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Ecuador's Legal Authorities Target Practitioners of Indigenous Justice

by Luis Ángel Saavedra

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The conflict between Ecuador's regular and indigenous legal systems has reached a breaking point now that 23 indigenous leaders have been prosecuted for practicing their own brand of justice. Six of those were convicted on kidnapping charges and sentenced to between four and five years in jail, suggesting that mestizo judges (of mixed white and indigenous ancestry) are either wholly ignorant of indigenous traditions, or that there's a deliberate directive from the Consejo de la Judicatura—the oversight body of Ecuador's legal system—to eliminate this ancestral practice, even if it means violating ordinary laws and the Constitution.

In the Alto Cañar sector of Cañar province, communities have practiced indigenous justice as far back as anyone can remember. In San Pedro, elders point to a case from 1973, not long after the town legally incorporated, as a shining example of how their legal system works. The case involved a man named José Angamarca Velásquez who neglected his family, didn't provide food or education to his children, mistreated his wife, and used violence to punish his children. The community decided to rectify the situation. Residents gathered in the town square and the men, one by one, flogged Angamarca Velásquez. Afterwards the women bathed him and whipped him with nettles and flowers. The healing ceremony worked, and Angamarca Velásquez mended his ways.

The adults also recall how in the 1990s, a group of young men in the community began stealing cattle. Parents of the culprits uncovered the crime and asked the community of San Pedro to intervene. Don Pedro Tenelema brought his son Manuel before the community along with six other youths. The mothers and grandmothers had the task of bathing and whipping the young men, again using nettles and flowers.

Indigenous authorities resolved dozens of community conflicts of this kind. But community dynamics change, particularly as a result of migration patterns, and there are moments when problems cannot be solved by a single community alone but must be dealt with as a tribe or, in extremely complex cases, as a nation, as established in Article 171 of the Constitution. "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," the document reads ([NotiSur, July 15, 2016](#)).

This is precisely what happened in San Pedro: Problems arose that affected people throughout the area, so they couldn't be dealt with by any one single community. One of those problems was the rise of the so-called Sombra Negra (Dark Shadow) gang, which operated throughout Alto Cañar. Sombra Negra was formed by migrants returning from the US who wanted to set up an organization along the lines of the Central American maras (street gangs). They got involved in robberies, small-scale trafficking, serving as links for international human traffickers, and were even blamed for several killings. Various youths began stealing from their homes or the homes of their neighbors for cash to buy drugs and keep themselves in the gang.

To tackle the problem, the area's indigenous communities formed what they called *Consortio de Justicia Indígena* (Indigenous Justice Consortium). While mestizo authorities thought that indigenous leaders had overstepped by forming the consortium, they also acknowledged the effectiveness of the mechanism. The then-governor of Cañar, Juan Cárdenas, took it upon himself to hand over the *Sombra Negra* leader to the indigenous justice system. In doing so, he explicitly recognized that the practice of indigenous justice conformed to constitutional law. Cárdenas now holds a National Assembly seat for the governing *Alianza País* coalition.

Forgiveness and reparations

The judges, prosecutors, and lawyers in Cañar who convicted or are criminally prosecuting the 23 aforementioned indigenous leaders say they're doing so not because the accused practiced indigenous justice, but because they committed crimes ranging from kidnapping and ransom to regular kidnapping, damage to third-party property, and in one case, accessory to kidnapping. Together, the rash of cases would appear to suggest that, over the past three years, there has been an epidemic of abductions by Alto Cañar indigenous leaders.

Indigenous justice cases are resolved in assemblies in the communities involved. The accused is brought before the assembly and given an opportunity to tell his or her version of events. In that way, the process guarantees accused people the right to defend themselves. It also favors a satisfactory solution for all parties involved ([NotiSur, Nov. 9, 2012](#)).

Indigenous justice seeks to restore harmony in the community and is based on forgiveness and reparation of the damage done. Critics of indigenous justice complain that resolutions are almost always monetary. And yet, in the majority of cases—for things like robberies, land conflicts, scams, etc.—offering monetary compensation to the victim makes sense. The regular justice system, in contrast, looks to punish the guilty party, but it doesn't repair damage, not does it compensate victims.

Once an agreement has been reached, and the victim is compensated for the damage done, the guilty party is subjected to a healing process that varies from community to community but generally involves a cold bath with nettles, flowers, and medicinal herbs. In more serious cases, the person may be whipped, forced to carry heavy sacks of dirt, or subjected to others acts that relate to the indigenous worldview.

The speed with which the *Consortio de Justicia Indígena* was establishing itself put regular legal authorities on alert. Gustavo Jalkh, president of the *Consejo de la Judicatura* (Judiciary Council), visited Cañar to collect information on the actions of the consortium, which was even criticized for its name, given that a consortium, according to mestizo officials, refers to a private system. Private entities, they argue, aren't supposed to exercise justice. In fact, the communities adopted the word "consortium" because of its use in the organization of sectional governments. "There is indeed such thing as a consortium of municipalities, a consortium of provincial governments, a consortium of parish boards. We believe that a consortium of justice for the communities of San Pedro should also be able to exist," said Luis Sarmiento Calle, one of the indigenous men sentenced to five years for kidnapping.

Trumped-up charges and extortion

Jalkh made no secret of his opinion that the jurisdiction of the indigenous justice system ought to be greatly reduced and limited only to resolving minor community conflicts. But regardless of

what his actual orders in Cañar may have been, his stance is being used as *carte blanche* not only to prosecute indigenous leaders, but in some cases even to extort money from them.

The first such case involved a man named Alberto Peñafiel, who inherited land from “Mama Josefina,” his aunt. Peñafiel gained the inheritance at the expense of his brothers by making Mama Josefina sign a blank document. These kinds of tricks are commonplace in the countryside, where family members take advantage of the elderly and scam them.

At the request of the wronged heirs, San Pedro indigenous leaders Manuel María Calle, 72, and Luis Eduardo Calle, 75, brought the case before the indigenous justice system. Peñafiel was presented to the community tribunal and agreed to pay his brothers the value of their share of the inheritance. But rather than honor that agreement, he accused the authorities in San Pedro of abducting him and forcing him to pay money for his release. As a result, Manuel María Calle, Luis Eduardo Calle, and José Sarmiento, the president of the consortium, were given five-year prison sentences and remain in jail.

The sentences are all the more jarring given that Convention 169 of the International Labor Organization (ILO) establishes that people who violate indigenous law should be sanctioned in other ways besides jail time. Also, the Ecuadoran Constitution, in the interest of protecting senior citizens, calls for alternative forms of punishment such as house arrest. The fact that these norms are being ignored shows that the regular judicial system is trying to punish these leaders for exercising indigenous justice and dissuade others from doing the same.

Other people followed the example of Alberto Peñafiel, especially cattle rustlers who’d been ordered to pay victims for the animals they stole. In this way, one case after the other was brought against indigenous authorities in San Pedro. Even more outrageous was that in nine of these instances, the lawyers and accusers took money from the accused (demanding anywhere from US\$5,000 to US\$40,000) to drop the cases, knowing full well that in criminal law, once a charge has been brought, there’s no going back. As such, the indigenous authorities, in addition to being convicted for invented crimes, were squeezed out of large sums of money, swindled by their lawyers and accusers.

The Confederación de Nacionalidades Indígenas del Ecuador, a national confederation of indigenous groups, has called for the prosecuted and convicted indigenous leaders to be pardoned and granted amnesty. It also said that an intercultural debate should take place on the subject of indigenous justice. So far, however, those requests have been blocked by government agents bent on limiting indigenous justice and the establishment of a plurinational state.

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