



“We were trained within the official educational system to be able to support our communities in their defense against that same system”: a talk with Saknicté Ishchel Racancoj Sierra (Association of Mayan Lawyers and Solicitors) about legal pluralism and indigenous law in Guatemala

Saknicté Ishchel Racancoj Sierra & Elisabet Dueholm Rasch

To cite this article: Saknicté Ishchel Racancoj Sierra & Elisabet Dueholm Rasch (2021) “We were trained within the official educational system to be able to support our communities in their defense against that same system”: a talk with Saknicté Ishchel Racancoj Sierra (Association of Mayan Lawyers and Solicitors) about legal pluralism and indigenous law in Guatemala, *The Journal of Legal Pluralism and Unofficial Law*, 53:3, 477-484, DOI: [10.1080/07329113.2021.2017640](https://doi.org/10.1080/07329113.2021.2017640)

To link to this article: <https://doi.org/10.1080/07329113.2021.2017640>



© 2021 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group.



Published online: 07 Jan 2022.



[Submit your article to this journal](#)



Article views: 300



[View related articles](#)



[View Crossmark data](#)

“We were trained within the official educational system to be able to support our communities in their defense against that same system”: a talk with Saknité Ishchel Racancoj Sierra (Association of Mayan Lawyers and Solicitors) about legal pluralism and indigenous law in Guatemala

Saknité Ishchel Racancoj Sierra^a and Elisabet Dueholm Rasch^b

^aAssociation of Mayan Lawyers and Solicitors, Guatemala; ^bWageningen University, The Netherlands

Introduction

Saknité Ishchel Racancoj Sierra was born into an engaged Maya K'iche'-Q'eqchi family in Quetzaltenango, the second largest City of Guatemala. In her youth, she was politically engaged in the civic committee Xel-jú, an indigenous political organization in Quetzaltenango. She studied law and is currently completing a PhD in Constitutional Law at the San Carlos University. We first met in February 2018 when I visited Guatemala to start up my research about the criminalization of territory defenders that defend their territory against extractivist projects. Saknité Racancoj is part of the Association of Mayan Lawyers and Solicitors, a group of lawyers that litigate many cases of territory defenders that are faced with extractive projects and criminalization. They were also involved in the defense of some of the territory defenders that I worked with.

I interviewed Saknité for this special issue because she works on the crossroads of “official” state law and indigenous law. Or, as she voiced it during the interview: *We were trained within the official educational system, to be able to support our communities in their defense against that same system.* Many of the cases she litigates are about defending the right of indigenous authorities to decide about the developments within their own territories. Before I go on to present the interview, I will first provide some background information on legal pluralism in Guatemala. Throughout the interview, I have added text boxes with extra information on some topics that arose during the interview.

Indigenous authorities and legal pluralism

In 1521 Guatemala was colonized by the Spaniards and since then the indigenous population has been excluded from the political and economic domains of power.

CONTACT Elisabet Dueholm Rasch  elisabet.rasch@wur.nl

© 2021 The Author(s). Published by Informa UK Limited, trading as Taylor & Francis Group. This is an Open Access article distributed under the terms of the Creative Commons Attribution-NonCommercial-NoDerivatives License (<http://creativecommons.org/licenses/by-nc-nd/4.0/>), which permits non-commercial re-use, distribution, and reproduction in any medium, provided the original work is properly cited, and is not altered, transformed, or built upon in any way.

Until the late 1960s, the Guatemalan state was almost completely absent in most indigenous municipalities. There were no health and education facilities, nor was there any presence of the state in the form of police or representatives of the judiciary (Rasch 2012). As a consequence, indigenous municipalities in Guatemala were for a long time exclusively administrated and governed through systems of community services (see Barrios 2001; Falla 2001, among others). In many municipalities indigenous groups have maintained their own ways of decision making and applying justice, rooted in a Mayan worldview. Today, more or less 60 percent of the Guatemalan population identifies as Maya. The organization of indigenous justice has been characterized by the revitalization and strengthening of so-called *autoridades ancestrales* (ancestral authorities). Mayan justice not only seeks the reparation of relations between human beings in conflict but also the restoration of balance between people and their natural and spiritual environment (Sieder 2017).

The own (*propio*) forms of community organizing and authority have persisted through the armed conflict that took place between 1960 and 1996. Most of the victims of this conflict were indigenous, and a part of the conflict has been classified as genocide of the indigenous population (see, among others, Carmack 1988). The return to civilian rule in 1986 paved the way for peace negotiations between the state and the guerrilla organization *Unidad Revolucionaria Nacional Guatemalteca* (URNG, National Guatemalan Revolutionary Unity) and in 1996 the Peace Accords were concluded, spurring democratization processes on the national and local level and creating a political climate favorable for the recognition of indigenous rights (Rasch 2012).

During the democratization and peace process, indigenous issues, like indigenous practices of justice, were also put on the table. The Accord on Identity and Rights of the Indigenous population (AIDPI), which was signed in December 1995, explicitly recognizes the multiethnic, multicultural and multilingual nature of Guatemalan society, and recognizes the collective rights of some six million indigenous persons (Sieder 2002, AIDPI 1995). Indigenous communities were granted the right to enforce customary law as long as it is compatible with national law and international human rights (Warren 1999, 213). The necessary Constitutional reforms to actually implement the proposed rights of indigenous peoples and explicitly recognize indigenous ways of applying justice have, however, not been realized until today (see Warren 2002; Sieder 2020).

This has not withheld indigenous lawyers from successfully litigating that indigenous law is part of “the way of life and social organization,” and is thus indeed implicitly recognized in the Constitution (Rasch 2016). The Guatemalan Constitution of 1985 recognizes that the nation comprises “different ethnic groups, including indigenous groups of Maya origin” (Guatemalan Constitution 1985, articles 66–70, translated by Sieder [2002, 193]). Customary law is only implicitly recognized in article 66 of that document, in which the State commits itself to “recognize, respect and promote the ways of life and the social organization of the different ethnic groups that comprise the population of Guatemala” (Guatemalan Constitution 1985, article 66). Mayan lawyers have successfully presented cases before the Supreme Court and the Constitutional Court, arguing that Guatemala’s ratification of International Labor Organization Convention 169 commits the state to recognize a

sphere of autonomy for indigenous communal governance. The Constitutional Court has issued a number of rulings that reaffirm the legality of indigenous authorities and their practices of justice, establishing an emergent constitutional jurisprudence favoring jurisdictional autonomy (Sieder 2017).

Parallel to the peace process and democratization in the 1980s and 1990s, Guatemala became part of the main route for cocaine, because of the disappearance of the Caribbean route (Briscoe and Pellecer 2010). Consequently, Colombian and Mexican drug cartels started to work in Guatemala. Simultaneously, the state granted concessions for mining companies and hydropower dams (Rasch 2012). These concessions often overlapped with the territories where drug traffickers and cartels were gaining power, close to the Mexican (Huehuetenango, Petén) and Honduran (Chiquimula) border. In many cases, but not in all, these same regions had also suffered from military repression during the armed conflict. Many of the cases that the Association of Mayan Lawyers and Solicitors litigate, are in the defense of indigenous territory defenders that are trapped in a web of violence and criminalization, facing powerful companies, a corrupted judicial system and the drug mafia.

What follows is a slightly edited version of the conversation that Saknité and I had about her work with the Association of Mayan Lawyers and Solicitors and the importance of her work within the current context of violence and criminalization of indigenous territory defenders in Guatemala.

We understand each other

I come from a family that has always been focused on the reinvalidation of indigenous rights as well as on the rights of women. At the age of four I told my mother that I wanted to be a lawyer. This idea came from seeing the work of a maternal uncle who is a lawyer. It just stuck in my mind. Without doubt my mother was also an important reference when it comes to why I became a lawyer. She worked with several women's organizations, promoting women's rights to health, food and economic development. She also worked for the Ombudsman for Indigenous Women.

It's important to be able to count on lawyers that are indigenous. For a mestizo lawyer it's difficult to understand the living conditions of indigenous peoples. Indigenous women face machismo, racism and structural discrimination from the State. I am not saying that the conditions of all indigenous women are equal. Some of us [indigenous women; EDR] have had the possibility of advancing in terms of education, without losing our essence as descendants of the Maya People. This allows us to identify ourselves with indigenous people who have not had access to education and economic resources; we have suffered the same system of discrimination of machismo. We understand each other.

This is why I wanted, I felt that I needed to study law, to be able to support everything that has to do with individual and collective rights of indigenous peoples and the defense of indigenous women. That was not easy, as the University did not teach these subjects. So I had to look into how to defend the rights of indigenous populations by myself. This is different now, now there is a course on indigenous law and indigenous rights at the Rafael Landívar University, as well as at the San Carlos University. But at other universities these courses do not exist.

Roadblock

After finishing university, my first case was the defense of an indigenous authority, a community mayor from Xepache, Quetzaltenango. When I got the case, I had a certain notion of the rights of indigenous peoples established in international conventions and national legislation, but I had never litigated a case like this. It was a case that confronted the official system by defending the existence of an indigenous legal system. This is where I began to investigate and learn about the challenges that indigenous people face when it comes to the recognition of their rights as indigenous people. I delved into the thematic, and nurtured myself with in-depth knowledge to be able to defend indigenous authorities.

The indigenous communal mayor that I defended was denounced by an extractive company because the community she represented had placed a cutter that prevented the trucks from entering the extraction site. She defended her position by claiming the right of indigenous peoples to exercise their ancestral legal system. She argued that she had made a decision based on principles that guide the work of indigenous authorities, one of them being the consultation of the community. This was also how we defended the case, and we won.

This case, among others, helped me to deepen my knowledge about indigenous rights and customary law. It enriched my knowledge about the authorities of our people. It made me realize even more that it was necessary to be able to claim the importance of indigenous authorities that inhabit our territories in court. It also showed me that it is crucial to recognize legal pluralism explicitly in the Guatemalan constitution.

Trained within the official system

I joined the Association of Mayan Lawyers like in 2014, soon after my graduation. As part of the Association, I continued to work with indigenous authorities. I started to gain in-depth knowledge about what legal pluralism is. I got to know cases of indigenous authorities who are denounced for exercising their rights as indigenous authorities, whereas they are fully entitled to do so within their own territories.

For me, legal pluralism is the diversity of legal systems within a territory, like the official system, indigenous law and the military system, that can all be exercised within the same space. Indigenous law is not only about legal processes, but also about the relation between human beings, the community, and Mother Earth. About the respect that we have for nature, humans, and other existing species.

We [as indigenous peoples; EDR] understand and live according to these principles of how to respect life (*respeto a la vida*). A *compañero* or *compañera* who is not indigenous will not understand this essence and how that is developed when indigenous authorities apply justice. So here the existence of the Association is extremely important. We were trained within the western or official educational system, to be able to support our communities in their defense against that same system.

Many people, mestizo and indigenous, sometimes still do not understand the issue of legal pluralism. I think that it is a minority that tries to promote the acceptance of legal pluralism and indigenous law. In 2017 we were quite close to

constitutional recognition of legal pluralism, when the issue of constitutional reforms was addressed through the referendum, but in the end we did not advance. So, I see it as a very long stretch, a long road that we still have to travel. It not only requires political power, but also knowledge and awareness to accept the coexistence of legal systems in this country. This is a political issue, and within our repressive political system, I see it as very unlikely that legal pluralism will be recognized in the near future.

Ancestral health systems

Another important issue that has enriched my knowledge of legal pluralism and indigenous authority, has been the process of reincorporating *comadronas* as indigenous authorities. I am currently providing political and legal accompaniment to the *National Movement of Grandmothers Comadronas Nim Alaxik*. This movement was founded in 2010 to unify comadronas from Sololá, Totonicapán, Quetzaltenango, Chimaltenango, but now is active in the whole country. In approximately 2016 the movement started to struggle for the legal recognition of comadronas. The Constitution does establish the existence of indigenous populations, their own forms and customs, traditions, but does not explicitly recognize the comadronas, nor the right of indigenous women to be cared for within their own, ancestral, health system. Nevertheless, comadronas do have a long history of being authorities in their communities.

Comadronas are Mayan midwives. Their role is highly respected in indigenous communities. A comadrona not only attends birth, she also provides spiritual guidance as well as prenatal and postnatal care, and treats children's illnesses and women's gynecological problems (Summer et al. 2017).

Carnet

The repression of comadronas has increased enormously the past decade. Comadronas started to be seen as women who do attend births, but do not have the knowledge and the skills to do so. This is because people that work in the official health system receive an education that devaluates the comadrona; not recognizing that comadronas act as community authorities. The work of comadronas can go beyond attending a delivery, they are the designated authorities to mediate between the ancestral indigenous and the official health system in the communities.

Today's health system had displaced the comadrona completely, there were so many things comadronas were not allowed to do; they were no longer allowed to attend women that give birth for the first time for example, or to do multiparous. They were basically only allowed to do the second or third birth, right, and had been limited access to hospitals and communal health centers. In addition, they were only allowed to work with a license (*carnet*) that the Ministry of Health gives to them. To get and to be able to keep the carnet, they have to attend workshops, and with two faults, they lose their carnet. Whereas the workshops do not really

have content, and above that: comadronas are born and not made. It is a *don* (gift) that they are born with and the official system represses the right to exercise the don given to them by birth through these mechanisms.

Now the Constitutional Court has recognized the existence and the rights of comadronas, as well as their mediating role in the communities between the official and the indigenous ancestral system. This means a lot; it gives them a right to make further demands. In places like Sololá and Chimaltenango the official health institutions are already coordinating with comadronas, they have said, well, you won in court, we are going to coordinate with you. Hence, comadronas had been repressed since colonization started in 1521, and have now regained their place as indigenous authority within the community.

Community consultations

Community consultations are manifestations of nonviolent grassroots democracy rooted in Mayan consensus-based decision-making processes. They entail extended debate at village and municipal reunions in a process that makes it possible to enact local democracy and strengthen local alliances (Copeland 2019; Rasch 2012, Walter and Urkidi 2016). Since 2004 more than 100 community consultations have been organized in Guatemala, in which the population decided not to support future extractivist activities.

For me community consultations are a way of defending the territorial rights of communities. However, the Government is always involved somehow and creates division between and within the communities. There is always the *compra de voluntades* (purchase of willingness), which causes fractures in the organization and social fabric of the communities. The consultations have not been effective. It is a defense mechanism, but it is not effective. Yes, indigenous peoples use the consultation system when they take decisions within a family and at the community level. But if we look at the consultation system that is established in ILO Convention 169, it carries another connotation because it is imposed from the outside.

Criminalization

Communities involved in resistance are portrayed as “against development” and their resistance is seen as a threat to internal security. Between 2018 and 2019, UDEFEGUA registered 30 killings and 290 cases of criminalization of territory defenders. Criminalisation refers to a wide range of practices ranging from demonisation in the press and police violence, to criminal prosecutions and disproportionate sentences (Van der Borgh and Terwindt 2012). It is seen as one of the strategies that is used to weaken the resistance towards large-scale extraction projects; it is a way of controlling the population. Criminalization takes place when political acts that are directed towards the vested institutions of the state and vested interests are earmarked as a crime, like terrorism, illicit meetings, or a like kidnapping or plagiarism (Rasch 2017, Rasch 2021, Villatoro 2016).

Many community leaders have been criminalized, but not officially for the issue of being in resistance. They are accused of contempt for authority or invasion of private property, for example. The judicial system has been completely coopted by extractive

companies, that's not a secret for anyone. Companies do not have evidence of the crime that indigenous authorities are accused of, however, while the judicial system works on the case and keep the territory defenders in house arrest, the company advances with its extractivism and monoculture projects.

Criminalization is a strategy to destroy communities' own ways of applying justice. It's part of a repressive system that seeks to disappear our ancestral authorities; it's one of the mechanisms that gradually strips the indigenous authorities of their authority. However, indigenous authorities have not disappeared; on the contrary, authorities have *re-emerged*. Hence, there has been a cultural resistance from the same communities, even though the repression is stronger every day.

References

- AIDPI. 1995. Acuerdos de Paz [Peace Accords]. <http://sepaz.gob.gt/observatorioacuerdos/index.php/ejes-tematicos/acuerdode-identidad-y-derechos-de-los-pueblos-indigenas/86-acuerdos-de-paz>.
- Barrios, Lina. 2001. *Tras Las Huellas Del Poder Local: La Alcaldia Indígena en Guatemala, Del Siglo XVI Als Siglo XX [in the Footsteps of Local Power: The Indigenous Mayoralty in Guatemala, from the Sixteenth Century to the Twentieth Century]*. Guatemala.
- Briscoe, Ivan, and Martín Rodríguez Pellecer. 2010. *A State under Siege: Elites, Criminal Networks and Institutional Reform in Guatemala*. The Hague: Clingendael Institute.
- Carmack, Robert M. 1988. *Harvest of Violence: The Maya Indians and the Guatemalan Crisis*. Oklahoma: University of Oklahoma Press.
- Copeland, Nicholas. 2019. "Linking the Defence of Territory to Food Sovereignty: Peasant Environmentalisms and Extractive Neoliberalism in Guatemala." *Journal of Agrarian Change* 19 (1): 21–40. doi:10.1111/joac.12274.
- Falla, Ricardo. 2001. *Quiche Rebelde: Religious Conversion, Politics and Ethnic Identity in Guatemala*. Austin: University of Texas Press
- Guatemalan Constitution. 1985. *Constitucion Política de la Republica de Guatemala, 1985 con reformas de 1993 [Guatemalan Constitution 1985 with 1993 reforms] (1993)*. http://www.oas.org/dil/esp/Constitucion_Guatemala.pdf.
- Rasch, Elisabet Dueholm. 2012. "Transformations in Citizenship: Local Resistance against Mining Projects in Huehuetenango (Guatemala)." *Journal of Developing Societies* 28 (2): 159–184. doi:10.1177/0169796X12448756.
- Rasch, Elisabet Dueholm. 2016. "There Is No Law That Justifies the Existence of the Board of Elders' Community Service and Legal Pluralism in Santa María, Guatemala." *The Journal of Legal Pluralism and Unofficial Law* 48 (1): 41–57. doi:10.1080/07329113.2015.1137727
- Rasch, Elisabet Dueholm. 2017. "Citizens, Criminalization and Violence in Natural Resource Conflicts in Latin America." *European Review of Latin American and Caribbean Studies/ Revista Europea de Estudios Latinoamericanos y Del Caribe* 103: 131–142. doi:10.18352/erlacs.10193.
- Rasch, Elisabet Dueholm. 2021. "This Will Never Be a Reason to Stop, Only to Engage More' Territory Defenders, Criminalisation and Violence in Guatemala." *Policy Matters* 22 (1): 106–113. <https://www.iucn.org/commissions/commission-environmental-economic-and-social-policy/resources/policy-matters>.
- Sieder, Rachel, ed. 2002. *Multiculturalism in Latin America: Indigenous Rights, Diversity and Democracy*. New York: Palgrave Macmillan.
- Sieder, Rachel. 2017. "Indigenous Sovereignties in Guatemala: Between Criminalization and Revitalization." *NACLA Report on the Americas* 49 (3): 370–372. doi:10.1080/10714839.2017.1373971.

- Sieder, Rachel. 2020. "To Speak the Law": Contested Jurisdictions, Legal Legibility, and Sovereignty in Guatemala." *PoLAR: Political and Legal Anthropology Review* 43 (2): 334–351. doi:10.1111/plar.12374.
- Summer, Anna, Sylvia Guendelman, Edgar Kestler, and Dilys Walker. 2017. "Professional Midwifery in Guatemala: A Qualitative Exploration of Perceptions, Attitudes and Expectations among Stakeholders." *Social Science & Medicine (1982)* 184: 99–107. doi:10.1016/j.socscimed.2017.05.005.
- Van der Borgh, Chris, and Carolijn Terwindt. 2012. "Shrinking Operational Space of NGOs – A Framework of Analysis." *Development in Practice* 22 (8): 1065–1081. doi:10.1080/09614524.2012.714745.
- Villatoro, Daniel. 2016. "El derecho penal le da una impostura legal a la represión." Plaza Pública. <https://www.plazapublica.com.gt/content/el-derechopenal-le-da-una-impostura-legal-la-represion>.
- Walter, Mariana, and Leire Urkidi. 2016. "Community Consultations: Local Responses to Large-Scale Mining in Latin America." In *Environmental Governance in Latin America*, edited by Fábio de Castro, Barbara Hogenboom, and Michiel Baud, 287–325. London: Palgrave Macmillan.
- Warren, Kay B. 1999. *Indigenous Movements and Their Critics. Pan-Maya Activism in Guatemala*. Princeton, NJ: Princeton University Press.
- Warren, Kay B. 2002. "Voting against Indigenous Rights in Guatemala." In *Indigenous Movements, Self-Representation, and the State in Latin America*, edited by Kay B. Warren and Jean E. Jackson, 149–180. Austin: University of Texas Press.