered, and, unlike other Colombian minority groups (Afro-descendants and *raizales*), territory has become a major and important political demand for the indigenous movement. For them, territory is a source of identity, spirituality, autonomy, governance practices, and the means to be deeply rooted in their culture and history. Therefore, centring this indigenous knowledge and their voices within Colombian TJ is necessary and urgent. It contributes to the reconfiguration of TJ by considering an ethnic perspective in the current implementation and their role as peacebuilders, as will be shown. Also, it is crucial to comprehend the implications of acknowledging territory as a victim and as a subject of harm and reparation, as demanded by ONIC. This has an impact not only on the current policies regarding land restitution and reparation, but also on the role extractive companies play in the post agreement context (Acosta *et al.* 2018).

4.1. The emergence of ONIC

Within the historical experience of Colombian indigenous resistance in the early twentieth century, the movement led by Manuel Quintín Lame is important. The path traced by him resulted in the process of the formation of regional councils, through which IPs were reclaimed their lands, culture, identity, organizations, and self-governments. In this context, for example, in the 1970's the Consejo Regional Indígena del Cauca (CRIC) arose, as an organization with indigenous claims framed in the popular and peasant struggles Asociación Nacional de Usuarios Campesinos

(ANUC) [Lemaitre 2009, p. 313], among many others in Antioquia, Vaupes, and Chocó (Laurent 2005, p. 74, Castillo 2007, p. 157). After a decade of indigenous resistance and regional organizations, in 1982 “numerous indigenous councils in the first Indigenous National Congress, shaped the first organization to represent and defend national interests of indigenous communities: Organización Nacional Indígena de Colombia (ONIC)” (Laurent 2005, p. 75, Lemaitre 2009, p. 322). The organization, as a “gremial” federation, to define its platform of action, gave special interest to autonomy as a central point of its struggle and stressed the importance of the defence of indigenous territories, history, culture, and traditions. Its guiding principles are Unity, Land, Culture and Autonomy (Laurent 2005, p. 76). The success of this organization is hard to imagine. Apart from its establishment as the main national indigenous organization, “in the 1980’s, for the first time the State recognized it as a legitimate representative of IPs and formulated a policy with its participation, Programa de Desarrollo Indígena (PRODEIN)” (Castillo 2007, p. 158).

However, since the Second Indigenous Congress in 1986 the organization was questioned because its decisions were “too centralized and even authoritarian” (Gros, cited in Laurent 2005, p. 77), which caused the division of some regional indigenous councils, particularly in southern Colombia where Autoridades Indígenas de Colombia (AICO) arose. Despite this, in the National Constituent Assembly process in 1991, ONIC and AICO participated through the first indigenous candidates: Francisco Rojas Birry and Lorenzo Muelas. Amongst the most important advances made in the Colombian Constitution are, the recognition and protection of the cultural and ethnic diversity of the Colombian nation and, the opening of new spaces for IPs to participate in the political process. It is precisely the constitutional opening of such political and social opportunities for participation, which means that IPs “find favourable opportunities to claim their demands” (Tarrow 2011, p. 110), not only at a national and at an international level, but also by an *ambivalent use of law* (McEvoy and McGregor 2008, Lemaitre 2009, p. 311). Currently, ONIC is the only organization within the five national organizations that has consistently led the public debate to struggle for the protection of their rights in the TJ context. As Díaz mentions, there are “power dynamics surrounding the various usages of TJ terminology and the ensuing contestations over the meaning, requirements and ownership of TJ processes” (Díaz, cited in McEvoy and McGregor 2008 p. 190), as it will be explained.

5. The Transitional Justice uses by ONIC

TJ has become a field of study, which operates a “process of institutionalization” and “normalization” as a mode of “global governance” (Teitel 2014). There is a proliferation of accountability mechanisms and processes at and across different levels – international, regional, domestic, and local. Yet, it is still unclear what these measures mean, either theoretically or operationally, at the intersection of the international and the local (Teitel, cited in Shaw and Waldorf, 2010). Recently, TJ has, to some extent itself, undergone a shift toward the local (Shaw and Waldorf 2010). That is how IPs, as “players from below”, have engaged with, and used, “TJ” terminology in pursuit of their objectives. In Díaz’s words (cited in McEvoy and McGregor 2008, p. 199), these players are increasingly employing the rights to truth, justice, and reparations language within their struggles. Indeed, non-state actors such as human rights and victims’ organizations and transnational advocacy networks (TANs) have prominently engaged in the public debate on the TJ legal framework. Not only to gain the international community support or to “vernacularize” the global victims’ rights discourse into the national scenario, but also to give content to truth, justice and reparation meanings based on the marginalized groups voices (Gómez 2014). In addition, through the lens of a *subaltern cosmopolitanism* (Santos and Rodríguez-Garavito 2005), there are multi-sited uses of Transitional Justice by IPs. On the one hand, ONIC creates TANs visibilizing some of the struggles of Colombian indigenous movements – through information, symbolic, accountability, and leverage

politics –. On the other hand, TJ discourses have been used as a political strategy by indigenous organization to claim for the protection of their collective rights.

5.1. Uses, lobbies and TANs (transnational level)

As Tarrow (2005, p. 8) mentions, while “globalization consists of increased flows of trade, finance, and people across borders, ‘internationalism’ provides an opportunity structure within which transnational activism can emerge”. It is the political processes in which activists bring about to connect the local and the global, “their local claims to those of others across borders and to international institutions, regimes, and processes” (Tarrow 2005, p. 11). Hence, in response to “changes in political opportunities and constraints” and due to the “opening up of institutional access” and “allies becoming available” (Tarrow 2005, p. 23, 2011, p. 160) by the 1991 Constitution, and the creation of different UN organisms, IPs have perceived opportunities and, in Tarrow’s words (2011, p. 246), “incentives for domestic actors to frame their domestic claims in global terms and to move beyond their own borders”. Indeed, IPs increased their efforts at the international level through a series of conferences and direct statements to intergovernmental institutions. These efforts were condensed into a real campaign at the global level (Anaya 2005, p. 92).

Although the UN has opened some opportunities for debate and dialogue regarding indigenous issues, international organizations are where truly binding decisions are taken, such as the Human Rights Council or the ECOSOC – IPs have no participation.⁴ This aspect has led them to advocate as a member in TANs with organizations that have participation in those institutions; also, lobbying with “friend” States so they assume IPs defence against various decisions taken by international bodies (Bellier 2010, p. 57); “to organize the continental indigenous movement in form of transnational NGOs and to consolidate the use of international scenarios for implementing advocacy strategies and seeking international support” (Santamaría 2010, p. 178). Regarding this, Sikkink (cited in Tarrow 2005, p. 147) says: “IPs have often found the international arena more receptive to their demands than are domestic political institutions”. Within this international arena, ONIC has engaged in a *TJ from below* in recent times.

Due to the lack of responsiveness on human rights protection by the State, and because of the “blockage” of domestic claims in Álvaro Uribe’s government (2002-2010) and some issues in Juan Manuel Santos’s Government (2010-2016), the Keck and Sikkink’s “boomerang model” occurred. ONIC reframed domestic claims to gain international attention and to pressure the government from the outside on policy change. The indigenous organization, instead of claiming in terms of TJ discourse focused on human rights and peace struggles in order to ask for justice, truth, and reconciliation. That is, “a set of old grievances has been reframing by the indigenous as rights claims within one several human rights frameworks” (Goodale and Merry 2007, p. 2). The organization, “when conferences and other contacts create arenas for forming networks” (Keck and Sikkink 1998, p. 32) leverages different kinds of strategies to mobilize information strategically about the violation of IPs rights. Indeed, “one of the most important tactics that networks use is *information politics*, or what human rights activists sometimes called the human rights methodology, ‘promoting change by reporting facts’” (Thomas, cited in Sikkink 2002, p. 45). As

⁴ The proliferation of international organizations and conferences has provided foci for contacts (Keck and Sikkink 1999, p. 93), such as the Working Group on Indigenous Populations (WGIP), the UN Permanent Forum on Indigenous Issues (UNPFII), the Special Rapporteur on IPs, and the Expert Mechanism on the Rights of IPs (EMRIP). However, as Sikkink (2002, p. 40) mentions, “the power that NGOs exercise is ‘hidden’ because it is carried out informally or behind the scenes. Although non-state actors are full participants in international spheres, they are still confined to their endorsement by the terms of the category ‘consultative status’”. For instance, the IPs participation is limited to those scenarios. Within the UNPFII, while a lot of IPs meet at its annual session, only organizations that are grouped under umbrella organizations can make their statements. In addition, the UNPFII president is the only one who has the power to intervene in sessions at the UN Economic and Social Council (ECOSOC), from which it derives its mandate.

Tarrow (2005, p. 147) proposes, “beyond the boomerang” domestic actors in addition to providing information, “can also use institutional access or engage in attention-getting direct action”, as will be shown.

FIGURE 1

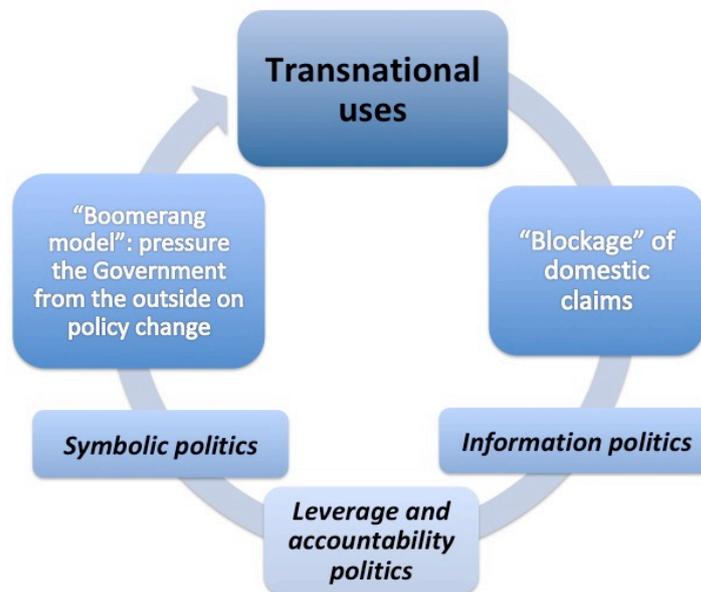


Figure 1. Transnational Uses by ONIC.

Firstly, “the primary way that networks contribute to socialization to new legal rules is by publicizing behaviour they deem inappropriate, using factual information or symbolic power” (Sikkink 2002, 50). The Organization issues several reports on the situation of human rights “to make them comprehensible to target audiences, to attract attention and encourage action, and to fit with favourable institutional venues” (Keck and Sikkink 1999, p. 90). For instance, the consequences of armed conflict in indigenous territories, large-scale forced displacements, killings of their leaders and community members, and the risk of extinction of 34 Peoples have been the most emblematic cases at the transnational level. The different statements made by ONIC and their allies between 2005 and 2016 is a clear evidence of this. From the claim to recognize the Guardia Indígena as an International Agent of Peace in 2005 and, the Misión Internacional de Verificación de los Pueblos Indígenas in 2007; the request to follow up the recommendations of the Special Rapporteur on IPs and the Constitutional Court Decisions 004 and 092 on internal forced displacement in 2010; to the statements in the sessions on *Indigenous Peoples: conflict resolution and peace* by Juvenal Arrieta, General Secretary of ONIC and, *Indigenous women in peace and in conflicts* within the UNPFII session in 2016.

Secondly, as Díaz (cited in McEvoy and McGregor 2008, p. 214) mentions “TJ discourses may be used as a strategy of resistance, building alliances with international human rights networks and deploying these discourses, such actors have successfully shaped the terms of the debate at the national level”. Hence, ONIC seeks the support of human rights NGOs such as the Comisión Colombiana de Juristas (CCJ), an NGO with ECOSOC consultative status and, “permanent user of the United Nations system” (Santamaría 2010, p. 147). Regarding the visits of the Special Rapporteur on IPs to Colombia, one of the NGOs among a large platform of organizations that coordinated the last visit was CCJ. As Juan Bustillo, CCJ researcher said, “two or three years prior to the visit, one of the members of the CCJ who went to Geneva, visited the Rapporteur to show the situation of the Colombian IPs. In this context, CCJ met members of ONIC, CRIC and CECOIN [Centro de Cooperación al Indígena]” (Juan Bustillo. Interview, Bogota, July 2011). Furthermore, ONIC used

different national strategies such as Minga de Resistencia in 2008 as well as international strategies asked the Government to request the presence of the Special Rapporteur. At that time the Universal Periodic Review was being conducted, therefore, some ONIC representatives lobbied with States, NGOs, and other international organizations. In Ana Manuela Ochoa's words:

We, Aida Quilcue and me, were at the Universal Periodic Review in 2008, the year that Colombia was reviewed. Our mission was to claim the recommendation of some States to visit the country by the UN Special Rapporteur. It was a super organized mission. We met around ten Ambassadors to the United Nations. We had to do a lot of work to increase the visibility on human rights situations, but among many things we had to convince them. The truth is it was super-successful. Almost everyone with whom we met intervened and put indigenous issues on the agenda. Bolivia for example, was one of the countries with which we met and specifically recommended the Special Rapporteur visit and the UN Declaration implementation. (Ana Manuela Ochoa. Interview, Bogotá, May 2012)

This strategy allowed indigenous organizations to generate attention on new issues and, to persuade, pressure, and gain leverage over the Government, in terms of Keck and Sikkink (1999, p. 97), *leverage and accountability politics*. Moreover, some UN organs have supported IPs claims in the Colombian TJ context. The Office of the United Nations High Commissioner for Human Rights (OHCHR) is one of the most important in "providing technical advice in the design and implementation of TJ mechanisms (particularly the organization of national consultations) and capacity building and training to national stakeholders, and committing in global and advocacy to ensure that human rights and TJ considerations are reflected in peace agreements and missions" (Lavin, cited in Littlechild and Stamatopoulou 2014, p. 229). For example, in its 2016 report on the situation of human rights in Colombia, OHCHR

exhorts the parties in Havana to seize the opportunity to dialogue with IPs to ensure that the peace accords and their implementation maximise the enjoyment of their collective and individual rights. The final accord should include specific reference to the commitment to ensure respect for internationally and constitutionally recognized indigenous rights in all aspects of implementation. (UN Human Rights Council 2016, p. 18)

Likewise, the UNPFII, the Special Rapporteur and the EMRIP could hold states accountable for their obligations on TJ measures under UNDRIP and other instruments of international law such as International Labour Organization Convention 169, however, "while this has never been done in relation to Truth Commissions, it has been done in relation to monitoring peace agreements in which IPs are key actors" (Arthur, cited in Littlechild and Stamatopoulou 2014, p. 215). In that sense, the Special Rapporteur, Victoria Tauli Corpuz, in the Seminar *Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace*, organized by Columbia University in 2016, mentions her visit to Colombia and highlights the challenges IPs face in the context of TJ and peace negotiations. This relates to the fear that demobilisation zones could overlap with indigenous lands and territories thus affecting their autonomy, and the expansion of megaprojects in the post-conflict scenario without their legal right to be consulted. Regarding the victims' participation in the peace process, the Special Rapporteur urges the Government to effectively involve IPs in defining, designing and implementing collective reparations and territorial peace, also mentioning that indigenous "participation in the peace process would be an important safeguard to ensure their rights are effectively protected and that they become true beneficiaries of the much longed for peace in Colombia" (Fieldwork Notes on the Special Rapporteur statement, May 2016).

Finally, the Organization appeals to symbols or events that make a situation understandable for a public that is often far away, *symbolic politics* (Keck and Sikkink 1998, p. 36). This is the case of the international campaign *Palabra dulce, aire de vida, por la supervivencia de los pueblos indígenas en Colombia* that allowed some international organizations to join the "indigenous cause" on human rights violations,

such as Coordinadora Andina de Organizaciones Indígenas (CAOI), Amnesty International, Survival International, ABColombia and, to hold meetings in Europe and Latin America. Furthermore, the statement in the side event "Truth Commissions and Indigenous Peoples: Lessons Learned, Future Challenges", organized by ICTJ, ONIC, and ACIN/CRIC, in which Ana Manuela Ochoa appeals to "Transformative Justice" rather than Transitional Justice in the aim of remedying historic injustice. Finally, the Juvenal Arrieta's participation at the UNPFII this year. Instead of talking about TJ and its measures, Arrieta presented a statement related to "peacebuilding" from IPs, due to the change of political agenda at the national level.

Accordingly, it is clear how global, national, and local actors are immersed in the TJ uses at a transnational level. As Merry (2006, p. 6) recognises,

intermediaries such as NGOs and social movement activists play a critical role to appropriate, translate, and remake transnational discourses into the *vernacular*. At the same time, they take local stories and frame them in national and international human rights language. Activists often participate in two cultural spheres at the same time.

Indeed, *TJ from below* "gave such [intermediaries] actors a language and framework to challenge a state-sponsored attempt to use TJ as a cover for a much more base political accommodation" (Díaz, cited in McEvoy and McGregor 2008, p. 215; see also Gómez 2014, p. 173). Thus, measures on "justice", "reparation", and "reconciliation" through human rights discourses are claimed by IPs as a *global value package*, which is "promulgated and disseminated by transnational organizations, civil society institutions and NGOs" (Levitt and Merry 2009, p. 447). Moreover, as the next section will describe, IPs also refers to another global value package in order to claim the defence of the rights of Land and Autonomy: the category of "victim". As Bonacker (2013, p. 97) recognises, "the development of human rights' normative pressure on national TJ processes placed victims at the centre of processes dealing with the past".

5.2. *Uses, appropriation and translation (national level)*

There is a paradox in the TJ process. There are, of course, some local practices incorporated into TJ, for example by adapting customary law processes or by involving local NGOs and local elites, but all local experiences remains included in the legal international framework and national political agendas. And, this does not modify the foundational assumptions of TJ (Shaw and Waldorf 2010, p. 5). As described above, there are three specific periods in which IPs have been key actors and, ONIC have played a pivotal role in securing the collective rights: Justice and Peace Process, Victims' Law, and Peace dialogues between the FARC and the Colombian Government. Despite the formal recognition of their rights and some opportunities to participate at the political debate, IPs face an ambivalent relationship between the Law and political struggles. During the TJ consolidation process, the ONIC has not only used norms and institutions in framing its demands and engaging in action, but also as "subaltern actors" (Rajagopal 2005, p. 183) they have been a critical part of the process whereby TJ measures are defined. As McEvoy and McGregor (2008, p. 6) mention, TJ "is by its nature a heavily politicised process".

FIGURE 2

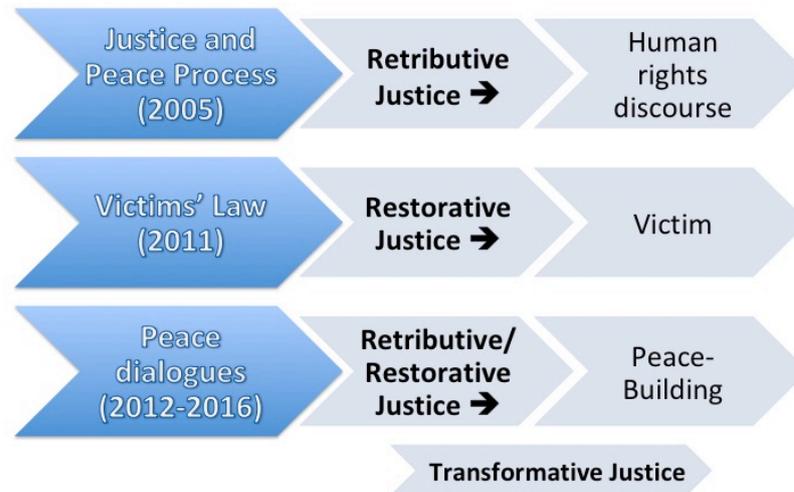


Figure 2. National Uses by IPs.

Firstly, the dialogue process with AUC was full of complexities in a context in which there was "a 'thin' and partial TJ" (Díaz, cited in McEvoy and McGregor 2008). For various reasons the demobilization of these groups became more difficult. They were "pro-system actors" who never fought against the State. They were not organized hierarchically and did not have a single command, the political and economic power structures were built by State agents, regional elites, and drug traffickers (Uprimny and Saffon 2008, p. 168). In this context, although it did not seem appropriate to mention terms such as "TJ" or "transition", their application was widely discussed. In fact, the government used and adapted TJ discourses by advocating demobilisation through reference to TJ language such as the right to truth, justice, and reparations (Díaz, cited in McEvoy and McGregor 2008, p. 194). As Uprimny and Saffon (2008, p. 171) write, the widespread use of TJ "is not only paradoxical because it takes place in the midst of an armed conflict, but also by the fact that while at the beginning none of the actors used it, for very different reasons all ended up adopting it". Thus, language and TJ mechanisms can be used in two ways. It can be used in a "manipulative way", the Government and paramilitary leaders can invoke TJ with the aim of securing impunity. However, it can also be used in "democratic forms" by victims' movements, human rights organizations, and the Courts, that is, as a tool to prevent impunity and to effectively empower victims of rights violations (Uprimny and Saffon 2007, 2008, p. 168).

While the government promoted the security policy "legalization" and, the existing power relations' normalization, there were resistance practices related to political and legal mobilization for human rights and the judicialization of the victims' rights (Gómez 2014, p. 79). But, even though, "the placement of victims' rights at the centre of the peace agenda was a victory for democratic users of TJ discourse" (Uprimny and Saffon 2007, p. 2), the indigenous struggles were absent from the debate. Due to the government of Álvaro Uribe refusing to recognize the existence of the armed conflict, IPs took the decision to withdraw from the national meetings of Dialogue and Consensus roundtables, such as the Mesa Permanente de Concertación (MPC), Comisión de Derechos Humanos and Comisión de Territorios Indígenas.⁵ As Diana Carrillo, a lawyer who worked in ONIC, mentions, "Uribe's

⁵ The MPC is an important space for dialogue between the main national organizations (ONIC, AICO, OPIAC, Autoridades Tradicionales Indígenas de Colombia -Gobierno Mayor, and CIT) and the Government since 1996. However, at this moment, due to the "blockage" of domestic claims by Uribe's Government,

government attempted to define various processes on territorial aspects and on public policy in the MPC, and all failed. MPC members were constantly rising, until the decision of the Constitutional Court in 2009 (Auto 004) with specific orders about forced displacement. The MPC was re-structured" (Diana Carrillo. Interview, Milan, July 2016). Thus, despite only a few statements about the process of Justice and Peace at the national level, ONIC denounced "the paramilitary strategy that had been designed, operationalized and institutionalized by the Colombian State creating different devices and legal rules that had legitimated their actions, and others seeking to legalize impunity for their crimes" (ONIC and CECOIN 2007, p. 3). Also, the organization made visible some justice demands in relation to TJ. The most salient of these was the Permanent Peoples' Tribunal (TPP in Spanish) endured by Colombian IPs.⁶

Afterwards, the IPs worried about the political situation, due to the lack of sanctions, the obstacles to implementing laws and, the devastating consequences not only for the individual, but also for them as a collective subject of forced displacement, particularly between 2002 and 2010 (Constitutional Court Decision 004/2009; Rodríguez-Garavito and Orduz 2012, p. 19). Hence, they began to use and appropriate the TJ discourse with the aim to protect their collective rights. Thus, due to "the victims' perspective [becoming] the normative basis for dealing with past atrocities" (Bonacker 2013, p. 98), they appropriated the category of "victim" and, they translated⁷ some methods, with all the tensions that this implies (Merry 2006a, p. 135).

From the beginning of Juan Manuel Santos government, and through Diana Carrillo ONIC review of his legislative agenda, the bill affecting IPs would need prior consultation. Of course, the Victims and Land Restitution Law was a strategic bet for the Government, which provided a space for indigenous discussion. Although this type of bill required prior consultation, this had already been settled (Rodríguez-Garavito and Orduz 2012, p. 21). Therefore, to consult with IPs the Government should withdraw the Bill and present it again after six months. This circumstance led to a rapprochement with the indigenous, Comisión de Seguimiento (CODHES) and, especially, with the National Bureau of Victims. As Carrillo mentions:

Representatives of victims approached the IPs to tell us it was timely and appropriate political context to bring the Victims' Law to the Parliament, the benches were with Santos. It was not necessary to withdraw the Bill because most it was likely to approve the Law. Thus it was better to propose another strategy to not do it. It was an emerged idea by Comisión de Seguimiento to formulate a transitory article in the Victims' Law that would empower the President to issue Decrees in a 6 months term. In fact, about this issue we began to look for alliances particularly scholars, to visualize that it was an 'objective' issue, not a political move by the IPs. (Diana Carrillo Interview, Milan, July 2016)

Indeed, "at the national level, the victim usually has moved sharply to the center of dealing with the past, in the context of truth commissions, in victims' organizations, and through victims participating through human rights groups in dealing with past

IPs used other action repertoires such as protest, national and international statements, TANs, symbolic events, hybrid tribunals, and local processes. For instance, the Minga Indígena in 2008, Tribunal Permanente de los Pueblos in 2007, and Misión Internacional de Verificación in 2006. In fact, TJ proposed by the former President Uribe "gave such actors a framework within which to critique the understanding being propagated by the State" (Díaz, cited in McEvoy and McGregor 2008).

⁶ Since 2005, ONIC, supported by other indigenous organizations, denounced nationally, and internationally, the genocide and "ethnocide" in course to IPs due to structural causes, the armed conflict (Bacca n.d.) and the "transnationalization of nature", particularly the mining-energy policy (Bacca 2013). In fact, Uribe's government was accused by the TPP of committing serious violations of indigenous' collective and individual rights, which are implemented in policies of extermination, genocide, and ethnocide policies. The Hearing on Indigenous Genocide was held in Atanquez, Kankuamo indigenous territory, Sierra Nevada de Santa Marta, Colombia, in July 2008.

⁷ *Appropriation* means taking the programs, interventions, and ideas developed by activists in one setting and replicating them in another setting. And, *translation* is the process of adjusting the rhetoric and structure of those interventions to local circumstances (Merry 2006a, p. 135).

violations" (Bonacker 2013, p. 98). Following that, the Victims pressured the expedition of the Victims' Law and it came into force in June 2011. The Government based on the transitory article to draft the Decree on measures of justice, truth and repair for indigenous victims and, to do the prior consultation before December 2011. Therefore, each organization delegated a representative and an advisor (Rodríguez-Garavito and Orduz 2012, p. 37), all indigenous leaders and lawyers. For instance, Julio César Estrada (OPIAC), Wilmar and Asdrúbal (traditional AICO), Germán Carlosama (political AICO), Belkys Izquierdo and Diana Mendoza – the only anthropologist (CIT) –, Luis Fernando Arias and Ana Manuela Ochoa, also participated. Moreover, members of the Comisión de Seguimiento -CODHES, Jorge Garay, and other lawyers: Rodrigo Uprimny, Natalia Orduz, César Rodríguez de Justicia, Fernando Vargas, Gloria Rodríguez, Yamile Salinas, and Camilo Pozo took part in the debate as well.

It was from alliances between indigenous leaders and scholars that some "practices of human rights" (Goodale and Merry 2007) emerged. In fact, "when international standards are translated into usable language and embedded in the working practices of grassroots organisations which are actually *doing* TJ in the most difficult of communities, there is potential for a thicker and potentially more powerful version of human rights discourse" (McEvoy and McGregor 2008, p. 8). Thus, when the scholars Uprimny and Saffon began discussing the limitations of TJ in a context like Colombia and related to indigenous issues, it was very clear that no link existed. As Carrillo says,

If we think TJ as a way to return to the situation before the armed conflict and the previous situation was a historical discrimination, with a risk of physical and cultural extermination that the armed conflict is sharpening it, therefore traditional TJ is not enough. The proposal was a Justice to look at the past only to find out what the structural factors of conflict were and, to make the changes necessary to transform the future. It is TJ in terms of *Transformative Justice*. In fact, this was one of the articles that had a lot of grassroots participation of the indigenous members of Macro-Norte. In the process of prior consultation, indigenous victims had broad participation on this issue. They told us their stories and how reparation should be understood. Among them, they wrote the article that was finally approved as *Transformative Reparation*.⁸ (Diana Carrillo Interview, Milan, July 2016)

It is a clear example of *vernacularization*, "a process of appropriation and local adoption" (Merry 2006a, p. 3, 2009, p. 446). However, as Merry mentions, appropriated programs are not always translated. Translation has three dimensions (Merry 2006a, p. 136). First, the images, symbols, and stories through which the program is presented draw on specific local cultural narratives and conceptions. As Carrillo mentions, during the prior consultation process, ONIC and DeJusticia made a specific passbook on the concepts of the Transformative Justice such as reparation, justice, and truth for the grassroots,

in which with little information, more pedagogical and images that could convey notions of TJ. For IPs reparation is usually understood as something, which is not able to repair the damage, neither pain nor death instead it could be understood as a path that is being built. So it is better understood as a path that is built gradually,

⁸ This category was proposed based on the report *Primero las Víctimas* by the Ombudsman in 2007, on the category "ethno-reparations" (Rodríguez and Lam, cited in ICTJ 2013) and on the "transformative perspective" of TJ by Uprimny and Guzmán in 2010 (Rodríguez-Garavito and Orduz 2012, p. 38). In general, the reparations are approached from an essentially restitutive perspective. A "comprehensive" and proportional reparation that returns the victims to the situation they were in before their human rights' violation. Thus, it is not only economic reparation, but also satisfaction for the victims, supported by substitute and complementary repair mechanisms. However, as Uprimny and Guzmán (2010) recognize, taking into account the characteristics of transitional contexts, especially in societies with such profound inequalities and widespread poverty, indicate a strong tension between corrective and distributive justice. The "transformative perspective" of TJ implies that measures of reparation should not return victims to the state of vulnerability in which they were before their rights' violation, but seek to eradicate the causes that generated this violation and the improvement of their living conditions. It is an opportunity to promote a democratic transformation of societies, in order to overcome situations of exclusion and inequality.

and if you look back you can transform it. Hence the book's cover had a path. (Diana Carrillo Interview, Milan, July 2016)

The second dimension is adapting the appropriated program to the structural conditions in which it operates and, as it was described the "transformative reparation" category was created and written as a result of grassroots participation of the indigenous members of Macro-Norte according to their stories and traditions. Finally, as programs are translated, the target population is also redefined, however, in the case of the appropriation of "TJ in terms of *Transformative Justice*" is still the same. There is no redefinition of their culture. Instead, IPs continually redefines its political claims following the national political agenda.

As Shaw and Waldorf (2010) mention, recently in some cases, local justice and customary law are perceived as complementary tools of tribunals and truth commissions. Indeed, increasingly, policymakers consult people in contexts of conflict and post-conflict about their priorities for TJ. Therefore, another issue discussed at consultation meetings was the category of "victim". In the process of prior consultation an important notion that 90% of the traditional authorities claimed was the enshrinement and recognition of *territory as a victim* (Art. 3 Decree 4633). The territory in its physical and spiritual ambit is the first element for their cultural conservation. This is why the ancestral territory and its vital cycle must be considered as "victim" and "subject of reparation" according to the worldview and major law practices. Thus, the reparation actions must be conducted to repair the spiritual damage, as well as to repair the material damage caused to the *Zaku-Kaku Jinas* (spiritual fathers/mothers) [Fieldwork Notes on Pueblo Arhuaco, 2013]. Nevertheless, beyond that IPs sought reparations from the territory, what they wanted was a symbolic recognition, as Carrillo expresses. Likewise, the notion of "collective" and "individual" victim was essential. "The deal almost did not make it. There were two strong arguments: the years to consider someone victim and subject to reparation and, linking the armed conflict with the model of development and extractive projects" (Diana Carrillo Interview, Milan, July 2016). Finally, the term collective had no problem, but the period and the notion of armed conflict did. At the end, there were many issues that were not concerted, however, after the prior consultation and the approbation again by the MPC and by former President Santos, the Decree 4633 came into force (Rodríguez-Garavito and Orduz 2012, p. 56).

Despite the creation of Comisión de Seguimiento y Monitoreo del Decreto 4633, the lack of implementation is due to some institutional aspects. There are Monitoring Committees that have not been installed, the SNARIV (Sistema Nacional de Atención y Reparación Integral a las Víctimas) has not regulated the mechanisms of indigenous victims' participation and there is a lack of knowledge of the Decree 4633. In fact, the Arhuaco people do not think that the Decree corresponds to their philosophy, thoughts and ways of thinking. The structure of the decree does not reflect their territorial order, nor their institutional, social, and spiritual dynamics corresponding to their views of the universe. For the Arhuaco people, the decree does not have an indigenous soul but a *bunachu* (non-indigenous person) soul (Fieldwork Notes on Pueblo Arhuaco, 2013). The Comisión de Seguimiento presented a report to the Constitutional Court, which collects the most relevant weaknesses regarding the implementation of the Decree. Among these weaknesses there is: uncertainty over the budget for the implementation of the Decree, a lack of institutional coordination in the SNARIV, the information systems SNARIV lacks variables of ethnic identification, deficiencies in collective reparations, serious delays in the restitution of collective territories, and the impact of mining and macro projects in indigenous territories (ONIC 2014, p. 4).

Therefore, the category of 'victim' loses strength in indigenous political struggles and gives way to new categories of the national political agenda. Since 2012, due to the opening of the dialogue between the Government and the FARC, there has been a change in the organization, Luis Arias was elected as Great Councillor and Juvenal

Arrieta as the General Secretary and, ONIC appropriated the discourse of “peacebuilding”. When the peace process was initially popularized, Juvenal Arrieta began with strong training at the international level, travelling and meeting with Marco Romero, Camilo González and Alejo Vargas, professors at Universidad Nacional de Colombia, and experts on armed conflict and peacebuilding. Thus, Carrillo states that the “ONIC began to build the indigenous discourse about peace” (Diana Carrillo Interview, Milan, July 2016). ONIC created a Political Committee on Peace, with members of the indigenous movement, and began to seek financial support from different agencies and international organizations. Thus, the organization got the support of GIZ Pro-indígena and the United Nations Development Programme to build a National Agenda for Indigenous Peace, in a document drafted by Diana Carrillo, in which the proposals of the Assemblies held in the Macro-Regionales meetings and MPC are systematized. According to the statements of the past two years it is clear that ONIC leads this process. The organization made an alliance with Congreso de los Pueblos and began to take part in Cumbre Agraria and create Commissions on Human Rights in which it participates.

Although IPs concerns about the current peace talks are related to five points: the free, prior, informed consent; areas for the demobilisation; the disarmament, demobilization and reintegration; the implementation of the agreements and; the post-conflict context, the main IPs concern is over territory. Juvenal Arrieta said that in the demobilisation areas requested by FARC, 60 municipalities would be directly involved in 103 indigenous territories, therefore prior consultation is required. In addition, the participation of the Ethnic Commission for Peace and Defence of Territorial Rights in the process of the negotiation and implementation of the peace agreements is also concerned (Fieldwork Notes on the ONIC statement, May 2016). As Arrieta mentions:

We want to propose a peace agenda, influencing not only the last point of the peace dialogues on the implementation of the agreements but also on the others points of the agenda. We want to be active in building peace. If we could deal with them in war, why we cannot do it in peace. However, if neither the government nor the FARC accept the proposal, we will not go to Havana. Although it is counterproductive, because some organizations say that if we do not go, the government will say that we do not want to take part in the institutional process, but others say that if we go and we do not have the conditions (only to talk about the point 6), that means we do nothing. All of these strategies will be discussed in the Minga in June. (Fieldwork Notes on Conversation with Juvenal Arrieta, New York, May 2016)

The Colombian TJ is an ongoing process. Therefore, this paper cannot be finalized without mentioning what occurred at the end of 2016. Despite the claim of the inclusion of the National Agenda for Indigenous Peace in the final agreements made by the last manifestation (Minga), IPs were in a Permanent Assembly because of the exclusion of the Ethnic Chapter in the agreement between the FARC and the Government on “a final and definitive deal” to end the armed conflict, on 24 August. However the following day, six delegates of Ethnic Commission for Peace travelled to Havana to meet with the delegates from the negotiating table to discuss this decision. The result of this meeting led to the inclusion of the Ethnic Chapter, which

involves all the essentials issues: autonomy, recognition of ancestral territoriality, participation and prior consultation. Also the implementation of the agreements and the budget allocated for the acquisition, “saneamiento” and demarcation of *resguardos*. This Chapter is the result of all these years of political struggle, the alliance with the Afro-descendants and, the advocacy at the national and international level. (Luis Arias, cited in ONIC 2016b)

Hence, as noted above, it is clear how TJ is adapted to meet the challenges produced by ethnicity. The fact that TJ measures typically focus their efforts on the redress of a narrow band of ‘first generation’ human rights and some actors outside the political debate, implies the narrowness of this analysis. Therefore, the relevance of local and social actors such as IPs voices and, human rights’ TANs in the construction of *TJ*

from below is important. In fact, with the inclusion of the Ethnic Chapter in the final agreements, the Government and the FARC recognize that IPs have suffered from longstanding marginalization as a result of colonialism, slavery, and dispossession of their lands and resources; and have also been severely affected by the armed conflict (ONIC 2016a, 2016b). As Bell (2009, p. 15) says, TJ discourse is used to

press western liberal democracies into addressing historic wrongs against IPs, their former colonies or the descendants of their slaves. This application of TJ seems disconnected from either a settled notion of authoritarianism or accepted notions of violent conflict (although on-going authoritarianism and anti-democratic practices in these contexts, as well as structural violence and conflict, argue some 'TJ' solutions)

to allow various subaltern groups to claim recognition and reparation for injustices suffered, or as it is called by Colombian IPs: *Transformative Reparation*.

Although the Ethnic Chapter was included, IPs are still struggling to be included in the political debates of the implementation of the agreement. In relation to the campaign for the referendum, they made several statements and a pedagogy process in their languages, supporting the *yes* vote in most of the indigenous territories. However, due to the *no* vote winning, ONIC in its IX Congress convened a mass demonstration: the March of Flowers. With the support of the Colombian Federation of Teachers (FECODE in Spanish) and rectors of the universities, many Colombians, including IPs, victims and students, mobilized on October 13, 2016 and expressed their desire for peace and the need to respect the final agreement. Once the Congress endorsed the agreement and the fast-track implementation began, many of the legislative measures were approved without their prior and informed free consent. For example, indigenous organizations were not consulted on the Truth Commission decree. Therefore, the national indigenous organizations agreed, on the one hand, to make a statement that rejected the lack of prior consultation and, to request the "truth" collective construction with their participation. On the other, to promote indigenous leaders in the SJP and the Truth Commission: Belkys Izquierdo and Ana Manuela Ochoa (SJP), and Julio César Estrada and Patricia Tobón (Truth Commission) [Diana Carrillo Interview, Bogotá, January 2018].

6. Conclusion

TJ, as a kind of legal transplant based on its agents, the subject and the dynamics of transplantation, shows us the multiplicity of actors at all levels that participated in the TJ establishment and consolidation. Actors who have used the discourse of "human rights" and the categories of "victims" and "peacebuilding" as a *global value package* at the transnational and national levels. In fact, its "establishment" was the result of using human rights discourses and its "consolidation" due to the location of victims to the centre of processes dealing with the past. However, TJ has been built and transplanted with the implications described at the global level, that is, in terms of a gender-ethnic neutral category. This implies that indigenous participation is not remarkable. Therefore, due to changes and political openings in the opportunity structures IPs "framed" their disputes to construct a *TJ from below* or in "localizing transitional justice" (Shaw and Waldorf 2010), through different discourse and language uses.

Those multi-sited uses of TJ by IPs might be understood as a social process of complex interactions involving different types of agents and political-legal arenas. ONIC inserted in a *subaltern cosmopolitanism*, organized social movements, created TANs, and participated with the support of NGOs in international forums (transnational uses). Also, used TJ discourses as a political strategy to claim the protection of their collective rights (national uses). This represents an interaction between multiple levels of law (local, national, transnational, and global), different interests of transnational political agents and the production of some "human rights practices" based on "indigenous autonomy discourse" and legal indigenous institutions such as, *territory as victim*, *transformative reparation*, and *indigenous*

peace zones. Although human rights language has been an instrument that has reproduced inequalities as well as ethnocentric and colonial practices, it has the potential to empower marginalized groups and to oppose oppressive practices (Lorna, cited in McEvoy and McGregor 2008). This is the Janus-Faced of human rights use.

References

- Acosta, M., *et al.*, 2018. The Colombian Transitional Process: Comparative Perspectives on Violence against Indigenous Women. *International Journal of Transitional Justice* [online], 12 (1), 108–125. Available from: <https://doi.org/10.1093/ijtj/ijx033> [Accessed 26 October 2018].
- Anaya, J., 2005. *Los Pueblos Indígenas en el Derecho Internacional*. Madrid: Trotta.
- Arthur, P., 2009. How 'Transitions' Reshaped Human Rights: A Conceptual History of Transitional Justice. *Human Rights Quarterly* [online], 31 (2), 321–367. Available from: <https://doi.org/10.1353/hrq.0.0069> [Accessed 10 May 2013].
- Arthur, P., ed., 2011. *Identities in Transition: Challenges for Transitional Justice in Divided Societies*. Cambridge University Press.
- Bacca, P., 2013. Genocidio en curso: los pueblos indígenas y la transnacionalización de la naturaleza. *AIDA* [online], 22 January. Available from: <https://aida-americas.org/es/blog/genocidio-en-curso-los-pueblos-ind%C3%ADgenas-y-la-transnacionalizaci%C3%B3n-de-la-naturaleza> [Accessed 17 August 2018].
- Bacca, P., n.d. *Genocidio y Crímenes de Lesa Humanidad en Curso: El Caso de los Pueblos Indígenas de Colombia* [online]. ONIC. Available from: https://www.alainet.org/images/Genocidio%20y%20Cr%C3%ADmenes%20de%20LesadHumanidad%20en%20Curso%20_El%20Caso%20de%20los%20Pueblos%20Ind%C3%ADgenas%20de%20Colombia.pdf [Accessed 17 August 2018].
- Balint, J., Evans, J., and McMillan, N., 2014. Rethinking Transitional Justice, Redressing Indigenous Harm: A New Conceptual Approach. *International Journal of Transitional Justice* [online], 8 (2), 194–216. Available from: <https://doi.org/10.1093/ijtj/iju004> [Accessed 15 February 2017].
- Bell, C., 2009. Transitional Justice, Interdisciplinarity, and the State of the 'Field' or 'Non-Field'. *International Journal of Transitional Justice* [online], 3 (1), 5–27. Available from: <https://doi.org/10.1093/ijtj/ijn044> [Accessed 10 May 2013].
- Bellier, I., 2010. La participación de los pueblos indígenas en la Organización de las Naciones Unidas: construcción de una voz indígena y producción de normas. In: A. Santamaría and R. Brett, eds., *Jano y las caras opuestas de los derechos humanos*. Bogotá: Universidad del Rosario, 41–71.
- Bonacker, T., 2013. Global Victimhood: On the Charisma of the Victim in Transitional Justice Processes. *World Political Science Review* [online], 9 (1), 97–129. Available from: <https://doi.org/10.1515/wpsr-2013-0005> [Accessed 5 June 2016].
- Bonilla Maldonado, D., 2009. *Teoría del derecho y trasplantes jurídicos*. Bogotá: Siglo del Hombre.
- Bryman, A., 2008. Of methods and methodology. *Qualitative Research in Organizations and Management: An International Journal* [online], 3 (2), pp. 159–168. Available from: <https://doi.org/10.1108/17465640810900568> [Accessed 5 June 2016].
- Buckley-Zistel, S., and Stanley, R., eds., 2011. *Gender in Transitional Justice*. London: Palgrave Macmillan.

- Castillejo Cuéllar, A., 2009. *Los Archivos del Dolor. Ensayos sobre la Violencia y el Recuerdo en la Sudáfrica Contemporánea*. Bogotá: Universidad de Los Andes.
- Castillo, L., 2007. *La reinención de la etnicidad indígena: de la lucha por la tierra y el territorio al desafío a la nación mestiza*. In: *Etnicidad y nación. El desafío de la diversidad en Colombia*. Cali: Universidad del Valle, 93-167.
- Centro Nacional de Memoria Histórica, 2015. *Desmovilización y Reintegración paramilitar. Panorama posacuerdos con las AUC*. Bogotá: Centro Nacional de Memoria Histórica.
- De Gamboa, C., 2007. El caso colombiano: la transición fallida. In: G. Hoyos Vásquez, ed., *Las víctimas frente a la búsqueda de la verdad y la reparación en Colombia*. Bogotá: Goethe Institut / Instituto de Estudios Sociales y Culturales Pensar / Universidad Javeriana.
- De Greiff, P., 2011. Algunas reflexiones acerca del desarrollo de la Justicia Transicional. *Anuario de Derechos Humanos* [online], n° 7. Available from: <http://corteidh.or.cr/tablas/r29408.pdf> [Accessed 25 May 2013].
- Elster, J., 2004. *Closing the Books: Transitional Justice in Historical Perspective*. Cambridge University Press.
- Gómez, G., 2014. *Justicia Transicional en disputa. Una perspectiva constructivista sobre las luchas por la verdad, la justicia y la reparación en Colombia, 2002-2012*. Editorial Universidad de Antioquia.
- Goodale, M., and Merry, S., 2007. *The practice of human rights. Tracking Law Between the Global and the Local*. New York: Cambridge University Press.
- Hoogenboom, D., 2014. Theorizing 'Transitional Justice'. Monograph of the Graduate Program in Political Science. Thesis (PhD). The University of Western Ontario. *Electronic Thesis and Dissertation Repository* [online], 1895. Available from: <https://ir.lib.uwo.ca/etd/1895> [Accessed 16 October 2013].
- Human Rights Watch, 2015. *Human Rights Watch Analysis of Colombia-FARC Agreement* [online]. Human Rights Watch, 21 December. Available from: <https://www.hrw.org/news/2015/12/21/human-rights-watch-analysis-colombia-farc-agreement> [Accessed 20 July 2016].
- International Center for Transitional Justice, 2010. *Indigenous Voices and Truth Commissions. Summary materials. New York: International seminar - March 22-23, 2010* [online]. ICTJ, 23 April. Available from: <https://www.ictj.org/sites/default/files/IPTC-March-2010-Meeting-Summary-Materials.pdf> [Accessed 15 June 2013].
- International Center for Transitional Justice, 2011. *Colombia* [online]. Available from: <https://www.ictj.org/our-work/regions-and-countries/colombia> [Accessed 15 June 2013].
- International Center for Transitional Justice, 2013. *Fortaleciendo los derechos indígenas a través de comisiones de la verdad*. New York.
- International Labour Organization - Indigenous and Tribal Peoples Convention, 1989 (No. 169) [online]. Geneva, 76th ILC session, 27 June. Available from: https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P1210_0_ILO_CODE:C169 [Accessed 11 October 2011].
- Joinet, L., 1997. *La administración de justicia y los derechos humanos de los detenidos. La cuestión de la impunidad de los autores de violaciones de los derechos humanos (civiles y políticos). Informe final elaborado y revisado por M. Joinet en aplicación de la decisión 1996/119 de la Subcomisión (E/CN.4/Sub.2/1997/20/Rev.1)* [Trans.: Equipo Nizkor] (online). Report. Geneva: United Nations Sub-Commission on the Promotion and Protection of

- Human Rights, 2 October. Available from:
<http://www.derechos.org/nizkor/doc/joinete.html> [Accessed 18 June 2013].
- Keck, M., and Sikkink, K., 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. Ithaca, NY: Cornell University Press.
- Keck, M., and Sikkink, K., 1999. Transnational advocacy networks in international and regional politics. *International Social Science Journal* [online], 51 (159), 89–101. Available from:
<http://courses.washington.edu/pbaf531/KeckSikkink.pdf> [Accessed 14 September 2010].
- Kritz, N., 1995. *Transitional Justice: How Emerging Democracies Reckon with Former Regimes*. Washington, DC: United States Institute of Peace Press.
- Laurent, V., 2005. *Surgimiento y auge del movimiento indígena en Colombia*. In: *Comunidades indígenas, espacios políticos y movilización electoral en Colombia, 1990-1998*. Bogotá: Instituto Colombiano de Antropología e Historia, 67-111.
- Lemaitre, J., 2009. *Los Indígenas dejan de ser una pieza de museo*. In: *El Derecho como conjuro*. Bogotá: Siglo del Hombre / Universidad de los Andes, 307-348.
- Levitt, P., and Merry, S., 2009. Vernacularization on the ground: local uses of global women's rights in Peru, China, India and the United States. *Global Networks* [online], 9 (4), 441-461. Available from:
<https://doi.org/10.1111/j.1471-0374.2009.00263.x> [Accessed 18 June 2016].
- Littlechild, W., and Stamatopoulou, E., eds., 2014. *Indigenous Peoples' Access to Justice, including Truth, and Reconciliation Processes*. New York: Columbia University Press.
- Marcus, G., 1995. Ethnography in/of the World System: The Emergence of Multi-Sited Ethnography. *Annual Review of Anthropology* [online], vol. 24, 95-117. Available from: <https://doi.org/10.1146/annurev.an.24.100195.000523> [Accessed 15 February 2011].
- McEvoy, K., and McGregor, L., 2008. *Transitional Justice from Below: Grassroots Activism and the Struggle for Change*. Oxford / Portland, OR: Hart.
- Merry, S.E., 2006a. *Legal transplants and cultural translation: Making human rights in the vernacular*. In: *Human Rights & Gender Violence: Translating International Law into Local Justice*. Chicago University Press, 134-178.
- Merry, S.E., 2006b. New Realism and the Ethnography of Transnational Law. *Law & Social Inquiry* [online] 31 (4), 975-995. Available from:
<https://doi.org/10.1111/j.1747-4469.2006.00042.x> [Accessed 25 September 2015].
- Mills, A.J., Durepos, G., and Wiebe, E., 2010. *Encyclopedia of case study research*, vols. 1-0. Thousand Oaks, CA: Sage. Available from:
<https://doi.org/10.4135/9781412957397> [Accessed 18 October 2018].
- Minow, M., 1998. Between Vengeance and Forgiveness: Feminist Responses to Violent Injustice. *New England Law Review* [online], 32 (4-summer), 967-982. Available from:
<https://heinonline.org/HOL/LandingPage?handle=hein.journals/newlr32&div=44&id=&page=> [Accessed 10 March 2013].
- Morris, A., 2015. *A practical introduction to in-depth interviewing*. London: Sage.
- O'Donnell, G., and Schmitter, P., 1986. *Transitions from Authoritarian Rule: Tentative Conclusions about Uncertain Transitions*. Baltimore, MD / London: Johns Hopkins University Press.

- Oré Aguilar, G., and Gómez Isa, F., eds., 2011. *Rethinking transitions: equality and social justice in societies emerging from conflict*. Cambridge / Portland, OR: Intersentia.
- Orentlicher, D., 2005. *Promoción y protección de los derechos humanos. Impunidad. Informe de Diane Orentlicher, experta independiente encargada de actualizar el conjunto de principios para la lucha contra la impunidad* (E/CN.4/2005/102/Add.1) [Trans.: Equipo Nizkor] (online). United Nations Commission on Human Rights, 8 February. Available from: <http://www.derechos.org/nizkor/impu/impuppos.html> [Accessed 18 June 2013].
- Organización Nacional Indígena de Colombia and Centro de Cooperación al Indígena, 2007. *La ONIC frente al paramilitarismo en Colombia y el proceso de impunidad* [online]. Available from: <http://observatorioetnicocecoin.org.co/files/ONIC%20FRENTE%20AL%20PARA%20MILITARISMO.pdf> [Accessed 3 August 2016].
- Organización Nacional Indígena de Colombia, 2014. *Balance de Implementación Decreto Ley 4633 de 2011* [online]. Report. 9 April. Available from: <http://www.prensaindigena.org/web/pdf/Balance%20Decreto%20Ley%204633%20de%202011.pdf> [Accessed 3 August 2016].
- Organización Nacional Indígena de Colombia, 2016a. *Capítulo Étnico incluido en el Acuerdo Final de Paz entre el Gobierno Nacional y las FARC* [online]. Press release, 25 August. Available from: <http://www.onic.org.co/comunicados-onic/1414-capitulo-etnico-incluido-en-el-acuerdo-final-de-paz-entre-el-gobierno-nacional-y-las-farc> [Accessed 2 September 2016].
- Organización Nacional Indígena de Colombia, 2016b. *Capítulo Étnico: logro de hombres y mujeres que soñamos y luchamos por nuestros pueblos en paz* [online]. Press release, 26 August. Available from: <http://www.onic.org.co/comunicados-onic/1418-capitulo-etnico-logro-de-hombres-y-mujeres-que-sonamos-y-luchamos-por-nuestros-pueblos-en-paz> [Accessed 6 September 2016].
- Oxfam, 2013. *Divide and Purchase. How land ownership is being concentrated in Colombia* [online]. Research report. Oxfam, 27 September. Available from: <https://oxfamilibrary.openrepository.com/bitstream/handle/10546/302323/rr-divide-and-purchase-land-concentration-colombia-211013-en.pdf> [Accessed 15 April 2017].
- Rajagopal, B., 2003. *International Law from Below. Development, Social Movements and Third World Resistance*. Cambridge University Press.
- Rajagopal, B., 2005. Limits of Law in counter-hegemonic globalization: the Indian Supreme Court and the Narmada Valley Struggle. In: B. de S. Santos and C. Rodríguez-Garavito, eds., *Law and Globalization from Below*. Cambridge University Press.
- Reátegui, F., ed., 2011. *Justicia transicional: manual para América Latina*. Brasilia: Comisión de Amnistía, Ministerio de Justicia / Nueva York: ICTJ.
- Rodríguez-Garavito, C., and Orduz, N., 2012. *La consulta previa: dilemas y soluciones*. Bogotá: DeJusticia.
- Rodríguez-Garavito, C., and Rodríguez Franco, D., 2010. *Cortes y Cambio Social. Cómo la Corte Constitucional Transformó el Desplazamiento Forzado en Colombia*. Bogotá: DeJusticia.
- Santamaría, A., 2010. *Movilización jurídica y derecho internacional de los derechos humanos: un análisis de las prácticas de incidencia en política de la ONIC*. In:

- Jano y las caras opuestas de los derechos humanos*. Bogotá: Universidad del Rosario, 177-206.
- Santos, B de S., 2002. *Toward a New Legal Common Sense*. London: Butterworths.
- Santos, B de S., and Rodríguez-Garavito, C., eds., 2005. *Law and Globalization from Below. Towards a Cosmopolitan Legality*. Cambridge University Press.
- Shaw, R., and Waldorf, L., eds. (with Hazan, P.), 2010. *Localizing Transitional Justice. Interventions and priorities after mass violence*. Redwood City, CA: Stanford University Press.
- Sieder, R., Schjolden, R., and Angell, A., eds., 2005. *The Judicialization of Politics in Latin America*. New York: Palgrave Macmillan.
- Sikkink, K., 2002. Transnational Advocacy Networks and the Social Construction of Legal Rules. In: Y. Dezalay and B. Garth, eds., *Global Prescriptions. The production, exportation, and importation of a new legal orthodoxy*. Ann Arbor, MI: Michigan University Press.
- Summers, N., 2012. Colombia's Victims' Law: Transitional Justice in a Time of Violent Conflict? *Harvard Human Rights Journal* [online], 25 (1), 219–235. Available from: <http://harvardhrj.com/wp-content/uploads/2009/09/Summers.pdf> [Accessed 13 March 2016].
- Tarrow, S., 2005. *The New Transnational Activism*. Cambridge University Press.
- Tarrow, S., 2011. *Power in Movement: Social Movements and Contentious Politics*. Revised and updated 3rd ed. Cambridge University Press.
- Teitel, R., 2000. *Transitional Justice*. Oxford University Press.
- Teitel, R., 2003. Transitional Justice Genealogy. *Harvard Human Rights Journal* [online], vol. 16. Spring, 69-94. Available from: <https://www.qub.ac.uk/Research/GRI/mitchell-institute/FileStore/Filetoupload,757186,en.pdf> [Accessed 18 June 2013].
- Teitel, R., 2014. *Globalizing Transitional Justice*. Oxford University Press.
- Twining, W., 2003. *Derecho y Globalización*. Trans.: O. Guardiola, C. Sandoval, D.E. López. Bogotá: Siglo del Hombre / Instituto Pensar / Universidad de los Andes-Facultad de Derecho.
- Twining, W., 2004. Diffusion of law: a global perspective. *Journal of Legal Pluralism and Unofficial Law* [online], 49, 1-45. Available from: <https://doi.org/10.1080/07329113.2004.10756300> [Accessed 28 September 2015].
- Twining, W., 2009a. *General Jurisprudence: Understanding Law from a Global Perspective*. Cambridge University Press.
- Twining, W., 2009b. The Implications of 'Globalisation' for Law as a Discipline. In: A. Halpin and V. Roeben, eds., *Theorising the Global Legal Order*. Oxford: Hart, 39- 59.
- UN Human Rights Council, 2016. *Annual Report of the United Nations High Commissioner for Human Rights. Addendum: Situation of human rights in Colombia (A/HRC/31/3/Add.2)* [online]. United Nations Human Rights Council, 15 March. Available from: <http://www.refworld.org/docid/56ead1a64.html> [Accessed 17 August 2016].
- UN Secretary-General, 2004. *The rule of law and transitional justice in conflict and post-conflict societies: Report of the Secretary-General (S/2004/616)* [online]. United Nations Security Council, 23 August. Available from: <https://www.un.org/ruleoflaw/files/2004%20report.pdf> [Accessed 5 October 2018]

- Uprimny, R., and Guzmán, D.E., 2010. En búsqueda de un concepto transformador y participativo para las reparaciones en contextos transicionales. *International Law, Revista Colombiana de Derecho Internacional* [online], n° 17, 231-286. Available from: <http://revistas.javeriana.edu.co/index.php/internationallaw/article/view/13824/11118> [Accessed 20 August 2018].
- Uprimny, R., and Saffon, P., 2007. Uses and Abuses of TJ discourse in Colombia. *Policy Brief* [online], n° 6/2007. Available from: <https://www.prio.org/utility/DownloadFile.ashx?id=158&type=publicationfile> [Accessed 28 November 2014].
- Uprimny, R., and Saffon, P., 2008. Usos y Abusos de la Justicia Transicional en Colombia. *Anuario de Derechos Humanos* [online], 2008, 165-195. Available from: <http://www.corteidh.or.cr/tablas/R21370.pdf> [Accessed 28 November 2014].
- Uprimny, R., et al., 2006. *¿Justicia Transicional Sin Transición?: Verdad, Justicia Y Reparación Para Colombia*. Bogotá: Centro de Estudios de Derecho, Justicia y Sociedad.
- Verdad Abierta., 2015. Especial: ¿Qué nos dejan 10 años de justicia y paz? *Verdad Abierta* [online]. Available from: <https://verdadabierta.com/especiales-v/2015/justicia-paz-10/> [Accessed 20 July 2016].
- Watson, A., 1993. *Introduction to Legal Transplants*. In: *Legal Transplants. An approach to Comparative Law*. Athens, GA: University of Georgia Press, 21-31.

Appendix. The research methods and sampling

Research methods	Sampling
<p>1. Ethnography: Multi-sited participant (Marcus 1995) & non-participant observation: "is a data collection method in which the researcher enters a social system to observe events, activities, and interactions with the aim of gaining a direct understanding of a phenomenon in its natural context" (Mills, Durepos and Wiebe 2010).</p>	<p>1) Scenarios:</p> <ul style="list-style-type: none"> a) UN Permanent Forum on Indigenous Issues, New York. <ul style="list-style-type: none"> i) 9th – 20th May 2016: Indigenous peoples: Conflict, Peace and Resolution. ii) 20th April – 1st May 2015: UN Post-2015 Development Agenda. iii) 12th – 23rd May 2014: Principles of good governance consistent with the United Nations Declaration on the Rights of Indigenous Peoples. iv) 20th – 31st May 2013: Future Work of the Permanent Forum and the Post-2015 Development Goals. v) 7th – 18th May 2012: The Doctrine of Discovery. b) International Seminar <i>Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace</i>, organized by Columbia University in May 14th 2016, New York. c) Side Event at UNPFII: <i>Truth Commissions and Indigenous Peoples: Lessons Learned, Future Challenges</i> in May 2012, New York. d) Educational program- EIDI session's 2013-2015, Colombian Indigenous Territories. e) Mesa Permanente de Concertación about Decree 4633 in 2013 and 2014, Bogotá. <p>2) Social Actors (non-recorded interviews in 2016):</p> <ul style="list-style-type: none"> a) ONIC: Juvenal Arrieta & Aida Quilcue (also CRIC). b) CIT: Ati Quigua y Dunen Muelas. c) Colombian Permanent Mission at UN: Diana Santamaría. d) Dirección de Etnias- MPC: Andrea Coronell. e) EIDI: Angela Santamaría.
<p>2. Qualitative contents analysis for documents: this method follows a recursive and reflexive movement between concept development-sampling-data, collection data, coding-data, and analysis interpretation. Categories and variables initially guide the study, but others are allowed and emerged during the study (Bryman 2008).</p>	<p><i>Laws, policy papers, NGO and indigenous organizations reports.</i></p> <p>1) Official documents:</p> <ul style="list-style-type: none"> a) Law 975; Acts 4760/2005, 3391/2006, 3570/2007, 1290/2008). b) Law 1448 (Victims' Law) and Decree 4633 & Actas Comisión de Seguimiento. c) Actas MPC Gobierno de Álvaro Uribe. d) CNMH reports about Justice and Peace Process. e) Statements between the government of President Juan Manuel Santos and the FARC about the peace process. f) The Legal Framework for Peace. g) Constitutional Court Decisions: Auto 004 and Auto 092. <p>2) Non-state actors documents:</p> <ul style="list-style-type: none"> a) ONIC Statements and reports issued on Victims Law and peace-building (2002-2016). Retrieved from: http://www.onic.org.co/comunicados-onic b) NGO reports: <ul style="list-style-type: none"> i) CCJ on victims, peace-building and Indigenous Peoples. ii) ICTJ on Colombian context, victims, peace-building and Indigenous Peoples. iii) Human Rights Watch and International Amnesty on Colombian context, victims and peacebuilding. iv) Media reports: Verdad Abierta, la Silla Vacía. v) Fundación Ideas para la Paz on TJ.
<p>3. In-depth interviews: involve asking a set of questions to investigate groups or social worlds, and to obtain life histories (Morris 2015).</p>	<p>1) Social Leader:</p> <ul style="list-style-type: none"> a) Ana Manuela Ochoa, a Kankuamo Indigenous leader and a lawyer of Universidad de los Andes with experience in strategic litigation in the inter-American system. ONIC Member since 2008 and Secretaria Técnica in MPC. Interview in May 2012, Bogotá, Colombia. b) Diana Carrillo, a lawyer of Universidad Nacional de Colombia and Master in Constitutional Law at the same university. She coordinates the research group Colectivo de Estudios Poscoloniales/Decoloniales en América Latina (COPAL). She worked at ONIC for 3 years, since August 2010. Interviews in July 2016, Milan, Italy and in January 2018, Bogotá, Colombia. <p>2) Activists:</p> <ul style="list-style-type: none"> a) Juan Bustillo, a researcher on Displacement and Lands in the Comisión Colombiana de Juristas- CCJ, co-author of the books <i>Colombia: el espejismo de la justicia y la paz. Balance sobre la aplicación de la Ley 975 de 2005, Tiempos de sequía. Situación de derechos humanos y derecho humanitario en Colombia. 2002-2009 y Camino al despojo y la impunidad</i>. Interview in July 2011, Bogotá, Colombia.