

**ABORIGINAL PEOPLE IN A TIME OF DISORDER:  
EXPLORING INDIGENOUS INTERACTIONS WITH JUSTICE IN COLOMBIA**

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## ABSTRACT

This study of law and aboriginal people in Colombia builds on the premise that law is a form of local knowledge and that state law is reshaped locally, producing outcomes unanticipated by the state itself. Comaroff's (2001) idea of *lawfare*, in which the state uses a legal regime to erode local autonomy, reflects the current reality in Colombia, but this notion does not explain this situation entirely. My data come from interviews with aboriginal leaders, experience as a public servant and reading of academic and popular literature. This case study of the Justice and Peace Law of 2005 examines legal processes of the state and aboriginal communities' public responses to the state and their own internal debates and processes. In the end, I was able to explore the intersection of the state and aboriginal people. Colombia's unique violence, product of political struggles and economical interests, was supposed to disrupt society has, paradoxically, strengthened community ties.

I have drawn three major conclusions to my argument. First, the passage of the JPL has inadvertently strengthened solidarity amongst the Embera – Chamí and other aboriginal groups. Second, this strengthening of solidarity has itself increased indigenous identity; and third, aboriginal justice practices have been transformed and solidified. This too has strengthened community cohesion.

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## 1. INTRODUCTION

In February 2006, as a Colombian civil servant,<sup>1</sup> I attended a workshop about the Bill No. 975 of 2005 called *Justice and Peace Law*<sup>2</sup> (JPL) whose participants were civil servants and indigenous leaders. There, an indigenous leader approached to me and said: “Please tell me about reparations and the JPL. How do you eat that?”<sup>3</sup>. This expression is used in Colombia to indicate confusion on how to use something. The state’s presentation on the applications and definitions of the law confused this leader, a sentiment shared by others in the workshop. In November 2009, three years later, leaders and members of the Kankuamo community were debriefed about the procedure of transitional justice by the Attorney of the Justice and Peace Unit, a requisite to begin the process of ending the civil unrest by applying the JPL. In contrast to that initial state of confusion, they actively took part in the discussions, asking well-informed questions. An extensive internal debate followed<sup>4</sup>. Colombia has experienced 50 years of civil war between paramilitary, guerrilla and state armies fighting over drug trafficking and territorial control. The JPL

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<sup>1</sup> I worked in the “Procuraduría General de la Nación de Colombia” in the “Delegada para la Prevención en Materia de Derechos Humanos y Asuntos Étnicos”: a mixed institution with Ombudsman and Attorney functions in the office for preventing human rights violations of indigenous communities, the position I had was part of a workgroup for Ethnic Affairs from 2004-2007. This focused in attending the problems that occurred with all the ethnic groups in Colombia: indigenous, afrocolombian, gypsies (Rom) and roots men (*raizales*).

<sup>2</sup> Ley 975 de 2005 called *Ley de Justicia y Paz* (LJP) throughout the text it will be called JPL. It was issued in July 25th 2005. The law frames the actions that will contribute to national peace by dictating dispositions for humanitarian agreements and regulating the procedures to be followed for those demobilized members of illegal armed groups. JPL contains a transitional justice component, facilitating the trial, conviction and sentencing of paramilitary leaders. This Law’s goal is of advancing the peace process and reincorporating fighters into civilian life. The law provides benefits, for example reduced sentences (5 to 8 years) in return for truth telling, reparations to the victims, and a promise not to return to lawlessness.

<sup>3</sup> All translations to Spanish are done by me unless otherwise stated.

<sup>4</sup> Article: Indigenous of the Sierra Nevada open doors for Justice and Peace November 12 2009: <http://www.verdadabierta.com/justicia-y-paz/1962-indigenas-de-la-sierra-nevada-abren-las-puertas-a-justicia-y-paz>

law started the process of demobilization of the paramilitaries in Colombia and holds them accountable for their crimes and allows “justice” for victims. However there are problems with this approach which is the focus of my thesis. I criticize the process in which the JPL law was shaped. My goal is to achieve a better understanding of how laws are experienced within an indigenous community and contribute to the field of legal anthropology. This study does not intend to be an ethnography of indigenous law concepts.

The previously illustrated example reveals dynamics about the clashes between native and non-native practices of justice, a topic widely studied in anthropology (among them, Gluckman 1969, Nader 1990, Miller 2000, 2006, Rosen 2006 and John and Jean Comaroff, 2006). By 2009, some indigenous communities such as the Kankuamo and Embera wished to participate in the JPL, and the fundamental questions I pose in this thesis are: what has changed within these communities? How have these communities approached, interpreted and described the JPL law in a period from its passage in 2005 to 2009? How has the larger, new, national justice system that it encompasses been set in motion in local contexts? How does this help in providing effective reconciliation measures?

This thesis aims to explore the tensions between aboriginal communities and the nation of Colombia, presently under the conditions of violence and political disorder. I view this in light of recent legal frameworks for peace, justice and reconciliation. The main outcomes are either the creation of legitimization inside the communities and the creation of more asymmetries (legal, social, economical and political). I concentrate on the case of Colombia and the indigenous communities which have been subjected to

violence from armed actors (the state, paramilitaries and guerrillas), and specifically the Embera-Chami. The Embera are a large indigenous group residing in several regions and zones of Colombia<sup>5</sup>.

They are divided into five subgroups geographically and linguistically: Chamí, Catío or Katío and three *cholo* (mestizo) groups. The majority live within and around the Andes Occidental mountain range: the Chamí from the departments of Risaralda, Valle and Chocó (west of Bogota); the Catío or Katío from the mountains of Antioquia and Córdoba (municipalities of Riosucio, Murri, Alto Sinú and San Jorge, north west of Bogota) and the three groups which are located in the Pacific coast of Chocó (close to the Atrato and Baudó rivers, and south of Buenaventura, also northwest of Bogota).

This work is based on participant observation obtained through my personal and professional experiences in Colombia as a former civil servant, graduate student with a research program, and concerned Colombian citizen. From 2004 to 2007 I worked with the Embera- Chami (among others). During my time in my position at the Ethnic Affairs Office in Colombia, I participated in projects that implemented education programs during 2004 -2005, funded by Canadian International Development Agency (CIDA). I also worked on intercultural dialogue programs involving indigenous communities and the state during 2006 – 2007, funded by *Empresa Colombiana de Petróleos* (ECOPETROL). The most challenging project was called *Etnoreparaciones*, also funded by CIDA, which ran from 2006 to 2007, a program designed to help the state to find

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<sup>5</sup> Geographically Colombia's Andes mountains divide in three ranges: Occidental (Western), Central and Oriental (East), these allow distinct climate zones with ecological and geographical particularities, as well as historical, cultural and economical contexts. The country has been divided administratively in 33 departments, each with a governor; a capital city and a municipality, which has a mayor as an administrator. Indigenous territories overlap these political and geographical divisions.

strategies to achieve reconciliation of the violence and reparations for ethnic groups that endured political violence. Acting as a public servant and a representative of the state, my interaction with the community was mostly with political leaders, traditional heads, and those who were elected as spokespersons of the communities. I collected data through informal discussions during project workshops, participant observation in the massive mobilization during the October-December Minga of 2008, and subsequent forums (both formal and informal) and related workshops, publication reviews in national newspapers and newsprint. These include *El Tiempo*, *Semana* and *El Espectador*, indigenous organization's Internet websites and public declarations that circulate through the Internet. I also gathered data from Internet NGO's websites such as *Actualidad Etnica*, *Centro Para la Cooperación Indígena* (CECOIN), *Red de Defensores No Institucionalizados*, and INGO's (Human Rights Watch), Inter-American Commission on Human Rights (IACHR), Organization of American States (OAS), and United Nations' declarations, its office United Nations High Commissioner for Refugees - UNHCR as well as the database from *Centro para la Investigación y Educación Popular* (CINEP) called *Noche y Niebla*, and reviews of national legal framework.

This thesis aims to contribute to the body of research on indigenous and non-indigenous justice, reconciliation and communities' relationship with the state by means of this JPL case study. I suggest that the state might more effectively engage indigenous communities in appropriate reconciliation processes by analyzing responses made by Embera-Chami leaders, indigenous organizations with whom Embera-Chami participate,



and the public statements of its members about the JPL issued in 2005 until December 2009.

My central finding is that the JPL legislation has increased local solidarity and collective or social actions in the form of the social mobilization of indigenous groups. This is an unexpected outcome for legislators because the indigenous responses have been mainly one of opposition to the JPL. However social mobilization is leading to further political action among other communities, and has expanded indigenous networks of affiliation in practices such as the Minga<sup>6</sup>. JPL has provoked local notions of justice (*justicia propia*) and strengthened indigenous identity, both internally and externally<sup>7</sup>. Some indigenous communities have now suggested local alternatives to national initiatives. I conclude that top-down approaches must be supplemented with local cultural understandings of justice and solidarity.

Law does not exist in isolation; it is part of culture, situated within a particular context, and analyzing law helps us understand how a culture is put together and operates (Rosen 2006:5). This description of law provides an approach filled with interconnections attributed to ways to address common problems: violence, disorder, conflict and conflict resolution, which in the case of Embera- Chamí are affected at local, regional and national levels. Power, violence, economical and political agendas reflect legal reasoning, providing a window into legal processes themselves. The JPL implicitly emerged as

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<sup>6</sup> The *Minga* is a way of collective solidarity. In this case it consists of two different forms 1) the Grand Minga of the peoples and 2) Minga as an exchange of labour mechanism. (They are a form of communal labour within their communal lands - *Resguardo* (reserve). They are work parties that congregate a numerous crowd of indigenous men to work on a determined issue, for the community or for a family (a fence, plowing or preparing a field (slash and burn), building a road, planting crops, etc). They have 4 stages: preparation, invitation, collective work, and celebration)

<sup>7</sup> One example of this is the recent organization of a National Indigenous Guard: with the structure and manpower ability to guard peace and justice in various parts of the national territory.

*lawfare*, which J. L. Comaroff (2001) defines as the use of legal instruments to commit acts of political coercion by using the violence inherent in the law for political and economical ends. He argues that those who “serve” the state conjure with legalities to act against its citizens. In this case, I explain how *lawfare* has been a constant mechanism applied in indigenous communities whose context is dramatically different from non-indigenous communities.

Local culture emerges as the key element for understanding reconciliation. It is valuable because in some cases indigenous groups already have ways of considering how grievances should rightly be handled, and are becoming less and less willing to put up with imposed, non-indigenous derived models (Miller 2006:1). In order to understand reparation, apology and reconciliation, we have to take in account the viewpoint of local people and their own practices. As such, the idea of reparations cannot be accomplished outside of community settings.

Local culture is important when reviewing the applicability of a law since it can be viewed as a form of local knowledge (Geertz 1983). It is a cultural translation of broader national forms because a law is enacted by local understanding and processes. According to Geertz (1983), law is not a placeless principle (local not just as to time, place or other issues), but local as constructive of social life as a set of notions about the relations between fact and norm. The JPL has changed –and still does– many ongoing practices and ways of relating with the state. Therefore, investigating the localization of the law allows for a richer analysis of its interaction with culture and sheds light on current and future similar processes. When analyzing the current events that brought the JPL and set the reconciliation process in motion, it is necessary to contextualize the state

of affairs in which the law was created. Comaroff and Comaroff (2006) write that there is a contemporary time of disorder characterized by violence, lack of justice, lawfare and corruption. In response, aboriginal communities develop strategies and alternatives for autonomy, recognition and survival.

## **2. BACKGROUND**

### **2.1. Colombia's context: violence and indigenous communities**

Colombia has been in a state of internal armed conflict between the Colombian army, guerrillas, and paramilitary groups for the last sixty years<sup>8</sup>. This existing internal armed conflict escalated twenty-five years ago when the world drug trade became intensified in Colombia. Drug cartels promoted terrorist actions, including targeted killings and bombings, to avoid extradition and to increase their position in the political economy. During the 1980s, paramilitary groups consolidated their power in the countryside with support from wealthy landowners and the drug cartels (Riaño-Alcalá 2006). By financing their operations with drug money, both the guerrillas and these organizations expanded throughout the country. Additionally, the Colombian army plays many roles in this violence, having one of the worst records in human rights abuses and a proven collaboration with paramilitary violence (Riaño-Alcalá 2006).

At the beginning of the 1990s, two contradictory processes were unleashed. On the one hand, old and new political elites drafted a constitution in 1991 in the hopes of ending the war by including the Universal Human Rights Charter, articulating representative and participatory democratic principles, and establishing new legal institutions. On the other hand, drug dealers, guerrillas, and paramilitary groups, each

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<sup>8</sup> The main illegal armed groups in Colombia are the paramilitary and guerrillas. The most notorious paramilitary groups are: AUC (*Autodefensas Unidas de Colombia* - United Self-Defense Forces of Colombia), the *Aguilas Negras* (Black Eagles, consisting of re-armed demobilized AUC) and BACRIM (*Bandas Criminales Emergentes*- new emerging criminal bands). The three guerrilla groups are: FARC (*Fuerzas Armadas Revolucionarias de Colombia* - Revolutionary Armed Forces of Colombia), ELN (*Ejército de Liberación Nacional* - National Liberation Army) and EPL (*Ejército Popular de Liberación* - Popular Liberation Army)

with their respective social and political allies, controlled huge financial resources and became armies waging war amongst themselves as well as against civilians and agents of the state. These criminal groups also infiltrated state structure by allying with congressmen and politicians and controlling communities and local governments<sup>9</sup>. Hence a paradox of order and chaos; during this period of constitutional change Colombian politicians and criminal groups tried to insert themselves into a new legal framework.

Jean and John Comaroff (2006) first suggested this paradox of law and disorder, in which many postcolonial nations make a fetish of the law, of its way and means. In spite of the means being commonly ridiculed, they are frequently central to everyday life of interaction of states and subjects. The paradox lies when regardless of legal advancements such as new constitutions, and claims of rights, the rulers “show themselves ready to suspend the law in the name of emergency or exception, to ignore its sovereignty, to franchise it out or to bend it to their will” (Comaroff and Comaroff 2006:134).

By 1997, paramilitary groups began a centralization process expressed in the foundation of the *Autodefensas Unidas de Colombia* (AUC) and tried, without much success, to articulate a shared political identity. A year later, Andres Pastrana’s government opened peace talks with the *Fuerzas Armadas Revolucionarias de Colombia* (FARC), a major leftist guerrilla group. Those failed peace efforts led to a military and social response from the government, backed by Plan Colombia, a program financed by

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<sup>9</sup> The participation of paramilitary groups in politics had been a silenced truth in Colombia for years. Recently this issue started to get some notoriety in 2006 when several congressmen and other politicians have been indicted for colluding with the AUC (the biggest paramilitary group in Colombia). This was labelled by the press as “La Parapolitica” (para -for paramilitary- and politics). By July, 2010, 80 members of Congress were investigated or prosecuted for their ties with paramilitary groups (El Tiempo, July 4 2010).

the United States. This initiative became a long-term state policy, labelled as *Seguridad Democrática*<sup>10</sup>, under President Uribe (2002- 2010).

## **2.2. Colombian indigenous population affected by the armed conflict**

A debate on indigenous rights emerged out of the constitutional changes brought by the 1991 Colombian Constitution's charter of rights. In preceding decades, the indigenous movements had established a variety of local networks and organized to fortify their regional presence.<sup>11</sup> It was after the passage of the Constitution that demands were made for more precise and specific rights, which in turn led to political and economic clashes. The number of indigenous organizations negotiating and demanding rights increased. Constitutional recognition of indigenous peoples became a challenge for both the state and the communities itself. On one hand, people who have been identified as peasants were now finally recognized as having a different culture, identity and specific rights. This provided useful tools for establishing indigenous justice, education and political systems at local levels. In contrast, some cases brought back vulnerability, since discrimination is a constant issue that indigenous peoples have to face.

Before the new constitution, the state's definition of being indigenous meant existing in a state of pre-modernity. The most important historical legislation for indigenous

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<sup>10</sup> Democratic security: whose objectives are among others to consolidate state control over violence, destroy illegal drug trade, strengthen the Colombian military army and its capacity and demobilize illegal groups.

<sup>11</sup> An example of these early indigenous movements is the one created by Manuel Quintin Lame in the Cauca department (south west of Bogota) in the first half of the twentieth century. This one was very well known in Colombia for being immersed in struggle for land reforms, discrimination and early guerrilla confrontations, and opened some doors for indigenous empowerment.

people is the Indian Bill 89 of 1890, which is still in use with some amendments. This Bill was based upon notions of indigenous people as savage and barbarian, and defined the process of assimilating and civilizing native people (*reducción a la vida civil*). The state considered indigenous people to be handicapped, with psychological and mental disadvantages similar to children. Legally, this meant indigenous had the same rights as under-age minors, and were immune to criminal prosecution. The new constitution transformed the legal and social status of indigenous people from children with limited rights to adults with equal rights. However the stigma of indigenous people as uncivilized and mentally less capable than the mestizo population endured.

Indigenous peoples all over the country have differentially experienced violence because of their location in the rural areas and therefore their proximity to drug cartel trade routes, as well as guerrilla and paramilitary bases and transit zones. In contrast to other Latin American countries such as Bolivia, Peru, and Ecuador, Colombia's indigenous population is a small minority, representing around three percent of the total population.<sup>12</sup> Nonetheless, there is a high level of diversity amongst the indigenous groups. There are around 85 different groups distributed throughout Colombia and more than sixty distinctive indigenous languages. The majority of the indigenous territory is held collectively, consisting of 710 *resguardos*<sup>13</sup> covering approximately 30 percent of the national territory (DANE 2005). Indigenous communities obtained the right to judicial autonomy within the *resguardos* as a result of the 1991 Constitution (article 246),

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<sup>12</sup> The 2005 national census conducted by the DANE (National Administrative Department of Statistics) estimated an indigenous population of 1,392,623 around 3.4% of the Colombian population. ([http://www.dane.gov.co/files/censo2005/etnia/sys/colombia\\_nacion.pdf](http://www.dane.gov.co/files/censo2005/etnia/sys/colombia_nacion.pdf)).

<sup>13</sup> Collective inalienable land grants created, for the most part, during the colonial era by the Spanish Crown, which still constitutes a form of collective property that belongs to an indigenous community legally recognized by the 1991 Colombian Political Constitution, Article 329.

which created a “Special Indigenous Jurisdiction” in which: “indigenous authorities have the faculty of applying justice *within their territory*, accordingly to their own norms and procedures, as long as they are not contrary to the Constitution and the law”. Indigenous groups obtained the right to the direct delivery of state funds to *cabildos*, the resguardo council authorities

The indigenous councils of the resguardos reject the presence of armed actors (guerrillas, paramilitaries, and the Colombian army) in their territory. For this reason, numerous indigenous leaders have been systematically persecuted especially while carrying out political actions, such as demanding acknowledgment of violations of human rights and protecting their communities. Indigenous leaders have emerged as one of the most effective voices for peace<sup>14</sup>, carrying out massive mobilizations represented in social actions, as a result of their position as unwilling victims of armed conflict<sup>15</sup>.

Forced displacement severely affects these communities. It is one of the major humanitarian problems in Colombia. Paramilitary groups and guerrillas deliberately drive individuals and entire communities from their homes in order to use their land for their own purposes. People also abandon their homes out of fear of getting caught in the crossfire, or being blackmailed or kidnapped (including forced recruitment), and frustrated with a lack of opportunities. Forcefully recruited individuals who desert their armed groups are frequently no longer accepted in their home communities and find

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<sup>14</sup> Some indigenous communities such as the Paez have been able to prevent guerrilla attacks on their territories with the use of their indigenous guard, acting as human shields in the town streets. The Arhuacos have gained media notoriety for their strong pacifist position against any form of violence, explained in documentaries, books and different media such as pictures and radio broadcasts that advocate for peace.

<sup>15</sup> Examples of these include the Minga, mentioned briefly before and which will be studied at length in the Embera-Chami case.



themselves displaced as a result. There are also a growing number of secondary displacements<sup>16</sup> from one town or city to another (Wong 2008).

According to CECOIN, it is estimated that 12% of Colombia's displaced individuals are indigenous<sup>17</sup>. On August 8, 2008, UNHCR, in light of the International Day of Indigenous Peoples<sup>18</sup>, made a public statement which addressed the humanitarian situation of displaced indigenous people in Colombia. The statement declared that each year between 12,000 and 20,000 indigenous people are registered as forcibly displaced. However, the Colombian National Indigenous Organization (ONIC) provides a larger estimate because many indigenous individuals are unable to access the registry or contact local authorities. Regardless of UNHCR's efforts to raise awareness of this situation, in March 2009, the commission voiced alarm and concern over the forced displacement amidst armed confrontation in indigenous territories, including the displacement of more than 1,000 Embera during that month alone<sup>19</sup>.

In Colombia, warfare processes that affect indigenous communities are varied and dynamic. As described by the Constitutional Court (Auto 092 of 2008 and Auto 04 of 2009), the most common ones include: flagging<sup>20</sup>, selective assassinations<sup>21</sup>, harassment

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<sup>16</sup> These are the ones that occur after the initial one when they have to mobilize to other receiving urban places after they were forced to leave for a second time or were not able to settle.

<sup>17</sup> Taken from the Report of the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People. E/CN.4/2005/88/Add.2 Mr. Rodolfo Stavenhagen

<sup>18</sup> UN High Commissioner for Refugees

[http://www.nacionesunidas.org.co/img\\_upload/29e3d3aa1b87e476b58e75187297599e/Boletin\\_dia\\_internacional\\_de\\_los\\_pueblos\\_indigenas.pdf](http://www.nacionesunidas.org.co/img_upload/29e3d3aa1b87e476b58e75187297599e/Boletin_dia_internacional_de_los_pueblos_indigenas.pdf)

<sup>19</sup> <http://www.un.org/apps/news/story.asp?NewsID=30205&Cr=colombia>

<sup>20</sup> Flagging is the major source of violation to indigenous peoples' Human Rights in the country, and the primary consequence of armed illegal groups penetrating their territories. Flagging is the signaling out of people as affiliated to one or another group. It is especially common in cases of (a) incorporating or using indigenous as informants from the army, or (b) temporary presence of the army or the illegal armed groups inside their territory, occupying their houses, communitarian buildings, etc. Flagging often leads to homicides, threatening, forced disappearances or, in some cases, in what the public has called extrajudicial

and threatening<sup>22</sup>, forced recruitment of minors and members of the community by irregular armed actors, sexual violence, theft, control of roads, mobility<sup>23</sup> and use of communities as human shields during armed confrontations. These tactics have contributed to the transformation of communities' ways of life and have created a variety of reactions and modes for coping by establishing alliances, reorganizing priorities and integrating within discourses reactions and solutions framed within these manifestations. It is in this context that the JPL was conceived.

### **2.3. Law No. 975 of 2005 (JPL)**

In 2003, President Uribe's government launched a strategy to demobilize the paramilitary groups, which lead the Congress to approve Law No. 975 in 2005. Its subtitle: reads "...for the . . . reincorporation of members of armed groups operating outside the law who contribute in an effective manner to the achievement of national

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execution' (falsos positivos) reported by certain members of the Army – that is, the disappearances of indigenous individuals that are retained by state or armed groups that aid the state and are reported, without any proof, as guerrilla members killed by members of the Public Force. In other words, it's assassination, presented as a (fake) combat death.

<sup>21</sup> Selective assassination of leaders, traditional authorities and important members of indigenous communities. The selective assassination occurs in different communities and is a consequence of different causes: to intimidate or terrorize the population; the intention to cause forced displacement of individuals, families or groups; as a form of retaliation for resisting the presence of armed groups or involving their communities in the conflict; as a retaliation for denouncing felonies and try to make effective victims' rights; in the development of non indigenous territorial interests regarding territorial disputes. The statistics of selective assassination inside of the indigenous communities in the last decade are overwhelming. Each of the groups has shown extremely high rates of selective murder and even massacres.

<sup>22</sup> These controls materialize in the establishment of rules and codes (norms) of conduct and control that are executed by the use of threats and intimidation.

<sup>23</sup> The control of people's mobility, food, health supplies, fuel, basic goods and services as well as emergency humanitarian aid, by the illegal armed actors, and in some occasions, by members of the army. Alongside the control of people's mobility there are often reports of food and goods, theft and seizing. Through such controls flagging becomes a common practice when, for example, somebody carries food, health supplies or fuel for communities or families. The mobility restrictions, by themselves or as a consequence of the presence and fighting of armed actors, prevent the traditional use of territories, causing an imbalance of cultural and economic structures that depend on such mobility. Likewise, they generate dire situations of resources scarcity that end up as food insecurity, health crisis and lack of basic needs for entire communities.

peace.” Although this law provided an institutional and legal framework to the process, it was criticized by human rights NGOs and independent research centres for its laxity. The Colombian victim-survivors’ movement and the human rights organizations that serve as their advocates, were able to achieve changes to the JPL through multiple judicial challenges, insisting on victim-survivors’ rights to truth, justice, and reparations (Theidon and Laplante 2006). By May 2006, a much welcomed corrective was introduced by the Constitutional Court. After revising the law, it issued ruling C-370, establishing, among other things, three major requirements: full and truthful recognition on the part of the paramilitaries of all their crimes in order to obtain the benefits offered by the law, participation of the victims during the entire duration of the judicial process, and the preservation of the historical memory of the conflict as part of the symbolic reparation of the victims.

JPL created the legal grounds for establishing of the National Commission of Reconciliation and Reparation (CNRR), which has, among other mandates, produced a ‘public report on the reasons for the illegal armed actors’ creation and evolution’ from 1964 onwards, through the Historical Memory Group. JPL does not include a truth commission per se, although the CNRR will assume many tasks associated with such a body, without a truth-seeking component that includes victims’ testimonies. There are enormous tasks involved in the demobilization, disarmament and reparation processes, considering that Colombia is still at war. FARC and ELN guerrillas are active, and new and old paramilitary groups continue to control territories, resources, networks and people.

Comaroff's (2001) notion of lawfare is useful in demonstrating how JPL came to be a tool to negotiate a demobilization process but benefited only a small group of armed actors, the paramilitary. The JPL challenged international standards of applying transitional justice and opened the door for more flagging and threats to communities which wanted to pursue justice and claimed that they were harmed by such armed groups. The JPL can be considered lawfare because it responds to political and economic ends, and its outcome does not entirely aim for social justice. This law requires compromising the absolute human rights standards of truth, justice, and reparations with the desire to bring a powerful armed faction to a negotiating table. The legitimacy of the law lies in the space in which local actors seek to balance legality with politics, the demands for peace with the clamour for justice (Theidon and Laplante 2006). Broadly, the legal challenges of JPL centers around the absence of protection of the three central components of transitional justice: truth, justice, and reparations. It reduces the punishment and imprisonment time and provides "alternate" sentences, thus generating an environment for impunity because in some cases criminal investigations are not required. Victims are excluded from the criminal process when there are no guarantees to ensure their safety during the investigation or protocols for obtaining and presenting evidence. Many victims are fearful because in some cases those who denounce being subjected to violence by paramilitary members are flagged or in the worst case assassinated<sup>24</sup>. JPL does not recognize the existence of "victims of the state, and seeks to cover up state responsibility in the creation, encouragement, development, and consolidation of the paramilitary strategy" (Theidon and Laplante 2006: 92).

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<sup>24</sup> To this date, at least 45 leaders have been assassinated after publicly demanding their rights to get back their lands from paramilitary ownership within the JPL process. (In Spanish: <http://www.albatv.org/Ya-son-45-los-lideres-de-victimas.html> )

## 2.4 The Embera-Chamí indigenous group

Since June 2001 the Embera-Chamí have been publicly pointed out as assisting the guerrilla movement<sup>25</sup>. As a consequence, they have been subjected to threats, harassment and violence by members of paramilitary groups. Allied NGO's and regional media have extensively reported on these situations, but national newspapers and media have national newspapers and media the overall context. In almost all of these similar and recurrent cases, the Colombian state proved to be ineffective in providing protection and produced either unsuccessful investigations or none at all. Following the example set by those cases, the indigenous organization CRIDEC (Consejo Regional Indígena de Caldas), with the aid of the NGO Corporación Reinicar, denounced these acts and petitioned to the Inter-American Commission of Human Rights (ICHR), for protection and to put to a halt to these attenuating circumstances. In accordance with the international treaties of human rights that regulate countries' agreements, the Inter-American Commission of Human Rights conferred precautionary measures<sup>26</sup> to the Colombian state concerning forty indigenous members of the Colombian Embera Chamí community on March 15, 2002. The beneficiaries of these measures are members of the indigenous resguardos: Cañamomo-Lomapieta, San Lorenzo, Nuestra Señora Candelaria de la Montaña, Escopetera-Pirza, Totumal, La Trina, La Albania, Cerro Tacón, La Soledad, and

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<sup>25</sup> Public complaint made by the Indigenous Regional Council of Risaralda in July 3rd 2001 (Consejo Regional Indígena de Risaralda) <http://www.ecoportal.net/content/view/full/23674>

<sup>26</sup> The primary functions of the Commission are to consider individual complaints and impose conciliatory remedies, to monitor human rights compliance in the region, to conduct on site studies of human rights conditions, and to impose "precautionary measures" to prevent potential human rights violations (Davies and Warner 2007).

members of the regional indigenous organization CRIDEC<sup>27</sup>. There is an important state program for promotion and protection of communities at risk implemented in the area because of its high risk of violence levels. The state argues that the region is geographically located in a strategic corridor between the departments of Choco and Antioquia where guerrillas and “self-defense groups” are established. An indigenous leader said: “All of our territories and cultures have been touched by the war, and conflict affects strongly the internal jurisdiction where communities are more fragile”.<sup>28</sup>

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<sup>27</sup> The State was asked to urgently take the measures needed to protect the life and personal integrity of the people who live in these communities , with the agreement of the petitioners of the cautionary measures, and to clarify judicially the acts of violence against the indigenous community. See: <http://www.cidh.org/indigenas/medidascautelares.htm> (Accessed June 1 2010)

<sup>28</sup> Personal communication with Colombian indigenous leader who preferred to remain anonymous. November 2008.

### **3. THE JPL: ALTERNATIVES AND RESPONSES OF JUSTICE, SOLIDARITY AND SELF EMPOWERING MECHANISMS**

Local practices of justice for the Embera – Chamí have changed throughout 2005-2009. My observations concern the local processes that occurred before, during and after the implementation of the JPL. Indigenous peoples have appropriated and transformed non-indigenous approaches to justice. This is also evident in how they talk about their war. They now use a mixed jargon of “indigenous traditional practices” and non-indigenous practices. The Embera – Chamí learned to use international discourse to talk about a variety of things including the ineffectiveness of state, the nature of persecution and discrimination, and the importance of their own forms of government. These discourses also resonate amongst other indigenous peoples in Colombia. For example, many public statements regarding factors that should be taken into account when deciding about their future include Bonfil Batalla's (1982) concept of “ethnodevelopment”, which he defines as empowered and informed self-management of cultural and social change.

In 2008, the indigenous group Nasa-Paez from Cauca drafted the Grand Minga of the Peoples<sup>29</sup> and invited all indigenous organizations to participate. The Embera – Chamí peoples were amongst the first to respond and join the mobilization. This was done by the physical presence of Embera members (who walked for a month through various towns and gave speeches) and through support with their own networks of solidarity and public statements. The Minga began as a way to denounce and reject the JPL. October 12<sup>th</sup> date was chosen as a starting day due to its significance. It is the day attributed to Columbus’

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<sup>29</sup> The Minga, a network of affiliation and mobilization that works towards communal goals.

arrival on the continent, symbolizing the starting point of struggle, colonization and violence for indigenous peoples. Minga claims were drafted that responded directly to the “democratic security” agenda established by President Uribe that contains the JPL, as it is threatening indigenous rights. The outcome of the political agenda is explicated through lawfare (Comaroff 2001).

The Minga has become an annual social mobilization for indigenous collectives, is an example of integration that JPL helped create<sup>30</sup>. This collective affiliation and strengthening of indigenous groups within the country has helped the Embera establish new strategies for survival and support. More recently, a proposal by the Embera to create a National Indigenous Guard based on the Cauca’s example has gained strength. Neutrality, peace and harmony are a constant in these discourses.

For example, Jaime Arias and important indigenous leader describe how the JPL helps communities to address disorder in their territories:

Peace conditions come with territory, culture and self governance. We are implementing strategies to strengthen unity. We are performing a humanitarian diagnosis from within the cultural vision of indigenous peoples with the goal to identify not only the effects of the conflict expressed in tolls/numbers of death, displaced, and disappeared, but the cultural, social, political, economical and historical causes of the conflict and how this has affected the government, the culture and the territoriality of indigenous.<sup>31</sup>

The complexity of the position of the indigenous communities in the political conflict is captured in what Jaime Arias describes as the need to:

Consolidate ancestral territory, more specifically to recover ancestral lands and from there guarantee how it’s managed; and to have the Colombian state, international organizations and NGO’s reformulate their intervention,

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<sup>30</sup> See the Minga’s web blog: <http://mingaindigena.blogspot.com/>

<sup>31</sup> 2008 fieldwork notes



recognizing the existence of an ancestral order and government that must be accepted and obeyed.<sup>32</sup>

### **3.1. The JPL's interaction with local responses and processes: a period for debate from 2005 to 2009**

After the JPL's passage in 2005, indigenous communities initially reacted with disagreement and rejection, because of the lack of state consultation (as required by Article 6 of Convention 169 ILO<sup>33</sup>), resulting in the undermining of indigenous rights. The idea of lawfare (Comaroff 2001) explicates this, which is still claimed by multiple leaders as shown in the ethnographic data below. Lawfare erodes local autonomy, strengthening the authoritarian power of the state. It was particularly evident that JPL didn't address collective indigenous issues as it generalized its reach for all collective communities in Colombia (peasants, urban dwellers, region, etc). JPL was mainly established to address non-indigenous collective issues. As described by Guillermo Tascon, an indigenous leader: "(...) we applaud any peace initiative; the problem is that this one does not regard indigenous peoples' interests. We think that because this law does not mention indigenous peoples' particularities, then this law should not be applied to us" (Fieldnotes 2006). The JPL was intended mainly for the benefit of paramilitaries and does not include effective ways of demobilizing and seeking reparations for actions conducted by guerrillas or the Colombian army.

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<sup>32</sup> Ibid

<sup>33</sup> The principles of consultation and participation in Convention No. 169 signed by Colombia in 1991 relate not only to specific development projects, but also to broader questions of governance, and the participation of indigenous and tribal peoples in public life (<http://www.ilo.org/indigenous/Conventions/no169/lang--en/index.htm>).

There is a deep distrust of this demobilization process by members of all social sectors. For example Leonor Salabata, an indigenous leader (Fieldnotes 2006) explained:

I believe that we the indigenous people ignore that law, we see that there is a handover of arms, but there is no structural demobilization. Drug traffic is still continuing, chainsaws that were used to kill so many people are not being handed over, victimizers are not being judged: they are not in prison; there is total corruption and impunity. That law is not convenient for us. Its outcome does not contribute for the indigenous to be respected as peoples, peace is not resulting from it and its proposed objective is not achieved.

During my research, resistance was one of the keywords used to describe how the JPL was received. Tribal leaders report that they are generally in a mode of resistance to the state and this has come to include the imposition of the law. Leaders express that resistance has helped them overcome the paramilitaries' violent actions. Interestingly, resistance is neither isolated nor unique, as Leonor (2006) explains: "...such resistance comes from the spiritual realm<sup>34</sup>, and emerges from collaboration with the international community and organizations" (Fieldnotes 2006). In the process of the establishment of the law, resistance was first explained as a rejection of the law itself and later on was integrated into a collaborative social movement. This process is exemplified in the recent 2009 debriefing in the Sierra Nevada during the procedure of transitional justice with the Attorney of the Justice and Peace Unit, a requisite to begin the process for applying the JPL (described at the beginning of this document). The Kakuamo indigenous community

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<sup>34</sup> This spiritual realm makes reference to the systems of beliefs that comprise the Embera's cosmological world.

refused to collaborate with the process because they were not consulted regarding the aggression against them during the conflict<sup>35</sup>.

The JPL established ways to seek justice, truth and reparation in a language and categories that weren't easily understood by indigenous people. For example JPL presents a comprehensive definition of reparations that includes restitution, indemnification, rehabilitation, satisfaction, and guarantees against repetition. More problematically, it states that victims who do not invoke their right of reparation during the special criminal proceedings do not receive explicit provisions for individual reparations. Article 8 of JPL states that "...collective reparation should be oriented towards the psychosocial reconstruction of populations affected by the violence." Yet the law implies that only victims and their parents are eligible while siblings and other related family members are excluded. This is very problematic for indigenous communities and collective understandings about reparations. For example, a native leader said:

There are some things like identity and culture that are very difficult to repair, the dead we can no longer revive. For example an assassinated leader is a catastrophic loss for one community, and many years and centuries will pass until a new leader is born<sup>36</sup>.

'Identity' and 'culture' were not considered to be elements to be repaired within the Law 975, although criminal events and violent practices, however, were within the legal provisions. The establishment of ideas and ideal reparations are constantly claimed in communities: "Reparation for us is that our lands are returned, and afterwards the state

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<sup>35</sup> Article: Indigenous of the Sierra Nevada open doors for Justice and Peace November 12 2009: <http://www.verdadabierta.com/justicia-y-paz/1962-indigenas-de-la-sierra-nevada-abren-las-puertas-a-justicia-y-paz>

<sup>36</sup> Tascon, fieldnotes 2006

protects that territory and recognizes that those are sacred places, and denies access to any combatant legal or illegal” (Resolution No 017 2009: Violation DDHH Iberia Resguardo Cañamomo- Traditional Leaders of the Indigenous Resguardo Cañamomo Lomapieta). In contrast to what the state claims, the JPL’s legal framework allows Colombia to minimize the state’s responsibility and thus its obligation to pay reparations. The IACHR<sup>37</sup> notes that, for collective reparations, the Justice and Peace Law “...places greater emphasis on restitution of unlawfully acquired property than on the kind of mechanisms that will make full reparations for victims possible...” and omits mention of damage to “...the social worlds and relationships of indigenous peoples, Afro-descendant communities, or displaced women, who are frequently heads of household under conditions of poverty and extreme duress. Each of these groups rank among those most vulnerable to the violence perpetrated by participants in the armed conflict” (OAS Annual Report 2005<sup>38</sup>).

Lawfare in Colombia through JPL has mobilized indigenous responses in new unexpected forms. Indigenous communities responded with their own ways of seeking and asking for justice, truth and reparation. JPL also opened the door for the creation of new approaches, including proposals to create new laws from the grassroots of the communities and indigenous organizations: “We’ve got to work in a proposal from our cultural and cosmological perspective” (Tascon, fieldnotes 2006)<sup>39</sup>.

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<sup>37</sup> Inter-American Commission on Human Rights (IACHR), OAS Annual Report 2005: <http://www.cidh.org/annualrep/2005eng/chap.4.htm>

<sup>38</sup> Ibid

<sup>39</sup> In this case, cosmological perspective refers to the system of beliefs that this indigenous community has. More specifically related to the distinction between what is non-indigenous and indigenous: peace, neutrality, different community interactions and cultural contexts.

Community members are concerned about the process: “Who is going to repair us? That law is deceptive (*carreta*) because we are never going to be repaired. The culture (*culturalidad*) of indigenous people can’t ever be repaired, not even with money” (Conda Cruz, fieldnotes 2006). Identifying the ‘repairer’ is still a matter of debate in the application of the law, which has established the victimizer as responsible for financial compensation and the state’s responsibility has been considered secondary. Only the goods that are returned by the paramilitaries, such as farms that were illegally occupied by them when they displaced families, or illegally acquired territories by the figure of *testaferro* (those who lend a name on a contract or business belonging to another) can be eventually used for reparation purposes. As of April 2010, of the 453 properties that the paramilitaries gave to the tribunal of Justice and Peace for repairing their victims, only 91 have been received by *Acción Social*, the state’s agency which selects, classifies and returns the properties and humanitarian aid to the victims. And to this date there are around 270.000 victims on the agency’s list.

It is still uncertain if the victimizer or the state will pay and how will reparation proceed. The principal claims for reparation are the monetary compensation for each family which was forcedly displaced from their lands, animals and in rare cases farmlands. The quantification of violence has been harshly critiqued by indigenous leaders. Money for each individual who has been displaced in a community and the compensation for the killing or forced disappearance of someone’s family member is considered insufficient. Seeking the truth behind violent acts, asking for public apologies and culturally informed meetings where elders can talk face to face with the perpetrators, confessing with true feelings of remorse and repent, are among the goals sought by the

communities. Such goals have been common in other truth and reconciliation processes worldwide, for example the Truth and Reconciliation Commissions of South Africa, Canada, Guatemala, Peru and El Salvador to name a few.

My analysis of these claims shows a process of adaptation to change and survival that indigenous communities encounter at the verge of drastic change and disorder. Even though there is a clear top-down approach persistent with the approval and application of the JPL, the variety of measures of protection, resistance and alternatives of justice that emerge are tools to empower and enhance indigenous identity. I examine this in the next section.

### **3.2. The Embera-Chamí's understandings of justice, protection and resistance: how to deal with change**

Until now, the 1991 Colombian Constitution's Charter of Rights has been the foundation of the acknowledgment of unsatisfied rights, particularly those considered basic human rights that respond to armed violence and conflict. The Constitution helped the Embera become more clearly organized as a group. The Chamí branch of the Embera in particular gained more recognition and were regarded as being something other than rural peasants, with specific indigenous culture and traditions establishing again their cohesion as a distinct group.

When the JPL was drafted and set in motion, indigenous community members believed it was another legal tool for the state to cause more disorder, explained in the concept of lawfare. Instead, many elements, including justice and legal interactions, are transformed to fit indigenous practices. Justice has changed for the Embera due to the

process surrounding the implementation of JPL and has combined both indigenous and non-indigenous ways. Pre 2005, the way in which the internal grievances were dealt with focused primarily on localized practices. Indigenous authorities solved everyday problems orally using traditional methods. Written statements and documents were not used and issues were addressed solely internally within the communities. Change occurred, nonetheless, because of the need to document violent acts for the Inter-American Commission of Human Rights. The Commission considered the situation in Colombia was so extreme regarding the Embera-Chamí that they required cautionary measures to protect indigenous people.

The Embera in turn responded by writing various decrees and resolutions in which the “external” violence and state “intromission” is described at length. For example the Resolution<sup>40</sup> No 17 of October 2009: Violation of IHR's Iberia Resguardo Cañamomo, emerged in the light of an incident on October 26th in which four policemen dressed in civilian clothes dragged a young indigenous man across a football field and shot him without apparent reason, wounding him. Over one hundred members of the community witnessed this act and restrained the officers, holding them until higher ranked police, state representatives, and the indigenous leader arrived. The description of this event is very detailed and is produced within the same structure and jargon as those from national and regional levels of government. It begins with perambulatory clauses, which follow a numerical structure of describing facts, continuing with a “Resolution”, and ending with a “So ordered”. The use of non-indigenous tools and discourses turned out to be very effective in this particular case. It was fortunate that the young Embera suffered only

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<sup>40</sup> IHR's stands for International Human Rights. Resolución No 017: Violación DDHH Iberia Resguardo Cañamomo, [http://lapluma.net/es/index2.php?option=com\\_content&do\\_pdf=1&id=3210](http://lapluma.net/es/index2.php?option=com_content&do_pdf=1&id=3210)

minor wounds and he has not been further threatened or harassed again. Another relevant example of including non-indigenous practices is the Embera Resolution of the Humanitarian Exchange (October 24 of 2006), where they explicitly support, establish rules and put forth a proposal towards exchange of political hostages between illegal armed groups and the state. This is particularly noteworthy since the place proposed for the exchange is part of indigenous territory.

The Embera – Chamí created written documentation of violent acts including threats, wrongful deaths, and displacements. For example, the Indigenous Hearing of the Permanent Tribunal of Indigenous Peoples in July 2008 where Alberto Áchito -Embera spokesman- presented the ground rules from the First Embera Congress the strategies to defend their territories and natural resources which were drafted in October 2008 by means of the Decree No 049. Embera created alliances with indigenous and non-indigenous organizations to strategize responses that can effectively reach broader audiences within the state and international organizations too (especially those who are part of the UN family of institutions). For example, the International NGO Cultural Survival, Human Rights First<sup>41</sup>, Witness for Peace<sup>42</sup> and the Colombian Fundacion Hemera,<sup>43</sup> and in OCHA's<sup>44</sup> monthly reports of status of social disruption, news about violence against Embera is common. As mentioned before, the local media is not entirely interested in publicizing events that concern this community, as it focuses on cultural

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<sup>41</sup> [http://www.humanrightsfirst.org/defenders/hrd\\_colombia/alert072109\\_Arney.html](http://www.humanrightsfirst.org/defenders/hrd_colombia/alert072109_Arney.html)

<sup>42</sup> <http://www.witnessforpeace.org/section.php?id=95>

<sup>43</sup> <http://actualidadetnica.com/>

<sup>44</sup> United Nations Office for the Coordination of Humanitarian Affairs (OCHA)



discrepancies<sup>45</sup>, and poverty<sup>46</sup>. Media rarely reports upon targeted violence and broader humanitarian crises. I have observed on many occasions in Colombia that media's broadcasting of these events, signifies a loss in readership, where violence has become somehow naturalized.

Embera – Chamí leaders interpret measures of protection and resistance as a way to fence violence outside their community, and they have responded and empowered themselves with specific international human rights discourses to endure violence. People tap into discourses of transitional justice, and the international standard that states have an obligation to respect, protect and fulfill the right of victims of human rights violations to an effective remedy<sup>47</sup>. *Truth* is establishing the facts about violations of human rights that occurred in the past; *Justice* is achieved by investigating past violations and, if enough admissible evidence is gathered, prosecute the suspected perpetrators; and *Reparation* occurs when providing full and effective reparation to the victims and their families, in its five forms: restitution, compensation, rehabilitation, satisfaction and

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<sup>45</sup> Common quarrels between indigenous and non-indigenous people's systems of beliefs and culture: for example the Embera tradition of female circumcision gained notoriety in media as a 'barbaric' practice and it still surfaces once every few months in local and national media.

<sup>46</sup> Homelessness among the Embera increased in urban towns caused by forced displacement. Children are frequently seen asking for money in the streets, practice highlighted in different local and national media associated with denounces of indigenous child exploitation.

<sup>47</sup> The right to an effective remedy for victims of human rights violations is enshrined in article 2 (3) of the International Covenant on Civil and Political Rights (ICCPR). It is also recognized in article 8 of the Universal Declaration of Human Rights, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, article 39 of the Convention on the Rights of the Child, article 3 of the 1907 Hague Convention concerning the Laws and Customs of War on Land, article 91 of the Protocol I Additional to the Geneva Conventions of 12 August 1949 relating to the Protection of Victims of International Armed Conflicts (Additional Protocol I), article 75 of the Rome Statute of the International Criminal Court and article 7 of the African Charter on Human and Peoples' Rights

guarantees of non-repetition<sup>48</sup>. This is apparent in resolution number 15 that states: “...we agree with the decision regarding the conformation of an indigenous tribunal accompanied by international stances that clarifies and judges those responsible of the extermination of Colombia's indigenous peoples”<sup>49</sup>.

Embera-Chamí have also adapted and created personal safety measures which they describe as their “own protection measures” against violence, with consciousness that violence could surround them, such as not wearing the same clothes two days in a row, not taking the same path as frequently as they used to and returning home early at night. Embera have incorporated basic safety precautions that add to the increasing number of ways to survive and adapt to external threats.

The human rights discourses have been learned, applied and have gone beyond their initial use in 2002 when asked for precautionary measures (to the ICHR) with help from the NGO *Reiniciar*. I draw upon the reports and descriptions presented by the CRIDEC, specifically those presented in two public documents, one from June 2006 and the 2008 document drafted in the context of the Permanent Tribunal of the Indigenous Peoples of Colombia (May 23-24 2008). These documents show how violence within a “state of armed conflict” is described and explained in detail. The following paragraph serves as an example:

It is necessary that national and international jurisdictional authorities accept our accusations of our vulnerable situation and the reiterative violations of our economic, social and cultural rights and our collective

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<sup>48</sup> Amnesty International: International Standards:  
<http://www.amnesty.org/en/library/asset/POL30/009/2007/en/7988f852-d38a-11dd-a329-2f46302a8cc6/pol300092007en.html>

<sup>49</sup> First Embera Congress resolutions drafted in October 2008 by means of the Decree No 049

rights; and the repeated violations of human rights and the International Human Rights Law.<sup>50</sup>

The terminology specifically addresses international political contexts, with a particular emphasis on the language of human rights, constitutional rights and International Human Rights treaties. Justice and law are presented as means to legitimate arguments that responds to violence. They use international language so that their local complaints can be heard. Actions such as assassinations, harassments and threats are already categorized in international terminology. In other words, these violent acts are no longer regarded as exotic or rare and become routine within political discourse. Aboriginal leaders began to reject the external forces affecting them by placing them within a discourse of “violation of rights” which implicitly appoints them as “victims”. The Embera – Chamí transformed their interpretation of violence.

They began to see patterns of systemic violence rather than individual violent episodes. The following passage illustrates this point:

Things seemed to calm down since the first indigenous Mayor, Darío Edgardo Tapasco took his position in 2003. A tranquility that had not existed in the region for a long time, a suspicious tranquility, one that makes people frightened –for the legitimate reasons that will be presented in this report. Darío Edgardo Tapasco’s candidacy for the Riosucion 2003 elections was not planned from the beginning, but it is the outcome of the assassination of the former candidate, Gabriel Ángel Cartagena, who represented the [the political party] Movimiento Indígena. (...) According to the archives of the [organization] Consejo Regional Indígena de Caldas (CRIDEC), since 2003, more than forty-five indigenous persons have been assassinated by armed groups and more than ten persons have been

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<sup>50</sup> The English translation is my own and the Spanish original is as follows: “Que se hace necesario que las autoridades jurisdiccionales del orden nacional e internacional, asuman nuestras acusaciones frente a la situación de vulnerabilidad y reiteradas violaciones a nuestros derechos económicos, sociales y culturales, nuestros derechos colectivos y las repetidas violaciones a los derechos humanos y el Derecho Internacional Humanitario DIH.” Preliminary hearing: “Jose Gilberto Motato Largo” of the resguardo San Lorenzo (Riosucio, Caldas) (May 23-24 2008).

threatened, injured or have disappeared, taking in account that there has been actions that violate human rights that have not been reported to the Organization.<sup>51</sup>

It is crucial to situate events and practices in a historical context, especially the story of the political assassination. This is stressed particularly in political interests from illegal actors and different motivations that produced the assassination of the former candidate. Keesing (1992) wrote that: "...reading historical events as moments in a struggle sustained over many decades tempts us to see individual acts and scenes as part of the design of a continuous tapestry" (Keesing 1992:208). Considering events as part of a bigger process is helpful because the Embera – Chamí began to define political violence in their own way since 2001, from the submission to the Inter American Comission of Human Rights, and more thoroughly during the period of time which this study focuses, from 2005 to 2009.

The Embera – Chamí use the political rhetoric of resistance also with the purpose of explaining their social actions. For Example:

Until the effectiveness of our rights is guaranteed within a true rule of law, we [The permanent Tribunal of the Indigenous Peoples of Colombia] declare ourselves in permanent vigil in defence of our territory, and we call for all the indigenous peoples of the Departments of Caldas, Risaralda,

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<sup>51</sup> "Desde que el primer alcalde indígena de Riosucio, Darío Edgardo Tapasco tomó posición en el 2003, las cosas han parecido bastante tranquilas. Una tranquilidad que no existía en la región durante mucho tiempo; una tranquilidad sospechosa, que da miedo a la gente – por razones muy legítimas como se va a presentar en este informe. La candidatura de Darío Edgardo Tapasco, para la posición del alcalde de Riosucio en las elecciones del 2003, no fue planeada desde el principio, sino que surgió por causa del asesinato del candidato inicial, Gabriel Ángel Cartagena, por el Movimiento Indígena. Según los archivos del Consejo Regional Indígena de Caldas (CRIDEC) se registran más de 45 personas indígenas asesinadas por grupos armados desde el año 2003, y más de 10 personas amenazadas, heridas o que han desaparecido, tomando en cuenta que se han presentado otros hechos de violaciones a los derechos humanos que no se han reportado a la Organización." International Mission for Truth Verification in Indigenous Communities (June 2006)

Quindío and Antioquia to the mobilization that will be carried out in October of this year within all the national territory.<sup>52</sup>

In spite of their use of language of resistance, an analyst must be careful as the concept itself is not enough. We still have to account for personal motivations, hidden schemes, stratagems of individuals and private ambitions. It is important to attend to a variety of transformative processes of change, regardless of the intentions of the actors or of the presence a variety of intentions. The previous quotation describes them in a state “of resistance” to the armed confrontation and to the injustices of the state.

### **3.3. Embera-Chamí’s description of categories of violence imposed by the state and their responses**

JPL’s framework is intended for reconciliation with the state following its failure to protect the communities from violence. This process of defining violence has helped unify the Embera community internally, which was a result of local notions of justice becoming increasingly important. There are internal problems to be resolved within the community, but the idea of labelling and classifying the problems related to the armed conflict have increasingly become part of how the community deals with disorder. Human beings possess the capacity to create the categories of their own experience; this goes beyond the everyday forms of justice that operate within a community and more with problems that affect them and are deemed external. Embera's justice system had been focused on internal local disputes. The typical cases the cabildos<sup>53</sup> had to deal with focused on family grievances, land conflicts, contaminated water, resources and marriages with non-indigenous persons. Nowadays the increasing violence has brought

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<sup>52</sup> Ibid

<sup>53</sup> As stated before, they represent the forms of local political government

up other conflicts and with them, their distinctive ways of resolution. One example of this is the year-long banishment and a public apology as punishment for two of the Embera members for making the community more vulnerable to attacks. A paramilitary group forced them to buy them groceries, after which the cabildo responded by ruling that they were putting in danger the neutrality that indigenous communities have long fought to establish<sup>54</sup>. The Embera had to work out a new set of punishments, because there are new kinds of violations which require new kinds of responses. In this case, the different levels in which punishments and justice are set in motion in local and community stances show the importance of styles of legal reasoning or the structure of cultural assumptions. The cabildo knew they were forced by the paramilitary, but they also believe that by imposing such punishments, armed groups will respect them, therefore preventing further trampling over communities. Responses to new forms of grievances can be useful as alternatives to understand the complexity of reconciliation processes within the framework of the JPL. State legislators should be encouraged to look closely at this kind of solutions.

### **3.3.1 Physical violence and official terrorism**

One form of direct-political violence affecting the Embera – Chamí is targeted physical violence and terror administered by official authorities and those opposing it. Various actors, including guerrilla, paramilitary and in some occasions the national army, use suppression, torture and threats to communities. These forms of violence are contained within institutional reports (For example the *Defensoria del Pueblo's* public

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<sup>54</sup> See: El Tiempo (National newspaper), January 08 2006 - *Justicia Alternativa: Entre las Tradiciones y el Conflicto*.

hearings 2009, and risk reports 2005; and the Departamental Diagnose of the *Observatorio del Programa Presidencial de DH y DIH, Vicepresidencia de la República* 2007<sup>55</sup>) which use socioeconomic and legal interpretative frameworks. Showing this political violence enables the Embera to report to the Inter American Commission of Human Rights regarding their cautionary measures in recognizable categories.

For example, the preparatory report for the International Mission for Truth Verification in Indigenous Communities (June 2006)<sup>56</sup> states that many of the violent events defy political power and authority within the region. They need to examine violence that occurs around elections. For instance:

The public force's 'welcoming' [to Dario Tapasco] was the bombing of the community of Iberia in the resguardo of Cañamomo Lomapieta by using their helicopters, which they justified as an attack on subversive groups in the area, when this area was nothing but pieces of land that belonged to humble indigenous workers. Residents of the town describe the event as a pathetic scene 'of a movie'. (...) The governors of the four resguardos of the region have been threatened by armed groups and they do not leave their homes without bodyguards and by taking cautionary measures<sup>57</sup>

The International Mission for Truth Verification in Indigenous Communities gathered together various indigenous groups and helped articulate the grounds for the

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<sup>55</sup> Obudsman: Defensoría del Pueblo. Audiencia Publica Octubre 5 2009, Informe de Riesgo No. 003-05 del 25 de febrero de 2005 Pág. 4. ; "Diagnóstico Departamental de Caldas", Pág. 3. and Observatory of the Presidential Program for HR and IHR, Vicepresidency of the Republic. 2007. In: [http://www.derechoshumanos.gov.co/observatorio\\_de\\_DDHH/observatorio\\_ddh.asp](http://www.derechoshumanos.gov.co/observatorio_de_DDHH/observatorio_ddh.asp).

<sup>56</sup> "Misión Internacional de Verificación de la Verdad en Pueblos Indígenas, occurred in September 2006, and was a component of a wider mission of HR's verification. It was composed by organizations of HR's and Europe, Latin America, US, and Canada's social civilians, with observers from the UN, the Swiss Embassy, the Embassy of Germany, the delegation of the European Commission and the MAPP-OEA.

<sup>57</sup> La "bienvenida" [a Dario Tapasco] por parte de la Fuerza Pública fue el bombardeo de la comunidad de Iberia en el resguardo de Cañamomo Lomapieta por medio de helicópteros de la Fuerza Pública, con la justificación de atacar grupos subversivos en el área, cuando toda el área atacada no era nada más que parcelas de humildes trabajadores indígenas. Habitantes del pueblo describen el evento como una escena patética "de una película" (...) Los mismos gobernadores de los cuatro resguardos del municipio han recibido amenazas por parte de los actores armados y no salen de la casa sin escoltas y sin tomar medidas cautelares". International Mission for Truth Verification in Indigenous Communities (June 2006)

creation of solidarity between the groups. The Mission enabled the indigenous groups to create alternatives for protecting their lives and documenting their human rights. From this emerged their own document called the “Public Policy for Protection of Life and Collective Rights”<sup>58</sup>, a document that encompasses shared proposals and strategies of survival within legal frameworks from indigenous groups.

### **3.3.2 Symbolic violence**

The second form of violence is what Bourdieu defined as symbolic violence. It is “exercised through cognition and misrecognition, knowledge and sentiment, with the unwitting consent of the dominated” (Bourdieu 1984:162). Bourdieu’s (1984) idea of *habitus*<sup>59</sup> helps understand how structures of violence may be reproduced in society and the influence it has in individual identity. Members of a society might have internalized the habitus of violence that structures social interaction in coercive ways, which in turn, reproduces the cultural divisions on which those practices are based. In this sense, by delimiting and establishing certain forms of violence within a social group, violence is performed as a natural phenomenon, but it is part of a social manoeuvre which is seldom perceived as such.

The Embera – Chamí are subjected to two forms of symbolic violence. One form arises from the actions of the state and the paramilitaries and guerrillas which either deny their status as indigenous peoples, or recognize them as such and claim indigenous association with enemy groups.

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<sup>58</sup> Defensoria del Pueblo: [http://www.defensoria.org.co/red/?\\_item=0301&\\_secc=03&ts=2&n=845](http://www.defensoria.org.co/red/?_item=0301&_secc=03&ts=2&n=845)

<sup>59</sup> Habitus is a set of dispositions which incline agents to act and react in certain ways (Bourdieu 1984)



A second form of symbolic violence arises in their cultural practices. In the Embera culture, there is an “essence of things and beings” called *jai* which can produce evil attacks<sup>60</sup>. The jaibaná (shaman) may intervene against these maleficent actions by curing and controlling, and in some communities they act as mediators of conflicts and resolve cultural offences (Arocha 1999; Vasco 1985, Jaramillo 2006). Violence permeates social representations. People sometimes refer to armed actors, particularly to guerrillas as *jai*, and have made *limpias* (a cleansing spiritual practice) as a reaction towards threats of their leaders. Jais are the force that explains those daily practices and expressions of violence on a micro-interactional level: interpersonal, domestic and delinquent. In the Embera community, individual lived experience normalizes petty brutalities and terror and creates a commonsense or ethos of violence (a point that Scheper-Hughes in her book ‘Death without Weeping’ (1993), makes more generally). This is expressed in the “tense tranquility” which the inhabitants of the resguardos constantly refer to.

The Embera are beginning to reject these forms of violence as the following quotation reveals:

[We] demand the national government (...) to recognize the more than 59.000 Embera Chamí indigenous persons that exists in the Caldas Department, as a true recognition of a pluriethnic and multicultural nation. (...) We reject all forms of stigmatization and address in the accusations to indigenous leaders who are promoting legitimate demand of rights for the indigenous peoples, as well as their arbitrary detentions by the armed forces of the state and the national police.<sup>61</sup>

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<sup>60</sup> They are the energy and a force that most beings have, a kind of soul-spirit within.

<sup>61</sup> “Exigir al gobierno nacional (Al señor director del DANE, reconocer los más de 59.000 indígenas Embera Chami, que existen en el departamento de Caldas, en el verdadero reconocimiento de una nación multiétnica y pluricultural. Rechazamos toda clase de señalamiento, estigmatización y ligera sindicación y acusación de líderes indígenas que promueven la legítima reivindicación de los derechos de los pueblos indígenas, así como la detención arbitraria de indígenas por parte de las fuerzas armadas del estado y la

Alongside the problem of recognition, it is possible to observe the context of violence in which JPL's framework was deployed. The state failed to protect communities from violence. As a consequence, the processes of defining violence help unify the community internally, forcing the state to rethink how to engage with these communities. The direct-political and symbolic violence shaped many responses. One was the precautionary measures to the Inter American Commission of Human Rights. Others are in the communal realm where the armed groups are constantly rejected whereas alternatives to address violent acts emerge such as the *limpias*. These responses are examples of what aboriginal people do in times of disorder: constantly developing strategies to address changing circumstances.

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policía nacional". Preliminary hearing: "Jose Gilberto Motato Largo" of the resguardo San Lorenzo (Riosucio, Caldas) (May 23-24 2008).

#### 4. CONCLUSIONS

This study of law and aboriginal people in Colombia builds on the premise that law is a form of local knowledge and that state law is reshaped locally, producing outcomes unanticipated by the state itself. Comaroff's (2001) idea of *lawfare*, in which the state uses a legal regime to erode local autonomy, reflects the current reality in Colombia, but this notion does not explain this situation entirely. My data come from interviews with aboriginal leaders, experience as a public servant and reading of academic and popular literature. This case study of the Justice and Peace Law of 2005 examines legal processes of the state and aboriginal communities' public responses to the state and their own internal debates and processes. In the end, I was able to explore the intersection of the state and aboriginal people. Colombia's unique violence, product of political struggles and economical interests, was supposed to disrupt society has, paradoxically, strengthened community ties.

I have drawn three major conclusions to my argument. First, the passage of the JPL has inadvertently strengthened solidarity amongst the Embera – Chamí and other aboriginal groups. Second, this strengthening of solidarity has itself increased indigenous identity. Third, aboriginal justice practices have been transformed and solidified. This too has strengthened community cohesion.

The intersection of local and national responses to JPL that I propose is distinct because most Colombian studies about reconciliation and state responsibility focus on the states' creation and implementation of JPL and on international standards for truth,

justice and reparation. Little has been said about how these transformative practices have been implemented at the community level. Comaroff's idea of law and disorder in the post-colony points to the difficulties of employing transitional justice mechanisms in the midst of war. This is the case in Colombia and the attempts to apply transitional justice creates challenges for the community and the state.

Perhaps the most significant development following the JPL is the strengthening of intercommunity Aboriginal networks of affiliation. New practices of documentation beyond existing oral tradition have allowed for the systematic gathering of information about state crimes. This information has been used to build court cases in a way recognizable by the courts and international fora.

The JPL has enhanced the ability of community leaders to present themselves as indigenous and therefore neutral in the armed conflict. Indigenous solidarity, in fact, is expressed when *indigenous* and *neutral* become indexes of identity in all public contexts. While previously the state was able to define who was indigenous, a new power to manipulate social discourses made the communities themselves better able to define their own boundaries.

The Embera discourses and practices that have been presented here show in a small scale what happens when a law is implemented in a community. JPL had as a goal the demobilization of paramilitaries and the creation of justice and peace through the use of reparations. But all of this has taken place without considering the history of aboriginal-state relations, particularly the violence and infantilization of indigenous peoples, and differences between indigenous and non-indigenous views. There is a disconnect

between the long history of the physical and symbolic assault on the communities and the rather perfunctory efforts at reparations.

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