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The creation of a justice council for the Kichwa Saraguro people in the province of Zamora (Consejo de Justicia del Pueblo Kichwa Saraguro de Zamora) aims to put into practice Article 171 of Ecuador’s Constitution, which recognizes the existence of systems of justice other than the white—or mestizo—system (NotiSur, Nov. 9, 2012). The effort, however, faces a racially-charged governmental challenge as well as voices within the indigenous movement itself that question any institutionalization of their ancestral systems of justice.

Ecuador’s Constitution states: “Authorities of indigenous communities, tribes, and nationalities will exercise judicial functions based on their ancestral traditions and their own law within their territory, with guarantees for women’s participation and decisions.” It specifically points to the existence of a legal system within the indigenous communities, with particularities suited to the diversity of the communities, peoples, and nationalities. The government, however, has systematically denied this.

Article 171 establishes a single limitation for indigenous jurisdiction when it says, “The authorities will apply their own rules and procedures for the resolution of internal conflicts that don’t contradict the Constitution or the human rights recognized in international documents.” This means that any kind of conflict—or “sorrows,” the word used in the Kichwa world—including those arising from murder or rape, could be resolved by the indigenous authorities in their own territories. Ecuador’s Constitutional Court has tried to limit the indigenous judicial system with a resolution that tries to stop indigenous judges from resolving conflicts involving the physical integrity of an individual, such as murder and rape. In practice, indigenous communities have ignored the resolution, viewing the court as an appendage of executive power that echoes the racist stance of President Rafael Correa, who is determined to reduce indigenous jurisdiction to a minimum.

The result is a collision of two systems, one accustomed to imposing its will and now backed by the ideology of the executive branch (NotiSur, Jan. 11, 2013), the other recently awakened but centuries old.

A problem of hierarchies

The judges of the white or mestizo system refuse to recognize the jurisdiction of the indigenous courts and attempt to retry cases that have been resolved in the indigenous system. They reject the legitimacy and enforceability of judgments made by the indigenous authorities, even though the same Article 171 reads, “The state will ensure that decisions of the indigenous jurisdictions are respected by public institutions and authorities.”

The process of indigenous justice, beyond establishing ways of repairing damage and compensating victims, culminates in a healing ritual, as they believe that a person is compelled to do wrong when his or her spirit is sick. To achieve a cure, the transgressor is bathed in cold water and whipped with nettles. Seeing this ritual as cruel, and following complaints by persons who have been subjected
to it, ordinary judges have prosecuted indigenous authorities. On more than a few occasions, indigenous judges have had to face criminal proceedings in white or mestizo courts for having tried wrongdoers in their communities. This has discouraged many indigenous authorities from continuing to hear and resolve conflicts internally.

Another common charge against indigenous authorities is abuse of power, kidnapping, or abduction in reference to the time the accused are held in detention—normally not more than one or two days while investigations and judicial procedures are carried out. The indigenous authorities have been alone in fighting this type of persecution, as there is nothing to back them up or help them in their efforts to move forward in the administration of justice, nor to defend them when they are accused by people who have been punished under their system.

Article 171, in fact, also calls for the creation of mechanism of coordination and cooperation between indigenous and ordinary justice. But despite what the Constitution says, Ecuador’s legislature has not shown any interest in establishing a way for the two systems to coordinate and cooperate. In the absence of legislation, indigenous initiatives have arisen to create systems to provide advice and protection, the most developed being the Saraguro justice councils in San Lucas and Tunkarta, two cities in Loja, a province in the country’s southern mountains. The new council was created by the Saraguros in Panguintza, in the province of Zamora, in the southern Amazon.

**Coordinating councils**

The leaders of these initiatives are certain that the traditional authorities are the only ones who can legitimately administer justice in their communities, and that the councils’ role would be to strengthen the systems of indigenous justice and collaborate in the necessary dialogue with the white or mestizo system. There are many who question this way of institutionalizing indigenous justice—perhaps the mere mention of institutionalization creates conflict. In reality, the establishment of a council doesn’t necessarily have to be seen as institutionalization. Rather it is the creation of a body for coordinating, guiding, and protecting, since it would be these councils who defend the indigenous authorities when they are harassed by the white or mestizo system. An indigenous judge should not have to defend him or herself before a mestizo judge, since both have the same constitutional status.

In this sense, the creation of the Consejo de Justicia del Pueblo Kichwa Saraguro de Zamora is a necessary step that takes the lead in a situation of legislative neglect. However, it has the task of being an example of what indigenous justice seeks to be, and above all, of clarifying the role of the coordinating councils and of the traditional authorities. The challenge is to have the councils of indigenous justice in operation, legally recognized by the state, and publicly funded.

The indigenous authorities have long been subjects of discrimination, which has caused them to be ashamed of their ways of governance, including their own systems of justice. It is necessary to revitalize their skills and competencies. Likewise, it is necessary to teach communities not to see the white or mestizo judicial system as the only institution that can resolve their conflicts. The interference of the police, political appointees, and the courts is pervasive in the indigenous world; its impact will be lessened when indigenous justice is properly valued.

The erosion of the tradition of indigenous justice has also contributed to the isolation of the authorities and communities, as has the lack of exchange of experiences with colleagues and the fact that national indigenous leaders have placed their priorities on other issues. Overcoming these
difficulties is the challenge of the indigenous justice councils, which must be created throughout the country despite government opposition and opposition from groups that always see the indigenous world as subordinate and lacking the ability to govern itself under its own customs and traditions.

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