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Indigenous Sovereignties in Guatemala: Between Criminalization and Revitalization

Throughout much of rural Guatemala, justice and security are provided not by state institutions but by indigenous authorities. The official justice system in Guatemala, ineffective and inaccessible to most people, has some of the highest indicators of impunity in the world. Despite postwar efforts at reform, it systematically discriminates against the impoverished rural Mayan population, who routinely suffer racist treatment at the hands of state officials. Instead of the national police or the courts, the first resort for justice for rural Mayans is to turn to local forms of community governance and dispute resolution conducted in their own languages.

In recent years, the organization of indigenous justice has been characterized by the revitalization and strengthening of so-called *autoridades ancestrales* (ancestral authorities): supra-communal governance structures that coordinate local, village-level authorities. Some of these organizations have existed since the colonial period; others have been constituted or reconstituted since the end of Guatemala's armed conflict of the past century. Perhaps the best known examples include the 48 Cantones of Totonicapán, a governing council of more than 3,000 community representatives who manage the health, education, forests, water, and territory of the local population, and the indigenous mayors of Sololá and Santa Cruz del Quiché. Both both play a vital role in local governance and conflict resolution. In other regions, such as Alta Verapaz or Chuarrancho, the refounding of ancestral authority structures has played a central role in ongoing efforts to recover communal lands.

These institutions handle everything from the regulation of natural resources to disputes and misdemeanors, sometimes intervening in serious cases such as robbery, assault, or even murder. Communal assemblies

select these authorities, who see their unpaid service as an obligation to the collective good, entailing great responsibility (*k'axkol* in k'iche'). While most of the authorities are men, women are increasingly assuming a prominent role. Irma Gutiérrez, vice president of the 48 Cantones of Totonicapán, for example, and María Lucas of the Indigenous Mayor's Office in Santa Cruz del Quiché, are important national leaders in the defense of the rights of indigenous men and women.

Practices and procedures of indigenous justice vary across the country, but are based on shared principles embedded in a Mayan cosmivision that aims to reestablish balance and communal harmony. The goal behind this uniquely Mayan justice is not just the reparation of relations between human beings in conflict but also the restoration of balance between people and their natural and spiritual environment. This stands in marked contrast to the anthropocentric perspectives on law underpinning the state justice system, which often favor the interests of transnational capital over environmental protection.

In Mayan law, dispute resolution invariably involves listening to all the parties to a conflict over extended periods, careful investigation by the indigenous authorities, acceptance of responsibility by the parties found guilty, requests for pardon, and reparations. In K'iche', *awas* refers to communal prohibitions or norms that should not be transgressed, and *pixab* to the advice and counsel given to those who defy them. Measures applied to offenders range from monetary fines to communal work to ritual shaming through the application of corporal punishment (*x'ik'ay*). Although opponents of indigenous autonomy denounce these as violent impositions that violate human rights, indigenous authorities throughout the country point to the widespread legitimacy and efficacy of Mayan law.



A protest against the Guatemalan Congress' rejection of a constitutional reform to legally recognize indigenous justice as part of the country's judicial system. INTERCONTINENTAL CRY/ ANNA WATTS

The underlying logic is to orient and correct social behavior in order to re-establish peaceful collective coexistence.

While a number of Latin American states have incorporated indigenous justice into their national law, Guatemala's governing elites continue to deny the rights of indigenous authorities to exercise their own forms of law. The peace accords signed in 1996 that ended the country's civil war promised to recognize indigenous or "customary" law. But a sustained campaign led by the powerful right-wing private-sector Coordinating Committee of Agricultural, Commercial, Industrial, and Financial Associations (CACIF) alleged that recognizing indigenous law would "balkanize" the country. A reform seeking to amend constitutional Article 203, which gives exclusive jurisdiction to the state judiciary, was rejected in a national referendum in 1999.

With the article still in place, Mayan activists and their allies have pursued other avenues to obtain recognition, including presenting cases before the Supreme Court and the Constitutional Court, arguing that Guatemala's ratification of International Labor Organization Convention 169 commits the state to recognize a sphere of autonomy for indigenous communal

governance. The Constitutional Court has issued a number of rulings reaffirming the legality of the measures applied by indigenous authorities, establishing an emergent constitutional jurisprudence favoring jurisdictional autonomy. In places such as Totonicapán, Sololá, and Santa Cruz del Quiché, the National Police and Public Prosecutor's office regularly coordinate their efforts with indigenous communal authorities, which has contributed to a marked reduction in violent and petty crime and social conflict.

Yet recognition has been inconsistent, leaving community leaders in a perpetual state of uncertainty, never sure whether they will face criminal charges for exercising their own forms of justice. This was amply demonstrated in a case from 2004 that Carlos Y. Flores and I documented together with the indigenous mayors in Santa Cruz del Quiché in the film *Dos Justicias* (<https://vimeo.com/42856999>). Indigenous authorities successfully resolved a murder, but public defense lawyers then accused them of illegally detaining and torturing the suspects—charges that the Supreme Court eventually dismissed after a lengthy legal battle.

In October 2012, the national police opened fire on a peaceful demonstration organized by the 48 Cantones of Totonicapán against proposed reforms that would have undermined communal governance and

threatened indigenous communal lands. In this massacre, six villagers died and 34 were injured. This signaled the end of the period when indigenous law was tolerated by the state as a form of “auxiliary justice” despite its lack of formal recognition—and a return to a politics of repression against indigenous communities and their authorities. This repression has been most marked in the battle between indigenous and state authorities over mining, hydroelectric, and biofuel projects in indigenous regions.

Communal authorities have led resistance to mega-projects in defense of territory, protesting the state’s failure to ensure prior and informed consultation. The state has consistently responded with violence and criminalization. Numerous cases point to the links between these attacks upon ancestral authorities and land dispossession constitute part of a colonial continuum that now denies indigenous communities the very means to survive.

Activists and scholars have documented numerous cases of human rights violations in the context of mega-projects, including the Q’ambalam River hydroelectric dam project in Santa Cruz Barillas, Huehuetenango, where protests led the government to impose a state of siege in 2012, followed by extrajudicial executions, arbitrary detentions, and imprisonment of numerous q’anjob’al community leaders. In 2014, the Santa Rita hydroelectric project on the Icbolay River in Cobán, Alta Verapaz—licensed without prior consultation with the q’eqchi’ communities of Monte Olivo, Samococh, and Raxruhá—sparked protests that resulted in the deaths of six Q’eqchi’ villagers and left dozens injured and detained.

Women have also been targets of this all-out assault against indigenous defenders of territory: for example, in 2008 police issued arrest warrants for eight female mam leaders from Agel in San Marcos, accused of acts of rebellion for their opposition to Goldcorp’s Marlin mine. And in June 2017, armed men threatened Lolita Chávez Ixcaquic and other k’iche’ activists from the Council for K’iche’ Peoples (CPK) following their attempts to denounce illegal logging in the department of Quiché. Throughout Guatemala, the state has repeatedly accused villagers and their authorities of crimes of “terrorism” and “illicit association” as part of a strategy to undermine indigenous governance and their sovereignty over territory.

The Guatemalan Congress’s recent refusal to constitutionally recognize indigenous justice should be

understood in the context of the ongoing delegitimation and targeting of indigenous communities that practice it—a delegitimation that aims to guarantee access to the country’s natural resources by national and transnational capital. In 2015, indigenous activists made renewed attempts to achieve state recognition for indigenous justice, part of a package of justice sector reforms drawn up in a national dialogue advanced by the U.N. International Commission against Impunity in Guatemala (CICIG) and the UN High Commission’s Office, along with Attorney General Thelma Aldana. (The reform proposals came in response to the corruption scandal that led to the removal of then-President Otto Pérez Molina in 2015.)

As in 1999, the proposed changes faced fierce resistance within Congress. CACIF orchestrated another sustained campaign in the national media characterized by colonial, racist discourses depicting indigenous law as violent and barbaric. Mayan ancestral authorities mobilized nationwide, giving press conferences and interviews and attending Congress to lobby in favor of the reform. Yet by March 2017, they had withdrawn their proposal, publicly condemning Congress as illegitimate and coopted by corrupt business and military mafias.

In the context of modes of governance where state agents, corporations, and criminal parallel power networks work in tandem, we must understand indigenous peoples’ demands for recognition of their own forms of justice as a claim to sovereignty. CACIF and its transnational allies oppose legal recognition of indigenous autonomy, as this will question a regime of private property founded on violent colonial dispossession. The criminalization of indigenous authorities and the opposition to constitutional recognition of indigenous law are part of a contemporary necropolitics that continue to target Guatemala’s indigenous people—as the state did during the genocide of the armed conflict in the early 1980s. Yet even without official recognition, indigenous authority structures in Guatemala are strengthening and revitalizing themselves, offering alternatives for those systematically denied justice and laying the foundations for other worlds in the face of the predations of twenty-first century capitalism. ■

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