

# BUILDING MAYAN AUTHORITY AND AUTONOMY: THE “RECOVERY” OF INDIGENOUS LAW IN POST-PEACE GUATEMALA

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## ABSTRACT

*Across Latin America, debates and practice around indigenous law provide a window on shifting relations between indigenous movements, states, and international actors. In Guatemala, the practice of indigenous law is a reflection of cultural difference, a response to past and present violence, and a resource for a population denied access to justice. In the postwar period, indigenous law has become a central element of contemporary Mayan identity politics. Together with the policy shift toward state-endorsed multiculturalism, this has meant it has become a highly contested and politicized terrain. This article examines attempts by indigenous activists to “recuperate” and strengthen indigenous law – or what is now termed “Mayan law” (derecho Maya) – in Santa Cruz del Quiché, Guatemala. Analyzing the tensions between local demands, the Mayan movement, international NGOs and intergovernmental bodies, and the Guatemalan state, it reflects on what they reveal about the limits and contradictions of the multicultural model of justice promoted since the end of the armed conflict.*

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## INTRODUCTION

Compared to the Andean countries, Guatemala's multicultural shift in the 1990s was relatively weak. In contrast to Bolivia and Ecuador, official recognition of indigenous peoples and their rights was not a response to a consolidated mass movement of indigenous peoples. The impact of 36 years of armed conflict, and particularly of the counterinsurgency violence visited on the civilian population during the early 1980s, had a devastating effect on popular organization. Over 200,000 people were killed or disappeared during the conflict, including an entire generation of indigenous leaders (CEH, 2000). The effects of the army's counterinsurgency campaigns continue to divide rural communities and condition individual and collective actions today. The indigenous movement which emerged in the late 1980s was comparatively weak and fragmented, and its fortunes were initially tied to the internationally brokered peace process.

The peace accords themselves, concluded in December 1996, constituted a relatively strong endorsement of multiculturalism and indigenous rights, particularly the extensive Agreement on the Rights and Identity of Indigenous Peoples, signed in 1995.<sup>1</sup> However, again in contrast to other countries in the region, these commitments never became constitutional norms. This weakened the prospects for their potential justiciability or legal guarantee and signaled the domestic political elite's opposition to making good on the promises of the peace accords.<sup>2</sup> In common with other Latin American states, Guatemala did ratify International Labor Organization's Convention 169, which provided a legal basis for the recognition of indigenous peoples' collective rights. Yet more than a decade after ILO 169 entered into force, its justiciability remains a question of considerable legal and political dispute (Sieder, 2007a; Fulmer, Snodgrass Godoy, & Neff, 2008).<sup>3</sup>

Despite the relative weakness of the indigenous movement and the limited scope for justiciability of indigenous peoples' collective rights, Guatemala has undoubtedly experienced a "multicultural transformation" of its politics since the end of the armed conflict. This is largely a consequence of two factors: first, the post-settlement implementation of the peace agreements – and specifically the role of the international community and international development cooperation in this process; and second, the ongoing rearticulation of the Mayan movement in the wake of the peace process. These two elements are intimately linked. In line with neoliberal policies elsewhere in Latin America, the post-peace development model promoted by the international community has emphasized administrative decentralization, increased local participation in the provision of public goods, and greater

official recognition of “culture” and ethnic diversity. This affected many areas of public policy, including justice administration, education, local government and community development, and has led to the creation of indigenous offices and programs within different government ministries and agencies and the employment of indigenous professionals to run these (Cojtí, 2005; Cumes & Bastos, 2007). Yet this more “pro-culture” stance within the state – or at least within some sectors of the state – has not meant the recognition of the collective economic, social and cultural rights of indigenous peoples inherent in international legal instruments such as ILO 169 or the 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP). Indeed, it has been denounced by movement activists as little more than cosmetic multiculturalism, or “neoliberal multiculturalism” (Hale, 2002), involving the adoption of a multicultural discourse and the co-opting of an elite of “permitted Indians” (Hale, 2004; Cojtí, 2005; Esquit, 2008). In addition, those institutional spaces that have been opened for indigenous people within the state apparatus are highly reliant on international development cooperation funding, raising questions about what will happen when the funding runs out (Cojtí, 2005).

The second factor, the rearticulation and revitalization of the Mayan movement, is a response to widespread frustration with the limited transformations achieved since the peace agreements were signed and the effect of the peace process on the national Mayan movement (Bastos & Camus, 2003). In response to the limited spaces opened by the process of multiculturalization of the state and the failure of governments to guarantee their rights in practice, left-wing indigenous activists across the country are focusing their efforts on reconfiguring grass roots organization and practices at local and municipal level. This has not yet produced a coherent or consolidated national political proposal, movement, or party (Bastos, 2009). However, more ethnographically grounded analyses of these local experiences reveal much about the shifting nature of relations between the indigenous movement and the Guatemalan state. They also allow us to assess the prospects for an emancipatory indigenous politics following the first phase of multicultural reforms.

Throughout Latin America, the strengthening of the norms, practices, and authorities that make up “indigenous law” has become a central element in indigenous peoples’ struggles for greater autonomy and recognition of their collective rights. Indigenous law has become increasingly politicized in response to a number of factors. These include the ongoing struggles of indigenous peoples’ movements to articulate alternatives to dominant forms of political organization, representation and economic development. They

also include advances in international norms regarding the collective rights of indigenous peoples, and changes in constitutional norms. During the 1990s and 2000s, constitutional reforms throughout Latin America increasingly recognized legal pluralism. The jurisdictional faculties of indigenous peoples' communal authorities were thus recognized, confirming their rights to exercise their own, culturally specific forms of law within their territories or communities. The most recent constitutions in Ecuador (adopted in 2008) and Bolivia (in 2009) go further than previous formulations and explicitly recognize the parity of indigenous law with state law.<sup>4</sup> These constitutional innovations have raised complex issues about how to coordinate indigenous law, national law, and international human rights norms, and how to balance the rights of individual citizens and the collective rights of indigenous peoples. For example, if international law specifies that indigenous peoples must give their "free, prior and informed consent" to development projects in their historical territories,<sup>5</sup> how is this to be weighed against arguments promoting mining or petroleum exploitation in those territories in the "national interest"?<sup>6</sup> And how are the individual rights of indigenous people, say to political participation or protection from gender discrimination, to be balanced against the collective rights of indigenous *peoples* to autonomy and to exercise culturally distinct forms of political organization or justice? Indigenous justice systems are neither harmonious nor static, but rather are highly dynamic and characterized by internal conflicts over power – something which complicates any attempt to define "indigenous law." One area which has proved particularly controversial, as I will explore in detail below, is the use of corporal punishment as part of indigenous justice practices. Many defend this as a culturally specific practice associated with correction or purification. However, detractors condemn it as an abuse of human rights or even (often with markedly racist overtones) as an example of barbarism linked to violent acts such as the lynchings of supposed delinquents. Since the approval of the new constitutions in Ecuador and Bolivia, controversy has resurfaced over the supposed "excesses" of indigenous law, specifically the use of corporal punishment and physical violence against those accused of wrongdoing in indigenous communities. This demonstrates yet again the highly politicized nature of indigenous law and the complexity of issues of coordination. Nowhere in Latin America has secondary legislation been approved to regulate coordination mechanisms between indigenous and ordinary jurisdiction. In Colombia the Constitutional Court has developed a significant jurisprudence which provides guidelines on coordination. Through its case-law, the Court has specified limits and guarantees applying to the special indigenous jurisdiction recognized in the 1991 Constitution. Its

judgments have broadly supported indigenous peoples’ collective rights to autonomy in the exercise of their own forms of justice within their own territories, including the use of corporal punishment, provided they respect certain “minimum legal standards” (*mínimos jurídicos*). These include internationally recognized prohibitions against capital punishment, slavery and torture, together with certain guarantees of due process (Assies, van der Haar, & Hoekema, 1999; Cepeda, 2005; Sánchez Botero, 2006, 2010; Padilla, 2008). At the time of writing a draft bill on coordination was still under discussion in Ecuador; a new law on coordination was approved in Bolivia in December 2010 (Condor Chuquiruna et al., 2009).<sup>7</sup> These laws will specify issues such as personal and territorial jurisdiction (who different forms of law are to apply to, and where), material competences (which law should be applied in different kinds of cases), and how the gender and human rights guarantees specified in the constitutions are to be secured in practice.

During the 1990s, the national indigenous movement in Guatemala focused its efforts on securing legal and constitutional reforms to further its demands and guarantee internationally recognized collective rights. However, although the peace agreements committed the government to reforming the constitution in order to recognize indigenous peoples’ rights to exercise their “customary law,” these proposed reforms were rejected in a popular referendum in May 1999. Nonetheless, the ratification of ILO Convention 169 by the Guatemalan congress in 1997 provided a legal basis for the official recognition of indigenous law. In addition, after the end of the armed conflict international development cooperation agencies began to play an important role in promoting respect for indigenous law and more effective coordination between indigenous authorities and the official justice system. During the 2000s Mayan rights activists strengthened their efforts to consolidate, strengthen, and systematize their own forms of organization, justice, and thought. These multiple dynamics of reconstitution and strengthening of indigenous law, promoted by indigenous activists within their communities and through a range of different grass roots, regional and national organizations and NGOs, are notable for their emphasis on a pan-Mayan form of law. This discourse and practice emphasizes the commonalities in norms, forms of authority and justice practices between the 21 different ethno-linguistic Mayan communities in Guatemala. As an influential publication by one of the leading Mayan organizations working to strengthen indigenous law states:

[The Mayan juridical system] includes a series of values, principles and philosophical, juridical and anthropological elements about the procedures, structure[s], functions of authorities and norms in both theoretical and practical [terms] ...

One of the main principles of this juridical system is that it was built, woven and developed by our Mayan ancestors in the context of their everyday life, [it was] continued and preserved; it has survived across time and space until the present through the oral transmission of historical memory. (DIWN, 2006, p. 13, 18, my translation)

Processes of revitalization of indigenous law can be understood on three different levels: first, as attempts to reconstruct community norms of coexistence after the armed conflict, when army violence and inter and intra-community conflicts resulted in gross violations of human rights; second, as a means of responding to the high levels of insecurity, crime, and violence that currently affect most Guatemalans; and third, as part of a broader and often highly politicized struggle for ethnic identity. As Clifford Geertz observed, law is a cultural code and a means of structuring or giving meaning to the world (Geertz, 1983). Attempts to strengthen and revitalize Mayan law or “the Mayan legal system” (*sistema jurídico Maya*) are responses to a violent past and present, but also a search for meaning and identity which focus on rebuilding moral community in a conflictive and troubled present.

Grass roots indigenous activists emphasize the historical continuity of their norms and practices, the essence of which, for them, is linked to Mayan identity, spirituality, and world view or *cosmovisión*. For this reason, activists talk of the “recovery” (*recuperación*) and revitalization of their forms of law.<sup>8</sup> Whilst fully recognizing that the institutions, authority structures and justice practices of indigenous communities have been transformed by war, modernization, religious conversion, migration, and other historical processes, they insist on the ethical, moral, and epistemological unity of Mayan law and perceive their work as an effort to recover, rediscover, and strengthen this.<sup>9</sup>

In this chapter, I analyze the efforts of Mayan activists to “recuperate” and legitimate indigenous customary law in the municipality of Santa Cruz del Quiché, based on research and fieldwork carried out in 2008, 2009, and 2010.<sup>10</sup> I focus on indigenous law as it is a key element in the reconstitution of indigenous authority at community level and of any attempt to build an alternative, locally grounded politics. It has also been a central area of policy concern and international development interventions in Guatemala since the signing of the peace accords, and as a consequence is a highly politicized and dynamic field, subject to multiple transnational influences. For these reasons debates and practice around the nature, strengthening and legitimacy of indigenous law reveal much about the changing dynamics between indigenous movements, the state and international actors in Guatemala today. At the same time, ethnographic analysis of how

indigenous law operates in practice also illustrates the competing, and often contradictory, understandings of justice at play within indigenous communities themselves.

The chapter is structured as follows: first, I describe the context of Santa Cruz del Quiché, the challenges facing indigenous government and justice systems, and the actors who are playing a central role in their re-elaboration and strengthening within the municipality. Second, through a specific case, I analyze the principles and practices of Mayan law as it is being reconstituted in Santa Cruz.<sup>11</sup> In the final section, I reflect on the controversies around indigenous law and what these reveal about dynamics between the indigenous movement, the Guatemalan state and international development cooperation in the postwar period.

## **SANTA CRUZ DEL QUICHÉ: RECONSTRUCTING INDIGENOUS LAW AFTER ARMED CONFLICT**

Santa Cruz del Quiché is one of 21 municipalities in the department of Quiché, in the northwest *altiplano* of Guatemala. With an extension of 8,378 km<sup>2</sup> Quiché is the third largest department in the country. According to the 2002 census, it had a population of 655,510 inhabitants, some six per cent of the total population of the country. Over 90% of the population is indigenous, mainly of the Maya K'iche' ethno-linguistic group. In common with other departments in the *altiplano*, Quiché suffers from acute levels of social exclusion: 85% of its inhabitants live below the poverty line and 33% in extreme poverty.<sup>12</sup> Most people rely on subsistence farming, seasonal harvest work on the coast, handicraft production, or petty commerce, but in recent years the region has also become a major exporter of immigrants to the United States (Falla, 2008). Santa Cruz del Quiché is the departmental capital and is classified as an urban area, with a population of 62,332.<sup>13</sup> It is the most important economic center of the region and many government offices, such as the departmental governor's office, the municipality, the main police station, and the law courts, are located here, together with numerous offices for governmental and nongovernmental projects, banks, shops, and a sizeable market. According to the 2002 census, 33.5% of the population in the municipality is urban and 66.5% rural. In total, there are some 74 cantons or communities in Santa Cruz, many of them effectively peri-urban hamlets, no more than half an hour by bus from the center of town. Most of these cantons comprise around a hundred houses and local

residents live in close proximity. While many *ladinos* or nonindigenous people live in the urban center, the surrounding villages and cantons tend to be predominantly Maya K'iche'.

Quiché was one of the regions hardest hit by the internal armed conflict. During the 1970s and 1980s, the department was a center for popular mobilization, first through the modernizing Catholic Action movement, then through the semi-clandestine peasant organization Comité de Unidad Campesina (CUC), and the insurgent guerrilla group Ejército Guerrillero de los Pobres (EGP).<sup>14</sup> Indigenous community organizers and communal authorities were a target for the escalating violence after 1974, which was orchestrated by local ladino politicians and the Guatemalan military. From 1980 onwards selective disappearances and murders gave way to widespread repression, involving killings, torture, mutilation, disappearances, and rape. Whole villages were destroyed and the civilian population internally displaced. Nearly all the hamlets surrounding Santa Cruz were subjected to army attacks in 1980, 1981, and 1982, the height of the military's counterinsurgency campaign. The number of deaths ranged from anything between one to hundreds of people per hamlet (Carmack, 1988, p. 56; CEH, 2000; REMHI, 1998). The UN's Historical Clarification Commission documented a total of 626 massacres in Quiché, which was the only department where, according to the UN, acts of genocide were carried out against the indigenous population (CEH, 2000).<sup>15</sup> By 1983, the army exercised direct control over all the hamlets of Santa Cruz. Community institutions were destroyed and supplanted by the military. All indigenous men were forced to participate in civil defence patrols (*patrullas de autodefensa civil*, PAC: Remijnse, 2002). Whereas previously indigenous communal authorities had resolved disputes over land, inheritance, intra-familial conflicts, or other local problems, the counterinsurgency violence left people without peaceful, culturally appropriate means of regulating their coexistence.

By the second half of the 1980s, despite continuing repression, new organizations campaigning for human rights and an end to militarization emerged in Quiché. The Consejo de Comunidades Etnicas Tunujel Junam (CERJ), founded by Santa Cruz schoolteacher Amilcar Méndez, mounted an unprecedented campaign against forced recruitment into the civil defence patrols (Brett, 2006; Remijnse, 2002). CONAVIGUA, the Coordinadora de Viudas de Guatemala, grouped together indigenous widows in the western *altiplano* demanding justice for victims and an end to forced recruitment and military patrols (Zur, 1998).<sup>16</sup> These human rights movements were the precursors of indigenous organization during the 1990s and 2000s to



strengthen indigenous law. Whilst CERJ and CONAVIGUA emphasized individual rather than collective human rights, their work to challenge violence and militarization and to promote the rights of indigenous citizens had a profound impact on indigenous rights organizing in Quiché. By 1992, the Red K'iche' Derechos Humanos Rech pa Qatinamit was created in Santa Cruz del Quiché to defend the collective and individual human rights of indigenous people.

Violence did not disappear after the end of the armed conflict. Following the negotiated peace settlement, concluded in December 1996, Quiché suffered from a wave of lynchings – violent collective attacks on suspected criminals which sometimes resulted in their death by beating or burning (individuals were doused with gasoline and then set alight). In the years immediately following the peace settlement lynchings became a common phenomenon in Guatemala, a response to a perceived increase in citizen insecurity and the ineffectiveness and corruption of the national judicial system. They were particularly pronounced in those areas that had suffered most violence during the armed conflict and for many months Quiché recorded the highest levels of attacks (Snodgrass Godoy, 2006; Mendoza & Torres Rivas, 2003). Most Guatemalans lack access to adequate judicial redress, particularly the indigenous poor who suffer from structural exclusion and often face discrimination within the official justice system. Going to the police or the courts is widely perceived by the local population to be ineffective, expensive, and inaccessible. Many people complain that their petitions are not taken seriously by state officials; investigations of suspected crimes are rarely carried out and corruption is commonplace. For indigenous inhabitants of Santa Cruz, the state justice system provides few avenues to resolve the frequent conflicts that occur within their families and communities. This is partly because crimes and misdemeanors are rarely successfully prosecuted; it is also because the procedures of the state justice system fail to reflect their moral and cultural values and thus to meet their expectations of justice.

The problems affecting the cantons of Santa Cruz are multiple and conflicts frequent. These include extremely serious cases such as murder and attempted murder, kidnapping, robbery, rape and attempted rape, extortion, domestic violence, threats, and slander (gossip and *envidia*). Conflict related to infidelity, spousal abandonment, and conjugal separation is commonplace, with women often seeking support when fathers fail to provide for child maintenance after abandoning them in order to establish a relationship with another woman. In the absence of formal contracts, disputes over debts are frequent and seem to have become more so with the

increase of migration to the United States. Disputes over land, access rights and water are also common, both between family members and within communities; indeed many more serious crimes have their roots in such disputes over material resources. In recent years, new “public order” problems related to firearms and youth gangs have increased,<sup>17</sup> while alcohol abuse remains a major factor in violence of all kinds. It is within this context that efforts to strengthen Mayan law are taking place.

### **INDIGENOUS PEOPLES’ LEGAL DEFENSE ORGANIZATIONS (DEFENSORÍAS INDÍGENAS) AND THE STRENGTHENING OF MAYAN LAW**

Indigenous law in Santa Cruz is practiced at the level of villages or cantons by different communal authorities, principally the community mayors (*alcaldes comunitarios*)<sup>18</sup> and village development committees,<sup>19</sup> and also by the *ajq’ij* or spiritual guides and midwives (*Ajijom* in K’iche’). In addition to canton level authorities, a number of other local actors, both nongovernmental and governmental, play a key role in reshaping Mayan authority and in defining and redefining Mayan law in Santa Cruz del Quiché.

Since the end of the armed conflict various Mayan popular legal defense organizations, or *defensorías*, have emerged to serve the Maya K’iche’ population. These include the Defensoría Maya, the Defensoría Indígena Wajxaqib’ Noj, both of which are national organizations with offices in other departments, and the Defensoría K’iche’, which operates in the department Quiché.<sup>20</sup> The *defensorías* are best understood as an indigenous social movement which in recent years has been transformed by external funding, principally from international development cooperation agencies. While they have offices in municipalities throughout the country, the *defensorías* are effectively networks of community activists coordinating justice auxiliaries in cantons. They are membership organizations (as opposed to professionally staffed NGOs), and many of the local Mayan activists who lead them were previously linked to the revolutionary left.<sup>21</sup>

The *defensorías* provide free legal aid for indigenous people, offering conciliation services in their mother tongue to try and resolve their conflicts and disputes according to the principles of Mayan law. They also accompany individuals and communities through the official justice system when they find themselves involved in a legal case, offering anything from translation services to para-legal advice.<sup>22</sup> Third, they work to raise

awareness about the collective rights of indigenous peoples included in the peace agreements and in international legal instruments such as International Labor Organization Convention 169. In recent years, they have also focused their efforts on raising awareness about women’s rights and participation, and on strengthening mechanisms for local oversight and participation in municipal government.

The *defensorías* constitute an important link between indigenous law and the official justice system and indeed part of their remit is to improve coordination between the two spheres. To these ends they produce materials and carry out workshops for members of the judiciary and the police aimed at raising their awareness about indigenous rights and Mayan law. While state authorities do not consistently respect community decisions (Padilla, 2008), the work of the *defensorías* in Santa Cruz del Quiché has slowly improved coordination between police, judges and state prosecutors and indigenous communal authorities. This improved coordination has also been a factor in the significant decline in the number of reported lynchings in recent years.<sup>23</sup>

In the early years of their existence, the caseload of the *defensorías* grew exponentially, often outstripping their capacity to respond to local demand. More recently they have focused their attention on strengthening indigenous authorities within the different cantons and encouraging them to exercise their rights to apply peaceful, collective, consensual means of conflict resolution. Through this type of accompaniment and practices they have made a significant contribution to strengthening and shaping the norms and practices of “Mayan law.”

In 2004 activists around the Defensoría K’iche’ began to promote efforts to “recover” or reconstruct the indigenous mayoralty (*alcaldía indígena*) in Santa Cruz. In other K’iche’-speaking municipalities, such as Chichicastenango, Joyabaj and Totonicapán, these indigenous mayoralties are an important form of nongovernmental supra-communal coordination of canton authorities, effectively constituting a sphere of semi-autonomous indigenous government (Barrientos, 2007; Ekern, 2006; URL, 1998). A number of the cantons around Santa Cruz named indigenous mayors who serve for three years, although efforts to consolidate a coordinating structure have been very gradual.<sup>24</sup> These indigenous mayors, men and women, generally work together with the canton level community mayors and other authorities, and with other indigenous mayors in nearby communities, in order to investigate and resolve serious conflicts.

The *defensorías* also work to “systematize” Mayan law through research aimed at increasing awareness among the nonindigenous population and asserting the legitimacy of Mayan law. Their publications describe the basic

precepts of Mayan *cosmovisión* and philosophy or world view, the selection mechanisms and obligations of indigenous authorities, and principles and mechanisms of conflict resolution according to Mayan principles and values. They also describe individual cases resolved according to Mayan law (DIWN, 2006, 2008; Defensoría Maya, 1999, 2000, 2003; Defensoría K'iche', 2010).<sup>25</sup> These publications are part of a broader trend to systematize and socialize Mayan law, promoted by Mayan movement activists throughout Guatemala who believe in the unity in the diversity of Mayan norms, authorities and practices. The *defensorías* do not favor a codification of indigenous law as such, insisting instead on its flexible, oral, and context specific nature. However, the pamphlets and books they produce do in effect constitute a kind of codification which influences development and practice on the ground. Indeed the cross fertilization of indigenous authority and justice systems across the country via networks of these Mayan popular organizations is a central element in explaining the resurgence and revitalization of indigenous law in Guatemala today.

These publications and the *defensorías* themselves have received funding support from a range of international intergovernmental and nongovernmental agencies, including the European Union, the United Nation's Program for Development (UNDP), the governments of Norway, Sweden, and Denmark (who channeled their funds through the UNDP program PASOC, aimed at strengthening civil society participation), and – in Quiché – Oxfam UK. International development cooperation has played a particularly significant role in the development of the indigenous movement in Guatemala since the end of the armed conflict. Support for Mayan grass roots organizations and for strengthening indigenous authority and customary law is part of the wider effort by the international community to support the implementation of the peace accords. While the lion's share of post-peace funding has been channeled to government ministries and institutions (see Azpuru, Mendoza, Blanck, & Blanco, 2004), strategic funding has also been channeled to civil society actors, leading some to perceive an “NGO-ization” of the Mayan social movement during the 2000s (Esquit, 2008; Cumes & Bastos, 2007).

The support of international development cooperation agencies for the work of the *defensorías* implies that these have become, at least to a certain extent, one of the means whereby international human rights norms are appropriated and translated or “vernacularized” within specific local contexts. As I suggest below, this vernacularization of international standards does not always square with different understandings of justice within local communities or indeed among Mayan activists themselves. The

policies and stances of these funding agencies inevitably affect the positions of the *defensorías*, supporting a range of different initiatives which unite local activism and international human rights concerns. For instance, international funding has supported workshops and training of *defensoría* personnel and community authorities on gender equity, gender violence, and women’s rights and participation. In the last three years, specialized methods have been developed within the *defensorías* in Quiché to attend to and register cases of domestic violence (*metodología para atención a casos de violencia contra mujeres, con pertinencia cultural*). *Defensoría* personnel also receive training on human rights standards and instruments – for example, on questions of due process guarantees for defendants. In their accompaniment of canton authorities they try and ensure that community methods of conflict resolution meet constitutional and human rights norms. In short, Mayan social movements such as the *defensorías* effectively work as cultural translators, mediating between the priorities and concerns of their international supporters, on the one hand, and demands and practices within the communities themselves. Anthropologists have long argued that understandings of “human rights” or what constitutes a human rights violation are contextually specific social constructs (Wilson, 1997, 2001; Cowan, Dembour, & Wilson, 2001; Speed & Collier, 2001; Merry, 2006; Goodale & Merry, 2006; Goodale, 2008; Pitarch, Speed, & Leyva, 2008).<sup>26</sup> Analysis of the case described below shows how these issues are contested within the broader context of revitalizing Mayan law and making indigenous claims within the post-peace accord politics of Guatemala.

### **THE THEFT OF A PICK-UP TRUCK: THE CONTESTED PRACTICE OF INDIGENOUS LAW IN SANTA CRUZ**

In September 2006, a community assembly was held in the canton of Tercer Centro Choacamán, on the outskirts of Santa Cruz del Quiché to discuss the theft of a pick-up truck from outside the house of its owner the previous day. The three young men accused of the robbery, Gerardo, Julio, and Cristobal, stood nervously in front of a crowd of around three hundred villagers. The proceedings were mediated by the *alcaldes comunitarios* and by the first and second *alcaldes indígenas* of Santa Cruz, Juan Zapeta and María Lucas, both from the nearby village of Xesic. The mood of the assembly was heated and at times angry. Some men in the crowd mentioned gasoline, making threatening

allusions to the practice of lynching suspected criminals. However, the *alcaldes indígenas* vehemently rejected such suggestions, and insisted that they would “apply the law of their ancestors”:

Neighbors, let's be very clear about this ... let's stop thinking that we're going to burn them with gasoline, that's not the way. Instead we will apply the sanctions established by our ancestors.

Juan Zapeta and María Lucas tried to maintain an orderly progression of the interventions as members of the crowd questioned the young men. Villagers insisted over and over again that the three “tell the truth,” and admit whether other people involved in the robbery. Gerardo, the eldest of the three, was angrily denounced by the crowd as the ringleader and a “real thief.” Some accused him of having a gun and demanded he hand over his weapons to the communal authorities. The youngest of the three, Cristobal, insisted he had not actually participated in the robbery itself but had helped take the car up to field where it was dismantled. Gerardo and Julio said little, looking sheepishly at the ground.

Establishing the truth is paramount in Mayan law: this is usually secured via the confession of the transgressor. In K'iche' *q'atb'al tzij* refers to the act of carrying out justice, and is associated with evaluating the truthfulness of the words or versions told by those involved in a dispute. The task of exercising justice is therefore intimately linked to the determination of the truth in a given context (URL, 1998, p. 51). The truth about the robbery, however, was not established during the community assembly, but apparently had become clear during the previous night. Once the owners of the truck realized it had been stolen they went to fetch the police from Santa Cruz and together with them found the dismantled truck in *caserío* Paztalam, further along the main road that leads up to Cuarto Centro Choacamán. At their request the *alcaldes comunitarios* worked throughout the night to try and establish who was responsible. They spoke at length with eyewitnesses to the robbery and then with the three young men themselves, who eventually admitted that they had taken the pick-up truck from the garage outside the owner's house, later stripping it down to sell for parts. Exhaustive investigation involving listening to all the parties to a dispute is a generalized feature and central principle of Mayan community law (DIWN, 2006; Defensoría Maya, 1999, 2000, 2003). During their investigations indigenous authorities talk with the accused and their families, and the injured parties and their families. Community assemblies subsequently provide the space for all members of canton to hear the different versions and to air their grievances and opinions. Celerity is

another common element of Mayan legal procedures: in contrast to the months and years it takes for the state justice system to investigate and prosecute crimes, community law is swift – the robbery in Choacamán was investigated and resolved within just three days.

During the community assembly the individual qualities of the accused youngsters, particularly of the eldest, Gerardo, who was the supposed ringleader, were repeatedly referred to by the villagers present:

We haven’t seen him working ... he’s a bad seed amongst us. He doesn’t work – he only hangs around the streets looking for someone to rob.

Work is a fundamental and positive value within Mayan society, and the fact that Gerardo did not work was seen as a major factor explaining his deviant behavior. Service to the community, respect for individuals and their belongings and for nature, truthfulness, honesty, and peaceful coexistence are particularly valued within Mayan communal life and people who transgress these norms are looked upon badly, as are their parents, who are seen as largely responsible for their children’s actions.

The villagers exhorted the three young men to take responsibility for their actions and admit their guilt. At the same time, eyewitnesses and others who publicly stated their views about the boys’ characters expressed their fears that the young men might take reprisals against them or their families in the future. Others lamented the current state of affairs in the canton:

In the old days there weren’t any thieves or bad people here in the canton ... but now there is great danger, lots of terrible things are happening, death is everywhere. This is what’s happening now in our communities. We don’t want this, what we want is to live in peace.

When it came to deciding how the three youngsters were to be sanctioned, the *alcaldes indígenas* suggested that twenty elders from the community should be selected and that they should decide what to do. However, one of the *alcaldes comunitarios* insisted that the course of action should be determined by the entire community:

Between all of us we’ll think about what kind of sanction we should apply to them or how they should pay for their guilt, so that everyone is in agreement. Otherwise many people could go home with doubts because maybe they wouldn’t agree with the measures decided on.

The role of the community assembly and consensus is central in Mayan law. Authorities such as the *alcaldes comunitarios* or *alcaldes indígenas* act as guides (*k’amal b’e*) orienting the proceedings, but do not make the final decisions themselves: power is exercised through the collective, not by

individual leaders or representatives. Decisions in cases such as these are validated by reaching a collective consensus endorsed by the assembly as a whole. The practice whereby everyone in an assembly bears physical witness to the final resolution is a crucial form of accountability and ensures the legitimacy of the decision. Indeed *alcaldes comunitarios* and *alcaldes indígenas* repeatedly emphasize their role as representatives of the community's will and are extremely wary of reaching a solution "behind closed doors," as they could later be accused of manipulating the outcome.

*Public Shaming: The Pedagogic Effect of Derecho Maya*

The sanctions decided on by the assembly in Choacamán provide a fascinating window onto the operation of Mayan law in the changing context of multicultural politics in Santa Cruz del Quiché. First, it was determined that the boys should pay the owners the value of the repairs necessary to restore the truck to full working order, in line with the norm of restitution (*reparación del daño*). Restitution is a common practice within Mayan law and can be secured via monetary compensation, community work or fines (DIWN, 2006; Defensoría Maya, 1999, 2003). Such agreements are usually recorded by the *alcaldes comunitarios* in a written document or *acta*.

The principle of repentance (*kuyb'al mak* in K'iche') is central to Mayan law and the role of public shaming is fundamental, especially in cases of robbery, domestic or sexual violence. In this case it was decided that the public shaming of the three young thieves should take place not in the canton, but rather in the municipal capital of Santa Cruz, a hitherto unprecedented occurrence. This would provide a unique opportunity for indigenous rights activists to inform indigenous and nonindigenous urban dwellers, as well as the state authorities, about the community's response to the robbery and thus to demonstrate the efficacy of Mayan law to a wider audience. As such it constituted a highly public demonstration of the validity of Mayan communal authority and a political claim for indigenous autonomy.

The following day a crowd of several hundred men and women, many of whom had walked several kilometers from Choacamán and adjoining cantons, congregated in the main square in Santa Cruz, in front of the cathedral, the municipality and the market place. They watched as the three young men lifted the tires from the stolen truck onto their backs; two each



for Gerardo and Julio and the fifth for Cristobal, the youngest, who also carried a piece of the car’s engine in his hand. The crowd then slowly followed the three of them through the streets of the town. The march was preceded by a police patrol car, there to ensure public order throughout the proceedings. It was followed by a pick-up truck carrying a group of *alcaldes indígenas* and *alcaldes comunitarios*, all of whom carried their staff of authority (*vara*). Some of the *alcaldes* provided a running commentary in Spanish and K’iche’ through a megaphone. Shopkeepers and passersby stood in doorways observing the three young men struggling along with the heavy tires. Indigenous people marching alongside them carried handwritten cardboard signs that read “Long live Mayan Law!”, “Respect Indigenous Law,” and “Proof that Mayan Law Works.” The *alcaldes indígenas* called on the young men to repent, and urged other youngsters and their parents to learn the lesson of this very public shaming:

It’s important ... for them to be shamed before the people. This is what we want to say to these three youngsters, we don’t want to harm or kill them. What we want is to give them advice, to give them good ideas in their hearts and their thinking. So that tomorrow they don’t do the same thing. We also call on the youngsters who are watching not to commit similar mistakes.

The event in Santa Cruz combined elements of a public shaming (*K’ixba’l*)—a typical element of community law – and a political rally organized by a social movement.<sup>27</sup> Whereas previously indigenous law was simply “custom,” today its revitalization is directly linked to claims for greater respect for indigenous authority and recognition of indigenous autonomy, and to the politics of the postwar settlement.<sup>28</sup>

Through the megaphones, the *alcaldes indígenas* told the crowd that they were doing this because they wanted to stop delinquency in the municipality; “we don’t want any more thieves here in Santa Cruz del Quiché,” and they called on those present to recognize and respect the legitimacy of indigenous law and acknowledge the work of the community authorities:

Indigenous law seeks harmony amongst our people. We have to be united. This isn’t the first time the indigenous authorities have tackled such a big, difficult problem ... they don’t earn a cent, but they managed to capture these thieves ... the majority of indigenous authorities are illiterate, some of them don’t speak Spanish, others can’t write, but they are carrying out a dignified task, one which should be copied and celebrated ... This is an example for all the population ... they are risking their lives to secure peace and tranquility in their villages.

*Correction*

The multitude then made their way back to the *caserío* Patzalam in Cuarto Centro Choacamán, where the car had been found. Many people, eager to witness the final resolution, walked several kilometers from the center of Santa Cruz to the village. On a large grass clearing, the material evidence was laid out for all to see: pieces of the pick-up truck, including the alternator, the battery, and the timer. Initially the assembled villagers and the *alcaldes* divided into three groups, one surrounding each of the young men, and questioned them again about the robbery in an attempt to check inconsistencies in their accounts. Gerardo, the eldest of the three, remained recalcitrant, but Julio confirmed that he and Cristobal had been easily recruited by Gerardo into the plan to steal and dismantle the pick-up.

The *alcaldes comunitarios* again emphasized that what they wanted was a peaceful solution to the problem, not a lynching:

Just like our brothers say, we're not here to burn you; what we're going to burn are the bad thoughts you have in your head, all those bad things you have in your heart.

The public shaming and admonition of the three young men before their parents and the community constitutes part of the practice of *p'ixab'*. Perhaps one of the most central elements of Mayan law, *p'ixab'* is a complex and multifaceted concept that refers to a code of behavior comprising certain norms, teachings, advice and moral, spiritual and ethical values. Respect for one's elders, for one's parents, for one's community and for nature – or for the essence of all things – is transmitted through *p'ixab'*. Its aim is preventative, to orient, correct, and ensure unity, balance and harmony within human relations and between people and nature. As numerous studies have observed, *p'ixab'* is transmitted orally from generation to generation, both within the family unit and by communal elders and authorities (ASIES/OACNUDH, 2008, p. 28). According to the Defensoría Indígena Wajxaqib' No'j:

*P'ixab'* isn't a form of pressure, it's not obligatory – it tries to seek awareness in people so that when they don't comply they don't fall into *K'ix* or shame and sanctions. It's about the search for pacific solutions to problems and conflicts through dialogue, consultation, consensus and community solidarity. (DIWN, 2006, p. 66)

If *p'ixab'* is successful then those accused of wrongdoing will reflect on their behavior and correct their ways in the future, something that was repeatedly emphasized in the assembly at Patzalam.

The different groups subsequently converged, leaving the three young men standing in a clearing surrounded by the *alcaldes*, their parents and the villagers. Children sat on the grass in front of their parents, mesmerized by the events unfolding in front of them. The communal authorities called the owners of the pick-up into the circle and after a lengthy discussion confirmed that they wanted the three young men to pay for the cost of repairing the pick-up. They also stated they would hold them responsible for any reprisals that might be taken against them and their families.

The elders present then discussed how many *xik'a'y* the young men should receive. *Xik'a'y* are a highly controversial element of indigenous law in Santa Cruz del Quiché and one that has divided the opinion of local Mayan activists. They consist of ritual beatings with thin branches cut from a quince tree and are administered by the elder *k'amal b'e*, *alcaldes comunitarios*, or the parents of the accused. Their detractors, including Mayan rights activists within the *defensorías*, condemn them as an abuse of human rights, a practice which can easily get out of hand given legacy of the armed conflict (when violent physical punishment was commonplace). However, their defenders describe them as a form of medicine, a ritual means of correcting the energies of those who have committed wrong, and argue vigorously that they are an integral part of indigenous law. As *alcaldesa indígena* María Lucas stated before the assembly at Patzalam:

These branches are to correct. Let us see how our ancestors corrected ... It's not just beating them, that wouldn't work at all. Let it be clear ... this is the way our grandfathers and grandmothers corrected in the past.<sup>29</sup>

The application of *xik'a'y* is a common practice within K'iche' families to "correct" children who are disobedient to their parents;<sup>30</sup> it is also sometimes applied by parents to their adult children if they have been unfaithful to their spouses (URL, 1998). (I was told of one case of an elder *alcalde comunitario* who had behaved in a lewd fashion toward a young woman when drunk and later requested he be "corrected" with *xik'a'y*.) In recent years, the *xik'a'y* have become an integral element of communal justice practices in some communities in Santa Cruz del Quiché. Effectively something that was previously private within the realm of the family has become an element of the public exercise of communal justice. This is aimed not just at correction but specifically at public shaming. It can also be understood as a means of containing popular demands for vengeance and more severe forms of punishment.

One by one, the three young men were told to take off their shirts and watches, and to kneel with their arms outstretched. Their parents were

invited to apply the *xik'a'y*, but only Julio's father took part, leaving the task for the most part to the older *alcaldes comunitarios*. The crowd fell silent, all eyes on the young men in the center of the circle. The first *alcalde* removed his hat and asked those present to recite the Lord's prayer with him as he sought permission from God and the assembly for what he was about to do. He then stood in front of Cristobal, the youngest, and spoke directly to him:

My son, I won't hurt you just for the sake of it. Who gave you this bad advice? Don't do it again. You should do what your father and mother tell you to do. Look what's happened because you listened to other people ... It's better that you work.

He then hit him lightly twice on the wrists with two branches. The second *alcalde* reminded him that his acts could have had much more serious consequences:

What if this had been somewhere else? They would have poured gasoline on you and burned you. But not here, we're going to correct you if you accept. If not then tomorrow we'll be watching you, and then it will be much worse for you.

After the third and fourth set of *xik'a'y*, applied to his back and the back of his knees, Cristobal began to cry. Children in the crowd also started crying; women watched fixedly, expressions of shock and concern on their faces. The *alcaldes* continued to admonish the young men, telling them to correct their ways and insisting that by applying the *xik'a'y* they were only carrying out their duties as representatives and servants of the community. "These youngsters can't accuse us of anything in the future, because we're carrying out your orders." It began to rain steadily, and the application of the *xik'a'y* to Gerardo and Julio was speeded up. In contrast to Cristobal, both of them cried out and twisted and turned as they received the blows.<sup>31</sup> Once the *alcaldes* had finished their task, the crowd dispersed.<sup>32</sup>

### **POLICING INDIGENOUS LAW: LOS XIK'A'Y – LEGITIMATE MAYAN LAW OR ABUSE OF HUMAN RIGHTS?**

As I have argued above, the controversy over the use of *xik'a'y* should be understood within the broader national and regional context: corporal punishment is a particularly contentious issue in political conflicts about the extent of indigenous autonomy and policy deliberations about the

coordination of indigenous law and national law. In Guatemala neither the judiciary nor the government has intervened on this issue in any consistent fashion.<sup>33</sup> Rather the debate about whether indigenous law is legitimate custom, or torture and barbarism, has been played out mainly in the national press. In the late 1990s, this was often linked to reporting on the wave of lynchings across the country. Press coverage has included outright rejection of Mayan law, revealing underlying and ingrained racist attitudes on the part of critics. However, in recent years it has also featured attempts by journalists and national and international defenders of indigenous rights to explain indigenous legal practices and world views to the general public.<sup>34</sup> In this sense, debate in the Guatemalan press has reflected the wider political struggles to advance or impede the guarantee of indigenous rights and autonomy in the postwar period, and the limited multiculturalization of the Guatemalan state and public debate.

Differences of opinion also exist within the Mayan movement over the question of *xik'a'y* and about the essence and practice of Mayan law. In April 2008, a representative from one of the *defensorías* told me that those activists in Santa Cruz who defended the practice were misguided, and that the *xik'a'y* were in fact a colonial legacy and not a “genuine” element of indigenous law. He argued that the emphasis of Mayan law should be on prevention, not punishment. He was also of the view that resolutions should involve community work, and if that did not elicit the desired result then miscreants should be handed over to the judicial authorities. Expressing concerns that the application of *xik'a'y* would become more violent over time, he insisted they simply were not effective as a means to correct delinquent behavior. However, other activists, including some individuals within the *defensorías*, defend *xik'a'y* and criticize external agents, such as international NGOs and intergovernmental agencies funding the work of the *defensorías*, for effectively “policing custom” and – in their view – censoring Mayan people’s expressions of their own forms of law.<sup>35</sup>

Such policing of custom is inevitably a part of the politics of peace implementation and international support for multiculturalism in Guatemala. It reflects the multiple objectives of international development cooperation, including securing more effective rule of law, guarantees for human rights, and respect for the internationally codified collective rights of indigenous peoples. In July 2006, for example, Anders Kompass, the Swedish head of the office of the UN High Commission for Human Rights in Guatemala at the time, published an opinion column in the Guatemalan press in which he signaled the “confusion” that existed, particularly around the tendency to link indigenous law with different types of physical

punishment, such as lynchings or beatings.<sup>36</sup> Kompass went on to describe and endorse *pixab'* as the essence of indigenous law:

*Pixab'* is a term in K'iche' which sums up very well the philosophy underpinning indigenous law, which means "to call to attention, give advice and transmit experience." This is exactly what indigenous law is: a juridical system that places most emphasis on crime prevention, on strengthening community links and on the importance of individual and collective behavior which – as in any legal system – should be based on respect for authority, norms and principles.<sup>37</sup>

The UN representative explicitly rejected the notion that corporal punishment was part of indigenous law:

Although indigenous law also contemplates sanctions, these are essentially calls to attention or, in the most serious cases [consist of] social work to repair the damage caused to the community. Indigenous law isn't based on any kind of violence, but rather on conciliation and harmony.<sup>38</sup>

The policy-driven logic of this position, one of strengthening the rule of law and reducing social violence, was clearly set out in the article,<sup>39</sup> which ended with various "calls to attention":

The first, to indigenous authorities and spiritual leaders, so that they raise their voices and actively take part in discussions on this issue, to insist that neither indigenous law nor state law can condone sanctions that violate human rights. The second is a call to indigenous communities to identify their best practices, to stop indigenous law being misrepresented, and to reject violent practices which are contrary to their ancestral principles.<sup>40</sup>

The third and fourth appeals were to the Guatemalan state and the population in general: to the former, to approve and apply laws in line with international conventions such as ILO 169, and to the latter that no human being "whether they are ladino, indigenous, of African descent or mestizo" should be subject to cruel, inhuman or degrading treatment: "This is an incontrovertible universal principle."<sup>41</sup> This call to indigenous authorities and spiritual leaders to reject sanctions which "violate human rights" has a clear logic within the postwar context, characterized as it is by summary actions such as lynchings and extrajudicial executions, the growing militarization of community responses to crime, and impunity. However, it also evidences the politicization of Mayan law that has occurred since the signing of the peace accords and the tensions that exist between "universalist" positions and more local or contextualized understandings of justice (Merry, 2006).<sup>42</sup>

## CONCLUSIONS

As new constitutions and international instruments increasingly endorse indigenous claims for autonomy, indigenous law has become increasingly politicized. In this respect, the analysis I have offered here of the revitalization of Mayan law in Santa Cruz del Quiché and the contestation and controversy surrounding its nature and practice invokes a number of wider issues present across Latin America. It also illustrates the specificities and limits of post-peace multiculturalism in Guatemala.

First, during the 2000s Mayan identity and specifically Mayan spirituality became a terrain of political contestation. The NGO-ization of the Mayan movement has involved greater external support for the work of local indigenous activists to strengthen the structures and practice of indigenous communal authority and "Mayan law," leading to the politicization of Mayan *cosmovisión*. At times this can result in a questioning of local practices, on the grounds that they are not "authentically Maya" enough.<sup>43</sup>

Second, the decisive role of international development cooperation funding in postwar Guatemalan politics and state reform, and particularly the emphasis among many agencies on "strengthening civil society" by supporting the work of indigenous popular organizations, means that these contestations among the Mayan movement are also intimately bound up with international policy positions and debates. Despite their commitment to ensuring respect for cultural diversity, the interpretative frameworks of most international actors working in Guatemala continue to be determined by deep-seated universalist presumptions.

Third, the case presented above of indigenous law in practice indicates the complex and multiple legacies of the armed conflict in Santa Cruz del Quiché. Indigenous authorities and local rights activists trying to rebuild structures of community cooperation must deal with the consequences of years of militarization and para-militarization, and with highly violent and authoritarian popular reactions to high levels of postwar insecurity and crime. Movement activists' efforts to systematize Mayan law and *cosmovisión* are a pedagogic and political exercise; they do not always reflect practice or desires within indigenous communities themselves, which are, in any case, internally heterogeneous. As the above analysis illustrates, the tension between reparation and latent threat is undeniably an element of community justice. Lynchings, although declining, have become a point of reference in the popular imagination and continue to occur in Quiché and elsewhere.<sup>44</sup> The possibility of violence is always present; indeed mediating these tensions is one of the main challenges for indigenous authorities. In

this respect, the practice of *xik'a'y* can also be understood as a response to popular demands for more summary means of dispute resolution.

Fourth, while the analysis offered here has focused more on the realm of civil society and less on the institutions of the judiciary, examination of indigenous law nonetheless reveals much about the postwar Guatemalan state. Official justice practices have been affected by the multicultural shift, even though this has not led to a marked improvement in the efficacy of the legal system. International support for state reform has trained state officials about indigenous rights instruments, and financed new state institutions which try and enforce respect for indigenous rights.<sup>45</sup> Numerous initiatives in the field of justice administration since the signing of the peace accords have encouraged greater de facto recognition of indigenous customary law, together with the decentralization and informalization of the lower echelons of the justice system (Sieder, 2007b).

In Santa Cruz del Quiché, members of the police, public ministry, and local judges have become more tolerant of indigenous law and sometimes actively coordinate their efforts with community authorities and with the *defensorías*. Particular cases are remitted to the indigenous authorities or the *defensoría* offices; the police actively liaise with local activists to ensure peaceful outcomes when suspected criminals are captured by inhabitants of the cantons. When I first interviewed members of the Defensoría K'iche' in 2005, they reported that a number of them were facing criminal charges, including illegal detentions, assault, and abuse of due process. By 2010, there were no judicial orders pending. Coordination with state authorities had improved to the point where the departmental governor himself was present in some community mediations, providing a highly public endorsement of Mayan law.

Whereas previously *alcaldes auxiliares* tended to deal with relatively minor disputes, passing more serious cases on to the state authorities, indigenous authorities are increasingly dealing with more and more complex and serious cases. Murders and firearms offences tend to automatically involve the state judicial authorities. However, since there is often little in the way of investigation or prosecution, identification of those responsible invariably falls to indigenous authorities (even though the penal procedures code clearly signals the state's responsibility to take action when crimes are committed). The multicultural development model has favored greater coordination between state and nonstate justice systems and the official recognition of indigenous law. At the same time, Mayan activists have insisted on indigenous peoples' collective rights to exercise their jurisdiction in all kinds of disputes, not just minor ones. Given the abject failure of the



justice system and the continuing economic marginalization of indigenous people, it is expedient for Guatemala’s political elite to endorse the provision by Mayan communities of their own justice and security under the banner of multiculturalism. Yet as recent protests over mining and hydroelectric dam projects have illustrated, the multicultural state may pay lip-service to “culture” and endorse anti-discrimination measures, but it does not promote economic or social rights and opposes any indigenous claims to autonomy that challenge elites’ economic control (Bastos, 2009; Fulmer et al., 2008). The fact that agents of the Guatemalan state are more tolerant toward indigenous law has not meant that indigenous peoples’ collective rights are respected in practice, a pattern that is repeated across multicultural – and even “pluri-national” – Latin America.

## NOTES

1. Over 50% of the population of Guatemala is indigenous, comprising 21 different Mayan ethno-linguistic groups, xincas and garífunas. The rest of the population is mestizo, of Spanish descent.

2. A referendum on a package of constitutional reforms was defeated in March 1999 (see Arnson, 1999; Warren, 2003).

3. The poor prospects for the justiciability of indigenous rights – or indeed any rights guarantees – are due not just to the absence of a strong constitutional charter, but also to the impunity that characterizes the Guatemalan legal system (Sieder, 2004; Pásara, 2003).

4. Rather than simply adding new rights to an existing legal and political structure, the new Ecuadorian and Bolivian constitutions aim to “re-found” or re-establish those respective nation states as “pluri-national.”

5. The UN Declaration on the Rights of Indigenous Peoples, adopted by the UN General Assembly in 2007, specifies “free, prior and informed consent” (Art. 32). Available at [www.un.org/esa/socdev/unpfi/en/drip.html](http://www.un.org/esa/socdev/unpfi/en/drip.html).

6. See Morris, Rodríguez Garavito, Orduz Salinasy, and Buriticá (2009) on prior consultation of indigenous peoples; Rodríguez Garavito and Arenas (2005) on a particularly controversial case in Colombia.

7. Law No. 073, the *Ley de Deslinde Jurisdiccional*, was approved by the Bolivian Congress on 29 December 2010. See <http://lexivox.org/norms/BO-L-N73.xhtml>, consulted 13 April 2011.

8. Revitalization tends to be used more by academics or in publications by organizations in the Mayan social movement; the term invention or reinvention is particularly problematic, as for many activists it carries connotations of inauthenticity (Hobsbawm & Ranger, 1992).

9. Similar debates on the continuity of pre-Colombian structures and practices have been a feature of Andean anthropology since the 1970s (see Harris, 2000).

10. I have been researching indigenous law, access to justice and Mayan activism around legal issues in Guatemala intermittently since 1995, when I lived for a year in Cobán, Alta Verapaz carrying out research on indigenous law in displaced communities in the immediate postwar period (Sieder, 1996). Since then I have collaborated with various Guatemalan research institutions and international agencies on research related to indigenous law, justice, and indigenous rights.

11. My research with members of the indigenous mayorality of Santa Cruz del Quiché includes the digitalization of film archives of cases resolved by Mayan law between 2002 and 2008, and the production of visual and written materials to strengthen the application of Mayan law. See the film *K'ixba'l* (Shame), produced by Carlos Flores and Rachel Sieder in 2010.

12. ASIES/OACNUDH (2008, p. 21), citing data from the Instituto Nacional Estadística, 2002 and the UNDP's Informe del Desarrollo Humano of 2005.

13. XI Censo Nacional de Población y VI Censo Nacional de Habitación (2002) www.ine.gob.gt, INE. Guatemala.

14. One refugee and former CUC activist from Santa Cruz estimated that over a thousand indigenous people from Santa Cruz joined the EGP after 1980: cited in Carmack (1988, p. 56).

15. See also REMHI (Vol. III, 1998, p. 174) for a map of 127 massacres registered by REMHI in Quiché between 1980 and 1983.

16. During the counterinsurgency of the 1980s the armed forces militarized the civilian population, forcing indigenous men to participate in Patrullas de Autodefensa Civil, some of which were forced to carry out violations of human rights (Comisión de Esclarecimiento Histórico (CEH), 2000). In a number of villages in Santa Cruz, as elsewhere in Guatemala, patrollers killed those suspected by the army of guerrilla sympathies rather than risking the lives of the entire village (Comisión de Esclarecimiento Histórico (CEH), 2000; REMHI, 1998; Carmack, 1988).

17. Jennifer Burrell's work *Todos Santos de los Cuchumatanes*, Huehuetenango points to the need to distinguish between different types of youth gangs: not all are necessarily involved in organized crime and violence (Burrell, 2009).

18. The post of community mayor is unpaid and is seen as a form of community service. Cantons can name up to three mayors, who in legal-administrative terms are part of the local government structures of the state. Before a reform to the municipal code in 2002, which strengthened official recognition of indigenous communities' norms and practices, these community mayors were known as "auxiliary mayors" (*alcaldes auxiliares*).

19. After 2002 development committees were renamed Community Development Council or COCODES. They are part of government decentralization policies and are the main mechanism through which rural communities can access government funds for local development initiatives. They are responsible for maintaining local roads and schools, and for ensuring the local supply of water, in addition to other tasks.

20. Defensoría Maya, the oldest of the *defensorías indígenas*, works in Sololá, Chimaltenango, Alta Verapaz, Baja Verapaz, Huehuetenango, Quiché, and Chiquimula; its network includes the K'iche', Ixil, Kaqchikel, Chortí, Mam, Chuj, Pocomam, Q'eqchi', and Achi ethnolinguistic communities. The Defensoría Indígena

Wajxaqib’ No’j works in the Kaqchikel region, with offices in Chimaltenango and Sololá; in the Achi’ region in Salamá; in the K’iche’ region in Santa Cruz del Quiché, Chichicastenango, and San Miguel Uspantán; it also works in the Chuj and Mam regions. The Defensoría K’iche’ has offices in Santa Cruz del Quiché.

21. During the period 2006–2009 the Defensoría K’iche’ office was staffed by a coordinator, an assistant coordinator, an administrative assistant and five *promotores*, 50% of whom were women; the Defensoría Indígena Wajxaqib’ No’j in Quiché had a coordinator, an assistant coordinator, an administrative assistant and seven *promotores*, 41% of who were women. The Defensorías do not have legal recognition as nonprofits, or *personería jurídica*, and in this sense are more social movements than NGOs.

22. None of the activists in the *defensoría* offices in Santa Cruz del Quiché are lawyers, although Defensoría Maya does employ indigenous lawyers.

23. Between 1996 and 2002 there were 77 lynchings in Quiché, resulting in 52 fatalities and 36 people seriously injured (Mendoza, <http://www.nd.edu/~cmendoz1/datos/>, consulted May 5, 2009); between 2000 and 2009 there were 27 deaths and 16 serious injuries in the department due to lynchings (personal communication with Ivan García, UNDP Guatemala, based on figures from the Policía Nacional Civil). The decline in lynchings can be attributed to a number of factors in addition to the work of local civil society activists, including more effective intervention by a dedicated team within the police in Santa Cruz del Quiché, who negotiate with community representatives when suspected criminals are captured (around 90% of captures in Quiché are carried out by communities themselves). More ominously, the decline in public lynchings is also linked to an increasing resort to extrajudicial executions of suspected criminals.

24. The indigenous mayoralty in Santa Cruz only secured a permanent place to meet and attend to the population in 2010. In other municipalities the indigenous mayoralty has an office near the municipal government offices, the market or the Catholic Church.

25. See also the monthly bulletin of the Defensoría Indígena Wajxaqib’ No’j *Qatzij*, *Nuestra Palabra* and the publications of Oxlajuj Ajpop Conferencia Nacional de Ministros de la Espiritualidad Maya (2001, 2005, 2003a, 2003b, 2006); and the Centro Pluricultural para la Democracia in Quetzaltenango (2005a, 2005b, 2006, 2007).

26. This does not imply that all anthropologists are cultural relativists, but rather that the discipline has emphasized the need to understand the cultural and contextual issues involved in constructions of human rights and their violation.

27. The proceedings were filmed by the *alcaldes indígenas* themselves and by a local cable TV station, which interviewed members of the *alcaldía indígena* during the march.

28. The practice of indigenous law also reflects the specific political trajectories of local indigenous rights activists and the struggle for local political capital.

29. The number of *xik’a’y* applied depends on the magnitude of the problem or wrong committed. Four *xik’a’y* represents the four cardinal points of the Mayan cross “porque los delinquentes han perdido su orientación.” Five *xik’a’y* includes the fifth element, *uk’u’x* or center of the earth. Nine *xik’a’y* signals the nine lunar cycles or the nine months of pregnancy “because a person who has committed a wrong has

this since they were born.” Twenty *xik'a'y* represents *jun winaq'*, or a person (counting ten fingers and ten toes). In the case of the three pick-up thieves, one *alcalde* explained “with the youngsters, what we want is for them to become people again.”

30. “In Mayan cosmovisión a person is made up of two energies, positive and negative. Positive energy has to be enhanced, and the system of *nawales* plays an important part in the life of individuals, families and communities. In order to correct negative energies which unbalance the behavior of individuals in their families and in society *pixab'* begins in the family, with the advice of grandparents, and mothers and fathers. When the person doesn't heed this advice and commits serious offenses, their negative energy needs to be repaired. It needs to be rebalanced through a strong reaction with the application of *xik'a'y*. This is the last recourse to correct a serious offense that requires attention ...

This practice of re-equilibrating or cutting off negative energies is practiced in Mayan ceremonies with the application of the branches of a plant called *Chajob'* in K'iche' or Chilca in Spanish. *Pixab'* and *Xik'a'y* are still practiced in many Mayan families, for example, as part of religious syncretism it's common for grandparents to call their grandchildren together on Easter Saturday and give them *pixab'*. They tell them to respect their mothers, fathers, and their elders, to do what their parents tell them. And then their grandmother or grandfather hits them gently with the branches.” (Juan Zapil, July 2009, personal communication).

31. I was told that those who had more guilt or who did not repent for their actions felt the punishment more strongly. However, it could be that the rain increased the impact of the branches on bare skin, or it could simply be part of a public performance on the part of those accused.

32. By July 2010 the two youngest men tried in Tercer Centro Choacamán in September 2006, Julio and Cristobal, were both working – Cristobal in the capital city and Julio in the United States. Neither of them had engaged in any criminal behavior since their public shaming in the community assembly and their parents enthusiastically endorsed the measures, saying they had helped “correct” their sons and ensured they were now working honestly and contributing economically to the family. The eldest and supposed ringleader Gerardo was dead, killed in another dispute in a neighboring village. According to some communal authorities, his death was a consequence of his failure to respond to *pixab'*.

33. While the Colombian Constitutional Court has ruled on a number of cases specifically related to corporal punishment in indigenous communities, no similar cases have ever reached the Guatemalan Constitutional Court.

34. See, for example, Lorena Seijo, “Derecho Maya: sistema de justicia paralelo,” *Prensa Libre*, May 28, 2006; Lucía Escobar, “Macario y la Justicia indígena en Chichicastenango,” *El Periódico*, August 19, 2007.

35. NGO representatives I spoke to condemned as torture the application of corporal punishment as a means to secure confessions before community assemblies. Yet Mayan activists who endorsed the use of *xik'a'y* also rejected such practices, at least discursively, and insisted that confessions were secured through patient investigation and questioning, not by threats.

36. “It seems that confusion exists, especially given the tendency to link indigenous law with different types of physical punishment, such as lynchings and

beatings." Anders Kompass, "Confusión sobre el derecho indígena," *El Periódico*, July 22, 2006. My translation.

37. *Ibid.* My translation.

38. *Ibid.* My translation.

39. "Precisely for this reason, opinions which associate indigenous law with physical punishment are so damaging, because they contribute to generating a climate of rejection toward a system which should be seen as an opportunity to continue the strengthening of the rule of law, decongesting the centralized and inefficient state justice system and contributing to re-establishing the bases of social relations in the communities by bringing harmony through peaceful and conciliatory resolution of conflicts." *Ibid.* My translation.

40. *Ibid.* My translation.

41. *Ibid.* My translation.

42. As Sally Merry has cogently demonstrated in her work on the construction of gender rights within the UN, so-called "universalist" human rights stances on culture and rights are in fact a contextually rooted cultural construction (2006).

43. As one national Mayan rights activist told me: "Lots of the actions of community mayors aren't based on indigenous cosmovisión. The people who know more about cosmovisión are often the NGOs or the intellectuals. Often the indigenous mayor isn't able to use cosmovisión to judge [or correct] someone, sometimes they just apply mediation." Interview with member of Defensoría Wajxaqib' No'j, April 2008.

44. For a particularly graphic journalistic account of a recent lynching in Camanchaj, Quiché, in January 2009 see "El linchamiento del sastrer," *El Periódico*, May 12, 2009.

45. Space does not permit an analysis here, but key institutions include the Indigenous Women's Defense Office (Defensoría de la Mujer Indígena, DEMI), the program of indigenous defenders (*defensorías indígenas*) within the state public defender's office, and the indigenous section of the human rights ombudsman. All of these institutions have regional offices in Santa Cruz del Quiché.

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