Law and Globalization: the 'multi-sited' uses of Transitional Justice by indigenous peoples in Colombia (2005-2016)

by

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To the Latin American indigenous peoples,
those who resist, struggle and survive the armed conflict on a daily basis/
A los pueblos indígenas latinoamericanos,
esos que resisten, luchan y sobreviven el conflicto armado a diario

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List of Abbreviations

AUC	Autodefensas Unidas de Colombia
CCJ	Comision Colombiana de Juristas
CNMH	Centro Nacional de Memoria Historica
CNRR	Centro Nacional de Reparación y Reconciliacion
ECOSOC	Economic and Social Council
EU	European Union
FARC	Fuerzas Armadas Revolucionarias de Colombia
HR	Human Rights
IP	Indigenous Peoples
ICTJ	International Center for Transitional Justice
NGO	Non-governmental organization
OAS	Organization of American States
OHCHR	Office of the United Nations High Commissioner for Human Rights
ONIC	Organizacion Nacional Indigena de Colombia
TC	Truth Commission
TJ	Transitional Justice
TAN	Transnational Advocacy Network
UNDRIP	United Nations Declaration on the Rights of Indigenous Peoples
UNHCR	United Nations High Commissioner for Refugees
UNPFII	United Nations Permanent Forum on Indigenous Issues
SNARIV	Sistema Nacional de Atención y Reparación Integral a las Víctimas

Introduction

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

Transitional Justice -TJ 'the conception of justice in periods of political transition' and its range of mechanisms and goals appears to be an important debate on how to deal with past human rights abuses in societies, not just in political transitions (from dictatorship to democracy and communism to liberal democracy) but also in post conflict periods. Thus, due to the Justice and Peace process in 2005 and the actual scenario of peace talks between the government and the Revolutionary Armed Forces of Colombia -FARC, Colombia has a structured and well-defined normative 'institutionalization' to deal with human rights abuses. It has established a range of mechanisms (including punishments, reparations programs, a land restitution procedure and a non-judicial truth-seeking mechanism) in order to end the internal armed conflict and facilitate the reintegration of the members of illegal armed groups into civilian life.

However, the active participation of Indigenous Peoples -IP is missing in this scenario. Only in 2011 the government approved the Victims' Law and a specific Decree for IP (Decree 4633) in order to attend the indigenous rights violations, and asked for their participation in some meetings in Havana. These norms present themselves as part of a political project of TJ, implying that the internal armed conflict is a thing of the past. "At this point no peace accord with the FARC is within sight[1], and therefore the current transition to peace can at best be only 'partial' and 'fragmentary'" (Uprimny & Saffon, 2007:1). In reality the conflict characterized by widespread human rights violations is continuing, and IP as a minority group have been the most affected, particularly by internal forced displacement and the dispossession of land.

While the government attempts to include some indigenous issues into the current debate,

[1] After four years of peace negotiations, on 24th August the Colombian Government and FARC announced that 'they have reached a final and definitive deal' to end the armed conflict. However, peace will be achieved when Colombian citizens ratify the peace deal in a plebiscite in October 2016.

the main national indigenous organizations, human rights lawyers and activists make some political and legal strategies due to the lack of sanctions and the obstacles to implement laws. For instance, the use and appropriation and/or the reformulation of important discourses, they "translate some stories into human rights violations to get the attention of the government and global audiences" (Keck & Sikkink, 1999: 91; Merry, 2006). This is the case of the Organización Nacional Indígena de Colombia -ONIC, a national indigenous organization created in 1982 and recognized by the State as a legitimate representative of indigenous peoples since the 80s (Castillo, 2007: 158). The organization has led various struggles on indigenous territories and the defence of collective rights, based on four fundamental principles: Unity, Land, Culture and Autonomy (Laurent, 2005: 74).

During the last two decades the ONIC has been part of Transnational Advocacy Networks-TANs (the link with some NGOs and legal activists such as CCJ) and some national/local political and legal strategies that have lobbied various international organizations (the UN, particularly at the UNPFII, EU and OAS) with two intent purposes. The first is to make the situation of the indigenous peoples visible and to pressure the Colombian government from the outside to fulfil its obligations to the international community (named the 'boomerang pattern'); and secondly, to participate in the current political processes that the Colombian context requires. In fact, the ONIC is the only organization (of the four national indigenous organizations) that has taken part in the peace process discussion, emphasising the defence of indigenous territories and autonomy as central points of their struggle.

There is a theoretical and analytical gap within the debate on TJ and Indigenous Peoples, and a particular lack of knowledge when it comes to the analyses of the relationship between TJ initiatives and identity conflicts and identity-based grievances that form a significant part of post-conflict and post-authoritarian contexts (Arthur, 2011). Hence this complexity of analysis is at the centre of this dissertation. The main purpose of this research is to identify and discuss *how the ONIC have used and appropriated the TJ in Colombia during the last 10 years*. Therefore, some sub-questions arise: how did the TJ discourse originate in Colombia? How does the Colombian TJ respond to the TJ global discourse? What is the link between TJ and the rights of Indigenous Peoples on multiple levels?

The starting point is the Colombian TJ, which is a social process of interactions involving

diverse types of agents (State actors, NGOs, international organizations, indigenous organizations, lawyers, etc.) and different kinds of levels of analysis (local/national/global/ transnational). Based on the debate between Law and Globalization, TJ will be analysed as a type of legal transplant that has operated in a cross-levels interaction and has also articulated resistance movements. This implies that non-state actors such as Indigenous Peoples-IP have engaged in a TJ 'from below' through different uses of the discourse. It will be argued that besides the 'manipulative use' and 'democratic use' of TJ, on the one hand, IP aims to make the situation of the indigenous peoples visible and bring pressure on the Colombian government by building legal/political strategies at a transnational level. On the other hand IP 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. That is, the 'multi-sited' uses of TJ.

Theoretically, the case of study is analysed through a socio-legal approach and the perspectives of Law and Globalization (Twining; Santos), that articulates the sociology of social movements (Tarrow; Keck &Sikkink), and of the diffusion and uses of law (Watson; Twining; Bonilla; Merry), in which the analysis highlights the conditions for the emergence, uses and/or appropriation of the legal discourse of TJ through the indigenous social movement. 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: 5) in order to understand and describe how the TJ discourse has been constructed at a global and national level, and how the TJ has been linked to the protection of indigenous rights in Colombia. The *uses of law* brings about a new perspective on Law "as it is practiced in everyday life, focusing on ordinary people as well as legal elites" (Merry, 2006: 975). That perspective is important in analyzing how the ONIC have engaged in TJ uses.

At a methodological level, 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: 42; 2009: 117). Thus, the useful perspective to discuss the unit of analysis is called 'multi-sited ethnography' (Marcus, 1995; Merry, 2006), a strategy of following people, discourses, ideas, connections and relationships as they travel. As Marcus says, this kind of methodology "moves from its conventional single-site location, contextualized by macro-constructions of a larger social order,

such as the capitalist world system, to multiple sites of observation and participation that cross-cut dichotomies such as the 'local' and the 'global', the 'lifeworld' and the 'system'" (1995: 95). Based on this and to be representative of the process that is studied, the qualitative approach of ethnography and the method of non-participant observation in some scenarios have been used, along with content analysis of laws, policy papers, NGO and indigenous organizations reports[2].

The case study and analysis will be presented by dividing this thesis into three sections: firstly it will address the theoretical framework, based on the foundations of the debate on the Law and Globalization in the aim to locate the case study and describe some analytical categories. Secondly, a background and analysis of TJ at a global and a national level will be presented as the context of the study. A deep analysis about TJ as a legal transplant is not one of the main objectives of this thesis, however a comprehensive presentation of it is necessary to begin the analysis. Lastly, the third part will combine the TJ context and Colombian indigenous peoples within a *subaltern cosmopolitanism* to analyse the 'multi-sited' uses by ONIC: the way in which IP have used, lobbied and appropriated the legal discourse at the transnational and national level.

[2] Further details of the methodology implemented are described in Appendix I.

1. Law beyond the State: from local to global actors

The idea that the Law is rational, consistent, exclusive and reduced to internal borders of nation-States (Dworkin, Hart, Kelsen, Raz), in which the analysis is related to state law and international law ('Westphalian Duo'), has been discussed over the last few decades, showing the different forms of diffusion and uses of Law. Thus, understanding the relationship between Law and Globalization, not as independent spheres but on the contrary, as interlinked categories. It is therefore essential to analyse the case study. This section aims to explore the foundations of the debate, exploring this through the lens of authors who have been sceptical about it. The process of "globalization is highly contradictory and uneven, far from being linear or unambiguous" (Santos, 2002: 177; Twining, 2003: 256). Therefore, the over-use and abuse of 'g-words' implies that the Law should focus in a cosmopolitan discipline of law or as Santos referred to it as, a *cosmopolitan legality* and *subaltern cosmopolitanism* (2005; 2002), which should be concerned with all levels of relations, legal ordering and all-important forms of law, not only the world as a whole but also the processes that operate at sub-global levels (Twining, 2009: 15; 2009a: 41; 2004: 11; 2003: 121).

1.1. Globalization and Law

Globalization is a contentious and vague concept. Some authors use it to refer to economic relations within a single world economy, commonly referred to as 'The Washington Consensus', while others in a broad sense go beyond economics to include any processes that tend to make economic, cultural, political and human relations more interdependent (Giddens in Twining, 2009a: 40; 2009: 13-14;Twining, 2003: 120). In this regard, the process of globalization as Santos mentions occurs through an apparently dialectical process in which new forms of globalization meet with new or renewed forms of localization. Globalization "is the process by which a given local condition or entity succeeds in extending its reach over the globe and, by doing so, develops the capacity to designate a rival social condition or entity as local" (2002: 177). It is selective, uneven and fraught with tensions and contradictions, because it continues reproducing "the hierarchy of the world system and the asymmetries among core, peripheral and

semi-peripheral societies" (Santos, 2002: 177).

In this context, both Santos and Twining agree that the processes of globalization have a long history, which are not unilinear (although the common process is from North to South) and are rapidly changing national barriers. Therefore, it is not possible to understand the local law by only focusing on the domestic law, the range of actors and processes has spread, and legal pluralism is central to understanding law in the modern world (Twining, 2003: 256). So while traditional legal theory has focused almost exclusively on two levels (national and international law), Santos recognizes the multiplicity of the levels of law, but only focuses on three: global, national and subnational (Twining, 2003: 259). Therefore, Twining suggests that this analysis tends to leave out all intermediaries and the analysis is much more complex than that. It includes alliances, coalitions, networks, movements, 'sub-worlds', 'global institutions' even if their geographical reach is uneven (World Bank, International Monetary Fund, among others), regional bodies and regimes, local and transnational relations and processes beyond the state (2009: 15).

Although globalization is absent in legal thinking, "it is not an external development that comes at the law from the outside. Rather, globalization and law mutually shape each other, today's globalization is a much a product of a law as it influences the law" (Michaels, 2013: 2). For instance, the increase in the recognition of the legal dimensions of some global issues (the environment, poverty, terrorism, migration, etc), the establishment of transnational fields or the emphasis on the transnational dimensions of some domestic subjects (criminal law, intellectual property, etc) and the increasing attention to the diffusion of law (Twining, 2009a: 43). Michaels identifies globalization as a reality, in which Globalization suggests the growing interdependence between states -following Keohane and Nye, and global transactions (trade, markets, communication, etc). In this sense, globalization refers to the impact and sometimes the enmeshment between the global and the local, and this, "is reflected in the law in the increasingly blurred lines between domestic and international law" (2013: 3). It is not a new phenomenon or a mere transfer of issues from a local to a supranational level. Otherwise, "the local and the global spheres mutually constitute each other" (Michaels, 2013: 3).

In this regard, Santos mentions two-forms of globalization[3], therefore different dimensions of the same phenomenon. First, *globalized localism* "entails the process by which a given local phenomenon is successfully globalized" (2002: 179). The worldwide adoption of certain localism requires globalization itself, that is, the process by which a local phenomenon is global. The second, *localized globalism* summarized in the impact of the global in the local and defined as "the specific impact of transnational practices and imperatives on local conditions that are thereby altered restructured in order to respond to transnational imperatives" (2002: 179). For the author, the world system is a web of localized globalism and globalized localisms. However, other processes that, unlike the above, contain a paradigmatic reading of current changes in the worldwide order. This results in two other types of globalization: the *common heritage of humankind,* "the emergence of issues which, by their nature, are analyzed as global as the globe itself" (Sousa, 2002: 181) and, *subaltern cosmopolitanism*, which will be explained later.

Globalization challenges traditional legal theory and seeks to theorize both society and Law, rejecting the traditional "methodological nationalism"[4]. In this scenario the role of the State remains central, however its constitutive elements (territory, administrative structure and population) have changed under the impact of globalization. Territorial integrity and sovereignty are the most important characteristics of the state, but state borders have become less effective and "are under regular challenge" (Twining, 2009: 7). This implies new extraterritorial regulations (migration, terrorism, etc.) and the importance of non-state norms that are part of state law through an incorporation, deference and delegation mode. Additionally, an increase in international cooperation to regulate trans-border transactions and the global interdependence of states, which means that the "State no longer holds absolute discretion on law making" (Michaels, 2013: 10). It does not mean that "the nation state is in terminal decline and the national borders are no longer significant" (Twining, 2009a: 49) or territoriality has become

[3] Regarding these ways of classifying globalization, Twining says that despite being a suggestive categorization is too schematic. While there are clear cases of globalized localism, it is not clear why structural adjustment programs belong to localized globalism. Thus, for many other analyses it is important to recognize the complexity of the interactions at all levels, from global to local, including many intermediaries (2003:256).

[4] This model is named the Westphalian Duo, the idea that the State presents the ultimate point of reference for both domestic and international law. In this model, all domestic law is the law within one State, whereas in international law, the only actors are States, and the supranational institutions that states have set up (Michaels, 2013:5; Twining, 2009:5; 2009a: 47).

irrelevant, but on the contrary "the role and importance of the territory remain, to a large extent, a function of the law" (Michaels, 2013: 10).

Moreover, the processes of the diffusion of law are more diverse, "and there is a growing realisation that the diffusion of law does not necessarily lead to convergence, harmonisation or unification of laws" (Twining, 2004; 2009: 7; 2009: 52). Thus, a new state of law as a global legal order suggests that the boundaries of the sovereign and the space above nation states are porous, allowing for the transmission of law across these boundaries (Halpin &Roeben, 2009: 3). There are new ways to call the Law besides state law: global, international, regional, transnational, inter-communal, territorial state, sub-state, non-state law[5] and diverse forms of soft law (Twining, 2004; 2009; 2009a), subnational, national and supranational (Michaels, 2013: 13; 2009). Therefore, based on a global perspective 'a map of state law' refers to a continuous story of the interaction and diffusion of law (Twining, 2004: 8). Diffusion is at the centre of comparative law studies, legal history, law and development, the sociology of law, cultural anthropology and so on Twining says (2004: 6). Nevertheless, the legal literature (particularly on legal transplant/reception) has been based on 'some simplistic assumptions', which were challenged by the impact of globalization. Therefore the diffusion processes as an aspect of inter-legality have specific characteristics (Twining, 2009a; 2009; 2004), which will be referred to in the second chapter.

1.2. Between local and global actors

While Law is best understood through 'top down' perspectives of rulers, legislators, judges and elites, it is persistently challenged by 'bottom-up' perspectives that "range from Holmes' Bad Man to user theory to various forms of post colonial subaltern perspectives -Nader 1984,

[5] Twining says that non-state law is an important phenomenon not only in the Global South or non-Western countries but also in North and Western countries, characterized with significant migrant communities in the current global context. The interaction of non-state norms with state law and, the institutionalised social practices open the discussion on legal pluralism and its variants: 'state legal pluralism', 'legal polycentricity', 'empirical legal pluralism', 'global legal pluralism' (2009:49-50; 2004:13), 'global' and 'transnational legal orders' (Halpin &Roeben, 2009; Twining, 2009; Halliday &Shaffer, 2015). Also, the discussion highlights the close link between legal pluralism and diffusion, particularly to 'interlegality' following Santos (Twining, 2004:14). However, due to the aim of the current research is other, this debate is too complex to pursue here.

Tamahana, 2001, Baxi, 2002, Rajagopal, 2003" (Twining, 2009: 7; 2009: 51). As Santos expresses, the prevalent forms of domination, the hierarchy of the world system and the complex ways of power relations, "do not exclude the opportunity for subordinate nation-states, regions, classes or social groups and their allies to organize globally in defence of perceived common interests, and use to their benefit the capabilities for transnational interaction created by the world system. A *subaltern cosmopolitism*: a fundamental component of the global agenda" (2002: 180).

Cosmopolitan activities include, transnational advocacy networks -TANs[6], NGOs, new social movements in the periphery of the world system and non-imperialist cultural values. Non-state actors 'frame' disputes "to make them comprehensible to target audiences, to attract attention and encourage action, and to fit with favourable institutional venues" (Keck & Sikkink, 1998; 1999: 89). In that context, the global time-space turns into a predominant arena of political struggle and creates others types of globalization: *globalization from above* or hegemonic globalization, including globalized localism and localized globalism, and *globalization from below* or counter-hegemonic globalization, related to subaltern counter-cosmopolitanism and the common heritage of humankind (Santos, 2002:182; 2005:29). This is characterized with two processes: "global collective action through transnational networking of local/national/ transnational linkages; and local or national struggles, whose success prompts reproduction in other locales or networking with parallel struggles elsewhere" (Santos, 2005:30).

Actually, where the channels between governments and non-state actors are obstructed or are ineffective to social groups, "international contacts can amplify the demands, pry open space for new issues, and then echo these demands back into domestic arenas" (Keck & Sikkink, 1999: 93) (named 'the boomerang pattern'). Hence the TANs become political spaces, wherein differently situated actors negotiate - formally or informally - the social, cultural and political meanings of their struggles (Keck &Sikkink, 1998; 1999:93). Also, they have an important role in the creation of political issues, agenda setting, bringing new ideas into policy debates, and helping to construct and enforce international norms, by serving as sources of information and

[6] The ability of non- traditional actors, those work internationally on an issue who are bound together by shared values, common discourse, and dense exchange of information and services, to mobilize information strategically to help create new issues and categories, and to persuade, pressurize, instigate changes in the institutional and normative basis, and gain leverage over much more powerful organizations and governments (Keck &Sikkink, 1999: 89).

testimony -it is the social construction of the rule of law as Sikkink recognises (2002:38). Although human rights are not the only issues, this discourse brings about "a 'framework', 'an arena' or a 'meeting ground' for dialogue, debate or negotiation about important values between people with different beliefs systems" (Hampshire cited in Twining, 2009a: 56).

For instance, as Arthur mentions, and this thesis will later describe, TJ began to emerge as a result of new practices that human rights activists had to face in countries where authoritarian regimes were replaced by democratic regimes in the late 1980s and early 1990s. "It is entirely possible that domestic human rights groups seeking to advance accountability claims could have leveraged their international networks to aid their causes, however without a distinct field of TJ and not just human rights ever coming into existence" (2009: 325). Therefore, understanding human rights as 'practices' in this dissertation allows a focus on the work of a diverse range of actors whose encounters with the human rights discourse is unavoidable, although they hardly ever leave their villages, towns or countries. In order to encounter or appropriate the idea of human rights they must envision the legal and ethical frameworks and give rise to the emergence of 'normative hybridity' (Goodale & Merry, 2007: 32). The virtual status**,** temporality and transnationalism of human rights discourse implies that the legal, technocratic and other types of knowledge through which the idea of human rights is translated or *vernacularized* (Merry, 2005) are constitutive of continually emergent collections of knowledge practices themselves, and not of a discrete system or permanent network (Goodale & Merry, 2007: 20).

In this regard, as Santos affirms, missing from this top-down picture (the hegemony approach of some authors, Dezalay, Garth and Merry, for instance) are the myriad local, non-English-speaking actors from grassroots organizations to community leaders, who constantly work in alliance with transnational NGOs and progressive elites, mobilizing popular resistance to neoliberal legality while remaining as local as ever (2005: 11). Therefore, based on a distinctive bottom-up perspective, Santos proposes a *subaltern cosmopolitan legality* instead of discarding cosmopolitanism. The change of this perspective implies "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" (2005: 14). Thus, it demands "a conception of the legal field suitable for reconnecting law and politics and reimagining legal institutions from below" (2005: 14-15).

As Rajagopal mentions “political struggles have an ambivalent relationship with the Law” (2005: 183). The Law operates at multiple scales under globalization and provides a much greater opportunity to use norms and institutions at those scales in framing demands and engaging in action through social movements (Rajagopal, 2003). The increasing vertical and horizontal growth of international legal norms (human rights, indigenous peoples, environment, etc) is a clear case of “changing opportunities and, the capacity of actors to take advantage that provide the openings that lead them to engage in contentious politics” (Tarrow, 1998: 33; Rajagopal, 2005: 184). But even though the subaltern actors are a critical part of processes whereby global legal rules are defined (Rajagopal, 2003), the space for a politics of resistance is neither purely local nor global due to counter-hegemonic struggles often being a combination of local and global elites (Klug, 2000: 50-51 cited in Rajagopal, 2005: 184). It does not mean that “counter-hegemonic coalitions are devoid of tensions, or that subaltern legal strategies are always productive” (Santos, 2005: 11) as will be shown through the case study.

2. The diffusion of Transitional Justice

TJ understood as "the conception of justice associated with periods of political change" (Teitel, 2000: 6; Teitel, 2003:1), refers to the way societies after periods of dictatorial regimes or armed conflicts undertake a set of measures (a non-exhaustive list includes: criminal prosecution - trials, purges, truth-seeking, reparations and institutional reform) based on the reconstruction of democratic principles (Kritz, 1995; Elster, 2004; UN Secretary-General, 2004; De Greiff, 2011)[7]. In such contexts, TJ implies a 'new normative conception of justice', rejecting the universal idea that the transitions defined purely in terms of democratic and electoral processes. Instead, to consider other practices such as the acceptance of the rule of law and liberal democracy, not as an idealized norm in transition but as "normative understandings beyond the majority rule, associated with the liberalization of the rule of law systems of political change" (Teitel, 2000: 5).

Hence TJ has become a very broad, heterogeneous and normalized field of study, as De Greiff mentions, with the 'mediate' goals to provide recognition to victims and to promote civic trust (from recognizing their status as victims to 'reversing' the marginalization of those that have suffered, and recognizing their status as citizens). The final goal is to contribute to strengthening the democratic rule of law (not only appealing to rules, but to recognize the ability of the rule to guide behaviour and authority) (2011: 28). Therefore, the aim of this section is to present a background of TJ at a global and a national level, which is necessary as a first insight to begin the analysis.

2.1. The emergence of the discourse at a global level.

The paradigm of TJ, following De Greiff, emerged from practice in context with the following

[7] 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 (1995:xv), nevertheless, Teitel was who first coined the term of TJ in 1992 and then 2000 (Bell, 2009:7-8; Arthur, 2009:329). In this regard, in 2003 Teitel published an article in order to demonstrate over time, a close relationship between the kind of justice that is pursued and relevant political constraints (2003:1) -the genealogy of TJ. The three phases of the TJ, ranging from the establishment of the ad-hoc tribunals and international criminal law (2003:5) to the formation of TC in the second phase (2003:11) and the phase in which TJ is related to a higher politicization of law and with a certain degree of concessions in the standards of rule of law (2003:22).

specific characteristics, firstly, the measures were applied in countries with relatively high levels of both horizontal and vertical institutionalization, although countries with weak institutions were not absent from all over the territory. Secondly, the TJ measures were adopted in response to particular types of violation, for example, those associated with the abusive exercise of power. At this point, measures were proposed as tools to settle deficits in justice without exacerbating problems of political instability (2011: 18). The TJ over time was adopted enthusiastically by policy-makers and regarded as necessary for the ceasefire and achieving a successful transition from conflict. The change that has occurred within the paradigm (not only the analysis of dictatorial regimes but also a post-conflict analysis) demonstrates that it involves a more explicit recognition of political and social goals beyond accountability (Bell, 2009: 9). Therefore, TJ has not only achieved its consolidation with the creation of institutions, agencies and specialists in the field operating a 'process of institutionalization' and its normalization as a mode of global governance (Teitel, 2014: xiv, xvi), but it has also consolidated and normalized due to its application in situations wherein a political transition is not clear. This is demonstrated in the case of Colombia, studied in this dissertation.

The TJ discourse has gotten into the global debate via two ways. On the one hand, through the UN agenda in 1991, when the Sub-Commission on Prevention of Discrimination and Protection of Minorities requested the expert Joinet to conduct a study on the impunity of perpetrators of HR violations[8], due to the incorporation of TJ measures on the agenda of traditional human rights organizations. TJ "became a label under which NGOs worked and university courses, centers and institutes were established. The founding meeting of the main transitional justice NGO, the International Center for Transitional Justice -ICTJ in 2000 and the creation of normative guidelines at the UN are examples of this kind of label" (Bell, 2009: 9). Indeed, a close relationship between TJ and HR in both directions arose at an international level, because TJ responded to the achievements of the era of the human rights expansion (De Greiff,

[8] In 1997 the expert submitted a report, in which discuss how successor regimes should deal with HR abuses by the authoritarian predecessors and to strengthen the protection of HR. The report collects principles on combating impunity, related to the right to know, to justice, to a fair and effective remedy and to reparation of victims. It is known as the principles of Joinet, updated with the report of D. Orentlicher in 2005.

2011:20). On the other hand, due to some authors initiated an interdisciplinary debate[9] on how a society should either punish its former regime or should forget its past. To some extent this responds to some paradigms related to 'justice' as the core of the transition and, the analysis of 'transition' with minimal justice (Appendix III).

2.2. Consolidating Transitional Justice at a national level

Although Colombia has faced an armed conflict for fifty years, it is characterized by a history of failed political negotiations (Appendix IV). Only recently have scholars, policy-makers, and non-state actors introduced their positions on the TJ debate while the conflict and its effects are still on-going. In 2005 as a result of 'the Justice and Peace process' between the government of Alvaro Uribe and the AUC, through Law 975 and other Acts (4760/2005, 3391/2006, 3570/2007) the discussion on TJ and its range of mechanisms begun. For instance, the punishment of ex combatants and the judicial benefits granted "on condition to comply with measures of truth, reparation for victims and adequate social rehabilitation" (ICTJ, 2011), the reparations program, the land restitution procedure and the establishment of a non-judicial truth-seeking mechanism. This discussion reflects some legal paradigms in which authors/policymakers have focused in times of transition to 'peace': retributive justice, restorative justice and/or reparative justice (Appendix III).

The predictably discussed and frequently adopted measures in Colombia, following the principles of retributive justice, at first focused on the establishment of a special prosecution model that includes alternative sentencing (a maximum of eight years[10]) for those demobilized former AUC that contribute to the clarification of the truth and reparations to victims (Law

[9] As Hoogenboom expresses TJ was built based on normative, legal -philosophical legal- and small-ethnographic studies by Western scholars -Kritz (1995) and Minow (1998)- influenced by the third wave of democratization and the conviction of a more liberal international community and a more humane system (2014). Today discussions occur through a variety of disciplines, including besides Law, anthropology, cultural studies, development, economics, education, ethics, history, philosophy, political science, psychology, sociology and theology (Bell, 2009: 9). Further details of some TJ actors are presented in Appendix II.

[10] This measure generated various tensions between the interests of the executive branch with multiple actors, one of them the international community. Indeed, this international opposition reinforced the negative response by social movements, HR organizations in Colombia and part of the media, which served to gradually modify the initial government proposal (CNMH, 2015; Summers, 2012).

975/2005, analysed by Decision C-370/2006 and amended by Law 1542/2012) (ICTJ, 2011). Additionally, the creation of the National Commission for Reparation and Reconciliation - CNRR, the Group of Historical Memory (today National Centre for Historical Memory -CNMH), and the establishment of preliminary reparation programmes for victims of illegal armed groups, excluding state victims (Decree 1290/2008). Between 2003 and 2006, more than 31,000 combatants of AUC were demobilized under international supervision (MAPP-OEA), but there was not a clearly defined policy in this regard and, this happened in the context of reports of people linked irregularly in the register as demobilized paramilitaries (CCJ, 2007 & CNRR, 2011 cited in CNMH, 2015:33). By April 2016 approximately 2,000 former paramilitaries had passed through the Justice and Peace tribunals, and only 37 had been sentenced (Verdad Abierta, 2015).

Indeed, many of the same paramilitary structures have re-emerged as new-armed groups, known as BACRIM (Aguilas negras- Bloque Capital and Los Rastrojos- Comandos Urbanos). Due to conceptual and practical weaknesses of programs of reinsertion and reintegration, the difficulties of coordination between various agencies and particularly the economic policy pursued, went against the initial goals that supported the social and economic reintegration policy. Narco-paramilitary groups continued with the network of social and political relations that AUC had established with some regional economic and political elites. These new groups continue to be actors "of violations of human rights in the capital against social leaders, human rights defenders, afro-descendants, indigenous peoples and women's organizations (...) due to the accusations on alleged links of these populations and their leaders with the guerrillas. Also they have been actively dedicated to the accumulation of land and capital and, the pursuit of legal and illegal income" (CNMH, 2015: 160; Human Rights Watch, s. f.).

Therefore, following the paradigm of restorative and reparative justice, in 2010 a non-judicial truth-seeking mechanism was implemented to offer legal benefits to illegal armed groups in exchange for agreeing to contribute to the clarification of the truth about the conflict (Law 1424/2010)[11]. However victims, offenders and society often felt that this kind of justice did not

[11] There have been some attempts to establish TC on the causes of the armed conflict from 1958 to 2015, however because of there has not existed an official one, the reports written by GMH (today CNMH) have been used as a mechanism of truth seeking/telling. Also, local actors have led other "alternative initiatives" to reach the truth, such

adequately meet their expectations. So due to their demands and the struggles of some social movements and NGOs, Congress enacted Law 1448 (Victims' Law) in 2011, which recognised a comprehensive reparations program (single, collective, symbolic or economic reparation) and land restitution procedure (Art. 132, 150 and 151 Law 1448/2011; Decree 4800/2011). It led to new institutions to implement these programs, specifically the Victims' Unit, the Land Restitution Unit, and the CNMH. Victims' Law is an innovative beginning to a process of TJ, namely to address the conflict and its effects through legal mechanisms within a context where no significant political or social change has occurred (Summers, 2012; Uprimny &Saffon, 2008).

Furthermore, in order to reach a negotiated solution with other armed groups, the dialogues between the government of President Juan Manuel Santos and the 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 a constitutional amendment (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 have agreed to a bilateral and 'definitive' cease-fire. This has motivated a continued debate in Colombia on the development of truth-seeking mechanisms, comprehensive and complementary judicial accountability models, and on the need to leverage new action repertoires to approve or reject the peace deal. Although polls indicate a 'yes' vote is likely, former president Álvaro Uribe has already started campaigning against it, also many Colombians do not agree with Santos government and think the peace deal implies impunity for the FARC. The paradigm of TJ is still being built.

2.3. Transitional Justice in Colombia: a legal transplanted category?

The establishment of such measures in Colombia operates as a kind of 'legal transplant' of global discourse of TJ to the Colombian context in the sense that, a legal importation and exportation of TJ technology -legal rules, institutions, and practices (Twining, 2004: 26) and expertise on the

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as peace local programs, victims' organizations, international verification missions, etc. Furthermore, if current agreements are approved, an official TC with the features discussed in Havana will be created.

subject occurs. Latin America has been no exception in the import and export processes of Law. Countries have been characterized as fertile ground for legal transplants that originate in the Global North and, at one time, in international organizations. On the one hand, there is a transplanted set of economic and legal institutions and standards that seek to promote classical liberal principles in order to strengthen the rule of law and market economy, and on the other hand, a package of rules and institutions that seek to transform legal systems in this part of the continent, following the American model (Dezalay &Garth, 2002: 368-369; Bonilla, 2009:13). Needless to say, this legal transplant has unique features.

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: 21). However, this was challenged by the impact of globalization. As Twining recognises the above naïve model is much more diverse and complex. This diffusion process as an aspect of interlegality is:

> A relation between exporters and importers that is not necessarily bipolar; on the contrary *the sources of a reception are often diverse*. Therefore, diffusion may take place between many kind of legal orders at and across different geographical levels (*cross-level interaction*), also through *informal interaction* (without formal adoption or enactment) and do not assume one or more specific reception dates (*long drawn out processes*). *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 (*any legal phenomena and actors*). 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, 2004:34-35; 2009:291-292).

Therefore based on the complex models, the dynamics of TJ as a legal transplant in Colombia has the following features. Firstly in relation to the 'agents', there is not an identifiable 'single' exporter or importer in the paradigm. In fact, TJ has been promoted not only by governments and international organizations but also by NGOs, social movements, TANs, and outside governments. All global, national and local actors are immersed in the construction of this paradigm as previously mentioned. For instance, in the late 1980s and early 1990s political

actors, human rights activists, and observers from around the world were convened in some international conferences in order to compare transitional 'dilemmas' and discuss a distinct set of measures - prosecutions, truth-telling, restitution or reparation, and reform of abusive state institutions, whose aims were to provide justice for victims and to facilitate the transition in question (Arthur, 2009: 325). Indeed, they still claim for those measures through the category of 'victims' of the armed conflict as a *global value package*[12] (Levitt &Merry, 2009) and, in the case of Indigenous peoples TJ measures have been used, adapted and/or translated into their political demands for the defence of the rights to Autonomy and Land not only via the category of 'victims', but also through the category of 'peace'.

In Colombia non-state actors have also played an important role in importing TJ, due to the continued violation of human rights, a lack of a comprehensive reparations process, the privileging of amnesty over victims' rights, and the failure to effectively implement pro-human rights legislation. International scrutiny further bolstered their claims (Summers, 2012: 224-225) as well the Colombian Constitutional Court[13] having pressured to reform some TJ measures. The UNHCR, some States at the Universal Periodic Review and some UN Special Rapporteurs reproached the government's inactivity regarding the internal displacement phenomenon, and pushed for the adoption of a national victims' rights and land restitution program. Thus, Congress enacted Victims' Law and established new compensation and restoration models. In fact, some human rights networks "have been used to raise the salience of accountability claims made on the domestic level" (Keck & Sikkink, 1998) but it is not reducible to them, as Arthur mentions. TJ and not just human rights came into being by transnational, national and local claims (Arthur, 2009: 325). It is a much more complex process that has operated in 'multi-sited levels' and *cross-actors interaction* and has succeeded in a legal system such as Colombia, which is not characterized as a dependent or less developed legal system.

[12] This term refers to the set of measures and goals that are transnationally recognized and is closely related to 'modern values' such as the rule of law, democracy, good governance, human rights, among others. These objectives are promulgated and disseminated by transnational organizations, civil society institutions, NGOs and the media (Levitt &Merry, 2009: 447). Regarding this, Bonacker analyses how global diffusion processes have placed victims at the centre of processes dealing with the past (2013).

[13] The Colombian Constitutional Court has been played an increasingly important political role in the Latin America constitutionalism, particularly in the judicialization of politics. The process by which the Constitutional Court has dominated the making of public policies (Sieder, 2005) through relevant judicial decisions about victims, HR violations such as internal forced displacement, TJ measures, and peace frameworks.

Secondly regarding the 'object', while the simple model usually assumes the object as a only set of legal rules that are transplanted without major change, the complex model shows that any legal phenomena can be the object of diffusion (Twining, 2004: 21). For instance, apart from legal rules TJ imports and exports institutional designs in relation to truth[14], justice and reparation, also forms of drafting legal documents, theoretical or normative models (retributive justice, restorative justice and/or reparative justice) and, ideologies regarding the type of transition. Models of compensation and restoration were established globally as "legitimate approaches to justice after mass atrocities" (Hoogenboom, 2014: 23) and have been applied in Colombia. Indeed, a common terminology related to societies that suffer or have suffered from conflict was structured by the Report of the UN Secretary-General. Concepts such as 'justice', 'the rule of law' and 'transitional justice' are essential to understanding the international community efforts to enhance human rights, encourage economic development, promote accountable governance and peacefully resolve conflict (UN, 2004: 2). Those values and political interests "are exported as part of a market driven ideology" (Twining, 2004: 27) and as *global values packages*.

Nevertheless, in the same way as it has 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 no 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 & Saffon, 2008: 171). As Bell recognises, "the lack of theorization of the type of transition that legitimately triggers TJ as a distinctive form of justice serves to weaken law's normative hold. TJ is left as a set of techniques and mechanisms for 'dealing with the past' when traditional legal mechanisms prove difficult or undesirable politically (for whatever reason). Law's hold is thus decolonized" (2009: 23-24). This implies that wide sectors of civil society have engaged in a TJ 'from below' (McEvoy &McGregor, 2008) through different uses of TJ discourses: 'manipulative uses', 'democratic uses' (Uprimny

[14] For instance, Castillejo-Cuellar recognises that TCs are part of what he calls "transition technologies", in which 'transition' by allowing a political teleology includes periods between authoritarian regimes, military dictatorships or internal armed conflicts and exclusively parliamentary democracies inserted in a capitalist economy on the other. Such axiom "is part of all of transnational circuit theorizing known by 'transitional justice' with its own gospel of reconciliation, truth and forgiveness horizon for future moral community" (2009: 301).

& Saffon, 2008) and as "a strategy of resistance by civil society affected by violence" (Diaz in McEvoy &McGregor, 2008: 214).

Finally, concerning the 'dynamics of transplantation', the simple model assumes that the exchange between two countries involves a direct one-way transfer in order to fill in gaps or replace prior local law. However this approach does not consider that transplants may occur between many kinds of legal orders and across different geographical levels and, the *pathways of diffusion may be complex and indirect,* and influences may be reciprocal. While the Colombian TJ being under debate has only occurred recently, 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 mentioned might serve as a model for the discussion on TJ in post-conflict transitions. Unlike the experiences of other countries, fundamentally political and legal instruments, resources and the dynamic application in Colombia are due to the internal institutional and social prominence and without the decisive factor of international cooperation and intervention (CNMH, 2015: 27). Of course, there are *reciprocal influences* between international organizations, NGOs, governments and non-state actors. TJ is *a long drawn out process* that has also articulated resistance movements that marginalize, contain or transform its regulations, this will be analysed in the next section.

3. The uses of Transitional Justice by Indigenous Peoples

Colombia has a structured and well-defined 'normative institutionalization' to deal with past human rights abuses. However, as this section will analyse, there is "no transportation without transformation" (Latour cited in Twining, 2004: 24). The reception implies that "most cases are at least in part stories of interaction between 'the imported law' and 'local conditions'" (Twinning, 2004: 24). That is how IP have been involved in a *localized globalism* (Santos, 2002). Hence the aim of this section is to analyse this particular relationship between TJ and IP rights in the Colombian context through the lens of a *subaltern cosmopolitanism*, the opportunity for subordinate groups to organize globally in defence of common interests (Santos, 2005). In order to do that, this section will be divided into four parts. The first part will start with a brief mention about TJ and identity, showing that, despite there being a large amount of literature on IP and TC, it is interesting to focus in on two levels: justice for historical abuses and, recent human rights violations. In the second part, the historicization of ONIC and its struggles will be described as a necessary context. The third part will then focus on the transnational level, pointing out how ONIC have engaged in TANs, lobbies and other action repertories on human rights. Lastly, the section will be concluded with a presentation of ONIC and TJ at a national level.

3.1 TJ through an 'identity' lens

The rise of HR on the international agenda in the 90s, along with the emerging of nationalism and violent ethnic conflicts in Yugoslavia, Rwanda, Sierra Leone, and elsewhere, meant changes in the 'neutral' liberal idea of the TJ subject, highlighting the importance of gender, age, race and ethnicity to understand the patterns of specific victimization (Buckley-Zistel and Zolkos, 2011: 5). Arthur argues that, in some societies histories of exclusion, racism and nationalist violence often create such deep divisions that the way to deal with past atrocities seems almost impossible (2010). Therefore, the 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).

In the sense that identity-based claims and conflicts among identity groups in society have important and varied consequences in contexts where the massive HR abuses are in need of redress: on the level of perception and culture, on the microlevel of everyday interaction, and on the institutional level of politics and the rule of law (Arthur, 2011: 4). There are cases in which abuses have a direct relation to the main lines of conflict, the case of Guatemala for example, in which the ethnic dimension to the conflict was palpable (Fullard & Rosseau in Arthur, 2011; Gómez Isa, 2011). In another instance, the case of Peru where the conflict was purely ideological but had serious consequences for indigenous Andean and Amazonian peoples (Rubio-Marin, Guillerot & Paz y Paz Bailey in Arthur, 2011; Mantilla, 2006), and others in which the conflicts are peripheral, and therefore it is more likely to be overlooked (Jung in Arthur, 2011).

These analyses, linking TJ and decolonization[15], "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 HR violations and, justice for systemic institutional marginalization on the basis of one's identity" (Arthur, 2011: 4). This is the case of IP and its link to TJ. Although a deep and critical analysis on it is scarce because most authors focus on describing TC in countries with IP (Guatemala, Maine, Canada, Australia) (Littlechild &Stamatopoulou, 2014); or on the dialogue between institutional vision and indigenous organizations (ICTJ, 2010; UNPFII, 2013); or give emphasis on the right to reparation of indigenous peoples (Rodriguez & Lam in ICTJ, 2010) by past historical injustices and marginalization (Gómez Isa, 2011), at the UN this issue arose. In 2013 the Permanent Forum on Indigenous Issues-UNPFII, experts made a report on the links between the rights of IP and TC, some organizations participated in a side event in 2012 and the sessions of the UNPFII, for the first time this year it was on peace, resolution and conflict. This is clear evidence of the growing interest of TJ and IP at the international level.

[15] The Maine Truth and Reconciliation Commission is a good example to show "a new kind of TC, linking reconciliation with decolonization, and truth with practical policy change, in the process of creating an important model of community-based conflict transformation and trauma recovery that has potentially wider implications for other communities seeking to reconcile, and to heal, after a period of long-term trauma" (Collins et al. in Littlechild &Stamatopoulou, 2014:140).

3.2 ONIC and its struggles

Since the Conquest, IP have supported their struggles through political claims, action repertories, administrative and judicial proceedings, and have engaged in high levels of organization and leadership that have enabled them to claim their rights and culture, and play an important role to the State and society. Within the historical experience of Colombian indigenous resistance in the early twentieth century, the movement led by Manuel Quintin Lame was important, an indigenous leader who served as the foundation for the formation of the indigenous movement in the 70's. The path traced by Quintin Lame resulted in the process of the formation of regional councils, through which IP were reclaiming their lands, culture, identity, organizations, and self-governments. In this context, for example, in the 70'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: 313). Hence based on its struggle the Consejo Regional Indígena del Vaupés -CRIVA arose in 1973, the Organización Indígena de Antioquia -OIA in 1976, the Organización Regional Embera Waunanan -OREWA in 1980, among many others (Laurent, 2005: 74; Castillo, 2007: 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: 75; Lemaitre, 2009: 322). The organization as a gremial federation, to define its platform of action, it 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: 76). The success of this organization is unimaginable. Apart from its establishment as the main national indigenous organization, "in the 80's, for the first time the State recognized it as a legitimate representative of IP and formulated a policy with its participation, Programa de Desarrollo Indígena -PRODEIN" (Castillo, 2007: 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: 77), which caused the division of some regional indigenous councils, particularly in southern

Colombia where 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 (Constitutional principle of Colombia as pluriethnic and multicultural nation); and the opening of new spaces for IP to participate in the political process. It is precisely the constitutional opening of such political and social opportunities for participation, which means that IP "find favourable opportunities to claim their demands" (Tarrow, 2011: 110), not only at a national and at an international level, but also by an *ambivalent use of law*[16], as will be described below.

3.3 Uses, lobbies and TANs (transnational level)

As Tarrow mentions while "globalization consists of increased flows of trade, finance, and people across borders, internationalism[17] provides an opportunity structure within which transnational activism can emerge" (2005: 8). 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: 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, 2011: 160; 2005: 23) by the 1991 Constitution and the creation of different spaces and organizations in the UN, IP has perceived opportunities and "incentives for domestic actors to frame their domestic claims in global terms and to move beyond their own borders" in Tarrow's words (2011: 246). Indeed, IP increased its efforts at the international level through a series of conferences and direct statements to intergovernmental

[16] Indigenous struggles are characterized by an ambivalent use of law. An ambivalence that is, "on the one hand, between the conviction that the Law is often a form of oppression and an instrument, and on the other hand, an emotional investment in the symbolism of the Law in its forms and arguments even when they exceed their usefulness practice" (Lemaitre, 2009: 311).

[17] Tarrow uses this term in "a complex way, to signify a dense, triangular structure of relations among states, non state actors, and international institutions, and the opportunities this produces for actors to engage in collective action at different levels of this system" (2005:25; 2011:246).

institutions. These efforts were condensed into a real campaign at the global level (Anaya, 2005: 92).

Although the UN has opened some opportunities for debate and dialogue regarding indigenous issues, international organizations where truly binding decisions are taken such as the Human Rights Council or the ECOSOC, IP have no participation[18]. This aspect has led them to be a part in TANs with organizations that have participation in those institutions; also lobbying with 'friend' States so they assume IP defence against various decisions taken by international bodies (Bellier, 2010: 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" (Santamaria, 2010: 178). Regarding this Sikkink says, "IP have often found the international arena more receptive to their demands than are domestic political institutions" (Sikkink cited in Tarrow, 2005: 147). Within this scenario ONIC has engaged in recent times.

Due to the lack of responsiveness on HR protection by the State, and because of the 'blockage' of domestic claims in the government of Alvaro Uribe (2002-2010) and some issues in the Juan Manuel Santos Government (2010-2016), the Keck and Sikkink's 'boomerang model' occurred. The 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 it has focused on 'human rights' and 'peace' struggles 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 & Merry, 2007: 2). The organization, "when conferences and other contacts create arenas for forming networks" (Keck & Sikkink, 1998: 32) leverages different kinds of strategies to mobilize information strategically about the violation of IP rights. Indeed, "one of the most important tactics that networks use is

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

information politics, or what HR activists sometimes called the human rights methodology, 'promoting change by reporting facts'" (Thomas, 1993: 83 in Sikkink, 2002: 45). Moreover, as Tarrow proposes, "beyond the boomerang" domestic actors in addition to providing information, "can also use institutional access or engage in attention-getting direct action" (2005: 147), as will be shown.

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). Hence the Organization issues several reports on the situation of HR "to make them comprehensible to target audiences, to attract attention and encourage action, and to fit with favourable institutional venues" (Keck and Sikkink, 1999: 90). For instance, the consequences of armed conflict in indigenous territories, large-scale forced displacements of IP, 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[19]. 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 IP 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 networking becomes a repertoire of action that is diffused internationally" (Keck & Sikkink, 1999: 93), the ONIC seeks the support of human rights NGOs such as Comision Colombiana de Juristas (CCJ), an NGO with ECOSOC consultative status and, "permanent user of the United Nations system" (Santamaria, 2010: 147). Hence regarding the visits of the Special Rapporteur on IP to Colombia, one of the NGOs among a large platform of organizations that coordinated the last visit was CCJ. A researcher of this NGO 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 IP. In this context, CCJ met members of the

[19] Further details on statements, reports and events at a transnational level are described in Appendix IV.

ONIC, CRIC and CECOIN" (Interview Juan Bustillo, Bogota, July 2011). Furthermore, the ONIC using 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, so some ONIC representatives lobbied with States, NGOs and other international organizations. As Ana Manuela Ochoa mentions:

> 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 HR 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 (Interview Ana Manuela Ochoa, Bogota, May 2012).

This strategy has allowed indigenous organizations to generate attention on new issues and, to persuade, pressurize and gain leverage over the Government, in terms of Keck & Sikkink *leverage and accountability politics* (1999: 97). Moreover some UN organisms have supported IP claims in the Colombian TJ context. 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 HR and TJ considerations are reflected in peace agreements and missions" (Lavin in Littlechild & Stamatopoulou, 2014:229). For example, in its 2015 report on the situation of HR in Colombia OHCHR "exhorts the parties in Havana to seize the opportunity to dialogue with IP 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" (2016:18).

Likewise, the UNPFII, the Special Rapporteur, and the EMIP could hold states accountable for their obligations on TJ measures under UNDRIP and other instruments of international law such as ILO-Convention 169, however, "while this has never been done in relation to TC, it has been done in relation to monitoring peace agreements in which IP are key actors" (Arthur in Littlechild & Stamatopoulou, 2014: 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 in February 2016 and highlights the challenges IP 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 IP in defining, designing and implementing collective reparations and territorial peace, also mentioning that IP "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 Monica Acosta 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 & Sikkink, 1998: 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 HR violations, such as CAOI, Amnesty International, Survival International, ABColombia, and 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 TJ in the aim of remedying historic injustice; and the participation of Juvenal Arrieta at the UNPFII this year. Instead of talking about TJ and its measures, Arrieta presented a statement related to peace building from IP, 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 uses of the TJ paradigm at a transnational level. As Merry recognises "intermediaries such as NGO 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" (2006: 6). Indeed, IP claim for measures on justice, reparation and reconciliation through 'human rights' as a *global value package* that is "promulgated and disseminated by transnational organizations, civil society institutions and NGOs" (Levitt & Merry, 2009: 447). Moreover as the next section will describe, IP 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 recognises "the notion of global victimhood developed only after World War II, following the global diffusion of HR, the change in academic conceptions of traumatic experiences and the advocacy of International NGOs, so that the development of normative pressure on national TJ processes placed victims at the centre of processes dealing with the past" (2013: 97).

3.4 Uses, appropriation and translation (national level)

As described above, there are three specific periods in which IP have been key actors and, the ONIC have played a pivotal role in securing the collective: 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, IP 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' they have been a critical part of the process whereby TJ measures are defined, following Rajagopal ideas (2005: 183). In fact, TJ "is by its nature a heavily politicised process" (McEvoy &McGregor, 2008: 6).

Firstly, the dialogue process with AUC was full of complexities in a context in which there was an incomplete transition. For various reasons the demobilization of these groups became more difficult. They were 'pro-system actors' who never fought against the State, but instead

supported its struggle against the guerrillas. 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 & Saffon, 2008: 168). In this context, although it did not seem appropriate to mention the TJ, everyone talked about its application in Colombia. As Uprimny and Saffon say, 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" (2008: 171). Thus language and TJ mechanisms can be used in a manipulative way, TJ is invoked with the aim of securing impunity, by the Government and paramilitary leaders (manipulative use), it can also be used in democratic forms by victims' movements, HR organizations and the Courts, that is, as a tool to prevent impunity and to effectively empowers victims of rights violations (democratic use) (Uprimny & Saffon, 2007; 2008: 168).

While "the placement of victims' rights at the centre of the peace agenda was a victory for democratic users of TJ discourse" (Uprimny & Saffon, 2007: 2), the indigenous struggles were absent from the debate. Due to the government of Alvaro Uribe refusing to recognize the existence of the armed conflict, IP took the decision to withdraw from the national meetings of Dialogue and Consensus roundtables, such as the 'Mesa Permanente de Concertación –MPC', 'Comision de Derechos Humanos' and 'Comisión de Territorios Indígenas'[20] (Appendix VI). Indeed as Diana Carrillo, a lawyer who worked in ONIC mentions "Uribe's 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" (Interview Diana Carrillo, Milan, July 2016). Thus, despite only a few statements about the process of Justice and Peace, ONIC denounced "the paramilitary strategy that had been designed, operationalized and institutionalized by the Colombian State creating different devices and legal

[20] The MPC is an important space for dialogue between the main national organizations (ONIC, AICO, OPIAC and CIT) and the Government since 1996. However, at this moment due to the "blockage" of domestic claims by Uribe's Government, IP used other action repertories such as protest, national and international statements, TANs and, symbolic events, hybrid tribunals and local processes. For instance, the "Minga Indígena" in 2008, "Tribunal Permanente de los Pueblos" in 2007 and the "Misión Internacional de Verificación" in 2006. In fact, TJ proposed by the President Uribe "gave such actors a framework within which to critique the understanding being propagated by the State" (Diaz in McEvoy &McGregor, 2008).

rules that had legitimated their actions, and others seeking to legalize impunity for their crimes" (ONIC & CECOIN, 2007: 3).

Afterwards, the IP worried about this due to the lack of sanctions, the obstacles to implementing laws and, the devastating consequences not only for the individual, but also for the indigenous peoples as a collective subject of forced displacement, particularly between 2002 and 2010 (Constitutional Court Decision 004; Rodríguez & Orduz, 2012: 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 has become the normative basis for dealing with past atrocities" (Bonacker, 2013: 98), they appropriated the category of 'victim', "*appropriation* means taking the programs, interventions, and ideas developed by activists in one setting and replicating them in another setting" (Merry, 2006: 135). Consequently, they translated methods, "*translation* is the process of adjusting the rhetoric and structure of those interventions to local circumstances" (Merry, 2006: 135). However as Merry recognises, "appropriated programs are not necessarily translated and if they are translated so fully that they blend into existing power relationships completely, they lose their potential for social change" (2006: 135).

Once the government of Juan Manuel Santos began, through the lawyer Diana Carrillo the ONIC reviewed the great legislative agenda of Santos, the Bills that could affect IP or the need for 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 & Orduz, 2012: 21). Therefore, to consult with IP the Government should withdraw the Bill and present it again after 6 months. This circumstance led to a rapprochement with the indigenous, 'Comisión de Seguimiento-CODHES' and, especially with the National Bureau of Victims. As Diana C. mentions:

> Representatives of victims approached the IP 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 IP (Interview Diana Carrillo, 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 HR groups in dealing with past violations" (Bonacker, 2013: 98). Following that, the Victims pressured the expedition of the Victims' Law. Thus, it came into force in June 2011 and, 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 had until December. Therefore each organization delegated a representative and an advisor (Rodríguez & Orduz, 2012: 37), all indigenous leaders and lawyers. For instance, Julio Cesar Estrada (OPIAC), Wilmar and Asdrubal (traditional AICO), German 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 Uprinmy, Natalia Orduz, Cesar Rodriguez of DeJusticia, Fernando Vargas, Gloria Rodriguez, 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 & 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 HR discourse" (McEvoy & McGregor, 2008: 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 Diana C. 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*[21] (Interview Diana Carrillo, Milan, July 2016).

It is a clear example of *vernacularization*, "a process of appropriation and local adoption" (Merry, 2006: 3; 2009: 446). However as Merry mentions appropriated programs are not always translated. Translation has three dimensions (2006: 136). First, the images, symbols, and stories through which the program is presented draw on specific local cultural narratives and conceptions. As Diana C. 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 IP reparation is usually understood as something which is not able to repair the damage, 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, and if you look back you can transform it. Hence the book's cover had a path" (Interview Diana Carrillo, 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'* IP is still the same, there is no redefinition of their culture. Instead, IP continually redefines its political claims following the national political agenda.

Likewise another issue discussed at consultation meetings was the category of 'victim'. In

[21] This category was proposed based on the report "Primero las Victimas" by the Ombudsman in 2007, on the category "ethno-reparations" (Rodríguez & Lam in ICTJ, 2010) and on the "transformative perspective" of TJ by Uprimny and Guzman in 2010 (Rodríguez & Orduz, 2012:38).

the process of prior consultation an important notion that 90% of the traditional authorities claimed 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) (Fieldworks Notes Monica Acosta on Pueblo Arhuaco, 2013). Nevertheless, beyond that IP sought reparations from the territory, what they wanted was a symbolic recognition, as Diana C 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" (Interview Diana Carrillo, 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 President Santos, the Decree 4633 came into force (Rodríguez & Orduz, 2012: 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 UAERIV 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 (Fieldworks Notes Monica Acosta 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, the impact of mining and

macro projects in indigenous territories (ONIC, 2014: 4).

Therefore, the category of 'victim' loses strength in the 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 was a change in the ONIC organization, Luis Arias was elected as Great Councillor and Juvenal Arrieta as the General Secretary, ONIC appropriated the discourse of 'peace-building'. When the peace process was popularized, Juvenal A. began with strong training at the international level, travelling and meeting with Marco Romero, Camilo Gonzalez and Alejo Vargas, professors at Universidad Nacional de Colombia and experts on armed conflict and peace-building. Thus, Diana C. states that the "ONIC began to build the indigenous discourse about peace", (Interview Diana Carrillo, Milan, July 2016). The ONIC created a "Political Committee on Peace", with members of the indigenous movement, and also began to seek financial support from different agencies and international organizations. Thus, the organization got the support of GIZ Pro-indigena and the UNDP to build a 'National Agenda for Indigenous Peace', in a document drafted by the lawyer 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 the 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 IP 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 IP 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 Defense of Territorial Rights' in the process of the negotiation and implementation of the peace agreements is also concerned (Fieldwork Notes Monica Acosta 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 Monica Acosta on Conversation with Juvenal Arrieta, New York, May 2016).

The Colombian TJ is still being built, therefore, this dissertation cannot be finalized without mentioning what has occurred during the last few weeks. Despite the claim of the inclusion of the National Agenda for Indigenous Peace in the final agreements made by the last Minga, IP 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 in ONIC, 2016).

Hence as noted above, it is clear how TJ is adapted to meet the challenges produced by identity such as ethnicity. The fact that TJ measures typically focus their efforts on the redress of a narrow band of 'first generation' HR and some actors outside the political debate, implies the narrowness of this analysis. Therefore, the relevance of local and social actors such as IP 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 IP have suffered from historic injustices as a result of colonialism, slavery, exclusion and dispossession of their lands and resources; and have also been severely affected by the armed

conflict (ONIC, 2016). As Bell says, TJ discourse is used to "press western liberal democracies into addressing historic wrongs against IP, 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)" (Bell, 2009: 15), to allow various subaltern groups to claim recognition and reparation for injustices suffered, or as it is called by Colombian IP: *Transformative Reparation*.

Conclusion

At the time of writing this dissertation, the FARC and the Colombian Government agreed to a ceasefire and a final and definitive deal. The news travelled around the world. The international media, Governments, international organizations and non-state actors talked about the opportunity for peace in Colombia. This is a good example of how globalization, in addition to lightening the flow of information, can conceive any economic, cultural and political process beyond national borders. In fact, as this dissertation argues, Globalization challenges the traditional conception of law, rejecting its exclusive, rational and limited understanding to national borders of the State, and the State and international law. As Santos mentions, the process of globalization occurs through an apparently dialectical process in which new forms of globalization meet with new or renewed forms of localization. Hence due to the local and global spheres mutually constituting each other, an understanding of the Law arises from a diverse range of actors and multiple levels of Law.

Therefore, the diffusion of law beyond national borders is the result in which the 'State no longer holds absolute discretion on law making'. On this basis, the dissertation discusses the global production of laws, soft law and institutions that define the insight of TJ, and how this paradigm and its measures created at the global level are transplanted at the Colombian national level. It is the localization of global orders, and in some cases its national actors who are involved in transnational scenarios and bring to a national level what they learn, which Santos recognises as a *localized globalism*, the impact of the global in the local. Thus, this dissertation which is based on the proposal by Twining analyses the TJ as a kind of legal transplant from its agents, the

subject and the dynamics of transplantation, showing the multiplicity of actors at all levels (global, national and local) that participated in the establishment and consolidation of TJ. Actors who have used the discourse of 'human rights' and, the category of 'victims' as a *global value package* at transnational and national levels. In fact the 'establishment' of TJ has been the result of using the discourse of HR and the 'consolidation' that the victims have been located at the centre of processes dealing with the past.

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 IP are missing in the debate. Thus, while Law usually is best understood through 'top down' perspectives of rulers, legislators, judges and elites, the goal of this dissertation was to provide a perspective 'from below', that is, to describe the 'resistant' or 'mobilising' struggles of non-state actors. Therefore, due to changes and political openings in the opportunity structures IP have inserted in a *subaltern cosmopolitanism*, organized social movements, created TANs and participated with the support of NGOs in international forums. They have 'framed' their disputes on different levels to construct TJ from below. In fact, as Merry mentions, "transplanting institutions and programs involves appropriation and translation" (2006: 135).

Regarding this, the ONIC is the only organization within the four national organizations (CIT, AICO and OPIAC) that has led the struggles on the protection of rights to Land and Autonomy in the context of TJ. Therefore, in addition to the uses of TJ: 'manipulative use', 'democratic use', and as 'a strategy of resistance by civil society affected by violence' the dissertation discusses the 'multi-site' uses of TJ. Indeed, non-state actors often participate in two cultural spheres at the same time. The 'intermediaries' not only take local stories and frame them in national and international HR language, but they also play a critical role in appropriating, translating, and remaking transnational discourses into the vernacular. The use of JT is in multiple sites. On the one hand, ONIC create TANs making some of the struggles of the Colombian indigenous movement's visible - through information, symbolic, accountability and leverage politics. On the other hand, the Colombian case also suggests that TJ discourses may be used as a political strategy by IP to claim the protection of their collective rights. Thus, the discussion and construction of Decree 4633 shows us how HR language (truth, justice, and

reparation, main categories of TJ discourse) is similarly being extracted from the universal and adapted to national and local communities, the *vernacularization* has occurred, as Merry says.

Finally, the uses of TJ are understood as a social process of complex interactions involving different types of agents and political-legal arenas (State actors, NGOs, international organizations, indigenous organizations, lawyers, etc.). In fact, the case of the ONIC represents an interaction between multiple levels of law (local, national, transnational and global), different interests of transnational political agents and the production of some 'practices of HR' such as an 'indigenous autonomy discourse' and legal indigenous institutions (for example *territory as victim*, *transformative reparation* and *indigenous peace zones*) in the context of peace-building and TJ. Although institutions and the language of HR have 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. This is the Janus-Faced of the use of human rights.

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Appendix I. The research process: methodology and methods

The current research is conducted as a part of the International Master's Program in Sociology of Law. During the design of the research proposal, several concerns regarding indigenous peoples issues and the current peace agreements were presented in order to write the dissertation. First at all, I would like to underline why my interest in indigenous peoples issues and, the methodology that I will describe in this part. Since 2010 I have been working as a junior researcher at Universidad del Rosario (Bogota, Colombia) with indigenous peoples on issues of law, political science and international relations. My research began by analysing the forced displacement of Indigenous Embera based on the recommendations of the UN Special Rapporteurs on Indigenous Peoples and the ONIC transnational advocacy networks, particularly studying in depth issues on indigenous peoples rights, indigenous national/international movements, leadership and international mechanisms to protect human rights (UN and OAS).

Moreover, I have been part of the educational program 'Escuela Intercultural de Diplomacia Indigena', in which I work improving knowledge and skills related to action-research, qualitative and interdisciplinary research with indigenous peoples, especially on the one hand, offering courses on human rights and transitional justice, national/international indigenous participation and, leadership; and on the other, developing action-oriented-research about political strategies in national/international indigenous participation, leadership in contexts of armed conflict and promotion of human rights at UN Permanent Forum on Indigenous Issues. Thus, taking into account those considerations, the aim to this section is to present the way in which my academic experience and my particular concerns were traduced into the writing of *Law and Globalization: the "multi-sited" uses of Transitional Justice by indigenous peoples in Colombia (2005-2016)*. The first part will focus on the qualitative methodology chosen; the second one will give an account of the research method, measuring and sampling; and finally, some ethical issues will be described.

1. Qualitative Methodology

Qualitative research is a "research strategy that usually emphasizes words rather than

quantification in the collection and analysis of data" (Bryman, 2008: 366), that is "concerned with exploring the understandings, meanings, and interpretations that people attribute to their social world" (Ezzy, 2013: 56). Due to the social world must be interpreted from the perspective of the people being studied, rather than as though those subjects were incapable of their own reflections of the social world. This is a useful methodological approach to viewing events and the social world through the eyes of people that the qualitative researchers study (Bryman, 2008: 385). Therefore, the valuable perspective to discuss the unit of analysis was 'multi-sited ethnography' (Marcus, 1995; Merry, 2006), a strategy of following people, discourses, ideas, connections, associations and relationships as they travel. As Marcus recognises, this kind of methodology "moves from its conventional single-site location, contextualized by macro-constructions of a larger social order, such as the capitalist world system, 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: 95).

Within this context, also there are involved two central tenets to seeing through the eyes of the people being studied, 'face-to-face' interaction as the fullest condition of participating in the mind of another human being and, the participation in the mind of another human being, "taking the role of the other" to acquire social knowledge (Bryman, 2008: 385). Hence another useful perspective to research was 'action-research', "a research methodology that combines theory, action and participation" (Fals Borda, 2013). The Participatory Action Research -PAR is "a qualitative research methodology that fosters collaboration among participants and researchers and, that focuses on social change" (Fals Borda cited in MacDonald, 2012). Due to the main aim of the dissertation was to discuss the production and uses of TJ discourse at the transnational and national levels, and their appropriation and translation by a national indigenous organization in Colombia: Organizacion Nacional Indigena de Colombia -ONIC, there was a methodological strategy, through the action-research, of following the TJ discourse, the ideas, connections and people that have used it as they travel.

In addition to these, the research was approached based on a socio-legal perspective that articulates the foundations of Law and Globalization (Twining, 2009; Santos, 2002, 2005), the sociology of social movements (Tarrow, 1998, 2005; Keck & Sikkink, 1998, 1999), and of the diffusion and the uses of law (Watson, 1993; Twinning, 2000, 2004, 2009; Dezalay & Garth

2002; Bonilla, 2009; Merry 2006, 2007, 2010), privileging the perspective of social actors. In order to overcome the conception of Law as a neutral, consistent and rational discipline, which usually focuses on the "study of codes, laws and legal decisions" (Courtis, 2006), the Law was defined as a 'social practice'. It is "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: 42; 2009: 117).

Indeed, in opposition to the Law is the 'legal discourse', that conceals, displaces and distorts the place of social conflict, is installed as legitimizing power, that disguises and becomes neutral (Ruiz, 2007). In the current research was important to analyse the "production of legal discourse", this is, Law as discourse[22] and as social practice that in addition to regulate the practices of the society, cannot be reduced to the laws or to the courts decisions, by the contrary the Law constructs the actors (male/female) and defines the basic concepts that order and determine modes of behavior (Kohen 2000; Ruiz 2000; Berrotarán cited in Sánchez, 2015).

2. *Research methods, measuring and sampling*

Based on the above and to be representative of the process that was studied, concepts such as "transitional justice", "discourse and the production of legal discourse", "uses and appropriation of law", "diffusion of law", "indigenous peoples rights" were also reviewed and discussed through a 'constitutive' law perspective. Those concepts derived preliminarily from pre-existing research and theories (deductive method), based on the aim of the research, and due to the focus of the dissertation was a *qualitative research*, questions as 'what meaning', 'how' and 'why' indigenous organization use and appropriate the TJ discourse were necessary to conduct in the research.

In this sense, the qualitative approach of ethnography and the methods of 'participant &

[22] As a Foucault says "It is in discourse that power and knowledge are joined together. And for this very reason, we must conceive discourse as a series of discontinuous segments whose tactical function is neither uniform nor stable. To be more precise, we must not imagine a world of discourse divided between accepted discourse and excluded discourse, or between the dominant discourse and the dominated one, but as a multiplicity of discursive elements that can come into play in various strategies. (...) We must make allowance for the complex and unstable process whereby discourse can be both an instrument and an effect of power, but also a hindrance, a stumbling block, a point of resistance and a starting point for an opposed strategy" (Foucault 1978: 100-101).

non-participant observation' in some scenarios and, the method of 'unstructured interviews' were used. Also the 'content analysis' of laws, policy papers, NGO and indigenous organizations reports. In addition for research purposes, "there is no need to work with the whole group, because the researcher is interested in meanings and understandings" (Tranter, 2013: 100). Thus, based on pre-existing action-researches, because the researcher knew about the target population and, the aim of the study based on convenience and purposive samplings, the following social actors, scenarios and documents were involved in the process of research:

Research methods	*Sampling*
1. Ethnography: Multi-sited participant & 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" (Liu & Maitlis, 2015).	1) Scenarios: a) UN Permanent Forum on Indigenous Issues, New York. 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 Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace", organized by Columbia University in May 14th 2016, New York. c) Side Event at UNPFII: "Truth Commissions and Indigenous Peoples: Lessons Learned, Future Challenges" in May 2012, New York. d) Some sessions of the educational program of University of Rosario "Escuela Intercultural de Diplomacia Indígena":2013-2015, Indigenous Territories in Colombia. e) Some sessions of Mesa Permanente de Concertación about Decree 4633 in 2013 and 2014, Bogotá. 2) Social Actors (non-recorded interviews in 2016) a) ONIC: Juvenal Arrieta b) CIT: Ati Quigua y Dunen Muelas c) ONIC/ CRIC: Aida Quilcue d) Colombian Permanent Mission at UN: Diana Santamaria e) Dirección de Etnias en la MPC: Andrea Coronell f) EIDI: Angela Santamaria
2. Qualitative contents analysis for documents: this method follows a recursive and reflexive movement between	*Laws, policy papers, NGO and indigenous organizations reports.* 1) Official documents: a) Law 975 and other Acts (4760/2005, 3391/2006, 3570/2007, 1290/2008). b) Law 1448 (Victims' Law) and Decree 4633

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).	c) Actas Comisión de Seguimiento del Decreto 4633 de 2011 d) Actas Mesa Permanente de Concertación con los Pueblos y Organizaciones Indígenas en los Gobiernos de Álvaro Uribe e) CNMH reports about Justice and Peace Process f) Statements between the government of President Juan Manuel Santos and the FARC about the peace process g) The Legal Framework for Peace h) Constitutional Court Decisions: Auto 004 and Auto 092 2) Non-state actors documents: a) Statements and reports issued by ONIC about Victims Law and peace-building (2002-2016) b) NGO reports: i) CCJ, about Victims, peace-building and Indigenous Peoples ii) ICTJ about colombian context, victims, peace-building and Indigenous Peoples iii) Human Rights Watch and International Amnesty about colombian context, victims and peace-building iv) Media reports: Verdad Abierta, la Silla Vacía v) Fundación Ideas para la Paz about TJ
3. In-depth interviews[23]: involve asking a set of questions to investigate groups or social worlds, and also to obtain life histories (Travers, 2013: 228).	1) Social Leader: 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. Member of the ONIC since 2008 and 'Secretaría Técnica" in MPC. Interview in May 2012, Bogotá, Colombia. b) Diana Carrillo, a lawyer of Universidad Nacional de Colombia, 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 the ONIC for 3 years, since August 2010. Interview in July 2016, Milan, Italy. 2) Activists a) Juan Bustillo, a researcher on Displacement and Lands in the Comision Colombiana de Juristas- CCJ, co-author of the books *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*. Interview in July 2011, Bogotá, Colombia.

3. Ethical issues

As Goodale affirms, in developing an analytical framework to locate human rights practices in

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

time and space, it is important to recognise the equal weight to what social theorist's eye sees and what participants in human rights networks themselves tell about the meaning and experiences of human rights as it relates to other forms of social practices (Goodale & Merry, 2007: 30). This research was conducted on the basis of the possibles impacts that the information about the armed conflict may have in the indigenous peoples affected by HR violations and, in their political and legal struggles. Therefore, as the research is "part of a political process" and the researcher is "involve in an ongoing political debate" (Ezzy, 2013: 60) about how the transitional justice in Colombia is consolidating, the ethical consequences of this kind of research were:

Because of the armed conflict is continuing, the researcher informed to the participants about the purpose of the research and the interview. Moreover, the researcher conveyed how the information was to be used, what and how the results were to be reported, the respect for identity privacy (certain forms of protection of anonymity and confidentiality of some interviewees, and issues that were written based on the observation of events, activities, and interactions) and, the political implications of talking about the causes and actors of the armed conflict.

Appendix II. Preliminary mapping of TJ actors (multi-sited level)

	Local/National	Global (international, transnational)
Actors	***Scholars:*** Benavides (2011) Castillejo (2009, 2012, 2013) De Gamboa (2005, 2006, 2007, 2012) Diaz Gomez (2008; 2011) Guzman (2006; 2008) Ibañez (2014) Olarte (2013) Rincón (2010) Saffon, (2006, 2008, 2011) Santamaria (2016) Uprimny (2006, 2008, 2010) ***Organizations:*** CCJ CAJAR DeJusticia Fundación Ideas para la Paz INDEPAZ Movice Red Nacional de Mujeres (Sisma Mujer y Humanas) Ruta Pacifica de las Mujeres ONIC (about indigenous issues)	***Scholars:*** Arthur (2009; 2010) Bell (2009) Buckley-Zistel (2011; 2014) Campbell (2005) Crocker, 2000 De Greiff (2006; 2011) Elster (2004; 2006; 2012) Freeman (2006) Hayner (1994; 2002) Kritz (1995) Leebaw (2008) Minow (1998; 1999; 2000) Ní Alóain (2005; 2006; 2007) O'Donnell and Schmitter (1986) Orentlicher (1991; 2005; 2007) O'Rourke 2007 Reátegui (2011) Roche (2007) Teitel (2000, 2003, 2014) Weitekamp (1993) Zehr (2002) Zolkos (2011) ***Organizations:*** International Criminal Court ICTJ Ulster University –TJ Institute Human Rights Watch International Amnesty International Crisis Group (ICG)
Scenarios	- Congreso de la República - Department of Transitional Justice, Ministry of Justice - National Centre for Historical Memory – CNMH - Corte Constitucional - Tribunales de Justicia y Paz - Fiscal y Procurador General de la Nación - Oficina del Alto Comisionado para la Paz - Sistema Nacional de Atención y Reparación Integral a las Víctimas - Mesa Permanente de Concertación (about indigenous issues) - Foros de Revista Semana y Universidades	UN: - Secretary-General - Human Rights Council - Office of the United Nations High Commissioner for Human Rights - UNPFII and the Special Rappourteurs (about indigenous issues) OAS: - CIDH - Misión de Apoyo al Proceso de Paz de la Organización de Estados Americanos (MAPP-OEA) - Comité Internacional de Cruz Roja (CICR)

Appendix III. Paradigms of TJ

Transitional Justice -TJ has become a very *broad field* of study, which has applied in post-conflict and in post dictatorships contexts, a *heterogeneous field* in which there are a variety of institutional measures related to truth, justice and reparation ("hybrid local/international mechanisms" as Teitel mentions, 2014: xvii), and a *normalized field* to be part of the international/national agenda, particularly of the human rights agenda (De Greiff, 2011: 19). In recent decades, TJ has been at the centre of discussion of different disciplines and it has been the subject of various institutional designs, which focus on "justice" and/or "transition". This responds to some extent paradigms that will be presented briefly through two debates: "justice" as a core of the transition and, the analysis of "transition" with a minimum of justice.

"Justice" in transition

The authors/policy makers have focused particularly on the kind of justice that should prevail from *retributive justice* invoked through criminal prosecution (Elster, 2006), *restorative justice* characterized by the recognition of Truth Commissions (Hayner, 1994, 2002) and *reparative justice* (Weitekamp 1993; De Greiff, 2006). Nevertheless, they have not discussed the main TJ goal, the capacity to promote human rights and liberal democracy[24] (Hoogenboom, 2014). As Elster points out, TJ has become a laboratory for the "empirical study of justice", that is, the debate on how the different normative conceptions of justice are developed in real historical circumstances of political transition (2004: 80). For theorists in favour of retributive justice, justice should take the form of criminal prosecution with some sort of punishment for the guilty. "The return to democracy is accompanied by the desire to see TJ done in an orderly manner, to prove that 'we are not like them'. In practice, nevertheless, this desire may yield to the even

[24] This particular objective is part of the prevailing theoretical contributions of TJ, but there are other debates about it. In South Africa, Arthur says, there have been claims of distributive justice related to transitions to socialism, rather than transitions to democracy. Justice for the crimes of apartheid requires more than the legal-institutional reforms for establishment of democratic citizenship and transformation of an abusive state security apparatus. It requires a redistribution of wealth that was unfairly accumulated through an inhuman political and economic system (2009: 359).

stronger desire for punishment of the obviously guilty" (Elster, 2006: 1).

However, victims, offenders and society often feel that the justice process deepens wounds and social conflict rather than contributing to healing or gaining peace (Zehr, 2002: 2). Hence restorative justice is proposed through non-judicial mechanisms, such as Truth Commissions -TC. While advocates of restorative justice have identified a large number of mechanisms including 'healing circles' as an alternative to criminal proceedings, the TC have become the mechanism most closely associated with this paradigm (Hayner, 1994, 2002; Mendeloff, 2004: 355; Hoogenboom, 2014: 137). Hence "such bodies are designed precisely as a morally second-best alternative when attributions of guilt and punishment are ruled out because of fears that legal prosecution might divide the society or weaken the new, but incomplete, democracy" (Crocker, 2000: 26). Although restorative justice does not primarily refer to forgiveness or reconciliation, the restorative justice mechanisms provide a context in which this could happen. In fact, some degree of forgiveness or even reconciliation occurs much more frequently than in criminal justice cases, this option depends on the individuals. Forgiveness processes are more on the side of justice, as offenders are asked to complete their punishments although they have been forgiven (Zehr, 2002: 6).

"Transition" with justice

Although most discussions have focused on 'justice' in transitional contexts, the debate has also focused on analysing what kind of 'transition' is needed, "from authoritarian regimes toward 'an uncertain something else'"[25] (O'Donnell and Schmitter, 1986: 3-5) and toward a post-conflict peace state or liberal democratization (Hoogenboom, 2014: 31). However, the focus is on

[25] Within this category fit many cases of political change, says Arthur: "revolutions", others "transfers of power", others "regime change", or "restorations", or "independence", or "modernization", or "political development" or perhaps "transitions" of one sort or another. These terms encapsulate changes from capitalism to socialism, military dictatorship to civilian rule, authoritarianism to democracy, communism to liberal democracy, communism to a market economy, and more (2009: 337). Hence the main aim is to discuss how "transition to democracy" was the dominant normative lens through which political change was viewed at this time (Arthur, 2009: 325). Therefore, the reasons of that were: in most of the countries undergoing political change, democracy was a desirable goal for many people; the delegitimation of modernization theory; the transformation of the transitions concept from a tool of socioeconomic transformation to one of legal-institutional reform; and the global decline of the radical Left and its ideological shift in favour of human rights (2009: 340).

transition 'from' rather than the transition 'to'. This is not questioned for a reason, at the time when the concept of TJ emerged, the democratic reform was declared as the main goal by a major segment of the population in countries undergoing political change. It could have been other complementary goals, such as the establishment of civilian rule or the creation of a market economy, however demands for democratization of political power at that time were undeniable (Arthur, 2009: 337). As Quinn recognises, there are three stages to identify the transition:

> (1) Post-conflict transitional societies, meaning societies that are "recover[ing] after mass atrocity, civil conflict, genocide, authoritarian regimes, and so on". These societies are "clearly in the process of seeking to move forward from the past, by dealing with questions of justice". "Forward," here, is defined as "transitioning toward peace and democracy."
> (2) Pre-transitional states are defined as "those in which there has not been a definite transition from one regime to the next, nor a clear move from conflict to peace. Fighting often continues, and the population continues to live in a state of 'suspended animation'."
> (3) Non-transitional states are defined as "countries that may well be regarded by the rest of the world as solidly democratic, peaceful states. And yet under their 'good guy' veneer often lurks a violent past" (Quinn cited in Hoogenboom, 2014: 30-31).

In this regard, there have been several positions, TJ as a subset of the "transition" in which issues of justice appear to be just one of many transient dilemmas and, could include transitional economy or governance transition. Also TJ seems to be a subset of the study of transitions of conflict, in which the justice component of a transition also present economic, political, social and psychological issues. Authoritarian regimes are not the only types of state with a legacy of serious human rights violations. They can also occur in widely democratic states that have experienced prolonged political violence. These 'conflicted democracies' in the terms of Ní Alóain and Campbell have a number of paradoxes and challenges (2005). A 'transition to peace' is different in nature from a 'transition to democracy', Arthur says that justice claims in such contexts are much more likely to revolve around reintegration of ex-combatants, internal displacement, property restitution, power sharing, among others. It is not possible to assume that measures of prosecutions, truth-telling, reparations and reform of an abusive state apparatus clearly work out such different practical problems (2009: 360).

Appendix IV. Colombia and its failed peace processes

Although Colombia has faced an armed conflict for fifty years, it is characterized by a history of failed political negotiations, which it will briefly described below. There have been seven initiatives for peace talks in Colombia. The first was in 1982 with the President Belisario Betancur and the last one with the President Juan Manuel Santos in 2012.

First initiative: In 1981 the government of the liberal former President Julio Cesar Turbay created the first commission of peace that intended to start discussions with the guerrillas, however, the ex-president Carlos Lleras Restrepo, responsible for leading the process, resigned and therefore the process stopped. Afterwards, in 1982 the ex-President conservative Belisario Betancur started the first peace talks, including the FARC-EP, the "Ejercito Popular de Liberación -EPL", the "Movimiento del 19 de Abril M-19", the "Ejercito de Liberación Nacional -ELN" and Autodefensa Obrera -ADO. This process gave as a result the promulgation of Amnesty Law and, in 1984 the signing of "La Uribe" agreement, which included mainly: bilateral Cease-fire, cessation of hostilities and kidnappings, and political spaces for the participation of the guerrillas. Hence the "Patriotic Union" was created. Finally, due to the lack of political support to Belisario Betancurt and the fact that a dialogue with communist groups directed attempt against the principles of the Conservative Party, this process stopped (Acuña, 2012).

Second initiative: Virgilio Barco, a liberal former President, began the dialogues with the FARC in 1988, however, when the paramilitary groups murdered some members of the Left Party Patriotic Union, the process stopped. At the same time, the former President Barco began dialogues with the M-19 in the "Cumbre de Usaquen" and, enacted an Amnesty Law. This caused a peace agreement with this guerrilla in 1990: the surrender of and the reintegration into civilian life. In fact, M-19 became a political force. It was a process led by the "Consejero Presidencial para la Paz" Rafael Pardo Rueda.

The Government of Virgilio Barco, likewise, created "Consejería para la Paz" with the goal to dialogue with guerrilla's groups. Members of the FARC, the ELN and the EPL with the

"Coordinadora Guerrillera Simon Bolivar" formed this "Consejería". This attempt was not successful.

Third initiative: In 1991, the former President Cesar Gaviria started talks with the FARC and the ELN in Venezuela (later they moved to Mexico). This was called "Diálogo de Caracas". Due to the assassination of former minister Argelino Duran Quintero, kidnapped by the guerrillas in 1992, the process stopped. However, at the same year, after peace agreements it was given the demobilization of several guerrilla's groups, such as the "Ejercito Popular de Liberacion -EPL", the indigenous group Quintin Lame and the "Partido Revolucionario de los Trabajadores -PRT". In 1993, some members of "Corriente de Renovación Socialista", a division of the ELN, surrendered of weapons and reintegrated into civilian life.

Fourth initiative: In 1998 the former President Ernesto Samper granted to ELN a "political status", whose objective was to facilitate discussions on a peace agreement. During this time, the Government met the ELN and the EP in Spain and Germany, however, there had no favourable results due to infiltration of the media. Due to some conversations, the agreement "Puerta del Cielo" which intended to make a National Convention was created. This process based on a large number of good intentions, did not reached significant advances.

Fifth initiative: The conservative former President Andres Pastrana, won the presidency with the promise of achieving peace dialogues and end the armed conflict. Hence to achieve this, the Government removed the military forces of an area of 42 thousand square kilometres to carry forward the peace negotiations: "Zonas de Distención para la Paz". In 1999 the process with the FARC started (the third formal attempt), however, these dialogs were developed in the middle of the armed confrontation. The process stopped after several attacks, in 2002. The greatest progress was the creation of "Agenda Común- Cambio hacia una nueva Colombia" between the government and the FARC.

Sixth initiative: In 2002, the former President Alvaro Uribe Velez with the support of the United States, launched a military offensive against the guerrillas and, began peace dialogues with the

ELN in Cuba. In addition, in 2007 the process with the guerrilla group was restored in Venezuela, with the support of the former President Hugo Chavez. This had no positive results. Finally, the biggest breakthrough was the process with the "Autodefensas Unidas de Colombia - AUC", which achieved a demobilization of several paramilitary groups. Despite this, the process was strongly questioned.

Seventh initiative: In 2012 the President Juan Manuel Santos signed an agreement with the FARC, which establishes a procedure and 'a road map', to carry out the peace negotiations. This process is known as "Proceso de Paz de la Habana", and it focuses on a direct dialogue between the Government, represented by Humberto de la Calle Lombana and, the FARC-EP by Ivan Marquez. This process was regulated in "Acuerdo General para la terminación del Conflicto y la Construcción de una Paz estable y duradera", a result of the agreements between the Government and the FARC-EP in Havana. This was signed on august 26th/2012 and was announced on September 5th September by the President Juan Manuel Santos and the FARC commander Timoleón Jimenez.

Appendix V. ONIC at a transnational level (2005-2016)

Statement by Ana Manuela Ochoa, a Kankuama indigenous woman and Secretary of ONIC, in the side event "Truth Commissions and Indigenous Peoples: Lessons Learned, Future Challenges", organized by ICTJ, ONIC and ACIN/CRIC, as a part of the eleventh session of the United Nations Permanent Forum on Indigenous Issues (UNPFII), New York. May 15th 2012. Photo: Monica Acosta

Rosalina Tuyuc (Guatemala's mayan), a Lecturer of Universidad Carlos III de Madrid, Aida Quilcue and Aty Quigua, indigenous women from Colombia in the side event "Seminar Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace", organized by Columbia University in May 14th 2016, New York. Photo: Monica Acosta

Statement by Juvenal Arrieta, General Secretary of ONIC, within the UNPFII session in 2016, New York, May 17th 2016. Photo: Monica Acosta

Since 2007, ONIC was established as an instance of self-government and changed its structure by establishing a Great Councillor (Consejero Mayor de Gobierno), an IP National Parliament and an Indigenous National Council of Justice. As a result of the humanitarian crisis[26] caused by the armed conflict on IP, ONIC established as a primary objective the construction of "common strategies and dialogue with other social movements, NGOs, the Colombian government and national and international organizations of solidarity and cooperation, among others, to streamline processes and establish peace, justice and reparation which may end the war [...] and post conflict guarantees acquire own future for IP" (ONIC, n.d.). Hence based on this objective,

[26] For instance, the Constitutional Court found that the internal armed conflict disproportionately affects indigenous peoples and endangers their physical and cultural survival. It observed three types of factors responsible for the disintegration, extermination and forced displacement of the indigenous population: first, directly caused by the conflict, for example militarization or belligerent confrontations occurring within indigenous territories and, massacres; related to the conflict but not directly caused by it, such as the cases of territorial dispossession caused by economic actors; and finally, factors that are aggravated by the conflict, that increase vulnerability, such as poverty (Constitutional Court, Decision 004/2009).

Santamaria recognizes the following four political strategies: i) Lobbies and pressure against the Colombian State, used to show and denounce the violation of IP rights, for example the lobby at the UNPFII and the Special Rapporteur during the last decade; ii) Lobbies to other States, which has led the organization to consolidate new alliances with indigenous networks and social sectors in other countries, such as the Coordinadora Andina de Organizaciones Indígenas; iii) Lobbies to supranational and international organizations, through which ONIC has implemented advocacy strategies in international forums (EU, UN and OAS); lastly iv) Economic lobbies to bilateral and multilateral agencies, such as the World Bank (Santamaria, 2010: 201-202). Therefore, within these political strategies and, based on Keck and Sikkink's transnational tactics, the main statements and reports by ONIC and its allies between 2005 and 2016 will be described below:

Year	Name	Strategy	Statement/Document abstract	Strategic partners
2002	SOS por los pueblos indígenas de Colombia	*Information politics*	Rechazo a la política de exterminio de los pueblos indígenas, por parte del gobierno del Presidente Álvaro Uribe Vélez. Solicitud de apoyo de la comunidad internacional.	ONIC, International Community
2005	Comisión Corográfica de los Pueblos Indígenas de Colombia	*Symbolic politics*	Proyecto realizado por la ONIC para visibilizar y exigir los derechos fundamentales de los pueblos indígenas en riesgo de extinción demográfica, describiendo la situación actual urbana-rural, la descripción demográfica, el territorio, las consecuencias del desplazamiento forzado y los mega proyectos.	ONIC, International Community
2005	Llamado desde los pueblos indígenas del Cauca y de Colombia a la solidaridad y al acompañamiento activo y concreto a las comunidades del norte del Cauca y de Colombia. (Iniciativa Diplomática de Paz)	*Information politics, leverage and accountability politics*	Análisis sobre la 'existencia' (a pesar de la negativa del gobierno de reconocerlo) y consecuencias del conflicto armado en territorio indígena del Cauca. Solicitud del reconocimiento de la Guardia Indígena como Agente Internacional de Paz; y de la creación de creen zonas indígenas de paz, libres de operaciones militares y sujetas de observación internacional.	ONIC, CRIC, ACIN
2005	Carta presentada al Relator Especial en el Foro Permanente	*Leverage and accountability politics*	Solicitan la atención de la ONU en los siguientes aspectos: - Reconocer la Guardia Indígena	ONIC, CRIC, ACIN, Organización Wayuu ORJUWAT

	sobre Cuestiones Indígenas		como un Agente Internacional de Paz. - La creación de una Relatoría Permanente para los Pueblos Indígenas de Colombia para monitorear y documentar las acciones que se requieran para proteger los derechos de los PI.	
2006	Creación del Consejo Nacional Indígena de Paz (CONIP)	*Symbolic politics, information politics,*	Análisis sobre qué entienden los pueblos indígenas sobre 'paz', 'reparación' y 'verdad' en la ley de Justicia y Paz.	ONIC, CIT, OPIAC, AICO
2006	Misión Internacional de Verificación de la crisis humanitaria y de derechos de los pueblos indígenas colombianos	*Symbolic politics, leverage and accountability politics*	Objetivo: una misión alternativa -no official- con la participación de delegaciones indígenas y de la sociedad civil para evaluar y recoger información sobre la situación de los pueblos indígenas (en el contexto de la aplicación de la Ley de "Justicia y Paz"). También buscaba contrarrestar una de las restricciones del sistema de Naciones Unidas para el que sólo los Estados pueden solicitar la realización de visitas o misiones para investigar la situación de derechos humanos en los países miembros de la organización.	ONIC, CIT, OPIAC, AICO, representantes indígenas de Canadá, Estados Unidos y diferentes países de América Latina
2006	Pronunciamiento en la 24 sesión del GTPI	*Information politics, leverage and accountability politics*	Pronunciamiento sobre la violación de los Derechos Humanos y la militarización de los territorios indígenas. Solicitaron al Consejo de Derechos Humanos "que ratificara las recomendaciones hechas por el Relator Especial para Pueblos Indígenas en el caso colombiano, y que en consecuencia instara al Gobierno a cumplir con sus obligaciones internacionales".	CECOIN, Organización Indígena de Antioquia (OIA), CRIC
2006	Pronunciamiento en el quinto período de sesiones del UNPFII	*Information politics*	Jaime Arias se pronunció respecto a la grave situación de Derechos Humanos. Luis Alfonso Tuntaquimba hizo un pronunciamiento sobre la "mujer, niñez y juventud indígena en Colombia".	ONIC
2007	Informe: Colombia, Chile y Perú. Criminalización de las demandas de los	*Information politics*	Reúne información y denuncia la criminalización de las demandas indígenas ante organismos y foros internacionales. Seleccionó tres de los	Coordinadora Andina de Organizaciones Indígenas, CAOI

	pueblos indígenas		seis países que reúne la CAOI. El documento final recoge en 36 páginas el proceso histórico, la evaluación política del Estado, la aplicación de políticas y prácticas de Estado y casos emblemáticos de cada país.	
2007	Tribunal Permanente de los Pueblos- TPP	*Symbolic politics, leverage and accountability politics*	En julio de 2008 se llevó a cabo el "TPP", en el que jueces independientes internacionales indígenas y no-indígenas, y autoridades indígenas colombianas, "juzgaron el Estado colombiano y las empresas transnacionales por su responsabilidad en las múltiples y sistemáticas violaciones de derechos de los Pueblos Indígenas"	ONIC
2007	La ONIC frente al paramilitarismo en colombia y el proceso de impunidad	*Information politics*	Crítica a la estrategia paramilitar que ha sido diseñada, operativizada e institucionalizada por el Estado. Igualmente, a lo establecido en la ley de Justicia y Paz. Hacen referencia a los derechos de las victimas a la verdad, la justicia y la reparación, conforme a usos y costumbres indígenas.	ONIC, CECOIN
2007	Pronunciamiento período de sesiones del UNPFII	*Information politics*	Hacen referencia a la situación de los indígenas, a la Misión Internacional de Verificación de los Pueblos (MIV) (septiembre 20-30 del de 2006) y solicitan una nueva visita del Relator Especial.	ONIC, Consejo Nacional Indígena de Paz (CONIP), CECOIN, CRIC, OIA, OIK, Fuerza de Mujeres Wayúu
2008	Minga Nacional de Resistencia Indígena y Popular	*Symbolic politics, leverage and accountability politics*	Antecedentes: "Minga por la Vida, la Justicia, la Autonomía y la libertad" - 2004 y "Cumbre de organizaciones sociales", 2006. En octubre de 2008 aproximadamente 10.000 indígenas se movilizaron en todo el país. Objetivo: construir redes conjuntas de lucha contra las dinámicas que vulneran la vida de los pueblos en Colombia. Sus reclamos fueron relacionados con 5 temáticas: - Tierra, territorio y soberanía - Vida y derechos: Para la Minga, paz no solo hace referencia al cese del conflicto	*Organizaciones indígenas:* - CRIC - ONIC - Organización Regional Indígena del Valle, ORIVAC - Delegaciones de los pueblos Pastos y Embera Katio del Alto Sinú. *Organizaciones campesinas:* - Coordinador Nacional Agrario, CNA

			y la violencia, sino que también quiere abarcar con este término aspectos de desigualdad, exclusiones y bienestar. - Modelo económico y leyes del despojo - Acuerdos incumplidos - Agenda de los Pueblos Los 5 puntos fueron: 1. No aceptamos "Tratados de Libre Comercio" porque tienen el propósito de despojarnos de nuestros derechos, culturas, saberes y territorios. 2. Rechazamos y exigimos la derogatoria de las reformas constitucionales y legales que sirven a los intereses del modelo económico y a la codicia transnacional. 3. Denunciamos el terror y la guerra como estrategias de despojo que en Colombia se implementan a través del Plan Colombia y la política de Seguridad Democrática. 4. Exigimos el cumplimiento de normas, acuerdos y convenios que se ignoran de manera sistemática. Pero no exigimos solamente como indígenas. Todas las causas son nuestras. 5. Construyamos la Agenda de los Pueblos. Nos comprometemos a compartir y sentir el dolor de otros pueblos y procesos. Tejido de dolor que se haga camino para que esta institucionalidad ilegítima al servicio del capital transnacional sea reemplazada por un Gobierno Popular Sabio.	- Comité de Integración del Macizo Colombiano, CIMA - Movimiento Campesino de Cajibío- ANUC-UR - Asociación de Campesinos Bajo Cauca *Organizaciones de trabajadores:* - Central Unitaria de Trabajadores, CUT - Central Unitaria de Trabajadores, CUT Cauca - Codesco *Organizaciones / Fundaciones Nacionales e internacionales* - Coordinación Colombia Europa Estados Unidos, CCEE - Coalición de Organizaciones Sociales - Campaña Permanente Tierra, Vida y Dignidad - Red de Hermandad y Solidaridad por Colombia - Campaña Prohibido Olvidar - Gran Coalición Democrática - Red por la Vida y los Derechos Humanos del Cauca - Cesnsat Aguaviva - Fundación Sol y Tierra - Asociación Minga - Suippcol

				Organizaciones estudiantiles - Minga Universitaria - Asociación de Estudiantes Universitarios, La Colombiana - Estudiantes Univalle
2008	Primera session MEPI	*Information politics*	Expresaron la grave situación de Derechos Humanos de los Pueblos Indígenas y la falta de implementación, por parte del Estado, de las recomendaciones hechas por el Relator Especial Stavenhagen.	ONIC, Fuerza de Mujeres Wayuu (Sutsuin Jiyeyu Wayuu) y la Asociación Jepirra, de Colombia
2008	Octavo período de sesiones del UNPFII	*Information politics*	Ana Manuela Ochoa, en nombre de la ONIC, se pronunció acerca de la grave crisis humanitaria que atravesaban los indígenas, en particular las mujeres, por causa del conflicto armado. Ante lo cual recomendó al foro, la realización de una misión urgente en el territorio, apoyo a la visita del Relator Especial James Anaya, y la visita del Asesor Especial del Secretario General sobre la Prevención del Genocidio.	ONIC
2009	Informe sobre mujeres. ONIC	*Information politics*	Evidencia la realidad de las mujeres indígenas, afectadas doblemente por el conflicto y la violación sistemática de los derechos humanos. Resalta el avance de las mujeres indígenas en la participación organizativa y política del poder local y regional.	ONIC
2009	Informe sobre pueblos indígenas en peligro de extinción. ONIC	*Information politics*	Recoge el estudio de la misión corográfica en los territorios de los pueblos en vía de extinción en Colombia. Analiza la realidad sociocultural de estos pueblos y, al mismo tiempo, cuenta la problemática y dificultades que sumen a los pueblos indígenas, y lo que significaría para la sociedad nacional la desaparición de estos grupos.	ONIC
2009	Informe: situación de la población indígena en el	*Information politics*	Analiza las circunstancias históricas que han llevado a la comunidad Emberá Katío a migrar fuera de su	ONIC

	Distrito Capital de Bogotá. ONIC		territorio, las presiones de los actores del conflicto armado sobre sus territorios y cultura.	
2009	Informe impunidad	*Information politics*	Recoge la lista de casos sobre violaciones a los derechos humanos de los pueblos indígenas en el marco del conflicto armado. Dicho informe fue presentado ante la Fiscalía General de la Nación y comprender la lista de los diferentes crímenes perpetuados contra las comunidades desde 1985.	ONIC
2009	Informe Tribunal Permanente de los Pueblos, sesión Colombia: Audiencia sobre genocidio indígena.	*Information politics, Symbolic politics,*	Ejercicio de sistematización que refleja el genocidio contra los pueblos indígenas en Colombia. La audiencia se efectuó en Atánquez-César en julio de 2008.	ONIC
2009	Reporte base de datos ONIC-CECOIN, sobre violaciones a los derechos humanos de los pueblos indígenas.	*Information politics*	Recopila cada una de las modalidades e infracciones a los derechos humanos y derecho internacional humanitario cometidas por los actores armados legales e ilegales involucrados en el conflicto. Comprende desde el año 1974 hasta 2009.	ONIC, CECOIN
2009	Informe: Asesinatos políticos pueblos indígenas.	*Information politics*	Retoma las bases de datos de ONIC-CECOIN y visibiliza en el los pueblos más golpeados por la violencia.	ONIC, CECOIN
2009	Informe de seguimiento a la aplicación de las recomendaciones del Relator Especial del 2004. (2005-2008). Comisión Colombiana de Juristas	*Information politics*	Recoge las omisiones en la implementación de las recomendaciones reflejadas en la crisis de derechos humanos de los pueblos indígenas. Evidencia el estado de las medidas adoptadas por el gobierno, insuficientes en temáticas como el desplazamiento forzado, educación, salud, etc.	ONIC, CCJ
2009	Informe ONIC al Relator de Naciones Unidas. Estado de los Derechos Humanos y Colectivos de los Pueblos Indígenas de Colombia: etnocidio, limpieza étnica y destierro.	*Information politics*	Analiza, desde una mirada crítica, a los pueblos indígenas como víctimas que interrogan al Estado sobre sus derechos en los campos de lo social, lo político y lo cultural, al mismo tiempo se convierten en objeto de la más aguda represión en todas sus manifestaciones.	ONIC

2009	Statement at EU	*Information politics*	Ponencia ante el Parlamento Europeo con relación al acuerdo de asociación entre la Comunidad Andina y la Unión Europea, los megaproyectos y conocimientos tradicionales.	ONIC
2010	Palabra dulce, aire de vida, por la supervivencia de los pueblos indígenas en Colombia	*Symbolic politics, information politics, leverage and accountability politics*	En la campaña expresan: "la preocupación de las organizaciones indígenas, sobre los efectos adversos en los derechos de los pueblos indígenas causados por el conflicto armado interno, la pobreza, la discriminación, el abandono institucional y la imposición de un modelo de desarrollo ajeno y devastador en los territorios indígenas, que amenaza con la extinción física y cultural de los 102 pueblos del país"	ONIC
2010	Autoridad Nacional de Gobierno Indígena (ONIC) en el Noveno Período de Sesiones del UNPFII	*Symbolic politics, information politics*	Pronunciamiento sobre las violaciones a los derechos humanos y por el conflicto armado intemo. Recomienda que el UNPFII haga seguimiento a las recomendaciones del Relator Especial y del cumplimiento de los Autos 004 y 092 de la Corte Constitucional. Que el UNPFII haga una misión para que de cuenta del riesgo de extinción fisico y cultural de algunos pueblos indígenas. Que el Experto de la Secretaría General sobre Genocidio visite el país.	ONIC
2010	Ponencia de Dora Tavera en el Noveno Período de Sesiones del UNPFII	*Symbolic politics, information politics*	Expresa su preocupación por las persecuciones de jovenes lideres y lideresas indígenas en latinoamérica, por la construcción de megaproyectos los asesinatos y desplazamientos forzados en Colombia, así como la extinción física y cultural de algunos PI. Las ordenes 004 y 092 de la Corte Constitucional se han inclumpido, y las violaciones han aumentado de forma significativa.	Enlace Continental de Mujeres Indígenas- ECMIA y ONIC
2010	Statement at UN	*Information politics*	On October 6, 2010 CCJ and ONIC issued a joint statement at UN in which they reject the position of the government of Juan Manuel Santos in the interactive dialogue with the Special Rapporteur, showing the severe human rights situation of IP.	CCJ, ONIC

2011	Declaración CCJ en el 18° periodo de sesiones del Consejo de Derechos Humanos de Naciones Unidas. Tema: Informe del Relator Especíal sobre Pueblos Indígenas -Industrias extractivas en territorios indígenas.	*Information politics*	Sobre los proyectos extractivos como una de las fuentes más importantes de abusos de los derechos de los PI: La implementacion de proyectos extractivos no solamente afecta la libre determinación de estos pueblos, sino que esta reforzando el alto riesgo de exterminio cultural o físico. CCJ pide al Consejo de Derechos Humanos respaldar al Relator en la supervision de la aplicacón de sus recomendaciones y de la Declaraciôn de Naciones Unidas sobre los Derechos de los Pueblos Indigenas.	CCJ
2012	Side Event at UNPFII: Truth Commissions and Indigenous Peoples: Lessons Learned, Future Challenges.	*Symbolic politics, information politics*	Panelists: - Alcibiades Escué, ACIN, statement about how territories have been consolidated and battalions camp. He went on to speak about harmonic justice, the purpose of which is to promote self-determination for persons and communities so that they can best acquire life essentials. - Ana Manuela Ochoa, ONIC: focused on the Victims and Land Restitution Law. The law only applies to acts committed since January 1, 1985. So what is sought is transformational, rather than transitional, justice. Indigenous peoples have suffered cultural and economic damage, with specific damage caused to women and children. - Esther Attear, Passamaquoddy tribal member and lead staff person for the Maine Wabanaki-State Child Welfare Truth and Reconciliation Commission. - Alvaro Pop, Guatemalan independent expert and member of the UNPFII, (Goldfaden, M from Auschwitz Institute for Peace and Reconciliation, 2012). Moderator: Eduardo Gonzaléz-Cueva, Truth and Memory Director at ICTJ. This event launched and distributed a resource book entitled “Strengthening Indigenous Rights Through Truth Commissions”, which summarizes the	ICTJ, ONIC and ACIN/CRIC

			findings of an international conference on truth commissions and indigenous rights hosted by ICTJ in 2011. It makes concrete proposals to consider when setting up a truth commission focused on abuses committed against indigenous peoples.	
2012	Strengthening Indigenous Rights through Truth Commissions: A Practitioner's Resource.	*Information politics*	The main idea of the report is the TC that involves IP, should go beyond a TJ approach focused on the State, beyond an individual rights analysis, beyond recent violations, and beyond written and archival sources, in which a "nation-to-nation" focus and oral traditions are put in place, also a collective rights view and a redress for historical abuses.	ICTJ
2013	A look at women's rights in Colombia. Shadow report to CEDAWcommittee 2013	*Symbolic politics, information politics*	It is related to the regulations about some of the aspects of discrimination and violence against women and, serious events that have taken place in Colombia, all of them having an impact on the lives of women: the development of investigations of the crimes committed by demobilized paramilitaries, even more serious in the case of crimes against women; the emergence of post-demobilization new criminal groups; the approval and implementation of the Victims and Land Restitution Law; the talks with the FARC guerrillas, and the entry into force of free trade agreements.	Women organizations, Dejusticia CCJ CLADEM Colombia, Consejería Mujer Familia y Generación- ONIC, Coordinación Mujer, Familia y Niñez-OPIAC, Mesa de Trabajo Mujer y Conflicto Armado, Sutsuin Jiyeyu Wayuu - Fuerza de Mujeres Wayuu, among others
2013	Comunicado: Movimiento Indígena exige verdad, justicia y reparación integral a las FARC	*Information politics*	Hace referencia a los PI como víctimas. Por eso las condiciones que exigen para el diálogo son: que se establezca una agenda de diálogo como mecanismo satisfactorio de verificación internacional y de las propias comunidades. Que respeten las autoridades indígenas y comunidad en general, y sobre todo, que respeten el ejercicio de control territorial y que asuman Verdad, Justicia y Reparación.	CRIC, ACIN, ONIC
2013	Minga Social Indígena y Popular y el Gobierno	*Symbolic politics, information*	La Minga como "escenario de resistencia y de paz". - Demandas: el cese al fuego, la	ONIC

	Nacional Minga Indígena Nacional por la Paz y la Reconciliación del país Marcha Nacional por la Paz Congreso Nacional por la Paz	*politics*	desmilitarización de los territorios, la reconciliación y la necesidad de que le Gobierno y las FARC pongan fin al conflicto armado. - Acuerdos: Acuerdo No. 12 El Gobierno acepta la propuesta de garantizar todas las condiciones para que tres delegados de la Minga ONIC, asistan a una reunión con Humberto de la Calle (Jefe del equipo de Negociación del Gobierno Nacional) y Sergio Jaramillo (Alto Consejero Presidencial para la Paz); esta reunión tendrá como fin concretar la visita a la Habana de delegados de la Minga ONIC Acuerdo No. 13: El Ministerio del Interior garantizará los medios necesarios para la realización de los Foros de Paz de acuerdo a la propuesta presentada por la ONIC.	
2013	Carta al Gobierno Nacional y a las FARC frente a los diálogos de Paz en Cuba	*Information politics*	- A las FARC: Realizar un acercamiento humanitario para tratar la grave problemática de infracciones al DIH (en relación con minas anti-persona, no reclutamiento de jóvenes, no utilización de la violencia sexual dentro de la guerra, no realización de acciones militares contra la población civil, cese de asesinatos de líderes). - Al Gobierno Nacional: Reconocimiento de los Pueblos Indígenas y la sociedad civil como actor fundamental por la Paz. - A la Mesa de La Habana en conjunto: Definir ruta de dialogo político y participación en lo referente a todos los puntos tengan que ver directamente con los PI.	ONIC, CRIC
2013	ONIC at OAS Inter-American Commission on Human Rights	*Information politics*	ONIC presented a report at the OAS Inter-American Commission on Human Rights on the alarming situation indigenous groups face due to violence, substantial displacement, discrimination, poverty, and institutional abandonment by the Colombian government. The organization highlighted the critical	ONIC

			condition of some indigenous communities that face cultural and physical extermination; their livelihood is affected by military operations and mining concessions and the presence of extractive industries in their territories (WOLA, 2013).	
2014	Agenda Nacional de Paz de los Pueblos Indígenas de Colombia	*Information politics*	1. La primera fue llevada a La Habana en la primera visita. Esta versión solo desarrolla un punto: DDHH y DIH. Los PI expresan que "a lo largo de los siglos, han sufrido un proceso de exterminio físico y cultural cuyas raíces históricas se han profundizado por el conflicto armado, el narcotráfico y una política de desarrollo irrespeta los territorios, autonomía y cultura. Han sido por tanto, víctimas de la negación, la asimilación y la imposición de proyectos de dominación, y de más de cinco décadas de confrontación armada interna, en proporción desmesurada, por lo que como sujetos políticos y plantean las propuestas de paz que garanticen los derechos fundamentales a la vida, al territorio colectivo, la autonomía, la cultura y la defensa de la Madre Tierra". 2. Esta cartilla avanzó en algunos puntos: Verdad, Justicia y Reparación Integral. Su objetivo era proponer una ruta metodológica para la construcción de una agenda definitiva.	1. ONIC 2. ONIC, PNUD y el Programa ProIndígena de la GIZ
2014	Informe en la 7ma sesión del MEDP	*Information politics*	Hace referencia a las consecuencias del conflicto armado en los territories indígenas y expresa que se requieren procesos que permitan el acceso a la justicia. Los sistemas indígenas están llamando con urgencia a sistemas de justicia no basadas en lo punitivo, sino en la reconstrucción de la armonía y el equilibrio comunitario, social y planetario, de nosotros los seres humanos, los otros seres y la Madre Tierra como garante de pervivencia. Por lo tanto requieren que se recomienden mecanismos claros en la	CRIC, ECMIA, ONIC

			aplicabilidad del enfoque diferencial.	
2014	ONIC en La Habana	*Symbolic politics, Information politics*	Visita de Luis Fernando Arias, Consejero Mayor de la ONIC, como integrante de la tercera delegación de víctimas que participa en La Habana. Pronunciamiento sobre PI como víctimas históricas del conflicto armado. Propuesta de Paz desde los PI.	ONIC
2015	Foro Nacional de Paz de los Pueblos Indígenas	*Symbolic politics, Information politics*	Panel 1. Perspectivas políticas y legislativas de los diálogos en La Habana en el marco de la Construcción de Paz en Colombia. Panel 2. Somos constructores de paz porque somos víctimas por defender la Madre Tierra, Aida Quilcue Vivas.	ONIC
2015	II Informe de seguimiento a la aplicación en Colombia de las recomendaciones del Relator Especial sobre la situación de los derechos humanos y libertades fundamentales de los pueblos indígenas 2010 - 2013	*Information politics*	Informe sobre los actores del conflicto armado y los PI. Igualment sobre la consolidación del movimiento social por la paz. Solicita a la Relatora Especial hacer un llamado a las delegaciones de las partes en la Mesa de Conversaciones de Paz a comprometerse a garantizar la participación de los pueblos indígenas en el proceso de paz, a tomar en serio sus propuestas sobre acuerdos de cese bilateral del fuego y cese de actividades militares en sus territorios ancestrales.	CCJ
2016	Debate sobre "Pueblos Indígenas: conflicto, paz y resolución", y "Las Mujeres Indígenas en la paz y en los conflictos" en el marco del Foro Permanente sobre Cuestiones Indígenas de la ONU	*Symbolic politics, Information politics*	Se llevaron a cabo dos paneles con debates interactivos para identificar estrategias y enfoques, así con medidas concretas para asegurar la paz y prevenir los conflictos: 1. Los Pueblos Indígenas: conflicto paz y resolución: Con el fin de exponer casos concretos de conflictos que los pueblos indígenas experimentan e identificar los aspectos particulares de estos conflictos, así como para destacar las estrategias y las mejores prácticas para prevenirlos, construir la paz y buscar la reconciliación. Participantes: - Akli Sheika Bessadah, Imouhagh International Youth (Tuareg) - Juvenal Arrieta, Organizacion Nacional Indigena de Colombia	ONIC, CRIC

			(ONIC-Colombia) - Niengulo Krome, Naga People Movement for Human Rights (India) - Yohanis Anari, Organisasi Pribumi Papua Barat, (West Papua) Co-moderation: Raja Devasish Roy, Member of the Forum and. Phillip Taula, Deputy Permanent Representative of New Zealand to the UN. 2. Las Mujeres Indígenas en la paz y en los conflictos: Discusión sobre las situaciones particulares de las mujeres indígenas, en sus estrategias para tener acceso a la justicia, en su contribución a la paz, así como en sus aportes a la reconciliación y al saneamiento en busca de la armonía con sus comunidades y la sociedad. Participantes: - Rosalina Tuyuc, National Association of Guatemalan Widows - CONAVIGUA; - Dawn Lave-Harvard, President of the Native Women's Association of Canada; - Anita Isaacs, Haverford College. Moderated by: Maria Eugenia Choque, Member of the Permanent Forum on Indigenous Issues	
2016	International Seminar on Indigenous Peoples' Rights and Unreported Struggles: Conflict and Peace.	*Symbolic politics, Information politics*	The seminar was holding on 14-15 May. It was divided in more than 6 sessions related to experiences from the North, Latin America, Africa and the Pacific, also some participants gave an overview of legal and policy framework on conflict and peace, the strengthening tools for peace sustainability and indigenous peoples, the indigenous women and experiences in dealing with peace-making and conflict. Participants: Aida Quilcue, CRIC-ONIC. Ati Quigua, Dunen Muelas, CIT	Columbia University: The Institute for the Study of Human Rights, co-sponsored by The Center for the Study of Ethnicity and Race; Galdú Resource Centre for the Rights of Indigenous Peoples (Norway); The International Work Group on Indigenous Affairs (Denmark); Tebtebba Foundation (The Philippines); Universidad Indígena

				Intercultural de América Latina y el Caribe.
2016	Diálogo Intercultural, justicia y violencia sexual en pueblos indígenas, Bogotá	*Symbolic politics, Information politics*	Objetivo unificar propuestas para el abordaje de la violencia sexual contra mujeres, niñas y niños indígenas, en el marco de la prevención, acceso a la justicia, verdad y construcción de paz.	- Ministerio de Justicia - Fiscalía General de la Nación - Instituto Colombiano de Bienestar Familiar (ICBF) - Consejerías Presidenciales para los Derechos Humanos y la Equidad de la Mujer, con el apoyo de: - Organización Internacional para las Migraciones (OIM) - ONU Mujeres - UNICEF - OXFAM - ONIC
2016	Comunicado: ¡La Paz sí es con nosotros (as)!	*Information politics*	Sobre la consulta previa y el apoyo al "sí al plebiscito por la PAZ" y a la implementación de la zona veredal transitoria de normalización (ZVTN) en el municipio de Buenos Aires y del punto de normalización ubicada en el municipio de Corinto, territorios indígenas en el Cauca.	ACIN y ONIC
2016	Comunicado sobre Propuesta Étnica a la Mesa de Diálogos de Paz	*Information politics*	Propuesta del Capítulo especial del Enfoque Étnico, de la Comisión Étnica para la paz y la defensa de los Derechos Territoriales al señor Jean Arnault, Jefe de la Misión Política de ONU para la verificación de los acuerdos de paz de los diálogos de La Habana, para que sea entregada a la delegación de paz del gobierno de Colombia y las FARC.	ONIC
2016	Comunicado Día Internacional de los Pueblos Indígenas	*Information politics*	Con entrega del bastón de la Paz al Ministro del Interior, Pueblos Indígenas reiteran su vocación histórica de paz y apoyo al Sí a la Paz.	- OPIAC - Consejero Mayor de la ONIC - Luis Fernando Arias Arias - CIT, Jeremías Torres;

				- Eduardo Estrada, AICO - Senador de MAIS - Luis Evelis Andrade Casamá - Representante de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos, Todd Howland.
2016	Inminente riesgo de exclusión del capítulo étnico del acuerdo final para la terminación del conflicto y la construcción de una paz estable y duradera en Colombia	*Symbolic politics, Information politics*	Comunicado sobre las preocupaciones por la exclusión del Capítulo Étnico en las últimas reuniones de la Mesa de Conversaciones de Paz entre el Gobierno Nacional y FARC. Por lo tanto se declaran en Asamblea Permanente.	

Source: http://www.onic.org.co/comunicados-onic

Appendix VI. TJ and IP at a national level (2005-2016)

Mesa Permanente de Concertación en los Gobiernos de Álvaro Uribe

Año	Acta
2002	No hubo Mesa Permanente de Concertación con Pueblos y Organizaciones Indígenas –MPC,
2004	Acta MPC sobre salud
2005	Acta MPC para establecer lineamientos de concertación
2006	Acta MPC sobre activación de comisiones técnicas
2007	Una sesión de la MPC
2008	Dos sesiones de la MPC
2009	Cinco sesiones de la MPC

Decreto Ley de Víctimas y Restitución de Tierras (Gobierno Juan Manuel Santos).

No.	Acta
1	Acta Sesión MPC, 3 al 6 de Oct de 2010
2	Acta MPC, 21 y 22 de Noviembre de 2010
3	Acta MPC, 8 al 11 de marzo de 2011
4	Acta MPC, 28 al 30 de junio de 2011
5	Acta MPC, 12 al 14 de septiembre de 2011
6	Acta MPC, 23 al 26 de noviembre de 2011
7	Acta MPC, 7 de diciembre de 2011
8	Acta MPC, 20 al 23 de febrero de 2012
9	Acta MPC, 15 y 16 de marzo de 2012
10	Acta MPC, 29 de marzo de 2012
11	Acta MPC, 14 de noviembre de 2012
12	Acta MPC, 28 al 20 de enero de 2013
13	Acta MPC, 5 y 6 de marzo de 2013
14	Informe Final de la Contraloría General de la República. Capítulos I, II y II. Informe Étnico. Versión Mayo 21 de 2013.
15	Acta MPC, 5 y 6 de agosto de 2014
16	Reunión de Alto Nivel- Implementación Decreto Ley 4633, 12 de noviembre de 2014
17	Acta MPC, enero de 2015