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GENDER JUSTICE AND LEGAL PLURALITIES

Latin American and African Perspectives

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AND JOHN-ANDREW McNEISH

Law, Development and Globalization

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Contents

<i>Acknowledgements</i>	ix
<i>Notes on contributors</i>	x
Introduction	1
RACHEL SIEDER AND JOHN-ANDREW MCNEISH	
1 Gender, human rights and legal pluralities: experiences from Southern and Eastern Africa	31
ANNE HELLUM	
2 Indigenous women fight for justice: gender rights and legal pluralism in Mexico	56
MARÍA TERESA SIERRA	
3 The gender of law: politics, memory and agency in Mozambican community courts	82
BJØRN ENGE BERTELSEN	
4 Sexual violence and gendered subjectivities: indigenous women's search for justice in Guatemala	109
RACHEL SIEDER	
5 Between Sharia and CEDAW in Sudan: Islamist women negotiating gender equity	133
LIV TØNNESEN	
6 Indigenous rights and violent state construction: the struggle of Triqui women in Oaxaca	156
NATALIA DE MARINIS	

7	Opening Pandora's Box: human rights, customary law and the "communal liberal self" in Tanzania NATALIE J. BOURDON	180
8	An Accumulated Rage: legal pluralism and gender justice in Bolivia JOHN-ANDREW MCNEISH AND ANA CECILIA ARTEAGA BÖHRT	200
	<i>Index</i>	224

Indigenous Women Fight for Justice: Gender Rights and Legal Pluralism in Mexico

María Teresa Sierra

Introduction

This chapter analyses indigenous women's strategies to secure gender justice in the context of complex legal pluralism in Mexico. It refers to the obstacles they face to access justice before indigenous and state authorities and underlines indigenous women's efforts to redefine indigenous law. The official recognition of legal pluralism in the country has provoked both a discussion of multicultural forms of justice and of gender rights, with different consequences for indigenous women's demands. The two emblematic experiences of women's organization within collective forms of indigenous justice in Mexico analysed in this chapter point to the complex realities of women's lives and the ways in which the tensions between individual and collective rights are played out in context of extreme marginalization and gender violence.

The struggle for gender justice is one of the main agendas for indigenous women in Mexico and throughout Latin America today. Indigenous women have not only organized to demand their rights, they are also taking the lead

in the redefinition of indigenous law from their own cultural frames of reference. In different forums they have developed a critique that addresses the impunity, gender violence and discrimination they experience as indigenous women, within their communities and in society as a whole. They are determined to confront gender oppression at different scales and levels, drawing on the support of national and transnational networks of human rights organizations. In a recent analysis, Aida Hernández has described how indigenous Meeph'a women living in conditions of extreme marginalization and poverty in Guerrero who were raped by soldiers confronted the Mexican state at the Inter-American Court of Human Rights, and achieved a historic legal victory against a regime that had denied them justice (Hernández, n.d.). The Inter-American court's ruling resulted in the case being transferred from a military to a civilian court, an unprecedented occurrence in Mexico.¹ At the same time Meeph'a women from the mountain region of Guerrero are fighting to ensure that their community-based systems of justice reflects a vision of gender equity, something that would have been unthinkable only a few years ago.² This dual process of appealing before state and indigenous authorities reveals the new conjunctures and contexts which indigenous women now confront, placing them centre-stage in the struggle for their rights. By analysing such processes I intend to demonstrate indigenous women's active role in the building of their own agendas; particularly their effort to fight for their rights in different institutional settings without leaving aside their own cultural frameworks. Indigenous women's rights are in fact at the center of a major controversy regarding culture and rights, one which

becomes particularly relevant in the context of legal reforms to recognize indigenous law.

In fact, the new context of legal pluralism in Mexico - established via constitutional reforms on indigenous issues approved in 2001 - has opened up the possibilities for women to discuss the nature and limits of both state and indigenous justice systems.³ Perhaps more than in other countries in Latin America, in Mexico recognition of indigenous rights has generated considerable concerns about gender inequalities and the observance of human rights standards in indigenous regions. In fact state officials refer to these topics in order to justify a limited recognition of indigenous rights, voicing fears that “savage” indigenous customs may violate human rights, and particularly those of women. Rather than expressing legitimate worries about women’s rights, such political uses of human and gender rights discourses reproduce colonial strategies of power and restrict the recognition of indigenous jurisdictions and rights to autonomy.⁴ Thus, the recognition of indigenous peoples’ collective rights and indigenous women’s rights occurs in a context of strong tensions that reveal the structural racism of the state and the preeminence of universalist discourses about rights; these discourses tend to disqualify culture as oppressive for women.

Women’s active role in ethnic mobilizations and the politicization of their rights have created alternatives for their participation in different areas of social life, permitting them to hold positions from which they were previously barred. This process is particularly notable within the spaces of community

justice. Not only in Mexico, but also in Ecuador, Peru, Bolivia, Guatemala, the USA and Canada, indigenous women are actively defending their peoples' collective rights and at the same time introducing changes in key institutions within their communities and organizations (Sieder and Sierra 2010). Women are attempting to redefine their rights from a gender perspective, something that triggers off diverse reactions and challenges within and outside their communities.⁵ Within this process global discourses of gender and law are being activated and redefined by local actors; they are imbued with new meanings, incorporating local knowledge and a critical reflection about traditions and justice. This process of vernacularization of gender rights (Merry 2006) is one of the principal challenges indigenous women confront when having to discuss and legitimate their demands in face of their communities. It is therefore critical to study indigenous women's concrete efforts to promote gender justice and the challenges they encounter.

In this chapter I first discuss how the recognition of indigenous rights came about in legal reforms in order to signal the specific characteristics of legal pluralism in Mexico. I will then refer to the particular ways in which indigenous women are discussing gender rights and access to justice, stressing gender ideologies and the consequences of women becoming organized. In order to illustrate these processes I analyse two contrasting experiences in Mexico: the case of Nahuatl women in Cuetzalan, in the state of Puebla, and that of the Na'avi, Meep'h'a and *mestiza* (non-indigenous) women of the *policía comunitaria* in the state of Guerrero. These are two emblematic experiences demonstrating indigenous women's contribution to

local dynamics of law and gender justice, as well as the ways in which local power structures permit or impede the exercise of women rights. In both cases the politicization of gender and ethnic identities pose new challenges for justice practices. The contrast between these two experiences furthermore reveals the importance of both context and legal consciousness when analysing gender rights, as well as pointing to the impact of neoliberal governance in the definition of law and autonomy. Finally I discuss the challenges in conceptualizing gender justice from a perspective of cultural diversity and plural legal rights within the contemporary context of legal pluralism in Mexico.

Legal pluralism in Mexico and indigenous women rights: paradoxes of legal recognition

In contrast to other Latin American countries, the official establishment of legal pluralism in Mexico in 2001 implied a limited recognition of indigenous normative systems and their subordination to the hegemony of state law. This in effect signaled what might be termed an “additive” form of legal pluralism that does not recognize full indigenous jurisdiction.⁶ In fact, Mexico represents one of the less developed poles in the continuum of multicultural constitutionalism in Latin American countries that ranges from a limited version of legal pluralism to the recognition of the plurinational character of the state.⁷

In spite of having the largest indigenous population in the Americas and a long tradition of indigenist state policies, reforms to recognize indigenous rights in Mexico were limited. The Mexican Constitution was first amended in 1991 to recognize the pluri-cultural character of the nation. But it was not until 2001 that constitutional reform recognized the collective rights of indigenous communities. In terms of legal pluralism the changes to article 2 of the Mexican Constitution explicitly acknowledge indigenous authorities and their right to apply their own normative systems within their communities. Although limited, these reforms implied a major shift away from nearly two centuries of legal monism in constitutional law (Stavenhagen 2002; Sieder 2002).

As in other Latin American countries, Mexico's multicultural reforms are part of neoliberal structural reforms that promoted decentralization and deregulation of the state with the rollback and restructuring of social policies. Along with reforms recognizing the pluricultural character of the nation and certain rights for indigenous peoples, others, such as the reform of article 27 of the Constitution, opened collective land ownership up to the market and paved the way for access to natural resources by transnational capital. What was presented as a response of the Mexican state to settle a historical debt with indigenous peoples actually meant a *neo-indigenist* policy reproducing a new form of state control without responding to the autonomy claims of indigenous peoples (Hernández, Paz and Sierra 2004). Neoliberal policies increased marginalization, insecurity and poverty in indigenous areas including transnational migration. In fact the material basis for the

reproduction of the indigenous and rural economies was severely hampered by neoliberal globalization, which in turn limited the implementation and practice of indigenous rights (Speed et al. 2009; Harvey 2001).

Indigenous legal reforms thus occurred in a structural context that has deepened inequality and in a political conjuncture where the Mexican elite and transnational interests view indigenous peoples' demands to autonomy with suspicion, as granting these would affect their privileges. This is the broader context that frames Mexican reforms to recognize indigenous rights. In terms of justice this has implied a reduced scope for indigenous legal systems, which are seen as a kind of auxiliary to state jurisdiction, useful for dealing with minor offenses and crimes. Furthermore, the reforms follow the logics of neoliberal multiculturalism (Hale 2004) and distinguish between "legitimate" and "illegitimate" forms of indigenous justice. The state retains the power to name and categorize the domains of indigenous jurisdiction; in consequence, it officializes what has become known as "multicultural justice."

The reforms reveal the process of state formation in Mexico and the long political tradition of negotiation and control in rural areas (Joseph and Nugent 1994). Ambiguity and a certain margin of recognition characterize the reform of indigenous rights as part of a larger process of modernization of the Mexican judiciary. New indigenous courts created by official decree in different states of Mexico, which were established without considering the existing traditional forms of justice.⁸ These reforms fragmented and

restructured the field of indigenous justice, generating new kinds of ethnic authority which affected indigenous-state dynamics (Chávez and Terven forthcoming).

Thus, the Mexican reforms entail differentiated forms of state control within a new frame of legal pluralism and define a highly limited scope for autonomy in the field of justice. They reveal the regulatory power of the multicultural reforms, which nevertheless have been appropriated and contested by indigenous actors. Other important institutions practising de facto indigenous autonomy, such as the “*policía comunitaria*” (community police) in Guerrero (Sierra 2010) and the Zapatista “*Juntas de Buen Gobierno*” (Councils of Good Governance) in Chiapas (Mora forthcoming) go far beyond the new legal framework, challenging the official multicultural order. Such instances of indigenous organization are deemed illegal and in consequence are constantly menaced by government authorities.

In sum, the new forms of regulation and surveillance imposed by legal reforms in the field of indigenous justice in Mexico emerged in a context of tensions and contradictions which have involved legal changes and local responses. On the one hand, the state recognizes certain rights that do not question the existing institutional order (considering certain de facto autonomies to be illegal). On the other, indigenous organizations have attempted to appropriate the new judicial institutions within their own cultural terms of reference, disputing the definition and practice of indigenous law and justice with the state. Within this context human rights

and women's rights have become important weapons used by state officials to restrict indigenous jurisdictions, while indigenous authorities and organizations have also turned to the language of rights to legitimate their demands, particularly their collective rights. It is also within these spaces that indigenous women take advantage of the new language of rights in order to question established gender relations and claim justice inside and outside their communities.

Indigenous women, rights and access to justice

Given the weight of gender ideologies that justify the subordination of women to male decision-making and power differentials, it has been very difficult for indigenous women to gain access to state and community justice. A patriarchal vision prevails both in the state legal system and in indigenous law.⁹ Studies in indigenous regions have documented the conditions of disadvantage, racism and exclusion women encounter within state justice institutions, as well as the difficulties they face when dealing with their own local authorities (Hernández 2002; Barragán 2006; Chenaut 2007; Sierra 2004).

Mistreatment, sexual abuse, marital abandonment and abandonment of parental responsibilities as well as other forms of gender violence are revealed when women approach justice institutions at community or state level. It is difficult to talk about rights in a context where women have many obligations and very restricted possibilities to take personal decisions about their domestic life. These conditions are aggravated by poverty and

marginalization, which complicate the survival of women and their families. Community norms tend to naturalize gender subordination, forcing women to accept their assigned roles according to the idea that customs cannot be questioned. It is not easy to confront a violent husband when women have no guarantees that they will not be additionally punished or expelled from their home, particularly if they have nowhere else to go. This was the experience of Rosa, a Na'savi woman in Guerrero; when she complained about maltreatment she was forced by her partner to abandon the family home.¹⁰ It is usual that women look first to their communal authorities when seeking justice. Even if their husband is aggressive they prefer to negotiate a solution with him in the presence of communal authorities, rather than following the labyrinthine processes of justice through the state courts (Sierra 2004). Only in extreme situations do women demand state intervention to sanction violent men. It is also true that women are not only victims but also important actors in domestic and community social life, and their presence has increased due to socio-economic dynamics and changes impacting local life; particularly because of migration. Women act as midwives, *curanderas* (healers), and partners to their husbands in a number of ritual and collective activities. They also play an active role in local productive endeavours, such as agriculture and handcrafts. The very fact that many women seek justice reflects their social agency (Sierra 2004, 2009; Chenaut, 1999, 2004; Sieder and Macleod 2009).

Gender oppression has become a focus of discussion amongst indigenous women's organizations and of public policy intervention due to the high

levels of violence that both indigenous and non-indigenous women suffer.¹¹ Nevertheless gender violence cannot be isolated from the structural and political violence women suffer due to their conditions of ethnicity and social class. For indigenous women, their circumstances of extreme poverty, marginalization, lack of access to health care and education, as well as the racism prevalent in their relations with the state and dominant society, are all characteristics that affect them and their families, men and women alike (Sieder and Sierra 2010). Furthermore, these conditions shape the ways violence is materialized and experienced. For these reasons, the International Forum of Indigenous Women (FIMI) has appealed for an intersectional perspective when analysing violence against indigenous women, in which violence is seen “in relation to aspects of identity beyond gender, using an approach that accounts for the ways that identities and systems of domination interact to create the conditions of women’s lives” (FIMI 2006: 12). The forum also insists that full recognition of indigenous peoples’ collective rights is the key to reducing violence against indigenous women.

Indigenous women’s organizations in Mexico and Latin America have attempted to create alternative approaches to confront patriarchal views of justice and gender violence from their own cultural perspectives. They are not only discussing rights, but are determined to influence the practice of law inside and outside their communities. Many different experiences have emerged linking indigenous women’s initiatives to official or non-official institutions supporting indigenous women’s legal defense: these include women’s human rights commissions, defense councils or human rights and

NGO networks, as well as indigenous women's institutions. At the same time, the new context of legal pluralism and the renewal of community-based justice in Mexico, albeit limited, have opened new forums for indigenous women to participate and to promote discussion about indigenous rights and traditional justice. Women seek appropriate formulas to talk about gender subordination and a more adequate way of living based on ideas of "*el buen trato*" (literally "good treatment"), reaffirming their relationship with their collectivity.¹² In fact, they are contributing to theorize the very conception of gender equity by appealing to complementarity and "cosmovision" (or indigenous worldviews).¹³

A cultural climate that favours women's rights can therefore be observed. A number of external factors play an important role, such as the legitimation of a gender discourse within federal public policies, international legislation, mass media and the discourse of NGOs on human and gender rights. These discourses are invigorated by indigenous women's organizations (Cunningham 2003; FIMI 2006). New laws that penalize violence against women on the national and international level undoubtedly imply significant advances. However, they also create other problems since public policies tend to impose liberal models of rights and gender without taking into account cultural contexts and indigenous women's worldviews. Official discourses therefore produce a series of contradictions and tensions that hamper the very practice of rights (Hernández 2006). Within the context of legal changes and the opening of new institutions of indigenous justice or the

official recognition of existing ones - such as occurred in the state of Oaxaca,¹⁴ the participation of indigenous women has become a central focus.

Towards an intercultural justice: the case of Nahuatl women in Cuetzalan, Puebla¹⁵

The experience of the *juzgado indígena* in Cuetzalan in the eastern Sierra Norte of Puebla reveals the possibilities and limits Nahuatl women face to build indigenous justice with a gender perspective.¹⁶ The creation of an indigenous municipal court was part of official multicultural policies in a region where indigenous communities have had a long presence and where local organizations involving men and women have mobilized to defend indigenous rights (Terven 2009). Indeed, local indigenous activists were able to appropriate the new indigenous court, disputing its legitimacy with state authorities. Although limited in its legal competences, the Indigenous Court has promoted new alternatives to indigenous justice. At the same time, the longstanding tradition of organizing amongst indigenous women in the region has provided important spaces for the defense of women's rights, such as the Indigenous Women's Center (CAMI – see below), also with support of state institutions (Terven 2009; Mejía 2010). Both the *juzgado indígena* and CAMI illustrate the central role women play in contributing to indigenous justice with gender equity. They reflect women's abilities to appropriate state-created institutions, investing them with new meaning.

The *juzgado Indígena* of Cuetzalan opened in 2002. It is one of five Indigenous Courts created by the judiciary in the highlands of the state of

Puebla in response to legal reforms regarding indigenous rights (Terven 2009).¹⁷ The *juzgados indigenas* (indigenous courts) are officially considered an alternative form of justice; they are in fact part of the state legal system's modernization policies that promote the *justicias de mediación* (alternative dispute resolution) and oral court proceedings.¹⁸ The *juzgado indígena* was imposed on indigenous communities' traditional authorities, the *jueces de paz* (justices of the peace, also known as auxiliary judges), who were not formally recognized as indigenous authorities by the new law.¹⁹ This has provoked continuous tensions in the relations between the *juzgado indígena* and the *jueces de paz*. Nevertheless, indigenous organizations have successfully appropriated the *juzgado indígena* and transformed it into an institution that goes beyond the official framework (Chávez 2008; Chavez and Terven forthcoming).

In spite of its limited legal attributes, the indigenous court has become a central point of reference for indigenous peoples in Cuetzalan. The court can only deal with minor crimes, which are solved by mutual agreements based on "customary law." Most of the issues dealt with in the *juzgado* relate to problems between neighbors, domestic violence, debts, demands surrounding custody of children, inheritance, land boundaries and water disputes, as well as other claims regarding everyday lives in the communities. Crimes like homicides, rape and felonies are turned over to the jurisdiction of the state (Terven 2009). In fact, the indigenous court now deals with most of the problems that were previously solved by indigenous local communal authorities, but also they deal with cases that were previously taken to the

mestizo municipal court in the city of Cuetzalan. The indigenous court operates within the municipality as a kind of second-tier legal forum to attend to cases within indigenous jurisdiction. However, the legal status of the new *juzgado indígena* remains ambiguous, affecting the practice of justice. The fact that this novel judicial forum was a product of a top-down decision and was not discussed with the local indigenous authorities, the *jueces de paz*, has also affected its legitimacy. For this reason, the *Consejo del Juzgado* (Legal Council), a reinvention of local traditions within indigenous communities, has become a new instance created by indigenous organizations to advise the *juez indígena*. The *consejo* has made great efforts to improve relations with local authorities in the communities. Indigenous women have been very active in this process as members of the *consejo*. This has offered an important opportunity for women to promote a gender perspective in the practice of justice.

The Indigenous Women's Center (CAMI Maseualcalli) was created in 2003. Led by indigenous women, CAMI has become a widely recognized and respected paralegal institution in the region and an important reference point for the provision of legal defense and the promotion of women's human rights (Terven 2009). With the strong support of *mestizo* women who have worked in the region for many years (Mejía 2010), CAMI developed an integrated methodology involving legal and therapeutic interventions to deal with domestic violence and discrimination. It has also become an alternative instance of dispute resolution at the municipal level. Women from the CAMI have developed a solid relationship with the *juzgado indígena*. This support,

however, does not mean a non-critical acceptance of the customary legal order. Some members of CAMI have also accumulated considerable experience in accompanying women involved in legal processes within the state legal system and are aware of the discrimination and obstacles they face seeking justice.

[INSERT FIG. 2.1 ABOUT HERE]

Gender ideologies in the practice of justice: between customs and rights.

It has not been easy for Nahua women to influence the practice of justice in the new indigenous court. The indigenous authorities, the *juez indígena* and the *mediador*,²⁰ are both creating styles of administering justice based on “uses and customs” as defended by the law. They do not necessarily share the priorities of indigenous women. For this reason, women from CAMI, as members of the *consejo*, promote a continuous dialogue with indigenous authorities in order to convince them to consider gender rights when imparting justice. This is the case, for example, when dealing with domestic violence or spousal abandonment. Nevertheless, it is difficult to question naturalized ideologies and longstanding customs that subordinate women (Sierra 2004; Vallejo 2004). The Nahua women of CAMI have learned to reframe their own discourses of women rights taking local cultural models into account in order to influence these institutionalized spaces. For example, they have tried to convince the indigenous judge that it is not a good resolution to accept that a woman loses the custody of her children just because she needs to go out to work and migrate temporarily to the city. Men are not used to accepting women’s counsel, not even to discuss with

them their style of doing justice. Women's intervention within such legal forums implies patience, respect and a capacity to negotiate and to accept that cultural changes are very slow and require agreements with men. This conflicts with some feminist positions which consider that indigenous women suffering violence need to confront custom in a much more direct way. In fact, liberal feminism tends not to contemplate context or cultural values when referring to indigenous women's subordination (Hernández 2006).

The following case illustrates changes in the practice of justice and the active role indigenous women are playing within it. Ocotlán, a Nahuatl woman from San Miguel Tzincapan, a community in the municipality of Cuetzalan, Puebla, was badly beaten by her husband and her father when she returned home after selling handicrafts in the village.²¹ After being informed by Ocotlán's young son about the beating, the justice of the peace and the subaltern agent,²² local authorities of Tzincapan, summoned both men to explain their actions. The father explained that Ocotlán was punished because she disobeyed custom, that she did not have permission to leave home and walk alone. Ocotlán subsequently disappeared. The authorities decided to imprison Ocotlán's father until she was found. In fact after being hurt she had first sought help in the hospital of Cuetzalan, and then she went to CAMI, where she received emotional support. The justice of the peace of San Miguel demanded that she present herself at the community court. She arrived there accompanied by women from CAMI. With the presence of Ocotlán's family, her parents, her husband and children, the judge sought negotiation. Although Ocotlán and her husband arrived at an agreement that

allowed her to work, her father was not convinced and it seemed he still thought the beating he had administered was justified. The women from CAMI therefore insisted on establishing a commitment between Ocotlán and her family within the *juzgado indígena* in the city of Cuetzalan in order to guarantee her physical integrity. It was only when the *juez indígena*, Don Alejandro, called for an extended dialogue with the whole family that he finally convinced Ocotlán's father to respect her decision to work. Don Alejandro insisted that times have changed and women now have the right to work and to help with the family economy. But he also stressed that Ocotlán's physical integrity had to be respected. Finally a written agreement was established between the family and Ocotlán. At the same time Ocotlán and her husband were recommended to participate in CAMI's workshops on gender rights and domestic violence, which they in fact did.

The case reveals different facets of justice practices in a Nahua community and the impact of women's rights and legal innovations. Firstly, it indicates the preeminence of customary law at local level, when the authorities tried to convince Ocotlán's father to let her work and to forgive her. This clearly shows the predominant masculine order, even though women are able to accuse men of domestic violence. Different cases taken to local courts confirm these practices and the ways women manage to deal with violence without challenging male domination (Sierra 2004, Vallejo 2004). Second, the role played by women of CAMI supporting Ocotlán stands out, as well as the *juez indígena's* legitimacy in convincing her father. His intervention was particularly relevant as it posed the defense of gender rights. Members of

CAMI not only accompanied Ocotlán during the process, but also provided oversight and insisted on an agreement established within the framework of the *juzgado indígena*, looking for a more formal agreement. Nahua women from CAMI have won recognition in the region and have achieved a leading role in improving gender rights and rights consciousness, but they do not have the legitimacy of the *juez indígena* nor his capacity to negotiate with male actors in the same terms and languages. Finally, CAMI's representatives also managed to incorporate the couple into their workshops where other indigenous men and women participate to promote awareness of gender rights and respect within the family.

The CAMI's capacity to transform justice practices by incorporating a gender perspective within the *Juzgado Indígena* is also noteworthy. These achievements may seem minor but are gradually becoming part of indigenous authority discourse; indigenous authorities now believe that women have rights and must not be abused. While not all cases are resolved with due respect for gender equity, in Cuetzalan indigenous women know that there are places where they can go to seek solutions to their problems. Given the limited formal scope of the indigenous court, members of CAMI are aware that not all cases can be resolved there: the most serious cases still have to be taken to state judicial forums. Members of CAMI therefore use state law and international legislation whenever necessary. However, they are also contributing to an integral strategy to deal with domestic violence beyond legal forums, where conflicts are not always resolved. Indeed, they

are creating interlegal proposals with the aim of promoting intercultural justice with gender equity (Terven 2009).²³

Indigenous women's claims within the community police of Guerrero: the fight for rights and community jurisdiction

The political project of the indigenous community police in the state of Guerrero aims to secure autonomous indigenous jurisdictions, something which goes far beyond the legal pluralism recognised in the Mexican constitutional reform of 2001. This experience evidences the strength and legitimacy of pluri-ethnic organizing in the region (dating from 1995), which has at its heart a project to build an autonomous legal order that is not subordinated to the state. Within this context, indigenous women from different ethnic origins – Na'savi, Meepha' and *mestizo*²⁴ - are promoting the discussion of custom and gender norms within the practice of justice, with the aim of opening spaces for women's participation in the communitarian system, something which in turn generates tension and resistance within the communities themselves.

The *policia comunitaria* have maintained their demands for regional autonomy in the exercise of security and justice. This has meant they are subject to continuous surveillance and aggression from the state, which, nonetheless, has been obliged to tolerate their existence. Women have participated in the community police in a number of different ways since its inception. As the male leaders acknowledge, without women's support it would not have been possible to create the organization. Above all, women

have benefited most from the new security system which now guarantees their safety on the roads, making them feel free of the fear of rape or robbery when travelling to the city. As women and their male partners put it, “the *comunitaria* changed our lives.”²⁵ In a region characterized by acute inequality, poverty, violence and racism, the participation of women can only be understood as part of a collective and community-based project.

The communitarian security and justice system incorporates two separate bodies: the Regional Community Police, and the Regional Coordinator of Community Authorities (CRAC) (Sierra 2010). The system exercises jurisdiction over about 100,000 people living in 80 communities distributed in an extensive territory stretching from the coast to the mountains in the south west of Mexico. In terms of justice, it incorporates the traditional local authorities of communities, who are subordinated to regional authorities in a new justice and security system. The CRAC administers regional justice, dealing with all types of crimes not solved within communities. They also have a re-education system where people who are found guilty after undergoing a justice process are subject to control and collective work in communities. The reeducation process is one of the features distinguishing the *comunitaria* from other experiences of community justice in Latin America (such as the *rondas campesinas* in Peru, or the *guardia indígena* in Cauca, Colombia), which normally sanction people involved in crimes *in situ*, but do not detain them for long periods (Sierra forthcoming). This in fact implies extensive organization among communities and authorities in order to sustain the reeducation process.

As is the case with most indigenous justice systems, community justice within the CRAC is strongly marked by gender ideologies that subordinate women. The results of a collaborative research project with women of the *comunitaria* indicate the difficulties and problems women face in order to access justice.²⁶ A lot of cases presented to the CRAC refer to naturalized customs that subordinate women to the decisions of men within their family and communities. The revision of the judicial records of cases taken to the CRAC and the observation of dispute resolution confirm a gender bias in the practice of justice. Nevertheless women prefer to attend community courts rather than the state courts located in San Luis Acatlán, the same mestizo city where the regional offices of the CRAC are located. They fear corruption, impunity and discrimination if they take their claims to the official authorities and are confident that the CRAC will attend their cases in their mother tongue and secure some degree of redress.

[INSERT FIG. 2.2 ABOUT HERE]

In recent years various attempts have been made to open spaces for women and to recognize the particularity of their justice claims. In 1997, when the CRAC was formed, a women's commission was created to accompany the CRAC when dealing with detained women.²⁷ Since 2006, women have also been elected as authorities within the CRAC. These developments are a response to the need to incorporate a female perspective on justice practices, given the significant amount of cases involving women presented

to the CRAC, some of them highly complex issues, such as cases of domestic violence, rape and infanticide.²⁸ The presence of women in the institution is not by itself enough to guarantee appropriate access to justice for women. However, it does respond to a pending debt community justice has with women. But women's participation has not been constant, nor have they received sustained support from men in order to promote their own vision of justice and rights. This is a highly complex task, but women are determined to continue with their project.

The opportunity to promote gender rights within the *comunitaria* has provided a privileged vantage point to see at first hand the enormous challenges facing women in their everyday lives.²⁹ It is not easy to discuss deep rooted customs surrounding practices of courtship, matrimonial alliances, access to land, male authority, or domestic violence in societies where women's subordination structures life worlds and social representations. It is even more difficult to speak about women's rights in situations where the material conditions of life are marked by such strong social inequalities, which in turn affect the exercise of those rights. For many women in the communities it is a new experience to talk about these subjects; most of them do not even know they have rights or they consider them as duties: that is for example what a Na'savi women said when, during a workshop, she stated that she has the "right" to take care of her children and to prepare food for the family. Some women do not dare to lodge a demand against their husband because they are afraid of being punished by their in-laws. The weight of community regulation and social control through

gossip and defamation, which affect women's honor, is notable, and this can also expose women to threats and witchcraft. Many of these problems are revealed in the cases that women take to the instances of local community justice, and ultimately to the CRAC in San Luis Acatlán.

In contrast to Cuetzalan, the women of the community police are in the initial stages of an organizational process, which is still very embryonic. They do not have the support of productive projects like handicrafts, which could provide them with economic guarantees of survival and a certain level of autonomy, as was the case for Nahua women in Cuetzlan. Initiatives to build an organization of women are still weak, and normally are not supported by men; but these attempts are important because of the scope of the community police of Guerrero. Even if the presence of women taking decisions or applying justice is still limited, the fact that they are already participating and promoting their rights as women has important symbolic implications. In particular, it visibilizes the presence of women in all public and community events. Women have won a place in the *comunitaria* and in this process women have learned to prioritize the collective rights of their institution even more than their own rights as women.³⁰ They are aware that the defense of autonomy and jurisdiction is a condition for the existence of the communitarian justice and security system, so they are committed to defending it, as they have done in different confrontations with the state and the army.³¹ Women's demands within the *comunitaria* are in fact a new topic of discussion. As is the case with other indigenous women's organizations in Mexico and Latin America, women are building their agenda according to

their needs rather than in line with strategic gender agendas that do not necessarily resonate with their context (Mejía 2010, 2008). Nevertheless they are also discussing fundamental issues of gender rights.

The circulation of gender rights discourses promoted by federal government programs and feminist NGOs impact local processes, even if they endorse an individual vision of gender rights. Through their practices, women of the *comunitaria* translate the language of rights to their own realities in order to help women when they seek justice. The following case illustrates some of the complexities involved.

Transforming community justice: women's efforts to redefine indigenous law

“Mateo (the *comandante* of Espino)³² began to flirt with me and I responded. I also did it out of spite because my husband never visited me while I was in jail. Mateo come into my cell on three occasions in the middle of the night, it's very cold there in the mountain and I was afraid because I was alone. As a result of those three times that I was with the *comandante*, I got pregnant. The problem right now is that I gave birth [by caesarian section] in a hospital and I need money to pay for my medical attention and also I am ashamed for having a child that is not my husband's.”³³

María a monolingual Mixtec woman held in the CRAC for “re-education” was found guilty as her husband's accomplice in a case of livestock theft. Her

husband fled. María tried to escape but was detained again. For that reason she was sent to another detention site, the CRAC offices in Espino Blanco in the mountain. Here she could no longer be visited by her children, which had been possible in the CRAC offices in San Luis Acatlán, where she was previously held. She was finally released after three months of detention. Later, when she was in the clinic giving birth, Paula - a *promotora de justicia* (community justice promoter or auxiliary) - then found out that the baby's father was a *comandante* in Espino Blanco. María wanted to give her child up at birth, so a women official from the Department of Family Protection (DIF) intervened. The CRAC was subsequently accused of allowing María to be abused while she was in detention, but the official also accused María of wanting to sell her baby. Paula informed the CRAC of the facts of the case and the *comandante* was detained, accused of having taken advantage of María.

During the proceedings, participation by *doña* Asunción (the only woman authority in the CRAC at the time) and Paula was fundamental in supporting María and seeing that she be treated fairly. María admitted that the *comandante* had not forced her; she had willingly had sex with him. What she asked was that he helped to support the child and that he give her his name. The *comandante*, who had been detained, assumed his responsibility and agreed to María's requests (although this implied a conflict with his own family). Nevertheless, the CRAC decided to send him for "re-education" since he also had been accused of abusing his authority. María was unable to return either to her home or to her community and she now lives in the city

San Luis, where her brother supports her. However, the interventions of *doña* Asuncion and Paula gave her the strength to demand her daughter back and she feels that justice has been done.

Maria's experience reveals various aspects of the drama that many women live when they are involved in criminal offenses. It also highlights some of the changes going on in communal justice, especially because of the role women are playing in following cases. On one hand it should be pointed out that women are vulnerable in the reeducation process and there are no guarantees for their personal integrity; this in fact is an important weakness of the communitarian justice system. The question of women in reeducation is a recurring issue that has motivated women to participate in supporting the system. From the beginning of the CRAC in 1997, they were invited to follow the cases of detained women. Reeducation has been designed mainly for men and the fact that very few women have been involved in serious crimes has not produced an adequate response in cases involving women. On many occasions women committed to the communitarian process, many of who are actually *promotoras de justicia*, have volunteered to accompany female detainees, sleeping in the office with them and finding productive activities for them to participate in. María did not have that kind of support, and her transfer to the office in the mountain made her more vulnerable and finally exposed her to sexual abuse. The CRAC offices are primarily masculine spaces and there is insufficient control over what goes on at various sites.

This case also shows how important it is for indigenous women to participate in the communitarian institution: one of them has a position of authority at the CRAC (as a regional coordinator) and the other assumed her role as *promotora de justicia*. Both of these women supported María and helped her confront her situation; to counter the mistreatment and accusations from the DIF official, and guarantee that the CRAC would intervene and pass judgment on the *comandante*. It was also important in compelling the *comandante* to pay child support and give his daughter his name. It was due to these women's influence that the CRAC decided that the *comandante* should be sent to "re-education," because he had abused his authority and as a form of exemplary punishment.

No doubt the main change that has taken place in the CRAC's communitarian justice is that women now participate as authorities at the Regional Coordinator of Community Authorities (CRAC). Although it is very recent, this space was gained as a result of women's engagement and because of the legitimacy of their demands. There are still few *promotoras de justicia* and their long-term project is not yet defined, but the importance of their participation is clear: to accompany women seeking justice and promote their rights. It is not easy to open spaces in processes so strongly marked by *machista* ideologies which pose obstacles for women and ultimately question masculine privilege. Some men don't agree that women should participate or that they be called *promotoras de justicia*. Others concede them recognition but are extremely critical of any mistakes they might make, and there are others who strongly support them. Until a few years ago women's

participation was not visible and was considered as some sort of appendix. Today it is accepted and even encouraged. The Indigenous Women's Center recently established in San Luis Acatlán,³⁴ run by indigenous women from the region to deal with health and violence problems, offers new possibilities that can strengthen women's work in the area of justice. Although the Center's main objective is in the field of women's health and in supporting traditional healing practices it incorporates an integral procedure to deal with these topics and this implies consideration of gender violence, one of the most common causes of women seeking justice. In the future hopefully "*promotoras de justicia*" (justice promoters) and "*promotoras de salud*" (health promoters) will develop common strategies to promote women's rights.

Indigenous women's commitment to the communitarian process and the defense of their system of justice has become clearer and clearer. Fewer women are turning to the state judicial system and increasingly more prefer the CRAC's intervention. This is the case of María who, in spite of having been detained and the drama of her case, recognizes how important it is for women to participate in the communitarian justice system since they understand each other's perspectives; she also appreciated being spoken to in her own language and not being charged for justice services, as occurs frequently in official state justice institutions.

These are daily processes that signal changes in the *comunitaria* justice system in Guerrero. Although – in contrast to Cuetzalan - this is not the case

of a consolidated group of organized women with a well-defined gender agenda, women's participation in the *comunitaria* is enhanced because of the overall impact of this institution. The fact of being a regional justice and security system that exercises jurisdiction over a vast territory without state legal recognition is particularly relevant. In this process women are opening spaces within their institution; they are constructing their own language for speaking about rights and obligations and they are already playing an important role in the practice of justice.

Women's experience in the communitarian system reveals their commitment to the collective project and their unconditional defense of this institution, because they know that it belongs to them as indigenous peoples, and particularly because the communitarian police guarantee them the security and access to justice that the Mexican state has been unable to offer. Beyond the tensions, limitations and mistakes made by the communitarian justice and security system, this institution has generated hope and gives them, men and women, dignity. Nonetheless these women still have a long way to go in order to ensure that their rights as women are taken into account within the system.

In sum, the analysis of both experiences of indigenous women seeking justice in Mexico - the case of Nahua women of Puebla and that of indigenous women in Guerrero, confirms the importance of context and organization when discussing gender rights. Indigenous jurisdictions *per se* – as in the case with the *comunitaria* - are insufficient to guarantee indigenous women's

rights. The goal of increasing an awareness of gender issues appears to be more feasible when there is a strong indigenous women's organization. This has been the case in Cuetzalan, Puebla, where indigenous women have built a longstanding network to defend their rights. Nevertheless, the officialization of indigenous justice, as exemplified by the *juzgados indigenas* and the controls imposed on indigenous law affect the possibilities women have to solve disputes within local indigenous courts. For this reason, organized Nahua women in Cuetzalan have developed alternative strategies to support women involved in legal disputes within both indigenous and state justice systems: at the same time they have built paralegal institutions to help women to cope with gender violence, such is the case of CAMI. In contrast, the embryonic organization of women belonging to the Communitarian Justice and Security System of Guerrero cannot yet respond fully to the difficulties women face when trying to find their way through the system. In fact it is the legitimacy of the *policía comunitaria* that makes indigenous women's participation so relevant to the communitarian institution. Women's engagement in the collective project in order to strengthen indigenous jurisdiction vis-à-vis the state is of particular importance. However, there is still a long way to go until gender equity really becomes a goal within the *policía comunitaria*. Both of these experiences reveal different subordinations where gender intersects with ethnicity and class, signaling the role women play in effecting social and legal change. They also underline the complex realities which frame the tensions between individual and collective rights in practice.

Conclusions

In this chapter I have analyzed the ways in which the new context of legal pluralism and legal pluralities in Mexico has opened alternatives for indigenous women to access justice. Legal reforms in Mexico recognizing indigenous jurisdiction, even if restricted, as well as the new international framework of women's rights have motivated discussions on gender inequalities within and outside indigenous communities. Women play an active role questioning entrenched customs and gender orders that naturalize violence and women's subordination. Women are not only discussing rights and promoting gender consciousness; they are also participating in local courts trying to influence legal proceedings in marital disputes and cases involving women. They are also aware of their identity as indigenous women and their engagement with their collectivities, thus they are committed to redefine their own institutions taking into account their cultural values and cosmovision or worldview. In this process women take advantage of the globalized languages of human and gender rights, imbuing them with their own meaning (Merry 2006). These dynamics are particularly important within specific institutional spaces, as is the case in the judicial field.

Multicultural legal changes in Mexico have assumed the form of an additive legal pluralism that recognizes a limited version of indigenous jurisdiction. This has generated new official categorizations to distinguish "official" indigenous legal systems and institutions, like the *juzgados indígenas* in Puebla, from others consider non official and illegal, like the Communitarian

Justice and Security System, in the state of Guerrero. In fact, the existence of institutions such as the *comunitaria*, practicing a de facto jurisdiction, constitutes a significant challenge to the national state legal order and reveals its inability to recognize indigenous peoples' demands. In sum, additive legal pluralism in Mexico promotes an official form of governance framing indigenous justice possibilities, with important consequences limiting the exercise of indigenous collective rights; what has been referred to here as "multicultural justice." In contrast, new forms of contra-hegemonic governance, developed in the margins of the state, go beyond official law, reproducing a condition of ambiguity and illegality which means they are subject to state surveillance and menace. Both of these experiences materialize the contrasting effects of neoliberal legal reforms in Mexico have had on indigenous justice systems. This new constellation of governance affects the dynamics of gender justice with contradictory consequences.

The resort to the language of rights help women confront male authority and limit gender violence, but gender rights *per se* cannot guarantee better outcomes for women. Gender ideologies are the principal obstacles to women's claims for justice. For this reason women clearly insist on the need to involve men in their process so as to provoke a deeper cultural change in gender relations and open new opportunities for women's participation in local and regional settings.

Both experiences analyzed here show the vernacularization of gender rights within indigenous justice systems. These spaces respond to indigenous

cultural logics and offer women better options to frame and solve their disputes. They are also important sites to discuss dominant conceptions of indigenous law and understandings of justice. Through their practice women confirm that customary law can be transformed without losing its cultural value; they also show that gender rights are shaped by cultural and ethnic identity and need to be understood in the intersection between individual and collective rights. Indigenous women distance themselves from universalistic visions of rights and gender justice that do not respond to their claims. In spite of the important progress of the recognition of women's rights in indigenous courts there is a long way to go to guarantee greater gender justice.

These processes are similar to experiences indigenous women are living in other Latin American countries where they are also opening local, regional, and national legal spaces. Women's demands, in fact, are at the forefront of debates regarding recognition of plural legal orders and collective rights at the national and international level.

Notes

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¹ The case of Valentina Rosendo and Inés Fernández, indigenous *meeph'a* women from the state of Guerrero raped by soldiers of the Mexican army, is an emblematic case of indigenous women seeking justice in national and international courts: <http://www.tlachinollan.org/Ines-y-Valentina/ines-y-vale.html> (Accessed 30 November 2011); see also Hernández and Ortíz (2010).

² Only in recent years have indigenous women's demands been expressed in terms of specific gender rights. The voices of Zapatista indigenous women in Chiapas after the indigenous uprising in 1994 were fundamental to opening space for the expression of women's rights awareness within indigenous collective claims for justice.

³ In August 2001, Article 2 of the Mexican Constitution was reformed to recognize indigenous rights to autonomy and self-determination within their communities. A subordinated version of legal pluralism was established recognizing local normative systems of law and indigenous authorities.

⁴ For an example of the ways in which Mexican state authorities use the defense of indigenous women's rights to discredit customary law, see <http://www.jornada.unam.mx/2008/01/19> (accessed 30 November 2011).

⁵ For a comparative view of these processes in Mexico, Guatemala and the USA, see Speed, Blackwell, Hernández, Herrera, Macleod, Ramirez, Sieder and Sierra (2009); for a perspective on Latin American experiences of women accessing justice, see Lang and Kucia (2009); Sieder and Sierra (2010).

⁶ André Hoekema distinguishes between an egalitarian formal legal pluralism - where indigenous legal systems are recognized at the same level as state

legal system - and additive legal pluralism, where indigenous legal systems remain subordinated to state law and institutions (Hoekema 1998).

⁷ Raquel Yrigoyen refers to this process as the pluricultural horizons of constitutional reform in Latin America, most advanced in the constitutions of Bolivia (2009) and Ecuador (2008): Yrigoyen (2011).

⁸ Different legislation in Mexico created new indigenous courts of justice as a response to the federal reform on indigenous rights; for example in Puebla, Michoacán, Hidalgo and Quintana Roo.

⁹ For a critical overview on indigenous women's access to justice in Latin America, see Sieder and Sierra (2010); see also Nostas and Sanabria (2009) on Bolivia.

¹⁰ These claims were made by Rosa, a Na'savi woman, during a workshop to elaborate a report on women's ideas on rights and customs, held in the community of Buenavista, Guerrero, in January 2009.

¹¹ See for example in Mexico the General Law on Women's Access to a life without violence (*Ley General de Acceso de las Mujeres a una vida libre de violencia*). Federal Government, Mexico, approved 1 February 2007 www.diputados.gob.mx/LeyesBiblio/pdf/LGAMVLV.pdf (accessed 30 November 2011).

¹² A similar reference is the Andean principle "*el buen vivir*" ("good living") as guide for living in family and community for women and men alike (Walsh 2010).

¹³ The relation between gender and cosmovision has been particularly developed by Maya women in Guatemala (see Macleod 2011).

¹⁴ Legal reforms in the state of Oaxaca (1995) – the state with the highest indigenous population in Mexico- have recognized indigenous normative systems in a broader way than other state legislations in Mexico (see Martínez 2012; Anaya 2006).

¹⁵ This section is based on Adriana Terven's PhD thesis (2009), Susana Mejía's PhD thesis (2010), and Claudia Chávez's Master Thesis (2008), and on my personal research in the region (Sierra 2004, 2009).

¹⁶ The Sierra Norte of Puebla, where the *juzgado indígena* of Cuetzalan is based, is an inter-ethnic region located in the central-east highland of Mexico inhabited by Nahuas, Totonacas and *mestizos*.

¹⁷ The *juzgado indígena* in Huehuetla, a Totonaco region also in the state of Puebla, is an important contrast to the implementation of officialized indigenous courts (see Maldonado 2011).

¹⁸ The *justicias de mediación* (mediation justices) respond to the alternative dispute resolution model developed in the United States in the 1970s. The model has been transplanted to Latin American countries as a part of the modernization policies supported by international institutions, a process that represents the transnationalization of law (Sieder 2006; Santos and Villegas 2001). In Puebla the judicial reform received funding from the World Bank (Terven 2009).

¹⁹ The *juez de paz* (justice of the peace), is a legal figure recognized by the law to administer justice within municipalities and local courts. In indigenous communities they function as local authorities and are part of a traditional system of community authorities (*sistema de cargos*). In 2004 the state of Puebla recognized the faculty of the justices of the peace to apply customary law; nevertheless their recognition as indigenous authorities remained ambiguous (see Chavez 2008).

²⁰ The *juez mediador* is also a new legal figure created by the same judicial reform in the state of Puebla. He is responsible for the new *centro de mediación* (mediation center) and acts as an auxiliary member of the indigenous court (see Terven 2009).

²¹ This case was followed by Adriana Terven as part of her PhD research on gender justice in Cuetzalan, Puebla (Terven 2009). I am grateful to her for her support in writing this part of the text.

²² The *agente subalterno* (subaltern agent) is the name of a representative of the *Ministerio Público* (District Attorney or public prosecutor's office) in indigenous communities. This authority has been incorporated to the traditional community authority system (*sistema de cargos*) and is usually exercised by a neighbor without receiving any salary.

²³ CAMI's integrated program to deal with intrafamilial conflicts, developed over nine years, involves emotional support, legal or paralegal procedures, and men's reflection groups.

²⁴ The *comunitaria* has a regional jurisdiction involving indigenous and peasant communities from different ethnic origins including poor *mestizos* (non-indigenous). These *mestizos* share with indigenous people a history of marginalization and style of living based on communal life.

²⁵ Such is the testimony of women, like Carmen, who are strongly engaged with the communitarian project

²⁶ Since 2009 I have been involved in a project on women's rights and access to justice with indigenous women of the *comunitaria* who are interested in discussing community justice and violence against women.

²⁷ The community police was initially created in 1995 to provide surveillance and security on the roads. Offenders were detained and handed over to the state judicial authorities. However, given the lack of will to prosecute them, in 1998 it was decided to create the Regional Coordinator of Indigenous Authorities (CRAC) as a specialized body to apply justice.

²⁸ Infanticide, the killing of a newborn baby, is a serious crime. Normally these cases involve young women. Abortion is not permitted and is considered a form of infanticide.

²⁹ As part of this project we carried out a participatory diagnosis with women in order to gain information regarding issues of customs, rights and access to justice affecting women (Sierra, Corzo and Cruz 2010).

³⁰ Shannon Speed describes something similar in the experience of Zapatista women of Chiapas when confronting individual and collective rights (Speed 2007).

³¹ Carmen, a *promotora de justicia*, referred to confrontations with the state when women were at the forefront of demonstrations to support their regional authorities.

³² Espino Blanco in Malinaltepec is one of the three regional offices of the CRAC; the others are in San Luis Acatlán (the original office) and Zitlaltpepetl in the municipality of Metlatónoc.

³³ Paula Silva, justice promoter at the CRAC, recorded this testimony.

³⁴ The center in San Luis is similar to the CAMI established in Cuetzalan; it is hoped it will play a similar role in promoting women's rights.

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Gender Justice and Legal Pluralities: Latin American and African Perspectives examines the relationship between legal pluralities and the prospects for greater gender justice in developing countries. Rather than asking whether legal pluralities are “good” or “bad” for women, the starting point of this volume is that legal pluralities are a social fact. Adopting a more anthropological approach to the issues of gender justice and women’s rights, this book analyzes how gendered rights claims are made and responded to within a range of different cultural, social, economic and political contexts. By examining the different ways in which legal norms, instruments and discourses are being used to challenge or reinforce gendered forms of exclusion, contributing authors generate new knowledge about the dynamics at play between the contemporary contexts of legal pluralities and the struggles for gender justice. Any consideration of this relationship must, it is concluded, be located within a broader, historically informed analysis of regimes of governance.

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Law/Development Studies/Gender

Cover image: © Me' phaa, ñu savi and mestizo women of the Regional Coordination of Community Authorities at a workshop in San Luis Acatlán, Guerrero, Mexico, 2010. María Teresa Sierra.

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