

**INDIGENIZING INTERNATIONAL LAW AND
DECOLONIZING THE ANTHROPOCENE: GENOCIDE
BY ECOLOGICAL MEANS AND INDIGENOUS
NATIONHOOD IN CONTEMPORARY COLOMBIA**

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ABSTRACT

This article displays the idea of indigenizing international law by recognizing indigenous law as law. Transforming international law becomes possible by directing indigenous jurisprudences to it—I call this process inverse legal anthropology—. Based on *inverse legal anthropology*, I present a case study on the ongoing genocide of Colombian indigenous peoples in the age of the global ecology of the Anthropocene. I also explain the political consequences of valuing indigenous cosmologies regarding their territories. While mainstream representations of indigenous territories include the topographic and biologic dimensions of the earth's surface, they forget the pluriverse of organic and inorganic beings that make and negotiate their social living together with indigenous peoples, and their ecological and spiritual relationships.

Keywords: Colombia, decolonizing the Anthropocene, indigenous cosmologies, indigenous genocide, indigenizing international law, indigenous movements, indigenous nation, inverse legal anthropology, ONIC history.

INDIGENIZANDO EL DERECHO INTERNACIONAL Y DESCOLONIZANDO EL ANTROPOCENO: GENOCIDIO ECOLÓGICO Y NACIÓN INDÍGENA EN LA COLOMBIA CONTEMPORÁNEA

RESUMEN

Este artículo despliega la idea de *indigenizar el derecho internacional* al reconocer al derecho indígena como derecho. Al dirigir las jurisprudencias indígenas al marco del derecho internacional, se posibilita transformar sus raíces; denomino a este proceso *antropología jurídica inversa*. Al *indigenizar el derecho internacional* utilizando una *antropología jurídica inversa*, el artículo presenta un estudio de caso sobre el genocidio en curso de los pueblos indígenas de Colombia en la era de la ecología global del Antropoceno. En este contexto, explico las consecuencias políticas de valorar las cosmologías indígenas en relación con sus territorios. De hecho, las representaciones dominantes de los territorios indígenas, teniendo en cuenta las dimensiones topográficas y biológicas de la superficie de la Tierra, han olvidado el pluriverso de seres orgánicos e inorgánicos que crean y negocian su vida social junto con las relaciones ecológicas y espirituales de los pueblos indígenas.

Palabras clave: antropología jurídica inversa, Colombia, cosmologías indígenas, descolonización del Antropoceno, derecho internacional indigenizante, genocidio indígena, historia de la ONIC, movimientos indígenas, nación indígena.

INDIGENIZAÇÃO DO DIREITO INTERNACIONAL E DESCOLONIZAÇÃO DO ANTROPOCENO: GENOCÍDIO ECOLÓGICO E NAÇÃO INDÍGENA NA COLÔMBIA CONTEMPORÂNEA

RESUMO

Este artigo desenvolve a ideia de *indigenizar o direito internacional* ao reconhecer o direito indígena como direito. Para que se possa transformar suas raízes, é preciso dirigir as jurisprudências indígenas para o campo do direito internacional — denomino esse processo de “antropologia jurídica reversa”. Ao indigenizar o direito internacional por meio de uma antropologia jurídica reversa, este artigo apresenta um estudo de caso sobre o genocídio dos povos indígenas da Colômbia em andamento na era da ecologia global do Antropoceno. Nesse contexto, explico as consequências políticas de valorizar as cosmologias indígenas quanto a seus territórios. De fato, as representações dominantes dos territórios indígenas, considerando as dimensões topográficas e biológicas da superfície terrestre, têm esquecido o pluriverso de seres orgânicos e inorgânicos que criam e negociam sua vida junto com as relações ecológicas e espirituais dos povos indígenas.

Palavras-chave: antropologia jurídica reversa, Colômbia, cosmologias indígenas, descolonização do Antropoceno, direito internacional indígena, genocídio indígena, história da Organização Nacional Indígena da Colômbia (ONIC), movimentos indígenas, nação indígena.

INTRODUCTION

The purpose of this article is to demonstrate that the importance of approaching indigenous thinking lies in the possibility of changing mainstream historical narratives and legal doctrines through idiosyncratic interpretations driven by indigenous peoples and organizations. In order to do so, first, I analyse the historical way in which the National Indigenous Organization of Colombia (ONIC) –the main Colombian indigenous organization founded in 1982 to represent indigenous peoples and their legal and political claims– has positioned its political reading of the Colombian nationhood. Then, I present ONIC’s legal agenda regarding indigenous peoples’ genocide in terms of international law. This analysis demonstrates how the Colombian indigenous movement has been *indigenizing international law* through an advocacy approach that acts concurrently from the outside and inside of the framework of international law. In so doing, on the one hand, I pay attention to how the Colombian indigenous movement *indigenizes* the imaginaries of nationhood to show the creativity with which indigenous cosmologies changed mainstream state-centric historical narratives. On the other hand, my reading of indigenous peoples’ genocide, based on ONIC’s interpretation of international criminal law, shows how on the face of a developmental model that is producing an ongoing genocide, indigenous peoples are still fighting to change international law standards in the midst of this humanitarian crisis.

In this article, my reading of indigenous peoples’ genocide and survival is inscribed within the framework of what Kyle Whyte (2017, 153-154), Potawatomi scholar and activist, who call *indigenous climate change studies* a field of inquiry that addresses the genocide of indigenous peoples in the age of the global ecology of the Anthropocene, the geological time in which the human impact on the Earth’s ecosystems reached a level that produced dramatic ecological fluctuations such as the ongoing anthropogenic climate change. In this field, the so-called global ecology of the Anthropocene, however, is critically scrutinized from at least three different perspectives: first, distinguishing that there is a link between climate change and colonialism; second, recognizing the importance of indigenous knowledge to stop the current ecological crisis; and, third, acknowledging that indigenous peoples think about climate change from their own perspectives and

life plans. In this setting, the decolonization of the Anthropocene implies to be aware that a

term like “anthropogenic” has very diverse meanings for indigenous peoples, from gradual changes, such as the adoption of new “relatives” (e.g. adoption of the horse in North America) to the shaping of habitats for certain plants and animals, to disruptive settler colonialism, such as practiced by Europeans arriving in North America. (Whyte 2017, 159)

Consequently, the colonial enterprise has not only accelerated the anthropogenic climate change, but also the consolidation of an economic system based on neo-extractivism, which openly contradicts indigenous’ systems of justice.

In this context, I also follow the work of the Puerto Rican literary critic, Juan Duchesne Winter (2015), who lucidly and relevantly explains the political consequences of valuing indigenous cosmologies and praxis regarding their territories. Indeed, mainstream geographical representations of indigenous territories, considering the topographic and biologic dimensions of the earth’s surface, have recognized the existence of indigenous populations, but have forgotten the pluriverse of organic and inorganic beings that make and negotiate their social living together with indigenous peoples’ ecological and spiritual relations. In fact, as Arturo Escobar (2018) pointed out, the “concept” of pluriverse supposes a dynamic set of relationships between different beings. Certainly, “each territory has political approximations that can be called cosmopolitical since they involve, in addition to humans, a great variety of non-human actors” (Duchesne 2015, 7). In this cosmopolitical line, the first step to understand the interpretation of international legal standards from an indigenous perspective entails both, the acknowledgment of multiple representations of the world, and the possibility of changing the imaginaries of international law through indigenous thinking. It is not a matter of speaking for indigenous peoples but mainly of being captivated by their voices.

One of the best examples of the aforementioned anthropological exercise is encapsulated in *The Falling Sky–Words of a Yanomami Shaman* the collaborative work between Davi Kopenawa, shaman and spokesman for the Yanomami of the Brazilian Amazon, and Bruce Albert, a French

anthropologist and Kopenawa's close friend since the 1970s (2013). This book, the outcome of intense fieldwork conducted by Albert, in which countless tape recordings of Kopenawa's teachings collected between 1989 and 2001, were transcribed and translated into French, encompasses a vivid example where aboriginal accounts impregnate Western narratives enabling their *indigenization*. The style and politics involved in this collaboration, as Eduardo Viveiros de Castro pointed out, imply a *counter-anthropology* because Kopenawa took on the task of explaining in "our" words what we should know about Yanomami thought and how we are perceived by his people. Indeed, according to Viveiros, *The Falling Sky*, "is not a book of anthropology written by Bruce Albert about an Amazonian Indian; it's a book written by an Indian about Bruce Albert and other white people" (Skafish 2016, 401-402). In my view, this is precisely the sort of anthropological endeavour that should be replicated in terms of indigenous peoples in international law.

On a first level, it is important to remark that the ethnographic process of listening to indigenous law as law does not pretend to create an academic translation of indigenous jurisprudence as it is enacted on ancestral lands. It is not a matter of representing indigenous knowledge as it appears in particular cosmologies, but as an exercise in which international legal ethnographers allow themselves to be seduced by the reflections of indigenous jurists. I understand this ethnographic act of seduction as the possibility of actively interacting with indigenous concepts, words, and cosmologies to transform the conceptual matrix of state-centric laws and indigenous international standards. In this way, it is not a matter of speaking up for indigenous peoples, but of taking their own systems of knowledge seriously. In this regard, a principal political concern of *indigenizing* state-centric laws has to do with the imperative need of stopping the indigenous genocide as a way to resist the geological onslaught that is producing the current ecological crisis (Viveiros and Danowski 2014).

On a second level, this approach, through which "we" can learn from indigenous jurisprudences in order to change "our" laws, is what I call in my research inverse legal anthropology (Bacca 2018). The methodology I am talking about does not seek to turn the discourse of indigenous rights as it appears in international law into the framework of indigenous cosmologies, but mainly to "traverse the distance that separates each

one's perspective and the different ways of being in which they rest" (Duchesne 2015, 196). In fact, international law as a project and field of study has been denying the relationship between its rules and those arising from indigenous jurisprudence. The task of my research is a very simple one, to take indigenous jurisprudence seriously, which in the context of my analysis here means unveiling the epistemological richness of indigenous legal theory and, consequently, the significance of aboriginal narratives in productively addressing the colonial role played by the Western legal tradition in dismantling indigenous systems of justice. In this regard, it would not be a matter of adjusting indigenous jurisprudences into the terms of the Western Rule of Law, but rather an attempt to fully acknowledge indigenous peoples' ontological self-determination (Escobar 2008; Viveiros 2014). Christine Black, a Kombumerri/Munaljahlai jurist, explains it this way:

There is a dearth of books and articles on Indigenous jurisprudence and a glut of texts on Indigenous peoples and Western jurisprudence. The existing definitions surrounding Indigenous jurisprudence therefore have been influenced by the way in which Indigenous peoples have been assimilated under the Rule of Law. (Black 2011, 9)

There is no doubt that indigenous organizations locally, nationally, and globally need the help of legal experts; but neither is there any doubt that it is the experience of indigenous leaders (narrating the facts, expressing the practical concerns, and talking about indigenous rights using their languages and cosmologies), which has headed the most important jurisprudence and international legal standards regarding indigenous issues. In any case, there is also no doubt that to be able to meet all the ontological and methodological challenges that supposes listening indigenous law as law, international legal scholars and ethnographers should pay attention to how indigenous peoples conceive their social environments, in order to promote legal measures against the ongoing indigenous genocide by taking into consideration the relationship between human and non-human beings, such animals, plants and spirits.

In this context, it is the distance between international law and indigenous jurisprudence that "produces" a particular perspective.

Since colonial times, the Western Rule of Law has been the unit of measurement of indigenous jurisprudences and, consequently, the silencing of indigenous peoples' jurisdictional speech has been the rule. *Indigenizing international law* entails, in this way, shortening the distance between Western and indigenous jurisprudential accounts, allowing listening to indigenous jurisprudences more closely. If “we”, captivated by the potential of indigenous living laws, allow “ourselves” to listen to indigenous law as law, the possibility of interpreting international law through indigenous jurisprudences to transform its very language becomes possible. Thus, the potential of *indigenizing international law* rests on an inverse legal anthropology that is gradual.

The gradualness of inverse legal anthropology appears in this article in two distinct, but complementary scenarios anchored in the idea of *indigenizing international law*. In the first scenario, mainstream narratives of the Colombian nation will be transformed by indigenous people's voices in a turn where the distance between Western accounts and indigenous narrations becomes shorter, and in a way that we can learn from them. In the second scenario, a critical reading of international criminal law will be displayed with the objective of showing how state-centric laws mobilized by indigenous organizations and their allies can also be used in the struggle against indigenous genocide. Thus, this article draws attention to resistance processes of survival, demonstrating (through the voices of ONIC's leadership) that indigenous peoples have not surrendered to colonial and postcolonial attempts at perpetrating their physical and cultural annihilation.

To advance in this direction, the first section presents the ONIC history through the memories of Taita Víctor Jacanamijoy and Luis Evelis Andrade, former ONIC vice-president and president respectively. My narrative intertwines, on the one hand, Jacanamijoy's and Andrade's life stories in order to show a concrete example of indigenous survival by means of resistance. And, on the other, their explanation (in “our” words) of what we should know about the ONIC political program and how the ONIC perceives the official narratives of Colombian nationhood. The second and third sections introduce the ONIC political program in international criminal law; especially, concerning the relationship between physical and cultural extinction and indigenous genocide through ecological means. For the ONIC, the ongoing indigenous

genocide in Colombia is taking place both by the physical annihilation of entire communities and the constant denial of indigenous peoples' ontological self-determination. In the final section I will present the conclusions.

Ethnic Militancy as a Means of Survival

During a political and free-flowing conversation with Taita Víctor Jacanamijoy, former ONIC vice-president (1986-1990), the image of stepping into their offices in the very heart of La Candelaria (the iconic historical neighbourhood in downtown Bogota) returned to my mind. As is the case with ONIC, at *Tambo Sinchi Uaira* (Jacanamijoy's home located in the working-class district of San Cristóbal in the capital city) the constant sound of music encompasses rhythmically with material and symbolic enactments of indigenous peoples' social and political struggles. From the moment you walk up the ONIC stairs, the sounds of *vallenatos* –Colombian folk music from the Caribbean region, reappropriated by indigenous peoples from the Sierra Nevada de Santa Marta and the Serranía del Perijá in the north-east of Colombia– complement the eloquence with which indigenous leaders from different parts of the national territory talk about the past, present, and future of political and legal struggles focused on their cultural survival.

Swaying to the *sanjuanitos*, an Andean folk music performed on traditional instruments such as the *bandolin*, *quena*, *charango* and pan flute, I found myself talking with Taita Víctor about his involvement with the national and international indigenous movement. Taita Víctor's personal and political life embodies the ONIC agenda in different ways. It is a platform to which he has been connected since its origins in the early 1980s. Originally from the Inga indigenous territory of Santiago –located in the southwest department of Putumayo bordering Ecuador and Perú– Jacanamijoy's community has experienced the consequences of different colonial periods ranging from the aftermath of the Spanish invasion in the 16th century and the Catholic missions' administration of Putumayo since 1547 (Davis 2014, 159-199) to the legacy of slavery produced by the rubber boom in the middle of the 19th century (Taussig 1991). And more recently, the militarized eradication of coca crops driven by the U.S.-Colombia antidrug policy (Plan Colombia), with aerial fumigations using Monsanto's glyphosate (Lyons 2015).

Jacanamijoy spent his early years in Leticia, the capital city of the trans-frontier department of Amazonas in southern Colombia, which turned him early into a politically involved indigenous subject. On the one hand, his interaction with Amazonian indigenous peoples such as the Bora, Uitoto, Makuna, Mirana, and Ticuna raises his awareness of biological and cultural diversity. Indeed, Jacanamijoy's prompt contact with indigenous elders of this area piqued his vocation as a healer. On the other hand, his constant communication with natives and mestizos from Ecuador, Perú, Bolivia, and Brazil across the Amazon corridor made him a versatile polyglot, and fed the cosmopolitan spirit, which led him to travel around the Americas, Europe, and Asia denouncing the ongoing genocide of indigenous peoples, as well as, promoting their political and ontological self-determination. In this way, Jacanamijoy's life embodies an indigenous' location that cosmologically and politically speaking is beyond the national and the international. Certainly, this kind of location is *outernational* because it is constituted as an *out of place* in relation to the nation-state (Girol, cited by Duchesne 2015, 24).

Jacanamijoy's ethnic militancy is inextricably linked to ONIC program, which flourished under the experiences of three social events that crystallized the ideas of political resistance and cultural survival at the national level under the heading of self-determination—understood as the power of indigenous nations to choose their own life plans. First, there were the indigenous struggles over land in the 1930s (Legrand 2017, 209-219), when the central state's failure to recognise and formalise indigenous territories gave way to the upholding of settlers "rights". The historical background of this fight dates back to 1905, with the enactment of Law 55 directed toward the dissolution of indigenous reserves (*resguardos*). In the first article of this law, which was in force during Quintín Lame's revolution in the Cauca province, the Colombian nation ratified the sale of indigenous *resguardos*—a procedure that was repeated in 1919 with Law 104 (Bacca 2013, 319-320).

Second, indigenous legal appropriations and reappropriations of nation-state laws in the 1970s, under the operation of the *División de Asuntos Indígenas* (DAI) (Division of Indigenous Affairs) that put forth a program to prohibit the dissolution of indigenous *resguardos* until further notice, through which the movement advanced in the consolidation of collective land holding. Finally, the last social event

happened in a decisive and meaningful way, by taking advantage of the 1970s indigenous uprisings with the collusion of grassroots organizations. This took place in three complementary scenarios: (a) the appropriation and reappropriation of nation-state laws created by the Instituto Colombiano de Reforma Agraria-Incora (Colombian Institute for Agrarian Reform) –an institution that “purchased lands for the establishment of community enterprises, which remained, nevertheless, independent of cabildos” (Rappaport 1994, 16); (b) a contentious dialogue with the Asociación Nacional de Usuarios Campesinos ANUC (National Association for Peasants) –“an independent peasant movement organized around demands for land and the protection of colonist and smallholders” (Rappaport 1994, 15); (c) fostered by the Consejo Regional Indígena del Cauca CRIC (Regional Indigenous Council of Cauca), an organization set up in 1971, that began the recuperation of the land and territories of the lost reserves, which were legally inalienable according to Law 89 of 1890 (Troyan 2015, 59-153).

These historical events have been recorded in indigenous’ oral tradition, and it has been by interacting with indigenous sources that I gradually began to better understand the meaning of survival within the Colombian indigenous struggle. Definitely, the image of stepping into ONIC offices that prowled insistently in my mind while I continued talking with Taita Víctor, speaks to me about the “same” historical period, however, this reminiscence mixes the academic accounts with indigenous voices. From the moment I met Jacanamijoy in 2002 during a campaign that sought the increase of special educational allowances for ethnic minorities, and my subsequent involvement as researcher for ONIC to devise a methodology for prior consultation processes with indigenous communities in 2003, the historical facts that led to the foundation of ONIC have surfaced in my dialogues with indigenous leaders as a prime example of my idea of *indigenizing international law* from an inverse legal anthropology. In this ethnographic exercise, it has become clear that the consolidation of indigenous’ collective land holding is not only about to take back the land but mainly to maintain the ontological relationship with the territory. This means to recover full control over territory is to recuperate the cosmological coordinates which shall ensure a fluid relation among humans, non-humans, and spirits (Escobar 2015, 179).

Thus, for example, in different public and private meetings in the last decade, I have heard Luis Evelis Andrade, former ONIC president (2003-2012), speak eloquently about indigenous survival and genocide in Colombia. Andrade, an Embera indigenous leader from the department of Choco, located in the west of Colombia, headed ONIC during one of the harshest periods of violence in the country's recent history. Remarkably, he links survival to the political program of ONIC, where self-determination, defence of indigenous territory, and control over natural resources are highlighted in terms of indigenous thinking. His account, as opposed to mainstream historiography, emphasises how indigenous struggles have produced a particular history of Colombian social movements. Thus, contemporary Colombian history is marked by a turn "manufactured" from within indigenous grassroots organizations (Rappaport 1994). Andrade talks about ONIC history by remarking not only the growing recognition of indigeneity that took place in Colombia when the organization first started working; but also by reversing the centrality of state institutions in order to read their history through indigenous voices, that is to say, *indigenizing* local and international standards.

The "inverse narrative turn", taken by Andrade in particular and indigenous leadership and grassroots in general, displays a storyline in which the political struggles assumed by CRIC were not only able to *indigenise* official state laws in a constant process of appropriation and reappropriation, but also by fighting for survival against genocide through social mobilization. Andrade introduces ONIC history through Trino Morales' voice, a Guambiano indigenous leader from the southwestern department of Cauca, who, having the collective repossession of land as a platform for his political agenda during the sixties, took a fundamental step toward strengthening national and international indigenous claims.

In 1962, Morales co-founded the Sindicato del Oriente Caucaño (Union of East Cauca), a Guambiano union that launched a program to repossess indigenous territories and to respond to the growing mistreatment of local leaders jointly with the indigenous council (*cabildo*). In the 1970s, while presiding as indigenous secretary in ANUC, he promoted the separation from this peasant social structure because of internal exclusions and ideological disagreements (mainly the resistance against

colonialism and the empowerment of self-determination) (Gross 2009). This coincided with the creation of CRIC in 1971 –the organizational force that provided the impetus behind the development of the contemporary Colombian indigenous movement. Since 1974, under the CRIC political program, Morales directed the Unidad Indígena (Indigenous Unit), a pioneering newspaper, which became a communication platform for indigenous peoples and that resulted in Morales' nomination as the first president of ONIC in 1982 (Archila and González 2010).

According to Taita Víctor, these platforms of resistance are best understood as an organized whole focused on indigenous ecological survival, though focused on different issues such as repossession of communal lands, strengthening of traditional authorities, promotion of indigenous rights to their own educational and health systems and defence of indigenous languages, history, and cosmologies. Jacanamijoy locates the 1970s with the advent of CRIC and the 1980s with the birth of ONIC, as a foundational moment to understand what was to become the internationalization of the Colombian indigenous movement at the beginning of the 1990s. He positions himself between the First National Indigenous Congress, which institutionalized ONIC in a multitudinous meeting carried out in Bosa (the southwestern 7th locality of Bogotá) and convened between February 24 and 28, 1982, and the Second National Indigenous Congress that took place in the same locality between 17 and February 21, 1986 (ONIC 1982; 1986).

Between 1981 and 1982, having returned to his native Santiago at the age of fifteen, Jacanamijoy did not have the financial resources to conclude his secondary schooling. Taita Víctor told me that despite the economic precariousness his decision to continue studying was absolute. For that reason, he called on the assistance of his indigenous council, where he held the position of scribe. The budget of the indigenous council was virtually non-existent; however, the governor at the time, Taita Mateo Chasoy, delegated him to conduct an indigenous census through which he earned the sum of 2,000 Colombian pesos. Though the amount was not enough to buy notebooks, pen, pencil, pencil sharpener, and eraser, the school supplies he needed to attend high school, Jacanamijoy recalled with nostalgia that the store owner gave these to him for that price. Between 1983 and 1984, after getting a tuition scholarship to complete high school, he combined his work as a part of the student committee

with his official appointment as member of the indigenous council, gaining the experience needed to emerge as one of the main indigenous leaders from the Amazon Basin and the Andean region.

In 1985, at the time of his graduation, ONIC convened the Second National Indigenous Congress and he travelled to Bogotá to join the meeting, which would be the beginning of a prominent career within the Colombian indigenous leadership. Jacanamijoy pointed out that in previous years he had mixed his educational activities with intensive working days next to experienced Putumayo and Amazon healers, with whom he not only learned the science of indigenous medicine, but also the art of political resistance to confront their physical and cultural extinction. In the action of walking through ancestral territories throughout the country –as Trino Morales and Taita Víctor have done– indigenous peoples continue to honour their ancestors’ work by training new generations of leaders. Acknowledging precisely such an endeavour, the Second National Indigenous Congress’ plenary appointed Jacanamijoy as ONIC vice-president for the period 1986–1990. This historical interval characterized by the strengthening of the local grassroots would prepare the terrain for the consolidation of a strong social movement at the national level. Indeed, it would be the first Latin-American indigenous movement able to reach a Constituent Assembly and, subsequently, to gain recognition of cultural diversity and of indigenous jurisdictional systems in 1991, in an event that would become a reference point for the international indigenous movement. Both Jacanamijoy and Andrade have stressed the importance of the constitutional recognition of indigenous peoples’ rights in our meetings, and have also expressed their concerns regarding the “parallel implementation” of a neoliberal economic model characterized by the massive extraction of natural resources in indigenous territories.

Until now, the distance between mainstream narratives and indigenous storylines on nationhood has produced a history in which the twentieth-century indigenous claims materialized in the 1991 Constitution. In fact, the historical tradition that wiped indigenous peoples off the face of the Colombian map was significantly counteracted, at least in formal terms, since indigenous demands were elevated to a constitutional level. This inverse legal anthropological calibration can be complemented with another reading that is a constitutive part of my narration –more invisible

but not less important— where the state-centric laws can be *indigenized*. Taita Víctor Jacanamijoy, like David Kopenawa, the Yanomami shaman of the Brazilian Amazon that together with Bruce Albert has displayed the most refined exercise of inverse anthropology, articulates his political discourse around his mystical experience as a healer. Kopenawa's and Jacanamijoy's political claims are directed to keep indigenous territories alive and to curb the ongoing genocide of their peoples.

Thus, in this particular case, the shamanic ontology wherein the defence of indigenous territories rests is encapsulated in the teachings of Kopenawa's and Jacanamijoy's master plants –consciousness-expanding plants that have been a part of indigenous experience for many millennia. Kopenawa is very clear about this experience:

I did not learn to think about the things of the forest by setting my eyes on paper skins. I saw them for real by drinking my elders' breath of life with the yakoana powder they gave me. This was also how they gave me the breath of the spirits, which now multiples my words and extends my thought in every direction. (Kopenawa and Albert 2013, 23)

In the same way, all the teachings that I have received to this day from Jacanamijoy ground on the wisdom of his spiritual medicine –*Ayahwasca* or *yagé*. In both cases, all beings (non-human, biotic, non-biotic, material, and non-material) that populate the world are able to acquire psychic faculties and agency, as humans do. That is why Kopenawa's and Jacanamijoy's perspective on indigenous genocide is concretely located in the age of the global ecology of the Anthropocene. Indeed, during our interactions, Jacanamijoy insisted that the struggle against the genocide encompasses both indigenous peoples' survival and the safeguarding of human and non-human life on the planet. This claim is based on a shamanic ontology, definitely, one that powerfully links shamanism, territory and law. Thus, according to Taita Víctor:

Indigenous justice begins in *yagé*, this is justice for my people. *Yagé* is territory. Just like our people, *yagé* belongs to this territory. Drinking *yagé* (chumando) I have learned to love, to respect, to cultivate, and to defend the life, which is the earth. This is our law, the natural law. Indigenous law was born in traditional medicine. (Interview 1 and Poetry Reading Day)

Here, the gradualness of an inverse legal anthropology enunciated in the introduction articulates both the sacred and the profane. Indeed, Jacanamijoy's reading of the Colombian nationhood operates as a *hinge text*—it functions to create an in-between account of *Ayahwasca* teachings and ethnic militancy towards survival. For example, Jacanamijoy has told me on repeated occasions that indigenous peoples cannot separate rituality from politics—the most important political decisions of his people are taken by following the advice of *Ayahwasca*. In this way, Jacanamijoy's *hinge text* operates between the jungle, where he learns the arts of his ancestral medicine; and national and international meetings where the decisions about indigenous peoples in international law are taken. Admittedly, for Jacanamijoy, this is a mandate where history can be conceived as an art of transformation:

I met Taita Francisco Piaguaje from the Siona people, Taita Fernando Mendua from the Cofán people [...] They are grandparents who have preserved their tradition and until the last day of their lives they have been drinking yage [...] They have died old and lucid. They barely knew how to sign. My Taitas, my grandparents have died. We, ingas, sionas, cofanes, camsás, are the shoots and we are still friends. Who will prevent it if this is an act of will, patience, perseverance, as our grandparents and the pacha mama (mama alpa—the earth) has taught us [...] Drinking yage, I have understood that life is also the water eye, the stone, the mountains, the animals, the sun, the moon, the stars, the lagoons, the air, the wind, the moors, the volcanoes. (Interview 2 and Poetry Reading Day)

Unlike accounts that read indigenous struggles in light of a history where the narrative emphasis is placed on official narratives of nationhood, indigenous historical accounts based on oral tradition have developed a social and political history articulated around their own protagonists and horizons of life. Thus, the trajectory carried out by human cultures to produce their own lives has the immediate consequence of enabling their own thinking regarding the production of anthropologies and histories. As such, the possibility of directing an Other's point of view towards us carves out a space where dissenting voices can change our perceptions about our own history and anthropology. This is precisely what has happened with my discernment about

indigenous survival in general and indigenous peoples in international law in particular by listening to ONIC history through indigenous voices. In this ethnographic exercise, the indigenous uprisings in Colombia acquired a human/no-human dimension, one in which both the hope for survival and the darkest side of genocide is displayed within the memory of indigenous cultures.

In the next section, I explore how my approach to the genocide of indigenous peoples vis-à-vis international criminal law, belongs to the Colombian indigenous movement. In this context, I locate a new *inverse legal anthropological* turn able to *indigenise international law*, one where indigenous peoples use state-centric laws for strengthening their political agenda. At the same time, my evaluation considers how ONIC has combined the use of international law standards with non-anthropocentric jurisprudences and social mobilization, in order to exert political resistance against the genocide of indigenous peoples by ecological means.

Ethnic Militancy in International Law

I can undoubtedly say that the simplest as well as the sharpest way to evaluate the recognition of cultural diversity and indigenous peoples' rights in the framework of the 1991 Colombian Constitution is to contrast its political formula in everyday life with the way in which indigenous jurisdiction is acknowledged. According to Articles 1 and 7 of the Constitution, "Colombia is a social state under the rule of law" where "the state recognizes and protects the ethnic and cultural diversity of the Colombian nation." Article 246, for its part, recognizes the indigenous jurisdiction "in accordance with their own laws and procedures *provided these are not contrary to the Constitution and the laws of the Republic*" (Emphasis added).

Indeed, my steps on the path of indigenous issues were marked first by the internal contradictions of the Constitution's political formula that, seeking the integration of indigenous peoples within the Colombian Republic, ended up disavowing the peculiarities of each indigenous nation. At a second level, by experiencing the contradictions of a multicultural society within a unitary republic (Sánchez 2001, 38), and the difficulty of making such a constitutional recognition effective, considering that since colonial times the idea of European superiority over indigenous

cultures has remained current (García and Rodríguez 2003, 35). And, last but not least, by witnessing first-hand how the Colombian indigenous movement, being aware of the operational capacity of the development model over the political formula of a pluriethnic nation, has been strategically combining the use of international law standards, indigenous cosmologies, non-anthropocentric laws, and social mobilization as a way to resist politically.

A decade after the 1991 Constitution, government policies in relation to indigenous peoples displayed the tendencies of global capitalism characterized not only by the positioning of indigenous rights at an international scale, but also by the structuring of an extractive mode of production where “conflicts over the exploitation of indigenous lands have multiplied and escalated rapidly across the world” (Rodríguez 2011, 266). I initially perceived the challenge by interacting with national indigenous leaders affiliated to ONIC, who always insisted on the need for using national and international procedural norms to counteract the risk of annihilation of indigenous peoples. And, at the same time, their unbreakable will to continue empowering indigenous thinking and social mobilization as a political banner to defend their self-rule. This includes their territory’s management plans focusing on their physical and cultural survival, comprising the recognition of indigenous peoples’ spiritual attachment to the land, and their everyday relationship with non-human beings and their agencies and personalities. In this context, ONIC has been drawing attention to the fact that 62,7% of all Colombian indigenous peoples are at risk of extinction if one cross examines ONIC internal statistics with the numbers offered by the Colombian Constitutional Court (CCC) (ONIC, 2010).

There were decisive events in the configuration of my understanding of the genocide of indigenous peoples through ecological means in the aforementioned context. I locate these balanced points between two symbolic dates first, the day of the abduction and subsequent murder of indigenous leader Kimy Pernía Domicó; and second, the day when the CCC determined the existence of 36 indigenous peoples at risk of extinction. Pernía, Embera Katío indigenous leader and water protection activist, died at the hands of paramilitary groups in northern Colombia. He led the collective mobilization of the Embera Katío nation against the construction of the Urrá dam, a massive hydroelectric project of the

Multipropósito Urrá S.A. Enterprise that changed the course of the Sinu River, the main watercourse that passes through northern Antioquia department and extends across the north Córdoba department before flowing into the Caribbean (Rodríguez y Orduz 2012). The Embera Katío life project, located in the midst of the extractivist development model and their fight to keep alive the Sinu River's spirits, source of their biocentric cosmological framework, epitomises the environmental struggles of the poor within the Colombian indigenous movement. Specifically, the struggles of those who have dedicated their lives to offer "resources of hope in the unequal battle to apprehend, to stave off, or at least retard the slow violence inflicted by globalizing forces" (Nixon 2011, 30).

The beginning of the Urrá project did not include the process of prior consultation with the Embera Katío nation. In this context, Pernía's activism to defend the physical and cultural survival of his people included a precursory Constitutional Court judgement that, affirming indigenous peoples' right to self-government and prior consultation, became a reference point in the framework of indigenous peoples' rights in international law (CCC 1998, Sentencia T-652). His international activity encompassed a process of witnessing before "a committee of [Canadian] MPs charged with oversight of foreign affairs. He told them about the devastating impact of a hydroelectric megaproject, built with financing from Canada's Export Development Corporation" (Amnesty International, 2016). He also attended a meeting with government ministers and civil society organizations while the 3rd Summit of the Americas was taking place in Quebec City in 2001. These facts were the beginning of a legal fight from which ONIC approached environmental and territorial rights, considering that the recognition of collective rights is meaningless unless it actively resonates with the territorial non-human agencies. Indeed, in the same way, that Kopenawa and Jacanamijoy are approaching their master plants as living and thinking beings, Pernía did not see the Sinu River as a mere natural resource. In the context of indigenous water ontologies, rivers speak and their waters listen; therefore, justice can only be achieved in indigenous territories with the help of their spirits (Cruikshank 2005).

As a prelude to the murder of Kimy Pernía, in 1999, there was a process of social mobilization that led the Embera Katío nation to march to the offices of the Ministry of Environment in Bogotá, which

suddenly and unexpectedly became crowded with indigenous peoples. The Embera communities and their supporters demanded their right to prior consultation; definitely, a fundamental right that was violated with the beginning of construction work on the Urrá dam in 1993 (Rodríguez and Orduz 2012). This mobilization process reminded the generation of law students at the beginning of the century of the stories about indigenous leaders, who came down from the mountains and roamed jungle trails to arrive at the 1991 Constituent Assembly. The figure of Kimy Pernía, which rests in the memory of the contemporary Colombian indigenous movement, has been key to my analysis of indigenous ontologies and non-anthropocentric realities. Certainly, it was through his life story that I approached the second breakpoint that set out my understanding of the ongoing genocide of indigenous peoples.

This succeeding fact took place on January 26, 2009, when the Colombian Constitutional Court (CCC) determined the existence of 36 indigenous peoples at risk of extinction due to causes directly and indirectly connected with the armed conflict, and the social phenomenon of forced displacement in the country. As part of the monitoring measures of the CCC, in September 2007, a technical briefing was convened to analyse this case (Amnesty International 2010, 8). Having reviewed the reports from indigenous and civil society organizations, the CCC ruled with the objective of protecting the fundamental rights of indigenous peoples displaced by armed conflict or at risk of forced displacement (Amnesty International 2010, 3). The CCC pointed out three structural factors related to the physical and cultural extermination of indigenous peoples: first, the confrontations taking place in indigenous territories between armed actors which integrated *factors directly caused by the conflict*, “for example, militarization or belligerent confrontations occurring within indigenous territories, massacres, and false charges of rebellion or terrorism brought against indigenous persons” (Rodríguez 2014, 9); second, the war process that actively involved indigenous peoples and their individual members in the armed conflict, encapsulating *factors related to the conflict but not directly caused by it*, “as in the cases of territorial dispossession caused by economic actors, acting illegally or legally, interested in the land’s natural resources or other actors interested in the territory’s strategic location” (Rodríguez 2014, 9); and third, the social and socioeconomic process associated with internal

armed conflict that affects indigenous peoples' traditional territories and cultures, integrating *factors that are aggravated by the conflict*, "that increase vulnerability, such as poverty" (Rodríguez 2014, 9).

Ruling 004 of 2009 has been referred to as supporting evidence of genocide and crimes against humanity according to United Nations institutions and bodies that specifically target indigenous peoples' concerns. In fact, Rodolfo Stavenhagen (2004, para 29), Former Special Rapporteur on the Rights of Indigenous Peoples, launched an alert in relation to the ongoing genocide in Colombia previous to the CCC decision in November of 2004. In 2009, ONIC submitted a report to the Special Adviser to the Secretary-General on the Prevention of Genocide, which provided evidence of genocide and crimes against humanity against indigenous peoples (ONIC 2009). In 2010, Former Special Rapporteur, James Anaya, following-up Stavenhagen's endorsement made the following recommendation:

The State is urged to invite the United Nations Special Adviser on the Prevention of Genocide to monitor the situation of the indigenous communities that, according to Decision 004 of the CCC, are under threat of cultural or physical extermination. The State is also urged to continue cooperating with the Office of the Prosecutor of the International Criminal Court. (Anaya 2010, para.64)

That same year, ONIC submitted a report to the Unpfii which highlighted the inefficiency of the protective measures taken by national and international entities on behalf of indigenous peoples and it clearly advised that "genocide [was] still the expression of the state-arranged policy and the imposition of an economic model by which the usurpation of territories [was] an easy way to have access to the resources available in the indigenous territories" (ONIC 2010a). At the same time, ONIC launched the campaign Sweet Words, Air of Life (*Palabra dulce, aire de vida*), in support of indigenous peoples at risk of genocide, and as an effort to find a negotiated political resolution to the Colombian conflict that should include civil society and indigenous authorities.

The campaign focused on pedagogic forums to defend indigenous peoples' development models, especially with regards to the conservation of their traditional crops and the implementation of small-scale productive projects. In this sense, in criticizing the monist developmental perspective,

namely, the one focused on the implementation of megaprojects, the campaign sought to generate social consciousness about the importance of guaranteeing the survival of indigenous peoples considering their own environmental policies and plans. These policies and plans, as this article has been showing, are based on a territoriality that not only supposes the existence of collective rights but also the coexistence of multiple worlds and overlapping realities. Among them, the motivating force wherewith indigenous peoples turn their territories into a pluriverses of interaction with non-human beings and agencies such as plants, animals, and spirits (Ruiz 2017, 89-90). Thus, ONIC prompted the use of communication and information media to present a critical reading of the rights of indigenous peoples to prior consultation. According to ONIC, a major problem in the processes of prior consultation has been the lack of transparency and disclosure of information, as well as, the internal disputes between indigenous organizations dissolving the line between the protection of ancestral life-plans and the negotiation of economic resources with public and private entities to fulfil everyday needs (ONIC 2010).

The campaign displayed indigenous peoples' present-day taking the colonial past as a reference point to understand their ongoing genocide. Following this periodization, the campaign manifested the causes of indigenous peoples' demographic decline over time, ranging from colonial slavery and indigenous deaths caused by unfamiliar diseases to the violent nineteenth-century rubber boom, and from the Texaco oil explorations of the sixties directly connected to the loss of indigenous territories as a result of forced displacement to the current expansion of mining and agro-industrial plantations, that have put indigenous peoples' environmental sustainability and ontological realities at risk. In this context, the ONIC analysis of Ruling 004 underscores two complementary registers. On the one hand, indigenous peoples have the right not to be subjected to any act of genocide contained in the UN Indigenous Peoples Declaration of 2007 (Unipd), which implies, on the other hand, the importance of considering that indigenous peoples understand the right to life linked to the biocentric pluriverse where their territories, ecosystems, and cosmologies create the conditions for collective action. In this way, ONIC pointed out the inappropriateness of separating physical and cultural genocide and, consequently, the existence of an indigenous genocide by ecological means (ONIC 2010).

GENOCIDE BY ECOLOGICAL MEANS

Like the struggle of the Ogoni in Nigeria against the Shell and Chevron pipes that poured poison into the land, streams and bodies of people, ONIC has been invoking the connection of territorial and environmental rights to argue that their people are victims of an “unconventional war being prosecuted by ecological means” (Nixon 2011, 103). Although the idea of linking the act of killing with the environmental annihilation of communal landscapes has an interesting genealogy, both in international law doctrine and environmental studies since the seventies, the main problem was and continues to be the experts’ preference for avoiding the legal consequences of such a connection in terms of international criminal law.

For example, in February 1970, before a setting of North American intellectuals discussing the war crimes perpetrated by the United States in Vietnam, the renowned plant biologist Arthur W. Galston coined the term *ecocide*:

Culminating four years of herbicide research and his attempts to end Operation Ranch Hand’, an action that elevated to the scale of chemical war the tactic of defoliation by means of the “environmental destruction and potential human health catastrophe arising from [this] herbicidal warfare program”. (Zeirler 2011, 14-15)

In 1973, Princeton University International Law Professor Richard A. Falk pointed out that those war crimes could amount to genocide considering not only acts of killing but also and, more importantly, genocidal policies. Raising the issue of environmental warfare in Indochina, Falk drew attention to the importance of understanding:

The extent to which environmental warfare is linked to the overall tactics of high-technology counter insurgency warfare and extends the indiscriminateness of warfare carried on against people to the land itself. Just as counter-insurgency warfare tends toward genocide with respect to the people, so it tends toward ecocide with respect to the environment. (Falk 1973, 80)

In Galston’s case, it was clear that ecocide was not tantamount to genocide, indeed, he suggested that if Ranch Hand had been conducted in the form of extractive projects it would not be ecocide

(Zeirler 2011, 18). Falk, for his part, proposed the drafting of an Ecocide Convention to examine how the Genocide Convention could contribute to the debate.

The legal documentation of cases such as the Urrá project and the ongoing genocide of indigenous peoples in Colombia show the type of paradoxes that the “marginalized poor and the environments they depend on” have to face in order to perpetuate their survival (Nixon 2011, 26). On the one side, there are precedents of indigenous human rights’ defenders who have been using procedural regulations in their fight against genocide in a strategic way. In fact, that can possibility depend on their direct involvement in negotiation processes with the state and multinational enterprises, as well as, their alliance with “national indigenous organizations who—due to their legal expertise in other consultations—can help balance out power relations” (Rodríguez 2011, 302). On the other side, the most inhuman and ruthless face of the neoliberal governance paradigm, the one that displays the “human and ecological costs of such ‘development’” (Nixon 2011, 26).

The ONIC struggle against indigenous genocide not only succeeded in connecting indigenous extinction with forced displacement inside of the CCC jurisprudence, but also in leading doctrinal reflections regarding indigenous genocide by ecological means and indigenous ontological self-determination. In the first scenario, as Rob Nixon has rightly stated, impoverished communities nowadays are exposed to displacement without moving (as happened with the Embera Katío nation). Thus, this radical notion of displacement:

Instead of referring solely to the movement of people from their places of belonging, refers rather to the loss of the land and resources beneath them, a loss that leaves communities stranded in a place stripped of the very characteristics that made it inhabitable. (Nixon 2011, 26)

In the second instance, as Alexandre Surallés (2017) and Daniel Ruiz (2017) pointed out, indigenous organizations have been able to show that the notion of territory cannot be reduced to a physical enclosure because it involves different ontological realities. In the particular case of indigenous territories, an interconnected network of human and non-human dimensions.

The ONIC interpretation of Ruling 004 increased the possibilities of questioning the way how the CCC eluded dialogue regarding genocide within the framework of international criminal law, even under the assumption of the risk of physical and cultural extermination. In such a context, cultural genocide involves not only the scientific environmental warfare listed above, but also the ontological conflict between an anthropocentric legal framework, and an indigenous jurisprudential cartography that goes beyond the human world (Ruiz 2017, 95). In monitoring the implementation of Ruling 004, ONIC brought the Colombian case before the UN bodies as a clear example of genocide by ecological means. In this setting, in 2011, *The Study on International Criminal Law and the Judicial Defence of Indigenous Peoples' Rights* was published, making the conclusions of Bartolomé Clavero (2011) –appointed Special Rapporteur on Indigenous Genocide by the Unpfi– public. The study, which is one of the most important examples of an official UN document that takes indigenous interpretations of international law seriously, points to Colombia as an emblematic case of an ongoing genocide of indigenous peoples by ecological means. According to the Unpfi (2009, para. 28-30), the legal approach of Ruling 004, unlike the predominant theory of criminal international law, makes clear that the extermination of some indigenous communities is not just a by-product of the armed conflict, but rather a political and economic enterprise. This enterprise, I would add, is actively involved in the annihilation of the indigenous spiritual beings, because as this article has repeatedly mentioned, indigenous' cosmopolitics do not separate the life of human and non-human actors.

In December 2011, after a year of negotiations with the Colombian government, ONIC achieved the promulgation of Special Decree 4633, which provides individual and collective measures for the reparation of indigenous victims, as well as special mechanisms for the restitution of the territories abandoned and dispossessed in the framework of the armed conflict. Exemplarily, the decree recognizes that indigenous peoples consider the territory also as a victim, and through this statement for legal purposes, the only subjects of the rights granted by the Decree would be the indigenous communities and their individuals. Once again, by adopting a biocentric approach, this achievement is *indigenizing* anthropocentric human rights standards.

In fact, this approximation resonates with the right of indigenous peoples to maintain and strengthen their distinctive spiritual relationship with their territories internationally recognized by the Unipd in 2007 (Surallés 2017, 222-224), the constitutional recognition of the rights of nature in Ecuador and Bolivia in 2008 and 2009 respectively (Ruiz 2017, 87); and more recently, with the recognition of the rivers as subjects of rights in Colombia, India and New Zealand (Eslava 2019). The heart of this matter is that the rights of nature would be impaired if their agents such as mountains, lakes, rivers, forests, and spiritual guardians, among others, are not considered legit legal actors. As Kirsten Anker (2017) has said, it is necessary to take seriously the indigenous *lawscapes* to properly acknowledge the binding status of the sources of indigenous laws, among them, their cosmologies, spirits, and ceremonies.

These facts show both the creativity wherewith indigenous organizations have been interpreting international law standards and the gap between the law applicable to indigenous peoples and its actual implementation. ONIC has been indigenizing international law to the extent that mainstream interpretations of international law are capable of transformation through the intervention of indigenous questions and thoughts. In this case, the task remains to shorten the distance between international law and indigenous jurisprudence, consequently, the indigenization of international law would operate as a strategy to help improve the humanitarian crisis of indigenous peoples.

CONCLUSION

This article presented a case study to evaluate two facets of the ONIC ethnic militancy in relation to the ongoing genocide of indigenous peoples in Colombia. First, the ONIC reading of contemporary Colombian nationhood based on a dialogue with Taita Víctor Jacanamijoy and Luis Evelis Andrade, former ONIC vice-president and president respectively. Second, the articulation of the ONIC reading of international criminal law standards with its ontological and political concerns, which together underpin the indigenous struggle for survival.

By analysing the genocide of indigenous peoples in the age of the Anthropocene, I remarked on the importance to listen to indigenous law as law. This implies taking the ecological and spiritual relations with which indigenous peoples enact their laws in their territories

seriously, and, in so doing, decolonizing the anthropocentric framework of international law with the help of indigenous knowledge. Thus, I claimed that the indigenization of international law does not imply the pretention to talk on behalf of indigenous peoples, but the possibility of producing a new perspective on international law, allowing us to be seduced by indigenous jurisprudences.

The ONIC approach to Colombian nationhood and indigenous genocide allowed me to experiment with the methodological tools offered by an inverse legal anthropology that is gradual: on the one hand, by shortening the distance between mainstream historical narrations and indigenous alternative histories—as a first exercise of indigenization, indigenous interpretation of Colombian nationhood was woven into a *hinge text* in which Jacanamijoy's stories, based on his role as a healer, were able to change conventional historical accounts; on the other hand, by shortening the distance between state-centric and indigenous interpretations on international criminal law—in a second exercise of indigenization, where the Colombian indigenous movement develops an international law analysis to talk about the genocide of indigenous peoples by ecological and ontological means.

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Interviews

- Interview 1 and Poetry Reading Day: Interview with Víctor Jacanamijoy Jajoy. Bogotá, 8 September 2015, two hours. Digital Audio Recording.
- Interview 2 and Poetry Reading Day: Interview with Víctor Jacanamijoy Jajoy. Bogotá, 10 November 2018, one hour. Digital Audio Recording.