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Legitimacies of Justice: NASA Communities, The State, and Legal Pluralism in Northern Cauca, Colombia

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LEGITIMACIES OF JUSTICE:
NASA COMMUNITIES, THE STATE, AND LEGAL PLURALISM
IN NORTHERN CAUCA, COLOMBIA

By

Ana María Gómez López

AN UNDERGRADUATE THESIS

In

Anthropology

Submitted to the
Department of Anthropology
University of Pennsylvania
Thesis Advisor: Dr. Paula L. W. Sabloff

2003
Dedicado a la memoria de Aldemar Pinzón y su hija,
y al Equipo Jurídico de la ACIN:
que continúen sus importantes labores,
apesar de las dificultades que se les atraviesen en el camino.
Indigenous judge and member of the ACIN Aldemar Pinzón (assassinated on September 6, 2002), when he signed a cooperation agreement with Baltazar Garzón, the Spanish judge in charge of bringing Chilean ex-dictator Augusto Pinochet to justice. This picture was taken during the seminar “Truth, Justice, and Reparation,” held in the University of San Buenaventura, Cali, Colombia, on May 20 and 21, 2002.

Photograph belongs to the ACIN.
# Table of Contents

Abstract
Acknowledgements

1. Introduction 1

11. The 1991 Colombian Constitution and a History of Nasa Collective Action 5


2. Indigenous Communities in Cauca: From the Colonial Period to the Mid-Twentieth Century 8
   a. The Colonial Period 8
   b. Colombia’s Independence Period 9
   c. The Early Twentieth Century 9
   d. From The Sixties to the Eighties 11

3. Cauca’s Indigenous Movement since the 1991 Constitution 14

III. Nasa Narratives of Human Remains Recovery 18

1. Fieldwork Context 18

2. The Taller (Workshop) 20

3. Search Methods and Recovery Practices 23

4. In the Shadow of the Colombian State 29

5. Searching as a Community Experience 33

6. The Search from the Perspective of Indigenous Justice 36

IV. Beyond the Recovery of Human Remains: The Implications of Legitimacy in Colombian Legal Pluralism 39

Endnotes 44

Bibliography 48

Figures 52

Annex 77
Abstract

The Nasa communities of Northern Cauca, Colombia, have long-standing cultural and juridical traditions for the recovery of their dead, a practice not foreign to them since many fall victim in the crossfire from different armed groups in Colombia’s decades long conflict. Collection of the dead is usually performed by Colombian law enforcement and forensic personnel, yet this procedure has been only partially enforced in Cauca due to weak state presence and internal corruption. However, Colombia’s new 1991 Constitution, grants various rights to indigenous communities such as the Nasa, legislatively allowing them to practice indigenous jurisdiction, which would potentially include the right to recover their dead independently. Using the Nasa and recovery of the dead as a case study, this thesis examines the implications involved in the articulation of Colombian official legislation and indigenous customary laws as well as the different conceptions of legitimacy both entail, within the context of Colombia’s new legal pluralism policies established in the 1991 Constitution.
Acknowledgements

This thesis is the culmination of two years of research. In the summer of 2001 I went to Cauca, Colombia, and spent time with members of the Consejo Regional Indígena del Cauca (CRIC) to learn the general dynamics of Cauca’s indigenous movement. In the summer of 2002, I was with the Judicial Program of the Asociación de Cabildos Indígenas del Norte del Cauca (ACIN), looking at the particular aspects of indigenous jurisdiction in Northern Cauca. To both organizations and the members that hosted me and were willing to let me spend time with them, I can only express my deepest gratitude. I avoid naming particular individual for security reasons.

Both summers were funded jointly through the Mellon Minority Undergraduate Research Fellowship Program, the Ronald E. McNair Post Baccalaureate Achievement Program, and University Scholars. I received a College Research Grant through the Center of Undergraduate Research and Fellowships for the summer of 2001. Without the constant academic and financial assistance of these institutions and the incredible personal support of their staff, I could never have even dreamed of completing the research necessary for this thesis.

In Colombia, certain individuals were crucial for the success of my research. These are the Tatay family (Pablo, Graciela, and Libia); Ms. Amanda Romero; Colombian anthropologists Dr. Myriam Amparo Espinosa and Dr. Luis Alberto Escobar; and U.S. anthropologist Dr. Joanne Rappaport. To all, thank you.

In the United States, the continuous and immense help provided by the advisor of this thesis, Dr. Paula L. W. Sabloff, was pivotal in every step of the process. For everything she did, from her wise comments and guidance to her extensive proofreading of my ESL writing, I express my deepest gratitude and appreciation. I also wish to acknowledge my mentors, Dr. Julia Paley, Dr. Ann Farnsworth-Alvear, and Dr. Araceli Garcia del Soto for constantly allowing me to talk my ideas through and always providing me with insightful feedback, as well as for the permanent impact reading their work has had in the way I conceptualize my own academic enterprises.

And, finally, I wish to thank my parents, Doris and William, and my brother Mauricio, as well as Harry Mantilla Vivas, for always being there for me in every stage of this project. Gracias, y los quiero mucho.
I. Introduction

I remember I was afraid my persistent questions would begin to create a feeling of frustration among those to whom I was directing my inquiries; however, I could not help but ask again for further descriptions of what had aroused in me such curiosity. At the time I was with members from the Nasa community, an indigenous group living in the department\textsuperscript{1} of Cauca, Colombia, also known by the Spanish name Páez\textsuperscript{2} (Figure 1). I was in a \textit{taller}, or educational workshop, on forensic anthropology organized by the Asociación de Cabildos Indígenas del Norte del Cauca (ACIN, or Association of Cabildos of Northern Cauca), an organization that represents Nasa populations living in the north of Cauca. Throughout the workshop, participants patiently described to me not only once, but over and over again how they proceeded to search, recover, and exhum members of their communities. The stories I was told created verbal pictures of \textit{whole communities}—tens, maybe hundreds of men, women, and children of all ages—walking through patches of countryside looking together for the bodies of relatives and friends, and excavating them together as a group. These images contrasted sharply with the recommendations I had received as a student of forensic anthropology, where I was always instructed to secure a crime scene to limit investigations to law enforcement officials and forensic personnel, a standard protocol which is also strictly followed by official forensic investigation teams from the Colombian government.

The Nasa communities, like many other indigenous groups in Latin America, have traditionally lived under precarious social conditions in rural areas. For decades, the territories they inhabit have been the setting of political violence among the actors of Colombia’s armed conflict: left-wing guerrillas, right-wing paramilitaries, and official governmental security forces. Consequently, as a community caught in the crossfire, the Nasa have borne the brunt of the conflict and have been forced to search, locate, and bring home their dead.
New Colombian legislation allows indigenous communities certain judicial rights. The new 1991 Constitution incorporated innovative legal stipulations on customary law, or jurisdicción especial indígena (special indigenous jurisdiction), as it is referred to in Colombian legal terminology. This new legislation allowed indigenous communities, acting in conjunction with national jurisdiction, to carry out judicial procedures according to their cultural traditions (also referred to in Spanish as uso y costumbres) within officially recognized indigenous territories. Among the many legal concessions indigenous jurisdiction potentially is the right to carry out judicial investigations, including the right to search and recover their dead within these territories. Hence my discovery that indigenous communities search and recover their dead as communities, rather than following official procedures.

The contrast between Nasa and government understandings of remains recovery and forensic protocols is just one of many examples where clashes between indigenous and governmental communities can arise as the principle of legal pluralism is implemented. In this regard, it is worth inquiring how pluralistic legal models, which have been implemented not only in Colombia but also across Latin America in the last decade, are understood by official states and indigenous groups such as the Colombian Nasa, both in general and in specific examples such as the recovery of the dead. It is also worth examining how these understandings may play out in the relationship between governmental and indigenous jurisdiction when these articulate under Colombian legal pluralism policies.

My aim was to explore Nasa views of indigenous jurisdictions and their legitimacy. Using recovery of the dead as a case study, I tried to compare the Nasa indigenous community practice of searching and collecting human remains in contrast to state official practices. This study interweaves two central preoccupations: first, the description of Nasa search and recovery practices, and second,
their perceptions of the official forensic practices performed by the Colombian state. These concerns inevitably lead to the larger inquiry, which is the central question of my thesis:

*How do Nasa perceptions of both indigenous and state practices shed light on the negotiation of legitimacy between the Nasa community and the Colombian state in the context of indigenous jurisdiction and the future development of Colombia's legal pluralism policies?*

This question of legitimacy becomes crucial if one considers the complexity of this relationship and the negotiations that take place between these two understandings of indigenous communities and the state. Establishing claims on how to collect the dead is understood differently by the Nasa community and by the Colombian state, leading in turn to different understandings of legitimacy. While the state understands indigenous jurisdiction as establishing the rule of law and enunciating the rights of indigenous citizens legally, indigenous communities seek to delineate a sphere of autonomy to protect and practice their own cultural traditions. On the one hand, indigenous groups have an understanding of legitimacy that goes beyond legal state recognition. Its essence lies in the indigenous cultural traditions and the forms of indigenous authority. In this regard, the 1991 Constitution’s clauses which could potentially allow for indigenous recovery of the dead is a legalization of a traditional cultural practice already legitimate in the eyes of the Nasa community. The Nasa communities, which have searched and collected their dead for years prior to the new Colombian Constitution, understand their practices as legitimate as a part of their past and their cultural traditions. On the other hand, indigenous participation has been defined as legitimate in the legal terms set by the Colombian state, where their practice acquires legitimacy for the government by becoming partially circumscribed to the primacy of national law (Gow and Rappaport 2002: 60). For the Colombian state, these practices are a part of a system of legal regulations and judicial protocol. This bureaucratic procedure on the part of the Colombian state seeks to construct a new basis of legitimation for the official government by making more inclusive legal and political systems (Van Cott 2000b: 211).
It is important to understand that the articulation of official legislation and customary law, as well as the forms that special indigenous jurisdiction will assume, is still being formulated. Up until now, the instances in which customary law has been used is still on a case-by-case basis, and standard procedures for each of Colombia's eighty-two indigenous communities have not been determined. Nevertheless, juridical customs that have been practiced by Nasa indigenous authorities are based on long-standing cultural traditions. The Nasa community has been known for practicing internal forms of regulating justice, including judicial investigations, for decades if not centuries. It is here that the collection of bodies as a standard indigenous practice will be consolidated, possibly creating contention and debate with the official Colombian authorities that traditionally have carried out this activity.

While my initial research and thesis cannot accurately portray the complexity of the situation between the Nasa community and the Colombian state, I attempt to weave together as many elements of my fieldwork that contribute insights to examining this question. The first section of this thesis sets the stage for dealing with the question historically: I provide an overview of legal pluralism policies established by the 1991 Colombian Constitution and the indigenous movements in Cauca and Colombia that are largely responsible for this legislation. The second section presents my fieldwork findings based on my experience with the ACIN. The study concludes by examining the implications of legitimacy in the relationship between the Nasa community and the state in the context of the newly founded indigenous jurisdiction.
II. The 1991 Colombian Constitution and a History of Nasa Collective Action


On July 4, 1991, Colombia adopted a new constitution, replacing the previous 1886 version. Following a trend that took place in fifteen other Latin American countries around this same period, the new Colombian Constitution was designed to provide channels of political inclusion in a traditionally rigid and restrictive political regime, causing a wide series of reforms on Colombia’s political and juridical institutions. Ten years later, it is still uncertain as to how structurally deep were the impacts of the Constitution in the betterment of the quality of life for most Colombians. It is also unclear whether or not the fulfillment of its democratic and participatory potential has been reached, particularly since many of the constitutional provisions designed to do so (such as indigenous jurisdiction) have only begun to be implemented. This is also true when one considers that some of the benefits of the Constitution run the risk of being suspended or severely limited in the face of current authoritarian administrations, such as that of Alvaro Uribe Vélez (Figure 2). Nevertheless, I believe it is useful for the purposes of this paper to emphasize what the constitution meant to be prior to disentangling its problems and potential difficulties, a problem I hope this thesis will provide some contribution. I believe one of the best descriptions as to what the 1991 Constitution aimed to be is the following quote by Ana María Bejarano:

Putting the constitutional debate in its place implies, first of all, reducing the unrealistic level of expectations we held for the Constitution of 1991 in the euphoric phase of its approval and recognizing it for what it really is: a “navigational chart” that signals a way, a map with a destination, a blueprint for a project under construction – that of a more pluralistic and just society, a more democratic political order, and a State that serves as the institutional framework for advancing toward both. (2001: 55)

Some of the 1991 Constitution’s most revolutionary reforms took place in Colombia’s judicial sector. These reforms are listed in Title VIII of the Constitution, called De la Rama Judicial ("On the Judicial Branch"). These include the creation of certain institutions such as the Corte Constitutional, or Constitutional Court, which would defend and guarantee the fulfillment of rights
presented in the new constitution and “ruling the constitutionality of actions taken by the legislative and executive branches, making a more balanced relationship among the powers” (Bejarano 2001:61); the Corte Suprema de Justicia, or Supreme Court of Justice, which is similar to its homologous branch in the United States; the Corte Superior de la Judicatura, Superior Council of the Judiciary, which is in charge of resolving jurisdictional clashes between more than one court, and the Fiscalía General de la Nación, or the Colombian equivalent of the U.S. Attorney General’s Office. These reforms, particularly with regards to the Constitutional Court and the Superior Council of the Judiciary, are crucial institutions that help maintain the existence of indigenous jurisdiction, discussed below.

Another of the Constitution’s most significant reforms was the provisions for the rights of ethnic communities. Colombia offers an interesting example of Latin American legal pluralism because as a constitutional model it is “among the most comprehensive and progressive to date” (Van Cott 2000b: 223) in the recognition of the rights of ethnic groups. Not only is it one of the first countries to recognize the multicultural nature of its national population, it is also a precursor in making legal pluralism official. Colombia’s indigenous jurisdiction and accumulated case law is far more extensive than that of any other Latin American country (Warren and Jackson 2002: 20). This is particularly interesting given that only two percent of Colombia’s population is indigenous, a condition which some scholars have suggested might have worked to the benefit of these communities, whose small numbers might have made their demands seem “unthreatening” to governing elites. In addition to its exemplary nature in comparison to other Latin American legal systems, it also offers a unique setting for the study of implementation in the midst of intense and long-standing political conflict.

The 1991 Constitution legally permitted the Nasa community to “enjoy autonomy in the administrative, financial, and judicial management of their territories” (Rappaport 1998: xii). The constitution granted Colombian ethnic minorities various rights, including collective titles over lands
that the communities traditionally inhabited, the right to autonomous forms of government, special consultative status for the exploitation of natural resources within their territories, and the right to practice their own traditional laws and customs. Legislation also provided indigenous communities with permanent seats in the Colombian congress.

According to the Constitution, "authorities of indigenous peoples are given the right to exercise jurisdictional functions within these territories, according to their own norms and procedures, when these are not contrary to the constitution and laws of the Republic" (Dandler 1999: 131). In general, the Colombian indigenous jurisdiction system represents one of the many legal and political gains that Colombian indigenous communities have accomplished, far outgaining other Latin American indigenous peoples' movements (Gros 1994: 118).

Despite this, the anthropological literature on Colombian indigenous jurisdiction is limited. To the best of my knowledge, the only anthropologists strictly focusing on indigenous jurisdiction are Herinaldy Gómez Valencia (1989, 1993 and 2000) and Esther Sánchez Botero (1987, 1996, 1998a and 1998b). However, the more general role of indigenous communities in the 1991 Constitution has been extensively examined. Examples of some of these works are Avirama and Márquez 1995; Cepeda Espinosa 1995; Gros 1991, 1993; Mondragón Baéz, Suárez Norato, and Cortes Lombana 1995; Rappaport and Dover 1996; and Van Cott 2000a.
2. Indigenous Communities in Cauca: From the Colonial Period to the Mid-Twentieth Century

a. The Colonial Period

The Gran Cauca, a wealthy massive state that reached up to what would now be the border between Panama and to the southern frontier with Ecuador, was one of colonial Colombia’s most powerful regions (Figure 3). Popayán, Cauca’s current capital, was a major economic and political center for Spain and its colonies during the XVI and XVII centuries. At the time, Colombia did not stand independently but was a part of the Nuevo Reino de Granada. This colonial period is particularly important in understanding much of the present situation for indigenous communities in Cauca today.

In the sixteenth century, Cauca’s indigenous population that survived the Spanish conquest was organized administratively by the Spanish crown. The most important institution that regulated the lives of indigenous communities was the resguardo. The resguardo is a territory unique to the Colombian experience, where the crown isolated indigenous communities forced to live in a designated land that could not be bought or sold, similar to Native American reservations in the United States. The resguardo was closely linked to the encomienda, a system where indigenous populations would have to pay tribute in the form of labor to chosen Spanish nobility. In return, indigenous communities were instructed in Catholicism and were allowed to use the land for their own subsistence. Resguardos were controlled by the cabildo or “councils,” headed by the noble cacique. It should be noted however that, although the caciques had authority over the resguardos, Spanish land titles acknowledged the ownership of indigenous communities over these lands. The recognition of indigenous communal ownership over the resguardo continued through the colonial era up until the eighteenth century.
b. Colombia’s Independence Period

After Colombia’s independence from Spain in 1810, Gran Cauca dissolved into various departments (Figure 4). In her book *The Politics of Memory*, Joanne Rappaport writes,

Cauca’s capital city of Popayán and its ruling elite lost the Chocó mines, the fertile lands of Nariño, the cattle and cane haciendas of the Cauca valley, the growing urban center of Cali, as well as the political authority and prestige they had enjoyed during the colonial era. In response to these conditions, the Cauca elite turned in upon itself, sucking dry its Indian and peasant populations, expanding coffee and sugarcane producing landholdings and cattle pasturage at the expense of the *resguardos*. (1998: 112)

The indigenous communities, peasants, and the recently liberated Afro-Colombians suffered brutal exploitation. Ironically, indigenous communities lost many of the *resguardo* lands they inhabited, despite legislation such as the Law of 89 of 1890, which provided legal recognition to indigenous territories and their authorities. After Colombia’s independence, *resguardos* were treated as “empty” public lands or *terrenos baldos*, and were distributed among emerging landowners. The Republican government was entitled to redistribute these lands to foster the growth of crops and boost Colombia’s budding agricultural export economy. Thus, indigenous communities lost their communal lands and became *terrenos* or sharecroppers, working under severe conditions of serfdom for food or little pay for large *terrenos* or landowners, in some places as far until the end of the twentieth century.

c. The Early Twentieth Century

Colombia experienced great economic growth from the last decades of the nineteenth century up until the 1930s, which brought about the demand for labor in newly formed haciendas, along with the construction of transportation infrastructure and rural migration. These levels of intense commercialization, economic development, and migration caused the weakening of the indigenous ownership of *resguardos*. However, in this period, confrontations between Cauca’s landowning elite and the indigenous, peasant, and Afro-Colombian segments of the population were
not uncommon. Land takeovers and protests over harsh working conditions imposed by owners of large estates took place. These actions were the beginning of indigenous organization and movement, whose reverberations would be felt up until today.

Indigenous communities in Cauca demanded the return of their resguardo lands, disputing nineteenth century baldío claims. The Nasa community was led by figures such as Manuel Quintín Lame, a deeply Catholic Nasa leader of indigenous revolts against forced labor and for land seizures, basing his actions on archival research of colonial resguardo titles (Figure 5)⁹. Indigenous communities sought to

revalidate already existing colonial resguardo titles...or draft new ones based on knowledge of boundaries, handed down orally from generation to generation...in an attempt to stave off the expansion of states on their communal properties (Rappaport 1998: 103).

Although this activism was successful in the first decades of the twentieth century in Cauca and was slightly fueled by the Agrarian Reform of 1930, much of these efforts faded after Quintín Lame moved to the neighboring department of Tolima to help indigenous communities there in the 1920s. This was not only due to his departure, but also to the intense repression and bi-partisan violence that took place between 1948 until the late fifties. This period, known as La Violencia, was marked by the administration of Colombia’s Conservative Party, which attacked and decimated opposition to the Liberal Party and non-party political activists. It is estimated that over 200,000 people died in this period and over 2 million emigrated as a result of the violence. Indigenous authorities were forced to submit to new local political figures. Landowners also began to attack indigenous communities with the use of pájaros, hired assassins used by the Conservative party during the Violencia. Cauca’s communities, in particular the Nasa, were severely affected by this period, which made much of their public actions such as land recovery become temporarily dormant. The subsequent rise of political dictator, General Gustavo Rojas Pinilla, in 1953, only made organizing even more difficult for the Nasa and other Colombian grassroots groups during this period.
From The Sixties to the Eighties

In the early 1960s, after Rojas Pinilla left power, Colombia’s indigenous and peasant movement experienced a period of revival. In 1967, the Asociación Nacional de Usuarios Campesinos (ANUC: National Association of Peasant Users), an organization that united the Colombian peasantry movement at a national scale, was formed. Although it originally encompassed indigenous and peasant populations, in 1971 an independent indigenous section within the ANUC was formed. This section was called the Consejo Regional de Indígenas del Cauca (CRIC, or Regional Indigenous Council of Cauca), the first indigenous organization in Cauca and Colombia. The CRIC was a part of the ANUC until 1981, when the latter broke up due to internal tensions, much of which were attributed to problems with CRIC. As Colombian anthropologist Myriam Amparo Espinosa explains:

The particular nature of the “Indian” begins to be reconstructed: On the one hand, it is built from daily routines in the fight for their interests, in the consensus on their relationship of reciprocity with nature, in their language. On the other hand it rests on their own (propio) territorial and political institutions, such as indigenous legislation, the resguardo, and the cabildo. (1998: 113)

While the ANUC continued to disintegrate progressively after this date, the indigenous movement, centered in Cauca, became stronger and acquired articulation and coordination both at a regional and national level (Equipo de Capacitación del CRIC 1989: 300). In 1980, CRIC helps carry out the First National Indigenous Conference in Bogotá in February 1982. Here, the ONIC, or the Organización Nacional Indígena de Colombia (National Indigenous Organization of Colombia) was formed.

CRIC continues to be the oldest and the most vigorous indigenous organization in Cauca and Colombia. CRIC’s initial slogan, Unidad, Tierra, y Cultura - “Unity, Territory, and Culture (now Tierra, Autonomía, y Cultura – “Territory, Autonomy, and Culture”) describes this group’s main foci of activism (Figure 6) Although the organization is meant to be representative of Cauca’s eight
indigenous communities\textsuperscript{12}, it is strongest in areas where the Nasa are mostly present. This is also because most of the Nasa, particularly those in the northern and northeastern part of Cauca, tend to be in regions where sharecropping and resguardo ownership by non-indigenous landowners continued into the last decades of the twentieth century.

Land seizures throughout Cauca, but in the north especially, brought about strong repression to these communities. The first waves of organized action in the 1970s\textsuperscript{13}, which was originally centered on mobilization and the recuperation of indigenous territories, was, and continues to be met, with violence. Indigenous land squatting, as well as marches, mobilizations, and protests, has led to strong violent acts by landowners working with the support of local security forces and the Colombian military. Massacres\textsuperscript{14}, assassinations\textsuperscript{15}, and disappearances\textsuperscript{16} have taken place at the hands of these actors since the CRIC’s inception, which from early on has posed “a clear threat to the Colombian elite and its traditional political parties, as well as to the paramilitary that defends the oligarchy” (Rappaport 2002: 39).

Yet the key underlying element for Cauca’s indigenous movement, as well as its main political goal, is cultural revitalization. This involves everything from promoting bilingualism and language preservation in communities to the consolidation of their own internal cultural administrative and political institutions. It is the preservation of what is \textit{propio} (which literally translates to “their own”), that which belongs to their own \textit{cosmovisión} or distinct worldview, which leads to the autonomy of Cauca’s indigenous movement. The movement rests ultimately in control of their territory and the preservation of cultural institutions and traditions.

This latter objective has provided the movement with a strong and efficient organizational structure. These are the resguardo and cabildo, adopted from the Spanish and used for furthering indigenous goals, and the asamblea, (or Nasa wala in Nasa), where the community of a resguardo debates political and administrative decisions. Yet in the indigenous adoption of these institutions,
the head of the cabildo and resguardo is not the cacique, but the tu’tenza in Nasa or gobernador in Spanish (governor), who is elected by the community and carries a bastón de mando, or staff of authority (Figure 7). The cabildo establishes laws that are agreed upon by the assembly. These two institutions, together with the the’ wala (shamanic elder), are in charge of organizing members of the Nasa community and of maintaining wecwec – harmony, or equilibrium, which is the main basis of the Nasa world. Key organizational tools since the beginning, these institutions have been essential to the development of Cauca’s indigenous movement, providing it with a solid framework for action that has remained strong even through the brutal obstacles these communities have faced.
3. Cauca’s Indigenous Movement since the 1991 Constitution

One of the 1991 Constitution’s most significant reforms was the unprecedented recognition of Colombia’s ethnic peoples, who were accepted as full citizens for the first time. By 1991, Colombia’s indigenous movement had become powerful in Colombia’s political scene. This legislation was brought about by the continuous pressure of the indigenous movement. Indigenous and Afro-Colombian delegates obtained seats in the Asamblea Nacional Constituyente or National Constitutional Assembly, the institution commissioned by the Colombian government to draft the 1991 Constitution.

It is undeniable that this participation at a legislative level between indigenous communities in Cauca and the national government has widened the scope of the movement through the 1991 constitution. The CRIC moves on three planes of interlocution: first, it works with its grassroots bases in the individual resguardos; second, it works in coalition building with other indigenous or non-indigenous organizations, speaking another type of language; and third, it uses legislative language to communicate with the Colombian government. Its multifaceted nature has let it to be criticized on some occasions by individuals in all three of the levels outlined above. However, the criticism has not dampened CRIC’s success in all three areas. Grassroots bases have been strengthened, and their protests and marches have gotten stronger (Figure 8); alliances with both indigenous and non-indigenous groups, although difficult at times, have led to important regional successes such as the recent election of Colombia’s first indigenous governor in 2001, Floro Alberto Tunubalá, a leader of Cauca’s Guambiano indigenous community (Figure 9); and nationally, the 1991 Constitution and its follow-up have brought these groups important gains in Colombia’s national political arena, which has given the Cauca movement a high profile for Colombia’s non-indigenous population.

Nevertheless, the wide regional scope of the CRIC has led other groups to operate in individual organizations that work jointly with the CRIC, yet are more focused on particular issues.
The Asociación de Cabildos Indígenas del Norte del Cauca (ACIN, Association of Indigenous Cabildos of Northern Cauca), is one of these groups (Figure 10). Formed in 1991, the ACIN was founded by the cabildos of northern Cauca to focus on issues pertinent to a predominantly “Nasa agenda” (Gow and Rappaport 2002: 54). Most of the indigenous inhabitants of the resguardos represented in the organization’s twelve cabildos - Toribio, Tarcuyó, San Francisco, Delicias, Huellas – Caloto, Jambaló, Concepción, Canoas, Guadualito, Munchique de los Tigres, Toez, Cabildo Urbano de Santander de Quilichao - belong to the Nasa community (Figure 11). The ACIN carries out work through programs on bilingual education, gender issues, agriculture, health, and indigenous jurisdiction, among others. This is not unusual for the Nasa communities of northern Cauca, one of the most militant and progressive sectors of Cauca’s Nasa, and which has set many precedents for the department’s indigenous movement as well as for Colombian indigenous communities as a whole. Some of these precedents have been set in the field of indigenous jurisdiction, where the northern Nasa communities have been precursors on indigenous jurisdiction case procedures. One of the most innovative projects the ACIN’s judicial program has is the formation of the Escuela Jurídica Indígena, or Indigenous Judicial School, that would be in charge of developing standard customary law procedures that would then be taught to members of resguardos not only in northern Cauca, but in the rest of the department as well. The project for the Escuela is being supported by the Colombian Superior Council of the Judiciary, which will tentatively provide funding for this enterprise in the future.

Thus, the nineties have represented many political gains for Cauca’s indigenous community, both at a regional level represented by the CRIC and at a more local level as represented by the ACIN. Yet these gains have not come problem-free: there has been an increase in violence carried out against these communities. Within the landscape of the conflict in Cauca, indigenous communities continue to experience violence from the Colombian state and the economic interests
of landholders in this area. More recently however, indigenous communities in Cauca have also been caught between territorial disputes among guerilla groups such as the FARC. Leftist guerrilla groups have committed acts of violence towards indigenous communities, mostly through the assassination of indigenous leaders. It is estimated that in the last twenty years, over 400 indigenous leaders, most of them from Cauca, have been killed in Colombia (Avirama and Márquez 1995: 89). The violence of the armed parties in Cauca has been steadily and steeply increasing in Cauca during the last three years, especially in the north. Paramilitary activity has skyrocketed and guerrilla presence is significantly greater than before, two conditions that have greatly affected indigenous communities living in this province. In short, the Nasa “are caught between two fires” (Rappaport 2002: 39)

Indigenous communities respond to this situation by exercising their right to protect their territory and autonomy through peaceful means. An example of these strategies is provided by the resguardos of the ACIN, which have created one of the most recent successful initiatives to resist the conflict the guardia indígena, or indigenous guard. The indigenous guard is a non-violent, organized group within the indigenous communities, which serves as protection for the population, armed only with a staff similar to that carried by the gobernadores. Gathering well over 1000 people of both sexes and all ages, the guard is made up of committed community members who join voluntarily to undergo a highly disciplined, non-violent training in security procedures to defend their people and land. The guard is used in events and assemblies within the indigenous communities, but often, in times of conflict, they set up 24-hour patrols. The guard also enforces self-imposed restrictions on carrying arms, rejects the entrance of armed factions into indigenous territories, as well as any other forms of support for armed groups. Since its creation in 2001, the guard has been very successful in securing indigenous territories by fending off attacks and aggression from armed actors.

Nevertheless, indigenous communities continue to maintain their organizational and political strength. This is in part due to the stable foundations of their movement. These groups publicly
express their refusal to side with any of the armed actors, identifying themselves as *comunidades en resistencia*, or "communities in resistance," who wish to govern their territories in peace based on their own culture, using diverse and creative strategies. It is this same kind of resistance that we see reflected in the Nasa's commitment to recover their dead, as I will describe in the next section.
III. Nasa Narratives of Human Remains Recovery

1. Fieldwork Context

I learned about Nasa searches for the dead through a Colombian friend, Ms. Amanda Romero, who works for a humanitarian organization that carries out extensive work with the ACIN. She described one occasion where members of the ACIN’s judicial program and indigenous guard had gone to Cauca’s upper Naya region to search for the bodies of Nasa members from that community, after paramilitaries carried out a large massacre in April 2001, leaving over 100 casualties (Figure 12). I was intrigued by Amanda’s story, given the isolation of the upper Naya, only accessible after twelve hours of walking from the nearest town, as well as the difficult topographical conditions of this area known for its steep cliffs, down which paramilitaries actually threw the bodies of many of the dead.

Seeing my interest and knowing of my studies in forensic anthropology, Amanda invited me to a workshop on peaceful resistance in times of conflict conducted in Bogota with various organizations, including the ACIN, on March 2002. It was here that I met Nasa members of the ACIN for the first time, including representatives from the judicial program. Through these individuals I sent a letter to the general director of the ACIN, explaining who I was and that I was interested in volunteering with this group over the summer around work concerning recovery of human remains. My reply from the ACIN’s director was to contact Jorge Salazar*, the head of the ACIN’s judicial program, directly, since it was here where I could be provided with more information on this issue.

After contacting Jorge* and writing letters back and forth, he invited me to visit the ACIN and meet the judicial program by attending their monthly meeting. I arrived at the ACIN’s headquarters in the town of Santander de Quilichao, Cauca, on May 27, 2002 (Figure 13 and Figure 14). Jorge* had already suggested to me the possibility of conducting a workshop for members of
the group in August and wanted to share this idea with the other members to hear their impressions. The intention of the workshop was for the judicial program to learn techniques they could relay back to their communities as well as to learn what elements of standard forensic investigation would be useful to include in classes conducted in the Indigenous Judicial School. A resounding affirmative response put me on my way to prepare the workshop with the ACIN for the following two months, which was set to take place in mid-August, in a rezgoardo called Huellas near the town of Caloto, composed of recovered lands from terratenientes near Santander (Figure 15, Figure 16, and Figure 17). The workshop would take place in a health facility location within this rezgoardo, which was once the house of the landowner who controlled these lands before they were rescued by the Nasa.
2. The Taller (Workshop)

My previous experiences with indigenous communities in Cauca in the summer of 2001, where I accompanied several members of the CRIC to learn more about their movement, provided me with useful background knowledge in carrying out this workshop. I knew of the indigenous organizational custom of holding talleres, or educational workshops designed to teach the grassroots. These include informational lessons often provided by some of the indigenous leaders of the ACIN, CRIC, or an outside supportive organization, and can range from everything from midwifery to natural fertilizers for agricultural crops. Critical thinking, political analysis, reflection sessions, and historical backgrounds, are also an intrinsic part of talleres. All those attending the taller are expected to participate.

The taller I would carry out with the ACIN would last two weeks, in which I would essentially compress my entire undergraduate coursework in physical and forensic anthropology into a few intensive sessions. I would be with twelve people, nine from the ACIN’s judicial program, two from the indigenous guard, and one that belonged to both (Figure 18, Figure 19, Figure 20, and Figure 21). The first week centered on human osteology, and the second focused on search methods and recovery. I prepared “textbooks” (Figure 22) mostly composed of graphics from my books rather than long wordy descriptions. I also made lesson plans (Annex 1) which includes very brief lectures,” exercises, drawing (Figure 23) and reviews. Hands-on practices were also central. For example, after covering dental charts and learning about teeth as a tool for determining age, young children in the ngeguard were used to practice age determination by the workshop team who had to estimate the age of the child based on their teeth. For osteology, plaster skeletons in a public school of Caloto was used.

My aim was to make the talleres as interactive as possible. As a student of forensic anthropology with extremely limited practical experience, I knew that those who attended the taller
had considerable more practice in recovering human remains than I. Although I was initially referred to as an “expert,” I made it repeatedly clear that I was only providing a theoretical framework to practices members of the groups were already familiar with.

To make my fieldwork more of a “give and take” matter, I designed the taller as the central place where I would gather data. Methodologically, I wanted to always give a practical contribution to the community, and not just have them be informants but participants in the actual work. In this regard, I used Julia Paley’s ethnography Marketing Democracy: Power and Social movements in Post-Dictatorship Chile as a model for my thesis. I used the taller as a methodological tool, “inserting myself into already existing organizations in which [the subjects] were conducting an ongoing process of analysis” (Paley 2001: 15), thus adapting Paley’s interpretation of George Marcus’ term “affinity.” I aimed for the subject of the taller, human remains collection, to be the “third” element Marcus describes in the definition of the term

A complicity...an affinity, marking an equivalence between fieldworker and informant. This affinity arises from their mutual curiosity and anxiety about their relationship to a ‘third.’ (1998: 22)

The recovery of the dead as the “third” proved to be very useful. On the one hand, I was bringing in technical knowledge based on my classes in forensic anthropology that the ACIN lacked and was interested in obtaining; on the other hand, the taller drew on the years of practical experience I lacked, serving as a context for the information I provided. While complete equivalence between subject and the anthropologist is very difficult, even in the terms used by Paley and Marcus, I did feel the taller was interactive. It did help me carry out fieldwork not only useful to me, but more importantly, to those I was working with. The result I aimed for is best described by Julia Paley:

Rather than objects of study, [the subjects] became intellectual colleagues; rather than a researcher of them, I became someone with and through whom traditional objects of anthropological study reflected on the political processes they shaped and faced. How each of us – anthropologist and community leaders – was situated varied significantly. We had different things at stake, and we have generated different products through our work. But
our process of analyzing and the uses to which our work was put intertwined and overlapped (2001: 16).
3. Search Methods and Recovery Practices

Throughout the workshop, either in spaces of reflection or during the activities taking place, members of the group shared a variety of narratives regarding their own experiences, as well as those they had witnessed in their community and by Colombian governmental officials. In most of the instances narrated, the individuals or groups had been disappeared, massacred, or assassinated by guerrilla forces, paramilitaries or the Colombian state. In some of the earlier narratives, instances of assassinations having been committed by large landowners were also mentioned. Searches for bodies of individuals that had died due to non-political criminal activity or after mass disasters, including the earthquake of June 1994 in Cauca (Figure 24)\textsuperscript{20}, were also described.

The variety of instances of searches and exhumations has provided members of the Nasa community familiarity with strategies I compared to those used by anthropologists, primarily involving search procedures, terrain signs that help identify the location of a grave or body, and identification of the stages and variety of decomposition of human remains. While some of the information may be "common sense" to individuals who are not necessarily familiar with forensic anthropology, what is striking is the systematic nature of the search patterns the members of the Nasa indigenous communities have adopted, which are comparable in many instances to the formal protocol followed by forensic anthropologists. I describe these processes based on the information gathered through interviews and reflection sessions throughout the workshop below.

Searches carried out in the Nasa communities take place a few days after a person or group is reported missing, security conditions and other factors permitting. In some instances, indigenous communities cannot go search for the members of their group until some time after the event, if at all. For the most part however, it seems that indigenous communities can look for remains fairly soon after an incident, primarily due to the strength of their organization as a movement, as I will describe below.
Once it is known that a member (or members) of the resguardo has disappeared and his (or their) whereabouts are unknown for one or two days, an asamblea or community assemblage convened by the gobernador and cabildo takes place. The asamblea will ultimately make the decisions leading to a communal search for the individual's remains. Those leading the search assembly are not only indigenous community leaders but also the family members of the individuals involved. It is important to stress however the active participation of many members of the community in this endeavor, who are also involved in making the decision as to where and how the search should take place.

The areas selected for searches, as well as the manner in which these are conducted, are based on suppositions as to where the remains are likely to be or on information from witnesses, which is gathered previous to the search. This stage of the search is comparable to the gathering of ante-mortem (prior to death) information in a forensic anthropology case. Witnesses are brought to the floor, family members and colleagues relay the information on the last known whereabouts of the individual, clothes and physical traits of the individual are identified, and suspicious activity or threats prior to the attack are examined. Members of the workshop informed me that often, the walis or medicos tradicionales, the shamanic elders of the Nasa community, may take part in providing information as to where the bodies may be. Although the Nasa gathering of antemortem information does not entail key data collection methods in a forensic case such as standard interviews and collection of medical records to use as mechanisms of comparison with remains found (which would often not available in these communities anyways), information on the individual is consistently gathered prior to searches.

Once the areas are selected, a ground search takes place by members of the Nasa indigenous community to determine the location of the individual remains. The method used would be identified as "visual assessment" by forensic anthropologists, which involved "walking an area and
scanning the ground for human remains and their associated materials” (Byers 2002: 84). Women and men, from mother with infants and young children to the elderly, take part in the search. These searches also often involve dogs that, while not professional cadaver dogs, have still helped find remains.

Members of the workshop group shared various indicators that they employ when trying to identify the location of the remains. These include standard signs also used by forensic anthropologists, such as insect activity (fly swarms) and odors in the case of exposed bodies, as well as changes in setting (disturbed vegetation, bare patches of uncovered soil, and broken up earth) in cases of suspected internment. Searches also are not restricted exclusively to human remains, but also to items associated to the individual, such as clothing, tools, bullet shell casings, or any other objects that may indicate the individual’s presence.

Once the remains have been found, it is usually those with previous experience in collecting or excavation that take the lead in recovery. Often these involve the gobernador, members of the cabildo, or individuals from the guardia indigena or indigenous guard; however, those involved can also be family members, close friends, or other members of the community. Women and children, although participants in the search, are usually not allowed to partake in the retrieval of the remains due to the health effects of the smell. All in all, the individuals who took part on the search, and even some onlookers, are present viewing the retrieval and recovery of the remains. Marta*, one of the older women in the ACIN’s Judicial Program, describes an instance of a search in which she participated in a search with her young child:

When I arrived to the place where the body was found, after having helped to search for it myself, I was not allowed to get close because I had a young boy and they would not let me near due to the smell. It was the cabildos that came close. The body was very deeply buried...In those searches the community really gets together, massively. A lot of people came.

And because I had a young child, I was told not to get close because the smell would not be healthy. So I stepped back from the place where the body was found. But some of the more curious members of the
community were there stretching there necks to see what was going on. All I could see was that he had been buried as if he was sitting down, and only one part was visible.\textsuperscript{21}

The remains are then taken back to the community or the individual’s home. Depending on the condition of the remains, these are usually placed in plastic bags or any other containers that are readily available. The actual recovery or disinterring stage of the recovery process was not detailed in the descriptions offered by workshop members, leading me to believe there is no customary procedure. Chains of custody, mapping, and other forensic anthropological protocols are absent. This is not to say that meticulous care is not involved in each step of the recovery. On the contrary, the remains are transported with symbolic care from the discovery site back to the community, for the community mourning process to begin.

I also learned from the narratives told to me by the Nasa members of their attention and identification to decomposition conditions of the body. Extensive correlation of taphonomic changes (modifications in the remains that take place from the time of death to the time of discovery) such as decomposition to time since death did not seem to be established by the Nasa. However, general observation on the stages of decomposition, such as bloating, discoloration, and insect activity were recognized as signs of early decomposition. Signs of decomposition are used by more experienced community leaders as grounds for correlating approximate times since death with remains found in order to possibly identify a person. Although rudimentary, Elias* described an example of this taking place:

\begin{quote}
In Las Delicias [a nearby town], there was a case in which they killed a young man. It was rumored that he had disappeared three days ago. When they went out to search for him, they found his body inside the resguardo. He was entirely disfigured. The only thing that was evident was that it was him because of his height, and...because his body was entirely black, black and bloated. It was a landowner in Santander that killed him.\textsuperscript{22}
\end{quote}

Knowledge of adipocere (hydrated body fats that give a white, slimy appearance to human tissue) as related to decomposition in rivers was identified. Skeletonization as a final stage of decomposition and as a sign of longer times since death were also well recognized by members of the group.
When I asked how individuals are identified Nasa community if the remains are significantly deteriorated, Nasa community members answered with mechanisms known to forensic anthropologists as “tentative identification,” which is based on clothing and possessions found with the body, location of the remains, or verbal testimony of a witness that provides an account for what has taken place which matches the remains (Ramey Burns 1999: 175). “Identification by preponderance of evidence,” in which particular traits or anomalies known by family and friends are found on the remains is also common (Ramey Burns 1999: 175). Marta’s narrative of the exhumation above also provides an example of such identification:

And so they thought it was not him and they called his brother. They told him they thought it was not him. And he said it was because of a little cap that he wore and because of a scar he had. They doubted it was him because he was naked and he had his clothes and boots when he disappeared... and besides, he was already decomposing. So he was removed from the soil and wrapped in plastic and taken to the cemetery the next day. That is the only body I have been able to see up close. 25

Positive identification, using dental and medical records or DNA analysis, does not take place for obvious reasons in the rural setting and the communities involved in the search. However, as Jorge explained, a key feature of Nasa identifications can again be the role of the the wala, of whom a select few are believed to be able to provide identification of an individual or individuals based on remains:

According to what is propio (our “own”), I believe that some traditional doctors can identify remains and know to whom they belonged. In other words, we are talking about the the wala. But there are very few who can actually carry out this exercise... I tell you, they are very few, since it depends on the doctor’s capacity.24

Once an individual’s remains are rescued and he or she is identified, the community will mourn the individual, and often, an investigation (known as yugues tign) as to who the perpetrators were and the cause and manner of death. While the remains and evidence found serve as elements in the investigation, much of it also takes place through other means of investigation, which tends to be carried out by the judicial members of the ACIN in each of their resguardos. In some instances, the perpetrators of the events are identified, and on some rare occasions, are brought to justice. In the cases where a culprit is found, the Nasa wala, or assembly, must approve of a punishment suggested
by the *cabildo*. It is important to note however that this punishment does not have negative connotations or stigmatization, but rather has as its aim the re-establishment of *wec' wec*, or harmony in the community.

While these are examples of standard search plans, it should be noted that Nasa indigenous communities sometimes tailor their searches to unique circumstances, which may limit community participation or change the search methods used. When the perpetrating armed actor is known or suspected, particular search methods are emphasized. In the case of paramilitary and military deaths, bodies are often deposited to the Cauca River, buried, thrown off cliffs, or any other mechanism that makes recovery and identification of the remains difficult if not impossible is employed. In the cases of guerrilla deaths, individuals are often kidnapped and killed in remote places yet are left unburied. These patterns of killing from the armed actors, while frequent, are not standard. Often, individuals are killed in the vicinity of their communities, or even in their own homes, in which case an exhaustive search is not required. Also, when searches are more difficult, such as the instances of individuals who have been thrown in the Cauca River or in areas where armed actors are heavily present, a more select group may be commissioned by the community to carry out the search.
4. In the Shadow of the Colombian State

There have been other experiences of the Nasa indigenous communities of northern Cauca with searches and remains recovery. These involve those that are carried out by Colombian state officials. Colombian legislation enforces that the state must carry out all levantamiento de cadáveres (the removal of the body by the police or other state officials at the scene, with the presence of a judge or other judicial officer required by law). Often times these procedures do not take place in Colombia’s rural regions that indigenous communities inhabit, since the presence of the Colombian state is far from uniform in all of the Colombian countryside. I was surprised to learn from the indigenous communities themselves that as of late state personnel will also often not travel into the countryside to carry out a levantamiento, due to “security reasons.” In the words of the members of the workshop, “Ya eso le esta tocando asumir el cabildo” (“The cabildo now has to take on that task”). Jorge* said to me that while state regulations regarding levantamientos in the past seemed to be more strict, the increase in political violence has forced indigenous communities to increasingly carry out levantamientos and searches. When I asked the group who carries out levantamientos in indigenous territories, he described the following in reference to state personnel:

Due to the conflict it, authority to carry out a levantamiento is not an issue…Recently there have been some dead around here, in that road we came on, near Corinto. And despite that the bodies are right there next to the road, the guard had to carry out the levantamientos…the indigenous guard had to do it, because they [state officials] do not go near there anymore.25

“They say no?” I asked regarding governmental official’s lack of willingness to take part in levantamientos and searches. Jorge* confirmed this was true, stating that officials would be even more unlikely to come if they knew that the acts had been committed by leftist guerrilla groups. Milena* expanded on what Jorge* said:

In Caldono [a town in eastern Cauca] it is also the same. There the cabildo always carried out the levantamiento. The police may be close by, but they will not come down because they are afraid. They will tell us no, that they only have to work within the town limits and no more, and that beyond that they cannot go. Last year alone they killed a young man by the Pitavo bridge, and the police were asked to come down to see. They did not come.25

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Despite safety conditions, a number of levantamientos carried out by the Colombian state involving members of indigenous communities of northern Cauca have, and continue, to take place. In almost all the accounts I was told by the group, the circumstances were the same: state officials would exclude indigenous participation from each step of the levantamiento, and would only, if anything, be onlookers in the process. The process is very bureaucratic and technical, where judicial expertise creates the grounds for power and knowledge inequalities that alienate indigenous communities. The most moving account I received of this experience was that of Teresa*. Her husband, Cristobal Secúe, a long time indigenous leader, was killed in their home by the FARC in June 2001. She recalls the levantamiento of her husband, where she was not allowed to participate, as follows:

In my experience of Cristobal’s murder,...the cabildo could not do the levantamiento, because they did not have the [legal] capacity to carry it out, and they had to help an inspector do it. This was despite the fact that I told them no, no, no, that this man should not be the one that carries out the levantamiento. But it was said that, by law, it was needed that the inspector of the police make himself present to say what the steps to take place were, to measure how many meters and how many centimeters from the door did he fall, and from the patio...Thus, according to this experience, the cabildo is not recognized to carry out the levantamiento, and so, regardless of whether I wanted to or not, the inspector of police had to be present.21

Colombian indigenous jurisdiction states that indigenous communities have authority for all judicial matters that take place within their territory. Although this legislation was approved in 2001, the particular instances in which indigenous communities have exercised these judicial functions autonomously are still limited. The situations where indigenous juridical authority has been exercised can still only be analyzed in a case by case basis, and indigenous jurisdictional standards are still not available. However, the members of the workshop were aware that indigenous communities should have the power to carry out levantamientos. In another instance where she spoke about Cristobal, Ma. stated the following:

It is very clearly stated in indigenous legislation that no one can intervene within indigenous territories where the cabildo is an authority and where the cabildo can do things such as legislate in the executive, judicial, and legal fields. That is what the legislation says. But I look and see if it is really happening that way, going back.
to the murder of Cristobal, after I said that this man should not do the levantamiento...and that he should not do it, that the cabildo should. And no, no, no...But like I told you, I was locked up in a room at the end, and he was the one that made decisions. That is where it is confusing: at times the cabildo seems to exist, while at others it does not seem to...28

Because indigenous jurisdiction is still undergoing its articulation with official legislation, instances such as that described by Teresa* are not uncommon. When available and willing, state officials have traditionally performed body recoveries and searches, and this custom continues to be enforced by the state in many indigenous communities, partly due to legal custom and state imposition due to their lack of knowledge on indigenous jurisdiction, and partly due to the lack of an officially written, established and recognized practice in indigenous jurisdiction in performing this activity and articulating with Colombian legislation in this regard. Colombian anthropologist describes this situation in his book De la Justicia y el Poder Indígena:

The fact that national law has not regulated all the forms of coordination between the national judicial system and special indigenous jurisdiction established by the constitution has generated situations that negatively affect the exercise of the latter. After the new constitution was promulgated, an interpretation was generalized by judges that states that until this formal regulation was carried out, the relationship would be the same to that prior to the constitution. For this reason, courts would continue to administer justice as if indigenous jurisdiction did not exist. In the previous decade in the department of Cauca, the number of indigenous cases taken up by national justice exceeded one hundred. In nearly a dozen I was asked to serve as an expert anthropologist, and, although I maintained that all the cases should have been ruled by indigenous jurisdiction, only in two occasions did the judges share my interpretation (2000: 119-20).29

It is likely that this lack of formal written rules as to how indigenous justice articulates with national legislation will continue to be a problem, although it is stated by law that courts cannot ignore indigenous jurisdiction based on these missing regulations29. This is due to the fact that, while crimes and sanctions are well known in Nasa and indigenous communities, these groups often chose not to write or codify their practices. As pointed out by Gow and Rappaport (2002: 57), some indigenous spokesperson “vehemently reject any steps to codify native legal systems on the grounds that these are inherently consensual, oral, and considerably more flexible than national legal codes.”
Indigenous communities have carried out searches and recoveries for years, but these activities have not made a standard in indigenous jurisdiction despite that they are long-standing traditions. More than being recognized as official manifestation of their autonomous judicial authority, state officials will allow indigenous communities to carry out their searches and levantamientos without governmental presence because of their lack of personnel or to not compromise their safety. It is worth noting however that, in many instances, the Colombian state has a vested interest not to allow indigenous communities to participate in the investigation stage of a judicial process. The Colombian judicial system is known for its widespread impunity. This impunity is particularly present in cases of human rights violations. The vast majority of perpetrators of these crimes have not been brought accountable, particularly in cases where there is paramilitary and military responsibility. Institutions of the Colombian government, local and international human rights organizations, and the United Nations, have all documented this impunity as well as the widespread collaboration of the members of the Colombian armed forces with right wing paramilitary groups, which together are responsible for most of the human rights violations in Colombia. Because the military and their paramilitary collaborators target indigenous groups in such a constant manner, it would make sense that the authority of this jurisdiction in handling cases carried out by these armed actors in their territory would be denied.
5. Searching as a Community Experience

Due to their experience with the Colombian conflict, searching for the bodies of those indigenous members killed by any of Colombia's three armed actors has not been foreign to the Nasa communities of northern Cauca. During the workshop, members of the group shared various first-hand experiences of how their individual resguardos and communities had carried out for the remains of someone disappeared or assassinated. These stories where both of events recently taken place and searches that had been carried out years and decades before. While I never asked how far in back in time the Nasa have been performing these searches, I believe it would not be a stretch to say that they have been doing this for the extent of the conflict in Colombia, which for indigenous communities traces back to the times of the colonial Spanish period. The systematic commonalities in the narratives from different events in various places, often decades apart, leads me to believe that this activity constitutes a long-standing tradition in the indigenous communities of northern Cauca.

The most striking commonality in all of the experiences relayed by the workshop team was the communal aspect of the search for Nasa community members. As I stated in my introduction, the images of large groups of women and men, from the young to the elderly, looking for human remains provided me with a surprising contrast to the highly specialized search protocols taught to me in my forensic classes. Because indigenous leaders, activists, and community members tend to be regularly targeted, searches can be put together extremely rapidly when the whereabouts of one of these individuals is unknown. Areas are selected, and the community goes out to find the remains or traces of evidence that may provide leads.

I witnessed how quickly this process can actually take – a member of the ACIN's judicial team who had stated his interest in attending the event did not appear the first day. While his absence did not draw excessive attention the first day because of the distance he was traveling and his many responsibilities with his resguardo, by noon of the second day, members of the Indigenous
Guard who were present made calls to other guard members in order to track the individual's location. These continued into the night when it was finally known that the person had decided not to come – however, by this time, members of the individual's reagardo had already been notified of the absence, and had his whereabouts continued to be unknown, a search assemblage would have readily taken place.

The communality of the search does not end once the body has been found and jointly rescued and/or exhurrd. Community mourning of the deceased, as is traditional practice in the deeply entrenched Catholic religious practices for some of the indigenous inhabitants of Colombia's rural areas, often follows. A community political response also follows in the form of protests, assemblies, or marches when the death of an indigenous leader or massacre has taken place. One of the largest of such responses took place in May 14, 2001, when thousands of indigenous inhabitants of Cauca marched from Popayán to the city of Cali to protest recent violence that had taken place in the region, in particular the April 2001 Naya massacres (Figure 25) 33.

When I shared with the group my surprise to hear their exposition of their communal search and presented in contrast some of the strict protocol I had been taught as an undergraduate anthropology student, I received a two-way response. Some mentioned the negative aspects that at times accompanied these group searches, such as occasional disorderliness, the carelessness with which the evidence was sometimes treated, and the fact that sensationalism often drove some community members to join the search. On the other hand, others implicitly stressed that a group search was a crucial community response to the events that had occurred. Community searches are not only logistical assemblages in order to efficiently scour large sections of terrain to find a missing individual. They also represent the union of the community in the face of adverse and often brutal events that have taken place. In the same way that the Nasa have mobilized for their cause for
decades, these individuals come together to affirm their presence when an act like a disappearance, an assassination, or a massacre in their community has taken place.

Community activities are an intrinsic part of Nasa indigenous lifestyle, stemming from their tradition of community work or *mingas*. Numbers of people would also make manifest that the group’s unity and strength has not been broken. Given that the preservation of group unity is precisely often one of the intended messages to the armed actors and the public in the manifestations and protests that accompany the death of a Nasa individual, it is not far fetched to suggest that the Nasa of northern Cauca would want to stress their unity and strength through group searches as well.

Finally, although the group never suggested this to be a cause, I also suspect that another of the seasons why the Nasa community would chose to carry out these group searches, secondary to that exposited above, is the element of unity and with it, the added factor of security. When searching for someone killed by an armed actor, it would make sense not to travel alone, but rather have a large group that would be less likely to have problems if an unexpected encounter with an armed actor were to take place.
6. The Search from the Perspective of Indigenous Justice

Returning to the instance when I asked the question of who performs levantamientos in indigenous communities, it should be noted that my answer was qualified by members of the workshop. I asked the group after stating my understanding of indigenous jurisdiction as a mechanism that allows indigenous communities to carry out a judicial process from the first investigation to the decision of a punishment. The immediate response by Jorge* the head of the ACIN’s judicial program, was a clarification of my question based on this interpretation:

I think that the question Ana Maria is posing is mostly regarding the order of the official levantamiento. It should be noted that our authority and our community is now in practicing this procedure...but if we look back from the point of view of the elders, the Nasa have been doing it but in another way, another space...not necessarily measuring and doing all these things. Because in the way Ana Maria is describing it, it has to do a lot with civil justice. 34

What Jorge* pointed out was that I was asking a question in a way that framed indigenous jurisdiction in the terms of judicial systems I was familiar with, which follow a western, liberal, and legalistic pattern based on written texts, established protocols, professional procedures, etc. A levantamiento is strictly a practice that belongs to the Colombians legal system, which does not replicate in indigenous jurisdiction practices. When asking who carries out a levantamiento, Jorge* explained that this was a recent practice of indigenous communities, but that the traditions of searching and recovering their dead has been carried out for many years, if one sees it from an indigenous cultural perspective or “from the point of view of the ancestors.” My mistake was to ask a question where I tried to understand indigenous jurisdiction in terms that were external to it and holding Western legal artifacts as my point of reference, instead of understanding in its own terms.

The imposition of Western legal categories and conceptions which subordinate indigenous jurisdiction is a situation that indigenous jurisdiction has had to struggle with since its official recognition in Colombia’s 1991 Constitution. The insertion of indigenous practices into the legalistic framework of the Colombian state is still a condition where indigenous communities, while provided
with constitutional rights that claim to foster their autonomy, are forced to act within the terms of
the state. At another point in the workshop, Jorge* made clear to me that awareness of this
condition is present in the ACIN’s judicial program:

_For better or for worse, we are inside a state system that wants to absorb us and impose all the political,
administrative, and judicial practices upon us._ 35

Yet the relationship between state jurisdiction and indigenous jurisdiction has not worked
only in a manner of imposition from the former to the latter. Since colonial times, indigenous
jurisdiction has adopted elements from foreign systems to their own practices, such as _cabildos,
reguardos_, and Law 89 of 1890. Enrique* articulates it very well by saying:

_We the indigenous peoples have a lot of things from outside, we have taken what is useful, and what can
compliment us, and what we cannot find use to we simply do not take..._ 36

The practice of forensic anthropology itself which I was introducing, one of these Western legal
artifacts I held as a point of reference for a legalistic view of justice, is itself one of the practices that
communities may wish to integrate partially into their juridical system. Given that I was invited to
provide a workshop on this topic, the openness of indigenous communities to incorporate foreign
practices into their own. Guillermo* synthesizes the stance of the workshop towards this discipline
as follows:

_For me it is good to learn [forensic anthropology] and make it work with indigenous customs, what we
work with, compare it, to put this together and make one thing._ 37

It is because of this that, regardless of the influences and adoption of official legislation,
indigenous development of their autonomous jurisdiction will not be carried out strictly by the terms
set by the state. While official jurisdiction has provided the grounds for indigenous jurisdiction to
exist, and inevitably will and have influenced indigenous conceptions of justice, the intention is to
have this develop on their own grounds. In this sense, the strength of indigenous grassroots
organization becomes evident – indigenous juridical traditions do not depend on official legislation,
but rather on their forms of autonomous organization, regardless of their recognition by the
Colombian state or no. Like the *Escuela Jurídica* (Indigenous Juridical School), the members of the ACIN's judicial program shared with me plans that they are preparing in order to foster a jurisdictional system based on their unique *cosmovision* or distinct worldview, or as stated by Jorge*:  

*With the intention of investigating the administration of justice from what is propio ("our" point of view)...the School will hopefully let us train our youth, training them in some areas of [Western justice]. Thus, those forms of levantamiento will be taken into consideration...but the idea is to look more at what is ours in order to be able to tell the government: our system of administration in the different parts of our territory has to be ours, but at the same time having clarity on the personnel, in what areas we can be independent, and what capacities we have to carry certain practices out.*

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38
IV. Beyond the Recovery of Human Remains: The Implications of Legitimacy in Colombian Legal Pluralism

It is interesting to observe how sources on legal pluralism in Latin America coincide in a common observation: the appearance of legal pluralism in these constitutions signals both a recognition of the legitimacy of indigenous legal systems, as well as a means through which state institutions, particularly in the judiciary, can continue to present themselves as legitimate (Van Cott 2000b: 210). Questions of governmental legitimacy have often been the reason for this democratic reform in the first place (Warren and Jackson 2002: 14). Indeed, as described by Deborah J. Yashar, “Latin America remains very much in the throes of state formation, where the identities, borders, and legitimacy of the state are highly politicized and contested processes, particularly in the countryside” (Yashar 1999*).

On the one hand, these new constitutions acknowledge “the legitimacy of indigenous customary law,” and thus cede “important sovereign rights of the nation-state” (Van Cott 1995:15) to indigenous groups. On the other hand, these changes are also due to governments’ search for legitimation (Yrigoyen 1998: 209). Donna Lee Van Cott states how legal “recognition is not attributable solely to the canny mobilization of indigenous organizations”; rather, the representation and participation of excluded groups through the codification of fundamental rights is a strategy used by Latin American states in the 1990s to consolidate their fragile legitimacies and the legality of democratic institutions (2000b: 208). Anthropologist Charles Hale understands political concessions made by governments to indigenous groups as representative of the consolidation of larger political and economic interests. For Hale, “these concessions, and people’s reception of them, enhance the state’s legitimacy in the eyes of the international community, as well as among potential indigenous adversaries” and thus “helps fend off collective demands that could set in motion transformative political changes” (2002*). Hale’s interpretation, primarily based on fieldwork in Guatemala, would
easily apply to Colombia. In the words of Gow and Rappaport, “the 1991 constitution, with all of its neo-liberal emphasis on decentralization and its move towards political and ethnic pluralism, is a prime example of governmental efforts to reassert the continued relevance of the nation-state in a period of economic globalization and political fragmentation” (2002: 60).

Political anthropologists Marc J. Swartz, Victor W. Turner, and Arthur Tuden define legitimacy as “a type of support that derives not from force or its threat but from the values held by the individuals formulating, influencing, and being affected by political ends” (1966:10) in which the group’s “expectations are to the effect that the legitimate entity or process will, under certain circumstances, meet certain obligations that are held by those who view it as legitimate” (1966:11). The articulation of indigenous forms of jurisdiction with existing official judicial systems in Latin America will have to incorporate both indigenous expectations for their participation at the national level, as well as governmental expectations both in maintaining state institutions and consolidating interests that lay beyond.

This thesis has begun to outline how indigenous jurisdiction and the practice of collection of the dead is still subject to larger state forces, since their legal existence is largely based on terms set by the official judicial system. This condition forces indigenous jurisdiction to deal with complicated issues of the recognition of state legitimacy by indigenous communities. The autonomy of indigenous legal projections as granted by these constitutions remains elusive at best, since these ultimately cannot transgress the boundaries of state law (Gow and Rappaport 2002: 60). Agreeing to participate in a national constitution denotes a certain level of allegiance to a state that for centuries has marginalized indigenous communities in the national arena, and that, until very recently, has responded to their demands with brutal repression. In being the benefactors of political concessions they have pressured the state to obtain, indigenous communities must also conform to how these concessions structure the spaces that as activists they are allowed occupy, such as limitations on
"which rights are legitimate" (Hale 2002*) to have within a legal framework. Thus, legal participation by indigenous communities might be counterproductive, where these "legal constructs regulating relations between groups entitled to collective rights and the wider scope of society may be as much a condensation of power relations as a normative compass" (Assies 1998: 19).

However, it is important to note that Colombian indigenous communities, including the Nasa in northern Cauca, recognize the limitations of the indigenous jurisdiction as presented in Colombian legislation, using it to work for their benefit. This goal for the Nasa is to be able to establish their own autonomy and competence to make decisions regarding their communities and territories: or in other words, what is commonly known as self-determination"9. By being willing to carry out actions within the legislative framework of the state, indigenous communities such as the Nasa are critically engaging within an existing institution, to transform it not as outsiders, but as citizens. Pointing to the deficiencies of a governmental system that does not adequately represent them and trying to change it is, in the end, participating to strengthen a democratic system. As Alison Brysk describes:

Self-determination is the legitimating rationale of democracy, which modern republics provide through indirect representation in national decision-making bodies. But if such representation is systematically inadequate for distinct nationalities within the state, democracy must provide supplementary forms or face chronic delegitimation. (2000: 285).

I believe it is useful to understand the relationship of indigenous and official laws under the terms set out by "new" anthropological studies of legal pluralism, where these are not contained systems that co-exist, but rather are interrelated in a process constituted by articulation and difference. Indigenous customary law can be understood as a "semi-autonomous field," a space in which indigenous communities "can generate rules and customs and symbols internally," but where they are also "vulnerable to rules and decisions and other forces emanating from the larger world by which [they are] surrounded" (Moore 1978: 55). In practice, there are overlaps between state law and
indigenous law. Indigenous law is often practiced concomitantly with official law, and indigenous communities invariably resort to both to resolve their conflicts (Iturralde 1990). Indigenous communities dynamically understand the implications and benefits of recognizing the legitimacy of the state’s jurisdiction and of that which stems from traditional indigenous authorities.  

Nevertheless, there are very strong differences between indigenous conceptions of the legitimacy of their system and that of the Colombian state. I go back to my case study of recovery of human remains to make my point. As Jorge* so clearly pointed out, the contrasts between the two systems are very evident, and indigenous communities regard their jurisdiction as based in their cultural patrimony, or as he described it, desde el punto de vista de los mayores (from the perspective of the elders, the latter being carriers of indigenous culture and traditions from previous generations). It is cultural traditions, such as Nasa practices in their recollection of the dead, which constitute the basis for their legitimacy. Because its foundations is inherently cultural, indigenous jurisdiction must be understood through separate means from those used to understand Western, legalistic notions such as the Colombian constitution. It is precisely for this reason that I suggest that indigenous recovery practices, while bearing some resemblance to forensic anthropological practices, must not be compared to this discipline and to law enforcement protocol. These traditions, like all indigenous jurisdiction, must stand in their own independent terms.

More importantly, one must understand the history that would cause a divergence of legitimacies and the reasons that indigenous communities want to remain autonomous. The Nasa, like all indigenous communities in Latin America, have been historically denigrated and excluded from the dominant society. Their modern day claims to participate democratically do not make this historical condition become forgotten. Instead, it is the main reason there should be more anthropological ethnographies and published writings of indigenous authors discussing the indigenous point of view on these processes. Given the situation of historical social and economic
marginalization that these indigenous communities have undergone, it is clear that their full participation in these processes are necessary so that these groups do not remain outside of this project.

In this regard, examinations of particular individual experiences of indigenous jurisdiction (such as in the vignettes presented by the members of the workshop above) as well as a wider contextual analysis of what this legal framework means in the larger relationship between indigenous communities and the state, may reveal complex disjunctures between the expectations both hold (and thus, on the understandings of legitimacy involved, following Swartz, Turner, and Tuden’s definition). As stated by anthropologist Italo Pardo in the introduction to his edited volume *Morals of Legitimacy: Between Agency and System*, there is a contextual significance to conceptions of legitimacy, which are culturally constructed and do not exist separately from other social processes (2000: 6). Pardo poses that if we wish to understand how conceptions of legitimacy operate, we must first understand how people experience these conceptions, which means “accounting for the terms of both the structural picture and the individual picture of what is going on” (2000: 6). Anthropological studies such as this thesis of the Nasa and the Colombian state in the recovery of the dead will hopefully not only continue to examine the experiences of indigenous groups with legal pluralism, but also to point to both the individual and larger structural picture Pardo points towards. I conclude by providing a quote told to me during the workshop that perfectly overlaps both of these pictures:

*We hope to elaborate and clarify the system we bark so much, our own...and when we have accomplished that, when we have clarity on that and not just us [the judicial program] but the governors of our territories like the gobernadores and the cabildo, then we would tell the government: we are going to handle things this way. And there will be things that we will have to adapt from them, but decisions will be made more toward our side, based on our perspective, which should be respected. That is the dream that we have, which will be difficult, no? Because it has already been proven that thing are won by fighting them little by little...but always fighting them from our own perspective. Because what you say is true, if we were just to copy what the government does we would be losing our time...we have, after all, a different way of thinking, of seeing things, of acting on different subjects.*

43
Endnotes

1 Departamentos, or departments, are Colombian territorial divisions similar to provinces or states.

2 Although many individuals both Nasa and non-Nasa still refer to this indigenous community as the Paez. However, I have opted to use the term Nasa because it is increasingly becoming used by these individuals themselves, instead of using the Spanish name imposed on them. In this respect, I am also following the lead of anthropologist Joanne Rappaport, who uses the word Nasa in her works and who inspired me to continue to refer to these communities as such.

3 Please refer to Article 246 of the Colombian Constitution, which states: “The authorities of indigenous communities will be able to exercise jurisdictional functions within their territory, according to their own norms and procedures, so long as they are not contrary to the Constitution and to the laws of the Republic. The forms of coordination of this special jurisdiction with the national judicial system will be established by law”. Translation by David Gow and Joanne Rappaport (2002: 57).

4 Argentina, Bolivia, Brazil, Chile, Costa Rica, Dominican Republic, Ecuador, Guatemala, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, and Venezuela (see Van Cott 2000a).

5 Alvaro Uribe Vélez was elected as president of Colombia in May 2002 while I was carrying out my fieldwork in Colombia. A far right wing candidate that supports a military solution to the Colombian conflict, he has stated in various occasions that certain institutions that protect human rights and a pluralistic democracy, created through the 1991 Constitution, be minimized if not eliminated. Although he is yet to carry out these statements, indigenous communities fear that Uribe Vélez will limit these institutions before the end of his term, particularly after he gave increased powers to the Colombian military by declaring the equivalent of a “state of siege” in Colombia.


7 Most of the works of Gómez Valencia and Sánchez Valencia is on present forms of indigenous jurisdiction. For an excellent account on the centuries-old development of these legal systems in the particular case of the Nasa, see Rappaport 1998.


9 Manuel Quintín Lame wrote various texts, amongst which the most famous is Los Pensamientos del Indio que se Educo Dentro de las Selvas Colombianas, written in 1939. This text has been translated to English by Gonzalo Castillo Cárdenas, and can be found in his book Liberation Theology from Below: The Life and Thought of Manuel Quintín Lame, Marykroll, NY: Orbis 1987

10 For detailed information on the history and development of ANUC, see Leon Zamosc, 1986, The Agrarian Question and the Peasant Movement in Colombia. Cambridge: Cambridge University Press. For more on the history between ANUC and CRIC, see Gros 1991.

11 This passage was translated by the author of this thesis.

12 These are the Nasa, Guambiano, Coconuco, Totoró, Yanaconas, Embera-Katio, Inga, and Kamentza.

13 For an extensive history of the CRIC’s first twenty years, see CRIC 1990.
A massacre is understood to be the joint death of three people or more, according to Colombian law.

Homicide.

A disappearance is the kidnapping and subsequent assassination of an individual in which his or her whereabouts and remains are unknown. It is normally understood that disappearances take place due to politically motivated reasons.

For extensive documentation on these procedures, see C.C. Peraza Simmonds and Ester Sánchez Botero.


With the exception of Amanda Romero, all names in this thesis have been changed to pseudonyms, and are henceforth marked with an asterisk.

In June 4, 1994 an earthquake and subsequent landslide caused enormous damages in eastern Cauca, particularly in a region known as Tierradentro, “killing more than a thousand people, displacing 20 per cent of the population, and ruining some 40,000 hectares of land” (Gow and Rappaport 2002: 51).

A la hora que apareció después de buscar, como yo tenía un niño pequeño no me dejaron arriar por el olor. Los que se arrimaron ahí fueron los cabildos. Eso si estaba enterrado...En esas busquedas la comunidad se une toda, masiva. Vino mucha gente. Entonces yo como tenía un niño pequeño en la espalda me dijeron que no me arrimara porque por el olor no era conveniente. Entonces yo me retire de ahí. Pero unos curiosos siempre estaban ahí alargando el pesquero. Yo medio alcanzé a ver que lo habían enterrado así sentado y apenas se veía una parte...

En Las Delicias, en un caso que también mataron a un muchacho...se hablaba de que el muchacho se desapareció ya hace tres días...cuando lo fueron a buscar al otro día lo encontraron y ya estaba en el rogoardó...Estaba totalmente desfigurado. Lo único que se podía saber es que era el por la estatura...y porque estaba totalmente negro, negro inflamado todo el cuerpo. Ese fue un terrateniente de Santander el que lo mató.

Entonces cuando dijeron que no era el, al rato llamaron al hermano. Y dijeron “Eso no es” y el dijo “Sí es” por una guarita que el había llenado y por una cicatriz que tenía. Dijeron porque lo sacaron desnudo y el estaba con ropa y botas, y ya estaba en descomposición. Entonces eso se sako y se envolvió en un plástico y al otro día para el cementerio. Ese fue el único cadáver que yo alcancé a ver.

Hablando de lo propio, yo pienso que para el reconocimiento de si es la persona que desapareció, si es el que ha muerto, yo pienso que algunos médicos le pueden hacer. O sea, nosotros no estamos diciendo los the walla. Pero son contabilidad los que pueden hacer este ejercicio...como le dije, son muy contaditos, como también eso va de acuerdo a la capacidad que tenga el médico.

Ahora por el conflicto eso ya no se ve la competencia...Es inclusive hasta por aquí por estos días han habido unos muertos para el lado de acá, por esta vía que llegamos, pero eso ya es Corinto, y a pesar de que es a orilla de carretera, le toca hacer levantamientos a la guardia...a la guardia indígena, porque ya no se meten por allá...

Por los lados de Caldeno también es así. Allá también el levantamiento lo hace siempre el cabildo. Las policías pueden estar en la parte de arriba pero no bajan porque les da miedo, y entonces dicen que no, que solamente les corresponde en el pueblo...
mas y que ellas mas alla no pueden ir. El año pasado no mas mataron a un muchacho en el puente de Pitaco, aca abajo. Y se les pidió que fueran a mirar a ver, y la policía no bajo.

27 Viviendo en mi carne propia el asesinato de Cristóbal. cuando el cabildo fue a hacer el levantamiento, no tenía la capacidad de hacer el levantamiento, y tuvo que asesorar un inspector. Así yo les dijera que no, y no, y no, que ese señor no tenía porque hacer levantamiento. Pero que por ley, que necesitaba que el inspector de policía se hiciera presente allí y dijera esto son los pasos para hacer el levantamiento, de aquí cuantos metros, que tantos centímetros de la puerta cayo, del patio a la casa, bueno... y que el cabildo, según eso, no tenia conocimiento de eso. Entonces, así yo quiera o no quiera, ahí presencia del inspector de policía.

28 Por que es muy claro la legislación indígena, dice que nadie puede intervenir dentro de un ambito territorial indígena, o sea, donde esta el cabildo como autoridad, y que [el cabildo] puede hacer las cosas, o sea legislar, el poder ejecutivo, el poder judicial y el poder legislativo....Eso dice muy claro la legislación. Pero yo me pongo a ver si eso es así, volviendo como a lo del asesinato de Cristóbal, que yo decía que este señor no debía hacer lo levantamiento.... y que, dije no, que el no tenía porque venir a hacer el levantamiento, que tenia que venir a hacer el levantamiento el cabildo indígena... y que yo no, no... Pero como le digo, como pues a mi me encerraron fue en la pieza a lo último, pues las decisiones las tomaba ya el. Entonces quiere decir que el cabildo no tenía validez... Mire que ahí es donde se queda otra vez confundido, como que el cabildo a ratos existe [y otros] como que no...

29 This passage was translated by the author of this thesis.

30 This is according to Sentence Number C-139/ of 1996: “No es cierto que la vigencia de la jurisdicción indígena este en suspenso hasta que se expida una ley de coordinación con el sistema judicial nacional. La constitución tiene efectos normativos directos, como lo ha afirmado esta corte reiteradamente, de tal manera que si bien es de competencia del legislador coordinar el funcionamiento de la jurisdicción indígena y la jurisdicción nacional, el funcionamiento mismo de esta no depende de dicho acto legislativo” (Gómez Valencia 2001: 122).

31 See United Nations High Commissioner for Human Rights 2002 Report on Colombia (E/CN.4/2002/17). On page 48, the report states the following: “The administration of justice continues to suffer from serious weaknesses and deficiencies that help bolster the high rates of impunity for major human rights violations and breaches of international humanitarian law.”

32 While I can only provide here detailed information of the search methods of the Nasa indigenous communities from northern Cauca, it is interesting to note that large scale searches for indigenous leaders and members of the community are not only carried out by this group. Because indigenous territories nationwide have been the setting for the Colombian armed conflict, other indigenous communities, mostly those that have a tradition of grassroots organizing, have also taken on searches for those that have been lost. A widely publicized example of such an indigenous search took place in June of 2001 after the disappearance of Kinny Pernia Domico, an Embera-Katio indigenous leader from the northern department of Córdoba disappeared by paramilitaries, presumably for his outspoken activism against the construction of the Urrá dam on Embera-Katio territory. Hundreds of leaders from Colombia’s indigenous communities gathered in Tierra Alta to perform a ten-day search, accompanied by members of international human rights organizations and even diplomatic officials. Although Kinny’s remains were not found, this example may be representative of similar search processes taking place in Colombian indigenous communities outside the Nasa. See Scott Wilson, “Colombian Indians Resist an Encroaching War: Indigenous People Join to Search for Leader,” The Washington Post, Monday, June 18, 2001.

33 For information on the Naya massacres, refer to footnote 16.

34 Yo pienso que la pregunta que hace Ana María es mas que todo en el orden del levantamiento. Vale la pena decir que en uso si pienso que en nuestra autoridad y nuestra comunidad es algo nuevo que se esta como practicando... pero que si nosotros vamos
a ver desde el punto de vista de los mayores, ellos lo hacen pero ya en otra forma, en otro espacio... necesariamente no midiendo y haciendo todas esas cosas. Porque en el orden que Ana María pregunta ya eso mucho tiene que ver es con la justicia ordinaria.

35 Bien que mal, nosotros estamos dentro de un sistema de un estado que as que quiere absorber a imponer toda la parte política, la parte administrativa, la parte de justicia.

36 Nuestros los indígenas tenemos muchas cosas de afuera ya, nosotros hemos cogido lo que nos sirve, que pueda complementar y lo que no nos sirve pues simplemente no lo cogemos y así siempre

3777 Para mi es bueno aprender esto [antropología forense] y ponerlo a funcionar con lo de los indígenas, lo que manejanos nosotros, ponerlo a comparar y hacer una sola cosa...

38 Con miras a investigar mucho lo que es la parte de la administración de justicia desde lo propio... con la escuela lo que nosotros queremos es tener muchachos capacitados, mirando un poco más próximo en algunas áreas de justicia occidental. En algo tendría que ver por ejemplo las formas de levantamiento a partir de un proceso [legal] de escavación... pero la idea es conocer más lo nuestro... decirle al gobierno: nuestro sistema de administración en los diferentes ámbitos de nuestro territorio tienen que ser el nuestro, pero ya teniendo claro el personal, en que áreas nos movemos, y en la capacidad que nosotros tengamos para ejercer determinado campo...


40 See Rappaport and Dover 1996 for further illustrations on this point, particularly pp. 26-27.

41 Todo el material que nosotros pensamos elaborar es para clarificar pues el sistema que proponemos tanto, el propio...y cuando logremos eso, cuando nosotros tengamos claro eso y no solamente nosotros [comité jurídico] sino los gobernantes de nuestros territorios como los gobernadores y los cabildos, entonces sí ya sería decirle al gobierno: esto nosotros lo vamos a manejar así. Y habrá costas que tendremos que obrar de ellos, pero ya la decisión en cualquier otra cosa que ya sea más de acá desde nuestra visión, que se nos respete. Eso es un poco el sueño que nosotros tenemos, que va ser difícil, ¿no? Porque pues ya se ha comprobado que aquí se han ganado cosas es peleando poco a poco...pero siempre mirando desde lo propio. Por que lo que hay es cierto, si vamos a terminar copiando lo que hace el gobierno entonces estamos perdiendo el tiempo...porque somos un poco diferentes en forma de pensar, de ver, de actuar en los diferentes campos.
References Cited


Figures

Map 1  The Nasa within their broader geographic context

Figure 1

Figure 2

Propaganda flier for the Alvaro Uribe Vélez presidential campaign, elected as president of Colombia in May 2002.
Figure 3

Plate 5  *Manuel Quintín Lame.* Lame is seen here at center, with long hair and a cigar in his mouth. The photo, from the collection of Diego Castrillón Arboleda of Popayán, was taken at his 1916 arrest at San Isidro.

**Figure 5**

Figure 6

Past coat of arms of the CRIC.

Graphic obtained from cover of *Historia del CRIC*. Popayán: Consejo Regional Indígena del Cauca. 1991
Figure 7

Blurry photograph of *gobernadores* of various *resguardos* of Northern Cauca. Each hold a *bastón de mando*, a staff that shows their authority. These staffs are also shown in the coat of arms of the CRIC (Figure 6) and ACIN (Figure 10).

Photograph obtained from ACIN and CODACOP. *Territorialidad Comunitaria* 2001.
Figure 8

Front page photograph of Colombian newspaper *El País*, June 26, 2002. The headline is “Blockade in the Pan-American Highway,” and the message below reads: “Four thousand indigenous members of different *cabildos* of Cauca blockaded at La María on the Pan-American highway yesterday during fourteen hours. The blockade is carried out in solidarity with the natives of Caldono [a town in eastern Cauca], who demand the resignation of their mayor.” Given that the *resguardo* overlaps with lands of a *municipio* (the Colombian equivalent to a U.S. county), Nasa communities were subject to a (non-Nasa) mayor, and demanded his removal given internal corruption of his administration and violations he made to their indigenous territory. This blockade took place while I was in Cauca, and is representative of the kinds of mobilizations this group carries out on a regular basis.
Figure 9

Front page headline of Colombian newspaper *El Tiempo*, October 2001 (exact date unknown), featuring Floro Tunubalá and other Guambianos in traditional every day garb. The headline reads “Guambiano Toast and Indigenous Claims.” The message below reads: “The indigenous members of the *resguardo* of Guambia, in the *municipio* of Silvia, do not miss the occasion to celebrate the election of *taita* [leader] Floro Tunubalá as governor of Cauca. The indigenous leader is featured here during a visit to the *vereda* [Colombian rural territorial division] of Las Delicias.”
Figure 10

Coat of arms of the ACIN. The coat of arms features the indigenous governors' staff; snow capped mountains of the Andean mountain range that crosses eastern Cauca; a woven ribbon which represents traditional Nasa artisanry; a *the wala* with a bag of herbs and a fire to the far right, with a thunder bolt on top [it is said true *the wala* will survive a “whipping” from thunder]; a tree symbolizing life; and water, a sign for Cauca’s richness of hydrologic resources.

Graphic obtained from the back cover of ACIN and CODACOP. *Territorialidad Comunitaria* 2001.
La Ubicación

Localización del Territorio Indígena Campesino del Norte en el Departamento del Cauca, Colombia

- 12 Resguardos Indígenas
- 3 Territorios Indígenas Rurales
- 1 Cabildo Indígena Urbano
- 15 Cabildos Indígenas
- 2 Municipios con administración indígena
- 1 Municipio con administración interétnica
- 191.518 Hectáreas
- 2 Zonas Mineras Indígenas
- 304 Veredas
- 3 Centros Urbanos
- 189,001 Habitantes
- 25,370 Familias

Fuente: Escuela de Planeación ACIN. Sistema de Información Comunitaria

Figure 11

Map featuring the ACIN's twelve resguardos - Toribio, Tacueyó, San Francisco, Delicias, Huellas - Caloto, Jambaló, Concepción, Canoas, Guadualito, Munchique de los Tigres, Toez, Cabildo Urbano de Santander de Quilichao — as well as three territorios indígenas (indigenous territories) with Nasa presence, not yet recognized as cabildos: Pueblo Nuevo Ceral, Miranda, and Corinto. Huellas, the resguardo where the workshop took place, is marked with a dot.

Map made by the ACIN's School of Planning, and obtained from ACIN and CODACOP. *Territorialidad Comunitaria* 2001.
Colombian Massacre
Large, Brutal

By Scott Wilson
Washington Post Foreign Service

TIMBA, Colombia—They brought out the victims using a helicopter with a cargo net dangling beneath. Soldiers wearing rubber gloves and masks unloaded body bags and laid them in the broad shade of an acacia tree. Forensic investigators began to work.

By the end of Thursday, the bodies of 12 farmers had been pulled from a war zone near the village of Naya, a daylong walk to the west of Timba in this embattled region 220 miles southwest of Bogota. Ten had been killed by machete; two had been shot. At least one was decapitated, the head still missing.

The grim business of preparing the bodies for burial, watched from across a soccer field by the mostly black residents of Timba and clusters of refugees from Naya, followed one of Colombia’s largest civilian massacres in years. Beginning the Wednesday before Easter, a squad from Colombia’s right-wing paramilitary force entered Naya and its surrounding hamlets. For three days, as the government army tried to reach the jungle town amid fierce fighting, Colombian officials say, paramilitary troops used machetes, guns and chain saws to kill at least 40 civilians.

In interviews with some of the 160 Naya families sheltered in the town school, survivors said the number of dead might be twice that amount. Colombian officials, who are continuing recovery efforts, agreed. The only recent killing of comparable size came four months

Figure 12

Figure 13

First image one gets arriving to the town of Santander de Quilichao, Cauca, on the Pan-American Highway.

Photograph taken by Ana María Gómez López.
Figure 14

Street of Santander de Quilichao, Cauca, similar to that where one would find the headquarters of the ACIN.

Photograph taken by Ana María Gómez López.
Figure 15

Entry to the health facility in the resguardo of Huellas where the workshop was conducted. The sign reads "Indigenous Health School – Association of Indigenous Cabildos of Northern Cauca."

Photograph taken by Ana Maria Gomez Lopez.
Figure 16

Picture of the health facility in the resguardo of Huellas from inside.

Photograph taken by Ana María Gómez López.
Figure 17

Picture of the landowner’s house, now health facility, where the workshop took place. The ACIN’s coat of arms is painted above the house’s entrance.

Photograph taken by Ana María Gómez López.
Figure 18

Picture of all the workshop team, along with the director of the Judicial Program and his assistant.

Photograph taken by Ana María Gómez López.
Figure 19

Workshop pictures.

Photograph taken by Ana María Gómez López.
Figure 20

Workshop pictures.

Photograph taken by Ana María Gómez López.
Figure 21

Picture of two members of the Indigenous Guard, the man closest to the front and the one featured in the far back.

Photograph taken by Ana María Gómez López.
Figure 22

Excerpt of a page from one of the textbooks I made for the workshop, featuring graphics of incision trauma on a skull.

Figure 23

Drawing from one of workshop members, done during a review session. To review what was learned during osteology lessons (see Annex 1), I asked those participating to draw from memory the lay out of the major bones in the body. Technical names of each bone was not emphasized, but rather the location and form of the bones. Most participants drew very accurate and anatomically correct detailed pictures of each bone of the body, such as this one.
Experiencias vistas

Año 1995, mes de junio.

Realizamos una caminata hacia el río, hacia allí donde había un año habían pasado una avalancha. En ese recorrido encontramos una parte del cuerpo que era alguna costilla y el fémur, las piernas. Las mayores eran los que lo miraban y consideraban si era de un ser humano o de un animal. Debiendo a que en el lugar uno encontraba muchos huesos, algunos enteros otros partida, algunos huesos eran de animales y otros eran de persona. Cuando se daban cuenta que eran huesos humanos los enterraban en el lugar que lo encontraban. A veces se encontraban huesos con pedazos grandes, pero ya bien seca, nunca se escarbaron los huesos encontrados eran los que habían quedado en la superficie. No encontramos un cuerpo entero, las personas que habían visitado el recorrido eran las personas que habían perdido algún familiar y conocían sus características, y quienes (quisieron) identificarlos huesos.

Figure 24

Ronald*, one of the participants of the workshop, wrote the following piece:

"Year 1995, Month of June.
We walked along the Punc River, where a year before an avalanche took place. In this walk we found body parts, such as some ribs and a femur. The older were the ones that looked at them, and could only identify if they had belonged to a human or an animal, since there were many remains, some intact and others in fragments. Some of the bones belonged to animals and others to people. When they realized that bones were human, they buried them in the site where they were found. On occasion we would find bones with bits of dry fish. No remains were excavated out, and we only looked for those on the surface. We did not find a complete body. The people that made this walk were those who had lived in this place and lost family members there, some curious onlookers, as well as children and school teachers, who helped identify the remains."
Figure 25

Photograph of the indigenous march that was carried out from Popayán to Cali, on May 2001, to protest the April Naya massacres. The picture features Nasa individuals and supporters holding a flag of Colombia, as well as the flag of the CRIC.

Photograph obtained from the “Colombia: Indigenous March” webpage at http://www.nadir.org/nadir/initial/region/free/columbia/marcha.htm
Annex

Annex 1

Translated copy of the workshop “syllabus”, which took place from Monday, August 12, to Friday, August 23, 2002.

First Week: Forensic Anthropology/ description of the Human Skeleton and Estimations based on Human Skeletal Remains

1. Introduction to Forensic Anthropology/ Introduction to the Skeleton
2. Cranium, Teeth, and Pelvis
3. Age Indicators and Sex Determination Based on Cranial Bones and Pelvis
4. Superior Part of the Post-Cranial Skeleton: Scapula, Clavicle, Humerus, Radius, Ulna, Metacarpals, Phalanges
   Posterior Part of the Post-Cranial Skeleton: Femur, Tibia, Fibula, Metatarsals, and Phalanges
5. Age Indicators based on the Post-Cranial Skeleton

Second Week: Forensic Anthropology/ Judicial Investigation Protocol

1. Review of Osteology
2. Investigation of a Crime Scene
3. Human Remains Excavation, Transportation and Treatment
4. Estimation of Time Since Death
5. Practice and Final Review Session
La historia y el tiempo serán testigos de nuestra organización.

"History and time will bear witness to our organization"

Photograph obtained from Historia del CRIC. Popayán: Consejo Regional Indígena del Cauca. 1990