

7. Indigenous Women against Impunity

Challenging discrimination in Guatemala's legal system



Women register at the Rights of Indigenous People's Workshop in Patzité

Guatemala signed a peace accord in 1997, after 36 years of conflict. But the legacy of violence continues to haunt its population, especially indigenous people and women, who face ethnic and gender-based discrimination. A culture of impunity dominates the government's legal system. Only 3 per cent of violent deaths are ever investigated. Violence, especially violence against women, is escalating. Indigenous people in Guatemala have their own traditional justice system, which operates alongside that of the state, although not on an equal legal footing. This paper looks at the relative successes of traditional conflict-resolution mechanisms, and examines how indigenous women are using Indigenous People's Defence Organisations to seek justice.

Introduction

Guatemala suffered from almost four decades of armed conflict, which ended in a peace accord in 1997. During this time, more than 200,000 people were killed or disappeared. Most were civilians, and 83 per cent were indigenous people.¹ The legacy of this violence continues today. Social relationships are characterised by aggression and violence, and the government is directly or indirectly responsible for many different kinds of abuses. The country ranks 118th out of 177 in the latest United Nations Human Development Report. More than half the population lives in poverty, and 15.6 per cent in extreme poverty.²

United Nations Human Rights High Commissioner, Louise Arbour, described Guatemala as 'one of the most violent countries in the region'.³ Since 2001, violent homicides have increased by 120 per cent.⁴ In 2007, there were more than 5,000 violent deaths. Firearms were used in 80 per cent of cases. There are two million individual firearms in a country of 13 million people, reflecting the general climate of insecurity.

Indigenous people, who make up 42 per cent of the population, are considered second-class citizens and face some of the most serious discrimination and abuse. Seventy-five per cent live in poverty, compared with 38 per cent of the non-indigenous populations.⁵ Forty-eight per cent are illiterate, compared with 30 per cent of the non-indigenous population. For indigenous women, illiteracy is higher, at 65 per cent.⁶

Women in particular face violence, discrimination, and oppression: Guatemala is 127th out of 156 in the most recent United Nations Gender Development Index. Although the country has a legal framework of 14 documents specifying the protection of women's rights, belief in the superiority of men over women, coupled with traditional social practices, lead to many injustices and human-rights violations against women, especially indigenous women.⁷

Guatemala has the highest rate of women homicides in the Americas and the fifth in the world.⁸ Between 2000 and 2007, almost 4,000 women were murdered. In most of these murders, the criminal's rage is unmistakable, as victims are often raped and sexually assaulted. Bodies with these characteristics appear daily in ravines, on the street, in desolate places, or in the victim's own home.⁹ Every two days, a young girl dies a violent death, 80 per cent of them sexually assaulted. Two per cent are under the age of five.¹⁰

A culture of impunity

Despite the high levels of crime and homicide, few criminals are brought to justice. Ninety-seven per cent of homicides are not investigated; a figure that glaringly demonstrates the degree of impunity that exists in the country. In addition to protecting criminals, impunity encourages crime as a way to solve problems and conflicts through violent means, individually or collectively through lynching.

‘Where impunity is the rule for past violations, it should come as no surprise that it also prevails for current crimes’, says Louise Arbour.¹¹ Angie Hougas of Amnesty International explains: ‘Impunity sends the message that ill treatment and torture of people will be tolerated. It denies victims justice and it erodes public confidence in its judicial system. It is a breakdown in the judicial system; it affects our outlook and undermines our trust in the whole criminal justice process. The effect of this is, it impedes the path to peace and respect for human rights, human worth and human dignity’.¹²

The inability and inefficiency of the Guatemalan system in delivering justice has resulted in high levels of frustration among the general population, which leads to apathy. The United Nations in Guatemala estimates that 75 per cent of crimes are not reported, mostly because victims consider that ‘it is not worth it’, or because they are afraid of retaliation.¹³

These are the consequences of a centralised, bureaucratic model which is slow, expensive, and has insufficient coverage; a system which abandons the victims and repeatedly violates due process.¹⁴ The police force and other authorities of justice are frequently accused of corruption, extra-judicial executions, torture, abuse of authority, negligence, and discrimination. No administrative or judicial action is taken against them so far, which in turn protects them and encourages impunity on behalf of the very institutions that should be fighting it.

‘The institutional collapse in the distribution of justice is not due to a lack of material and qualified human resources. The magnitude of impunity in Guatemala is the result of the State’s inability to purge clandestine groups from within these institutions which have been controlling them since the armed conflict and have the power to neutralise them’, says Carlos Castresana, Director of the International Commission Against Impunity in Guatemala.¹⁵

The official justice system in Guatemala is rampant with racism and sexism, and does not adequately address any cases involving indigenous people and women, particularly indigenous women. Indigenous people have even less chance of finding justice than the rest of the population: the system obstructs access to justice and violates human rights through its instruments and legal processes.

For example, research found that many indigenous people spend up to ten months in prison without being processed and/or sentenced, even when they are innocent.¹⁶ Even though 23 indigenous languages are spoken, a multilingual justice system does not exist, interpretation services are insufficient, and there is a lack of bilingual operators.¹⁷ Spanish being the official language is an obstacle, as 'those who are illiterate or who do not speak or understand Spanish' cannot officially act as witnesses.¹⁸ This excludes illiterate people (30 per cent of the population) and the monolingual indigenous population (more than one million people).

According to Alexei Avtonomov, Rapporteur for Guatemala, United Nations Committee on the Elimination of Racial Discrimination: 'Disdain and rejection towards the indigenous population is evident among several sectors. It is necessary to develop instruments that allow access to justice, so as to overcome the high levels of discrimination and facilitate the implementation of basic rights for Guatemala's ethnic groups'.¹⁹

It was in recognition of the seriousness of this situation that in late December 2006, the Guatemalan government and the United Nations signed an agreement to establish the International Commission against Impunity in Guatemala (Comisión Internacional Contra la Impunidad en Guatemala - CICIG), to assist local authorities in investigating and dismantling the clandestine groups. The International Commission, the first of its kind in the world, began to operate in January 2008. It is hoped that this will begin to address some of the major issues within the official justice system. In the meantime, indigenous people are working on supporting those whose rights have been violated, not only through the official justice system, but also through a traditional indigenous justice system, which operates alongside the state system.

This paper examines how indigenous people are using their own traditional justice systems to address rights abuses and the culture of impunity, and at the same time ensuring that cases are dealt with through the state justice system and the courts.

The right to judicial pluralism

The 1996 Agreement between the Guatemalan government and the guerillas states that: 'For indigenous people, traditional norms have been, and continue to be, a basic element for the social regulation of life in their communities and therefore, for the maintenance of their unity.'²⁰ Indigenous law has survived five centuries of colonisation.²¹ Indigenous justice is not based on punishment, but is seen as a guide and an educational process that helps communities to: 'avoid and amend inappropriate conduct or wrong actions'.²² It takes into account the interests and relationships of those in dispute, searching for compensation, balance, and harmony.

Guatemala has committed to respecting the rights of indigenous people and their judicial system, signing international agreements such as Convention 169 of the International Labour Organisation, the International Convention to Eliminate all Forms of Discrimination and Racism, and the Declaration for Universal Indigenous People's Rights. Pursuing these rights as an alternative to a judicial and culturally ethnocentric system represents a real challenge.²³ The legal structure, process, and restrictions of the official justice system go against the essence and implementation of traditional indigenous justice which is oral and educational.

Indigenous traditional justice has survived alongside official state law and is a daily reality in Guatemala. During colonial times, the segregation system allowed the indigenous population to administer their own justice, but they had to submit this to the colonial authorities. This practice was then totally prohibited during Independence (1821) until the most recent Constitution in 1985, which indirectly recognises the obligation of the state to 'respect the customs, traditions and ways of life' of indigenous peoples. Nevertheless, the Constitution establishes that 'any jurisdictional functions can only be attributed to the Supreme Court and other courts, as stated by the law'. The use of indigenous justice was given legitimacy in the 1996 Peace Accords. The Guatemalan state is now formally committed to an official recognition of this system, but legislation still does not recognise this. Even so, 'the implementation of indigenous law has advantages in geographical and linguistic accessibility, and cultural pertinence, privileging reparation and satisfaction of both parts in conflict resolution', according to the Guatemalan office of the United Nations High Commissioner.²⁴

Indigenous People's Defence Organisations

Indigenous People's Defence Organisations support indigenous justice systems by directly assisting cases, accompanying complainants to public justice institutions, strengthening indigenous authorities with cultural principles and values, and organising community councils to promote rights in the indigenous regions of Guatemala. They include the Defensoría Indígena Wajxaqib' Noj, Defensoría K'iché, and Defensoría Maya.

Fermina López: from victim to rights advocate

In 1997, the Inter-American Court of Human Rights demanded that the state of Guatemala protect the life of Fermina López, an indigenous woman whose husband was captured during the internal armed conflict.²⁵ Ms. López was being threatened for her activism as a leader of the National Widows' Coordination of Guatemala (CONAVIGUA), the first indigenous organisation to demand justice for the victims of human-rights violations during the conflict. She also defended indigenous youth against forced military recruitment and participated in the exhumation of victims of massacres in clandestine cemeteries, in search of her husband, and accompanying other women doing the same.

Today, Fermina is a member of a new generation of rights advocates devoted to the construction of peace emerging from the armed conflict. She works in the Defensoría Indígena Wajxaqib' Noj, one of the Indigenous Defence Organisations aiming to improve opportunities for free and fair access to justice through the use of legitimate means, including indigenous law. She believes that the laws of the state: 'are not in our favour, they do not reflect how we see our lives...For me, our biggest challenge is one day achieving structural changes in the system so that policies, laws and practices are truly inclusive of all the people of Guatemala'.²⁶

Confronting violence against women²⁷

Domestic violence is a major problem in Guatemala. In 2007 alone, it was reported by more than 17,000 women.²⁸ Of the 2,600 women assisted yearly at the government-run Indigenous Women's Defence Office, which co-ordinates and collaborates with the Indigenous People's Defence Organisations, 85 per cent reported family violence, 11 per cent rape, and 4 per cent ethnic discrimination.²⁹

But campaigns to have domestic violence treated seriously lack the support of male leaders, and women are often fearful to come forward. 'Women activists say that fear is one of the main problems they face as they try to galvanise people inside Guatemala to pressure the Government to do more', says one newspaper report.³⁰

In seeking justice, the petitioner once again becomes a victim, only this time from insensitive authorities who: 'treat rape, murder and cell phone theft the same way', according to one penal system researcher.³¹ Amnesty International has documented that the severe and persistent deficiencies of the system, along with discriminatory attitudes on the part of authorities, result in a lack of protection of women at risk, blaming of the victim, and denial of justice.³²

Indigenous justice systems can claim to have more success: while the government justice system favourably resolves only 3 per cent of all reported cases of domestic violence, the Indigenous People's Defence Organisations have clarified and resolved more than 60 per cent.

On receiving cases of domestic violence, the Defence Organisations first focus on the prevention of more violence and mediating the

relationship. Failing this, a separation is advised with shared child-care responsibilities. Other cases come to their attention because they have not been dealt with by the government justice system, such as the case of María Chacaj.

María Chacaj

María Chacaj was a victim of persistent domestic violence who disappeared in June 2006. Her husband reported her 'disappearance', but authorities did not investigate it. Later, he tried to have the matter dismissed saying she had probably 'run off with other men'. The report was filed away and forgotten by the official system. Not convinced, María's family members turned to one of the Indigenous People's Defence Organisations, and with the community's support, in January 2007, her remains were found buried in the patio of their house. Her husband was apprehended the same day by local authorities and handed over to the police.³³ In May 2008, a judge sentenced him to 26 years in prison. In this case, the Indigenous People's Defence Organisation assisted the case in being brought to justice in the official system.

Many other cases have been reported by women to the Defence Organisations for domestic violence, incest, fraud, and to claim their rightful inheritance. One woman said: 'I prefer to come to their offices instead of the court, because they truly help us', and another noted: 'I hope these defence offices never close, because they really help us'.

Anastasia Suy

Anastasia Suy is a widow with five children. She is from the Mayan K'iché ethnic group, part of the 60 per cent monolingual indigenous population,³⁴ and one of the 75 per cent of indigenous people living in poverty.³⁵ After the death of her husband four years ago, their land titles were handed over to her mother-in-law by the 'official' court system, despite the fact that she had legal rights to the land. Her community advised her to go to the Indigenous People's Defence Organisation, who assisted in mediation between the two women. She was able to speak in her own language, resolve her litigation through traditional means, and was accompanied to court to legalise the agreement in the 'official' system.

In this way she avoided the institutional bureaucratic paperwork and the high fees charged by lawyers. In November 2007, her mother-in-law agreed to give the land over, although it was put in Anastasia's children's names rather than her own.³⁶

The Defence Organisations also complement service provision with activities that favour skills development of indigenous women. They offer leadership training and education about their rights, in order to promote their empowerment, in turn helping them face violence and oppression on all levels. Women interviewed by Oxfam who had been accompanied by the Indigenous People's Defence Organisations highlighted the importance of the attention and accompaniment received, and the results obtained. They valued being believed and understood in their own language.³⁷ Antonia Buch, President of Defensoría Maya, says she values 'the trust we have gained among

the women...many act as replicators of the knowledge acquired through the training'.

The sub co-ordinator of the Defensoría K'iché, Sebastiana Sen, emphasises the advocacy work of organised women, and their participation in the local development councils (LDCs) in order to demand accountability at the municipal level. LDCs are part of a government attempt to decentralise decision-making. They offer, in theory, participation to local leaders at the community and municipal levels.

As women challenge and denounce gender-based oppression and violence, insisting on their rights, they become empowered and their roles become more prominent in society. Women like Antonia, Sebastiana, and Fermina know that results take time, but also that through their work they are seeing advancements in indigenous women's rights in their country and eventually a lessening of the violence.

Oxfam's role

During the 1990s, Oxfam GB supported the work of the Indigenous People's Defence Organisations, in order to protect communities and leaders when their human rights were violated in the context of the armed conflict and military control.

Now, Oxfam GB strengthens the Defence Organisations and indigenous local authorities on a human-rights and gender approach to indigenous women who are victims of violence. Support also includes helping these organisations to focus their strategies so that they can increase the legitimacy of their demands and co-ordinate more effectively with the official authorities.

Recommendations

Oxfam's work to promote the right to be heard includes efforts to improve the ability of marginalised populations to make an impact on decisions that affect their lives. This includes, but is not limited to, ensuring that the state and its justice systems are inclusive and responsive to the needs of diverse populations.

While supporting the efforts of indigenous populations in Guatemala to create more inclusive alternatives to the existing state justice system, major changes in the structure and attitudes of society as a whole are also necessary. The state must guarantee to improve access to justice for indigenous and non-indigenous women, and for Guatemalans in general, in order to stop the systematic proliferation of racist and sexist beliefs and practices. This means improving the institutions designed to promote justice and security, as well as the state's role in educating and promoting rights. New approaches are needed at different levels, with diverse strategies that are culturally

appropriate, for example, promoting women's rights linking with the Mayan worldview of equity and respect.

Based on the experience and expertise of the organisations with whom Oxfam works, recommendations are focused on different levels. Implementing these recommendations will mean that the voices and visions of indigenous people are more likely to have an impact on the legal and policy decisions that affect their lives.

International

- Guatemala has an important opportunity to eradicate clandestine and violent groups through the new International Commission Against Impunity in Guatemala. The international community can help in two ways: through financial support to cover operating costs, and political accompaniment to ensure security and efficiency.
- The situation of women and indigenous people in Guatemala should be monitored with assistance from governments and multilateral organisations. This will help to pressurise the Guatemalan government into guaranteeing human rights and promoting an inclusive society where the participation of groups who are discriminated against is improved.

National co-operation and civil society

- The Guatemalan state and its institutions should **restructure the justice system**, putting into place effective policies and practices which combat impunity, racism, and all forms of discrimination; with culturally appropriate processes and services for victims, especially for rural indigenous women.
- The recent **reform of the Penal Code**, which combats violence against women in Guatemala according to international human-rights standards, needs to be applied in practice. The government must accept and carry out the recommendations of the United Nations High Commissioner for Human Rights.
- **Indigenous authorities** should be sensitive towards victims of violence and ensure that they offer conditions for their protection and the right to a life free of violence.
- The right to be heard for indigenous and non-indigenous women should be promoted through **literacy programmes**, which support the use of their native language, and help them to understand and demand their rights within their families, communities, and the state.
- The **organisations of women survivors** of violence should be supported in order to ensure their self-esteem, economic empowerment, and access to basic services, as well as justice. The role of indigenous women within the Defence Organisations

should be strengthened as a way of striving toward gender equity in the face of cultural oppression and exclusion.

- **Indigenous justice** should be supported and strengthened through the Indigenous People's Defence Organisations as a legitimate and recognised alternative system. **The level of co-ordination** with official authorities should be raised to ensure effective and culturally appropriate approaches to violence against indigenous women, as well as other conflicts that affect these communities. Official and indigenous authorities must talk to each other in order to achieve this goal.
- These processes should be linked to other indigenous people's organisations, through **sharing and constructive learning** and the inclusion of women's visions, rights, and participation.

Notes

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³⁷ Interviews with indigenous women attended by Indigenous Defence Organisations and Oxfam GB partners in Guatemala, February to December 2007.

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