

Indigenous Empowerment or State Instrumentalization? The Formalization of Indigenous Justices in Michoacán, México

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R E S U M E N

El reconocimiento formal, o la formalización de las justicias indígenas en México, ¿ha empoderado a las comunidades indígenas con más derechos de autonomía? Este artículo intenta responder a esta interrogante mediante un análisis del Estado de Michoacán. Analiza dos fases distintas del proceso de formalización. Primero, la inclusión y legislación de formas “indígenas” de justicia dentro del sistema legal michoacano; y, segundo, la primera experiencia de poner en operación la reforma a través del Tribunal Comunal Purépecha entre 2007 y 2009. Sobre la base de este análisis se sugiere que lejos de empoderar a las comunidades indígenas, el proceso de formalización legal ha restringido su autonomía para ejercer sus distintas formas de justicia. [tribunales comunales, justicias indígenas, reforma judicial, México, jueces de tenencia]

A B S T R A C T

Has the formal recognition, or formalization, of indigenous justices in Mexico empowered indigenous communities by providing them with more autonomy rights? This article responds to this question by analyzing the case of Michoacán province in Mexico. It explores two different phases of the formalization process. First, the inclusion and legislation of “indigenous” forms of justice within Michoacán’s legal system; and second, the initial experience of the reform’s operationalization—the Purépecha communal tribunal, which took place between 2007 and 2009. Far from empowering indigenous communities, the formalization process has in fact reduced their autonomy to exercise their different forms of justice. [communal tribunals, indigenous justices, judicial reform, México, *tenencia* judges]

The demand for formal-legal recognition of indigenous justices¹ has occupied a central place in the claims promoted by indigenous movements in Mexico over the last three decades. In fact, this demand was among the first to be accommodated by the state, at least formally, during the phase of “indigenous rights recognition” in Mexico (Burguete 2008; Gómez 2011); this phase dates from around 1992, with the first indigenous federal Constitutional reform, to 2001, when the last Constitutional reform on indigenous matters was approved. Although recognition of indigenous legal systems was mandated for all states in the Mexican federation in Article 2 of the Mexican Constitution in 2001, its implementation was different in each state. These differences were a result of the stipulation in the reform of Article 2 that each province should produce its own legislation, adjusted to local realities. Anthropological studies have already given accounts of several of these processes (Adonon 2006; Aragón 2013; Buenrostro Alba 2012; Terven 2009), but a comparative analysis of these different experiences in Mexico is still pending.

This article analyzes a specific case that reflects the closure of the second phase of indigenous rights recognition in Mexico regarding indigenous justices. It addresses the experience of Michoacán province, and specifically reform of the judicial system as it affected Purépecha communities. The fieldwork for this study was carried out between 2007 and 2009 as part of my PhD research; during this time, new indigenous tribunals were being designed both in practice and in legislation in Michoacán and the Purépecha communal tribunal initiated its work. The main question guiding this analysis seems simple: has the inclusion of indigenous justice in Michoacán’s legal system empowered indigenous communities by providing them with more autonomy rights?

Despite appearances, this has not been a simple question to address, however. Research in the discipline of legal anthropology in Mexico has tended to concentrate on the complexity and ambiguity of the social and legal processes that shape “indigenous justice,” rather than trying to evaluate the impact of government recognition policies, which necessarily requires an exercise in “simplification” to be able to take a stance. Yet the current circumstances of Mexican indigenous organizations and movements demand further evaluation of the reform from a clear political stance, rather than studies that merely reaffirm the complex and ambiguous nature of postmodern legal pluralism (Santos 2009, 67).

To reduce the risk of oversimplification in my response, then, I have approached the question via two strategies. The first part of the article analyzes the institutional reform of the judicial system through which a new form of “indigenous justice” was created within Michoacán’s legislation, and asks whether and to what extent the indigenous communities affected by the reform were able to participate in this process. The second section focuses on the newly created Purépecha communal tribunal, from 2007 to 2009, using a methodology based on landmark legal cases

that condense the judicial production of this period. On the basis of this analysis I conclude that the Purépecha communities of Michoacán have not been empowered by this process; rather, their de facto autonomy rights have been restricted.

Recognition, Formalization, or Invention? Building Michoacán's Judicial Diversity from the State

Analyzing the introduction of communal tribunals into Michoacán's judicial system not only allows for a comprehensive political evaluation of the processes whereby indigenous justice was integrated within the state judiciary system, but also sheds light on the visibility and strength acquired by indigenous organizations as political actors and promoters of their own rights. The phase of judicial reform in Michoacán can be divided into three periods distinguishable by the respective actors involved, the topics placed on the public agenda, and the asymmetrical power relations at play within Michoacán's state bureaucracy.

The first period commenced with the 2007 amendment of Article 67 of Michoacán's Constitution. In this amendment, the right of indigenous communities to apply their own forms of justice in internal conflicts was formally included in Michoacán's Constitution. However, what in fact was established by the amendment of Article 67 was a new judicial system within the structure of the Supreme Tribunal of Justice of the State of Michoacán (Supremo Tribunal de Justicia del Estado de Michoacán or STJEM), by which the right of indigenous communities to administer justice was implicitly formalized. No explicit reference to this collective right was made within the state's constitution. Communal tribunals were simply included in the STJEM's structure as part of the new judicial apparatus responsible for administering justice in Michoacán's indigenous communities. No precedent existed for such tribunals within the traditional justice practices of Michoacán's indigenous communities.

The participation of indigenous communities and their organizations in this constitutional reform was virtually nonexistent, even though the right to consultation was already recognized at this point in Article 2 of the federal constitution and in Convention 169 of the International Labor Organization, ratified by Mexico in 1990. There was also no pressure applied by means of social mobilization (Jasso 2012). This does not mean that indigenous organizations in Michoacán have not mobilized to seek the recognition of a wide set of rights (such as self-determination, language, intercultural education, traditional knowledge), or specifically with respect to the recognition of indigenous justice, just that their efforts had had little effect. Michoacán's indigenous organizations mobilized in the context of the 2011 elections, when for the first time in Michoacán's history it seemed feasible that a

left-wing candidate could win and become governor. During the campaign, one of the most important indigenous organizations, Nación Purépecha or Purépecha Nation, even presented the candidate with a draft law, which had been created with the involvement of several of Michoacán's indigenous communities. Once elected, Governor Lázaro Cárdenas Batel requested that his advisors and the state agency responsible for indigenous peoples and communities devise a new reform. However, none of the initiatives proposed found support among the state congress members; they were also rejected by several indigenous organizations in Michoacán (Ventura 2010).

The inclusion of indigenous justices in Michoacán's constitutional text was accomplished via entirely unexpected means. The initiative to reform Article 67 was promoted in the state congress without explicitly mentioning the word *indigenous*. This was possible, at least in part, because the change was being promoted as part of a broader constitutional reform. Indeed, the incorporation of communal tribunals within the STJEM was conducted in the context of a judicial reform that significantly transformed courts in Michoacán. Most of the actors in the legislature were focused on constitutional reform, rather than on the recognition of indigenous justice. When I interviewed him, the deputy who promoted the judicial reform as a whole, and the inclusion of community tribunals within the structure of the STJEM, stated that he became aware of the importance of legislating on indigenous justice after attending a workshop on alternative dispute resolution organized by the STJEM and funded by the European Union (interview with deputy Eugenio Torres, July 19, 2010). He confirmed that the idea to create the communal tribunals and integrate them within the structure of the STJEM was a direct result of attending that workshop.

This deputy's testimony is significant because it makes two things clear. On the one hand, it reveals the rationale underpinning the inclusion of indigenous justice in Michoacán's constitution; namely, to introduce communal tribunals as auxiliary entities of state justice, just like any other alternative dispute resolution mechanism promoted as part of judicial reform agendas (Nader 2005, 206–209; Santos 2004, 195). On the other hand, his testimony clarifies why this reform failed to take any of the previous discussions on the inclusion of indigenous justice into account.

In the same interview, the deputy also explained why the word *indigenous* was avoided in this reform initiative. Aware of the many frustrated attempts to approve proindigenous reforms in Michoacán, he had decided to omit the word *indigenous* from the discussion, as well as from the name of the future tribunals. He claimed that he did so because he wanted to avoid "politicizing" the proposal and to circumvent the intervention of other actors, particularly from the Commission of Indigenous Affairs (which is part of the state congress), which in his view might have impeded the approval of his initiative.

Thus, the inclusion of indigenous justices in Michoacán's Constitution was achieved without the participation of indigenous communities and organizations, but also without a public debate on the topic of indigenous justice practices and their recognition more generally. At that point the only decision made was to create a new judicial apparatus under the name "communal tribunal," which would henceforth specialize in indigenous justice. The main elements defining its operation and integration had yet to be established in secondary laws.

The second period concerned the regulation of the communal tribunals. As in the previous period, the regulation of the tribunals was conducted without the participation of indigenous communities and organizations. However, at this point in the process, deputies of Michoacán's congress were joined by the STJEM (previously, members of the judiciary had been sidelined by the legislators in order to impose certain elements of the judicial reform).

According to interviews I conducted with the advisors of the STJEM and congressional deputies, the law regulating the communal tribunals was designed with reference to two existing experiences of Quintana Roo and Chiapas, where indigenous tribunals had already been created.² This approach resulted in the exclusion of local traditional institutions, such as the figure of the *tenencia* judges.

Tenencia judges belong to an administrative subdivision of the municipality, called the *tenencia*. These judges exist in various indigenous communities of Michoacán, principally among the Purépecha, as the "traditional" authority responsible for the administration of justice. These tribunals have a colonial background. Throughout Michoacán's history as an independent Mexican state and until the judicial reforms of 2007, they constituted the lowest level of the STJEM structure. However, these tribunals had never been explicitly recognized as indigenous; in fact, they also existed (and probably still exist) in several rural mestizo communities. Their functions and competences have varied over time, but they were always meant to deal with minor disputes. Despite some regulation, they had acted with a significant degree of liberty, which allowed them to greatly extend their competences, sometimes extending to religious as well as strictly legal functions.³

As a result, the provisions for the operation of the newly created communal tribunals, outlined in the secondary legislation, differed considerably from the ways existing indigenous legal authorities administered justice in indigenous communities in Michoacán. Two examples are illustrative in this regard. First, *tenencia* judges were elected and deposed by the community assembly, whereas communal judges, according to the new Organic Law of the Judicial Power (*Ley Orgánica del Poder Judicial*), approved in 2007, were to be appointed and dismissed by the STJEM's governing body without any consultation with the respective indigenous communities. Second, while *tenencia* judges had been subject to minimal oversight by the STJEM, contributing to the flexible and oral nature of the justice they

dispensed, the new communal tribunals were “hyper-regulated”: not only were they included in the state constitution, they were also mentioned in a chapter of the new Organic Law of the Judiciary and were subject to a new Law of Communal justice (approved in 2007), leaving justices with little leeway to adapt their forms of justice administration to local practices. Despite this “super-regulation” of communal tribunals, many important aspects of their implementation were left unaddressed by the three laws cited above. Issues such as the selection process of judges, the number of communal tribunals to be installed in Michoacán, which persons would potentially integrate these entities, and where they would be located, were not clarified.

During the third period, the communal tribunals were installed. Again, communities and indigenous organizations were not consulted and the process was at the exclusive discretion of the STJEM. For some related issues, the STSJM sought the advice of the Office of Inter-institutional Coordination for Attention to Indigenous Communities and Peoples of Michoacán (Coordinación Interinstitucional para la Atención de las Comunidades y Pueblos Indígenas de Michoacán, ICOAICPM), the state agency responsible for designing public policy for the state’s indigenous communities.⁴ At that time, the ICOAICPM was directed by former leaders of indigenous organizations.

Together with the ICOAICPM, the STJEM issued a call to select communal judges. The mechanism for this involved a training course to evaluate the best candidates. The syllabus for the course omitted indigenous forms of justice as practiced in local communities. Instead, it dealt with the areas of competence that were henceforth to be the responsibility of the communal tribunals, as outlined in the above-mentioned laws. These included elements of civil, commercial, criminal, and family law, as well as general aspects of alternative dispute resolution. The course was predominantly taught by mestizo judges working in state tribunals pertaining to the STJEM. The ICOAICPM’s participation in this course was limited to teaching a few modules on indigenous rights and legal pluralism; however, former or acting *tenencia* judges were not invited to take part in these modules. They were taught by academics (some of them of indigenous origin) without any practical experience in the implementation of indigenous justice in local communities. After the completion of the selection for community judges, the STJEM unilaterally took two decisions that had significant consequences. First, the communal tribunals were to be composed of a judge, a secretary, a clerk, and so forth, as in any ordinary tribunal. In so doing, the composition of existing indigenous legal forums—which typically included several judges serving on rotation, and some auxiliary staff—was ignored. Second, aside from the judge, all other officials who were part of the communal tribunals would not need to be indigenous; instead, these posts were opened to mestizo lawyers with professional experience within

the STJEM. Due to pressure exerted on the STJEM authorities by the aspiring communal judges, this decision was partly revoked before the installation of the tribunals, through a ruling that the future communal tribunals were to include a second indigenous member in addition to the judge.

Ultimately, the STJEM authorities only authorized the opening of two communal tribunals for the entire state of Michoacán: one for the Purépecha people, and one for the Nahua. This, in turn, resulted in the formal homogenization of a variety of forms of administering justice, since these varied in practice from community to community, or even within a single community. It also meant the exclusion of at least two other indigenous peoples of Michoacán, the Mazahua and Otomi, who have never been given a dedicated communal tribunal.

Finally, the issue of where the two communal tribunals were to be located was also left to the discretion of the STJEM. It was subsequently decided that the new tribunals would be located in cities where the STJEM already had some infrastructure, although these locations were not indigenous communities. Thus, the Purépecha communal tribunal was established in the city of Uruapan and the Nahua communal tribunal in Coahuayana. Henceforth, the jurisdiction of the Purépecha communal tribunal would encompass all indigenous communities in the municipalities of Pátzcuaro, Quiroga, Salvador Escalante, Erongaricuaró, Tzintzuntzan, Morelia, Chilchota, Charapan, Los Reyes, Cherán, Nahuatzen, Paracho, Tangamandapio, Tangancicuaro, Uruapan, Ziracuaretiro, Nuevo Parangaricuaró, Tingambato, Zacapu, and Coeneo. Meanwhile, the second communal tribunal, established in the Nahua region along the coast of Michoacán, maintained its jurisdiction in the municipalities of Aguila, Chinicuila, and Coahuayana (see Fig. 1).

As noted above, there was almost no participation by indigenous communities during this phase of legislation and institutional design of the communal tribunals. In answer to the question posed in the introduction to this article, not only was there no empowerment of the communities and their organizations in this phase; there was actually a reduction of their autonomy. Indigenous representatives from the affected communities were excluded—a process that clearly points to a limitation of the autonomy rights for which indigenous movements had been fighting in Michoacán and Mexico.

The inclusion of indigenous justice in Michoacán cannot even be qualified as a case of “recognition” of a key collective right of indigenous peoples to exercise their own forms of justice particularly if one takes into account the fact that legislators remain ignorant of existing legal practices in indigenous communities in Michoacán. Rather, what occurred was an example of a process observed by Eric Hobsbawm (2002: 11), whereby the state invents and fosters new traditions to break with the old. This process of invention did not occur in a vacuum; I argue that this “formalization of indigenous justice” through the invention of the

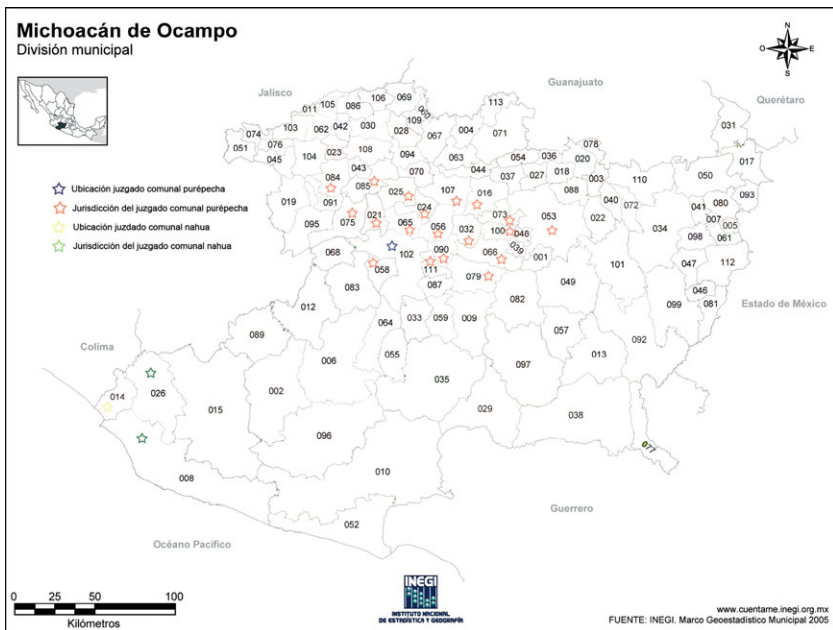


Figure 1 Location and jurisdiction of the communal tribunals of Michoacán.⁵

communal tribunals responded to the operating logic of the STJEM, itself reflective of the neoliberal ideologies that underpinned judicial reform. The phenomenon of formalization entailed the reinterpretation and adaptation of previous forms of indigenous justice to the neoliberal logic and ideology prevailing in the state tribunals. The process in Michoacán is similar to that which occurred in other states in the Mexican federation. Similar factors led to the creation of new institutions of indigenous justice in practically all the experiences of recognition of indigenous justice across the country. What varied across the different states, depending on the conditions under which the courts were operating and differing patterns of social organization, was the ability of indigenous communities and organizations to appropriate these new spaces. Therefore, these processes of reform can be understood as part of a broader phenomenon of “low intensity recognition” of indigenous rights promoted by the Mexican state in the first decade of the 21st century (Hernández, Paz and Sierra 2013; Sierra and Aragón 2013; Sierra, Hernández and Sieder 2013).

This statement can be corroborated by studying the communal tribunals’ judicial production, which is the subject of the next section. It looks at how these communal tribunals operated in practice, and focuses on the Purépecha communal trial in Uruapan, where I carried out three years of ethnographic fieldwork.

Michoacán's "New" Indigenous Justice in Action: The Production of the Purépecha Communal Tribunal

The aim here is to shed light on the judicial production of the Purépecha communal tribunal. Thus, this section focuses on two cases, which I consider representative of the general logic of operation of this judicial body, at least during the time of my ethnographic research between 2007 and 2009. During this period, the Purépecha communal tribunal heard a total of 96 cases, of which 66 were classified by the staff of the tribunal as commercial, 23 as civil and family, and seven as criminal matters. As my data indicate, the Purépecha communal tribunal's judicial work was divided into two major types of conflicts, which followed different procedures. Executive commercial affairs were dealt with according to a highly formal process (almost like that of a standard tribunal, except for an initial mediation session and a little more flexibility in some procedural aspects), with written demands, promissory notes as evidence, provisional embargos, the intervention of lawyers against indigenous people, and so on. Conflicts of family law were adjudicated with greater informality and followed a conciliatory logic, similar to the procedures adopted by *tenencia* judges among the Purépecha. This involved long discussions, sometimes in the presence of relatives of the parties to a conflict, with reflections on the "good order" of the community.

Disputes about commercial issues were predominantly staged by savings banks operating in the region against Purépecha debtors. To be more precise, 48 out of 66 cases were promoted by the same savings bank owner. Family matters, by contrast, were brought forward by members of a community against another member of that—or another Purépecha—community.

Michoacán's Purépecha communities were unevenly affected by the Purépecha communal tribunal's work. The court was a significant presence for communities belonging to the municipality of Uruapan while in the communities belonging to other municipalities its presence was scant or even nonexistent. This assertion is supported by the fact that 62 of the 96 cases reviewed by the Purépecha communal tribunal between 2007 and 2009 concentrated on seven Purépecha communities belonging to the municipality of Uruapan: the community of San Lorenzo held 47 of these trials, for example. Following in number were communities of the nearby municipality of Nahuatzen, but on a much smaller scale (only 16 cases; see Fig. 2).

The two cases resolved by the Purépecha communal tribunal, which I focus on below, exemplify the practices of, and the cases heard by, this tribunal. Nevertheless, this does not imply that conflicts were always resolved in the same way. The court's proceedings differed according to the composition of the tribunal's staff, their relationship with the authorities of the Purépecha communities, and their relationship with the STJEM authorities.⁶ The first case was classified as a commercial matter and the second as a family affair.

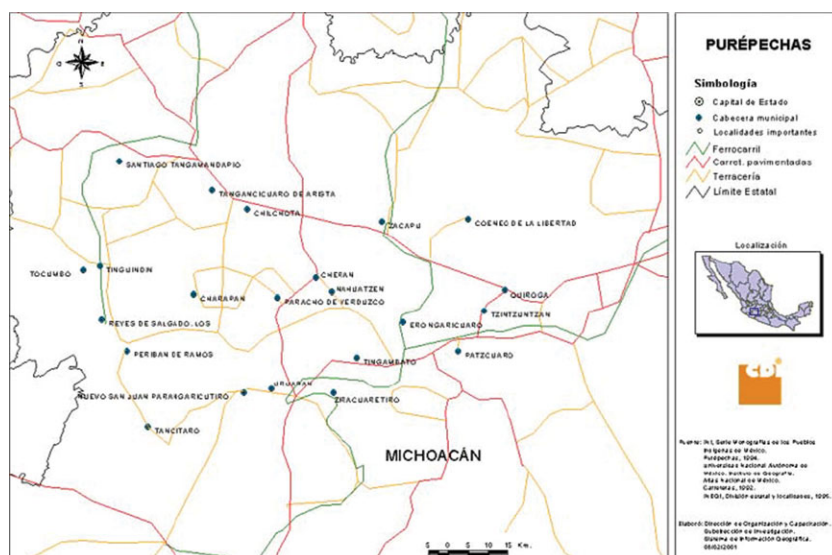


Figure 2 Municipalities in Michoacán with greater Purépecha population.⁷

Case 1

This case corresponds to a commercial matter initiated by the Purépecha savings bank against an indigenous person from San Lorenzo. The trial began with the presentation of a written commercial charge, formulated in technical terms, by the lawyer for the savings bank. The charge asked for the payment of the main debt of \$9,200 (all amounts in Mexican pesos),⁸ plus \$13,800 of unpaid interest over a 15-month period, as well as the payment of the trial costs. The written charge was accompanied by a promissory note signed by the defendant, as is common in this kind of trial in an ordinary STJEM tribunal.

Subsequently, the tribunal accepted the case and summoned the defendant to attend a conciliation hearing. As the accused did not attend the hearing, the tribunal proceeded with a precautionary embargo.⁹

To issue a provisional embargo, the tribunal's staff, and the lawyer for the savings bank, with his intern, met in the main square of the community of San Lorenzo. It should be noted that only the Purépecha lawyer, who acted as the tribunal's clerk, should carry out this hearing; however, as he was new to the tribunal, the rest of the tribunal's staff (judge and secretary) also attended.

They all moved from the town square to the defendant's residence. On arriving at the woman's humble home, a brick house under construction, they knocked on the door. The defendant came to the door very quickly and started speaking in Purépecha with the clerk of the tribunal and the judge. They explained why

they were there and what procedure would be followed. I was told that the debtor acknowledged the debt, but said that she had no money with which to pay it, and that she had already explained her personal situation to the lawyer: her husband was in bed because of a brain tumor, and she looked after him and paid for his medication; she and her husband depended on *desyervando* (weeding) work in avocado orchards.

At first she would not let us in her house, but finally she was convinced by the members of the tribunal. Once inside, it was noted that indeed the debtor did not have any goods to cover the principal amount of the debt, much less the interest payments. By then the defendant had already agreed to go to the communal tribunal for a conciliation hearing; however, when the lawyer realized that the woman had no goods of value he began to threaten her, saying that he “would proceed under criminal law”: in other words, he would seek her imprisonment. The secretary then told the Purépecha clerk to give her the writ of notification to complete. The clerk handed the writ to her and she began to fill it out while listening to the savings bank’s lawyer, who told her what to write, including elements that were not explicitly accepted by the debtor. The clerk complained about the interference of the lawyer in filling out the writ, but the secretary replied that those were things he should have told the debtor previously. Faced with this response the clerk stopped talking, feeling discredited by his lack of knowledge of the phases and formalities of such legal proceedings.

At one point, the lawyer for the savings bank asked the tribunal staff to let him identify the goods for the precautionary embargo, and asked to enter the debtor’s room to see if there was anything of value. The debtor and her sister, who entered the scene at some point, agreed to let them enter the room, and even joked that he could take “the figure of the baby Jesus they had there,” saying that it was the only thing of value she had. When they had all entered the room, which was about four by four meters, they realized that there was some property there, including a bed, a wardrobe, a television, a nonfunctioning radio, and a playstation, as well as items such as the baby Jesus figure and some boxes. There were also seven *naguas* (Purépecha traditional skirts) and their aprons, hung on the wall, and an old sewing machine. The lawyer pointed out the television, playstation, and seven *naguas* as assets to guarantee the payment, and declared his intern to be the trustee (the person who temporarily holds the property for the benefit of another). Apparently he did not see the sewing machine, which was partly covered by some folders and the bedroom door. It was agreed between the parties that the goods would not be removed from the house, and finally it was also agreed that the debtor would go to the tribunal for the settlement hearing.

At the end of the proceedings, a disagreement arose among the tribunal staff because the Purépecha clerk protested that the obviously impoverished debtor was

being treated in an overtly abusive manner. However, the secretary and the judge asked him to calm down, maintaining they could not act as advocates for anyone, but instead should remain impartial and neutral.

The settlement hearing was scheduled almost a week after the precautionary embargo at 11 a.m. in the communal tribunal. The defendant arrived half an hour early and waited there for the lawyer to arrive, who did so with his intern five minutes before 11 a.m. In less than five minutes the hearing began.

The first to speak was the debtor, who did so in Purépecha and addressed the judge and the clerk who also spoke Purépecha. The judge noted that the defendant had failed to answer the lawyer's demand because she could not read or write. The Secretary then read aloud the demand made by the lawyer for the savings bank in Spanish. After the reading of the demand, both Purépecha officials began to explain the contents of the charge to the defendant in her own language.

Upon hearing of the lawyer's accusations relating to a debt amounting to \$24,000, the defendant addressed herself again to the judge and the clerk, but this time in Spanish, stating that she had a question for the lawyer. She wanted him to tell them whether she had paid anything at all. The lawyer, somewhat surprised, tried to respond as firmly as possible and indicated that he believed he remembered that the debtor had made a payment once in the amount of \$400. At that moment, the debtor gave the judge three receipts of payment for the amount of \$400 each; a sheet where partial payments were registered without referring to the amount or the day; as well as a new invitation, of recent date, from the Purépecha savings bank for her to request another loan. Presented with these documents, the lawyer said he recognized the payments because he had handled those receipts himself.

At that moment the clerk intervened and asked the lawyer, "What about the other document? Did the defendant make that up?"—referring to the sheet on which the partial payments were registered. The lawyer said that this was a unilateral document, which he did not recognize; at that time he had not taken the case. The judge asked the lawyer what his offer was for the debtor, to which he replied that if she paid \$5,500 the debt would be covered. The defendant agreed and it was settled that she would make two payments over the course of the next two months.

This hearing was one of the shortest I witnessed during my fieldwork, lasting just half an hour, but the preparation of the record was delayed by another half an hour. During that time, the lawyer and his intern went away to check other issues in neighboring tribunals. On their return, the record was read in Spanish, as usual, and was drafted in formal terms, like all other documents of this kind. It gave an account of the agreement that had been reached, but failed to mention anything about the lawyer's questionable attitude. In addition, the resolution only mentioned the three receipts of payment but any reference to the payments list elaborated by the debtor herself was omitted from the records.

At the end of the hearing, the tribunal staff had another disagreement, because the clerk criticized the attitude of the lawyer and the inactivity of the other two members of the tribunal, while they exhorted him to behave like an officer of the tribunal and not as the debtor's advocate.

The case ended with the payment of the agreed amount, although with a delay of some days and the issue of two warnings by the tribunal; an additional fine of \$750 was imposed after the defendant was late with the second payment.

It is clear in this case that neither community members nor their authorities have benefited from the tribunal's presence. On the contrary, an actor external to the communities, the Purépecha savings bank, took advantage of the procedures of the communal tribunal in order to achieve its goals—which could have been much more difficult to achieve before a “nonindigenous” tribunal. Moreover, there was little evidence of those elements typically guaranteed in instances of indigenous justice among Purépechas, such as the *tenencia* judges. A formal logic and state legal discourse was privileged (albeit with disputes among the staff of the tribunal) and there was a focus on the legal security of private property and loans. These elements were privileged over and above considerations of harmony in the community, which issues are often the focus of the deliberations of *tenencia* judges in such conflicts.

Case 2

The second case involved a family conflict concerning a couple from the community of San Lorenzo. The process began with the appearance of the husband at the tribunal, where he asked the tribunal to summon his wife in order to settle a disagreement between them. He presented both of their certificates of origin from the community, as well as their marriage certificate from the registry office.

The staff of the communal tribunal decided to accept the case and summoned the wife to appear before them to resolve the conflict. At first, the wife did not heed the summons; she only acceded to attend following the threat of a fine of \$259 if she failed to appear. The conciliation was attended by the wife, her daughter, and her husband. The problem was that the husband had left for the United States a year after the couple's child was born. The wife was left alone and, apparently, had been unfaithful to her husband at least once during that period. There was some discussion of the existence of “an act” or formal documentation of an event, supposedly made by the head of the *tenencia*, where a witness claimed to have found the woman half-naked and to have seen a man come out of her house.

Upon returning from the United States, the husband learned of this event and attacked his wife, which is why she went to live in her brother's house. On

another occasion, the husband appeared inebriated at the house of his brother-in-law and started to hit his wife again. This time he also damaged his relative's home. All this information was relayed in Purépecha to the tribunal. However, as the secretary had not mastered this language, the other members of the tribunal had to discreetly translate the testimonies to her so that she would understand.

The particularity of this hearing was that the Purépecha clerk was not present at the proceedings; rather, he was looking after the couple's daughter, as tribunal officials agreed that it would be harmful for her to listen to her parents' conflict.

At the hearing, both parties hurled accusations, mostly without looking at each other. The wife said her husband was a drunkard and hit her, and he replied that she was irresponsible. Interestingly enough, the issue of infidelity was not mentioned during the hearing; instead, the spouses gave their respective versions of this matter separately and before the hearing to the judge.

During the hearing, the husband asked his wife to accompany him wherever he went on business because he planned to engage in a commercial undertaking. He demanded that she should not spend all day at her daughter's school, and also that she reduce the visits to her family to three hours on weekends, since, according to him, she spent all her time there.

For her part, initially, the wife asked her partner to apologize to her brother for the damage he had caused to his house, and to thank him for the time he had looked after her there. At first the husband refused to do so; later, he accepted this request upon condition that his wife's brother would apologize to his nephew for a fight they had had.

The conflict then focused on the husband's request that his wife should not spend all day at her daughter's school. The wife claimed it was necessary because her daughter was sickly. Here, the issue stalled because, according to what the husband had told the tribunal staff, his wife had an affair with one of the teachers at the school.

The hearing ended after three hours and 40 minutes, without a definitive agreement, because the wife asked for more time to think about her decision. Another hearing was scheduled for a week later. The settlement hearing itself lasted three hours and 20 minutes, but the drafting of the record of the hearing, which had to be read aloud and signed by the parties, took another 20 minutes. As often happened, the record did not include a lot of information about the conflict; in fact, the text of the record remained limited, in general, to the "agreement" reached by the parties, that is, that they would take a few days to think about the matter.

The second settlement hearing was to be held at 11 a.m. The husband arrived on time, but not the wife. Some 25 minutes after the appointed time both the

husband and the tribunal staff thought that the wife would not attend—in fact, they were about to draft the record to register her absence when she appeared. She was accompanied again by her daughter, but also by another woman with a child.

Once again the hearing was held in Purépecha, with the intervention of the two Purépecha tribunal officials and the married couple. The conciliation focused on hypothetical scenarios of what the husband would do if the wife came back, and vice versa. For example, if the husband began working in trade and had to leave their community, would he leave her enough money for her daughter? And so on. The judge and the clerk answered that those were marriage obligations that could not be forced or compelled. Their interventions consisted of giving advice about what a good marriage should be in the Purépecha communities, and that the couple should take this into account for their family's sake. The content of the dialogue at the hearing circled around the same issues, with similar responses; it was an exercise in patience, and of repeatedly outlining the same arguments.

The actual hearing ended after an hour and 15 minutes, with the agreement of the parties to return to their life as a married couple. After the hearing, the parties remained in the tribunal offices because the secretary had to write the records where, finally, their decision to live together was established. The drafting of the document in the technical language of state law took about half an hour and, at the end, the record stated that the process had concluded with the reconciliation of the parties; this was read aloud in Spanish.

One week later, the husband returned to the tribunal with the news that his wife had not returned to him, and that he had already called her brother's house where she lived. His brother-in-law had warned him that his sister would not return to him. The man wanted the tribunal to issue a document stating that his wife had not complied with the agreement—a request that was denied by means of the argument that legal proceedings had been completed and such a document could not be issued.

There are substantial differences between case 2 and case 1. This time both the judge and the clerk constantly appealed to family patterns usually reproduced in Purépecha communities. Thus, it attempted to safeguard a value considered as such inside Purépecha communities. The means used were similar to those typically used by *tenencia* judges, such as the resort to lay legal discourse and indigenous language. However, these elements were always accompanied by a formality closer to state justice and, most importantly, they were beyond the control and scrutiny of indigenous communities.

As can be seen, then, there are significant differences, but also many similarities, between the two cases presented. The cases varied with regard to the kind of actors who participated, preponderance of one kind of legal discourse employed

during the process, degree of formality of the proceedings, preeminence in the protection of certain values over others, and degree to which mechanisms of coercion were employed. The most important similarities between the two cases, on the other hand, resided in the use of the Purépecha language, some flexibility in the proceedings (when compared with ordinary STJEM tribunals and not with indigenous justice in the communities), and the logic of conciliation.

These contrasting elements indicate the heterogeneity and complexity of the judicial production of the Purépecha communal tribunal during the period studied. The tribunal's staff acted differently depending on the subject matter. However, this analysis of the two cases also affirms the impressions gained from the first part of this study, namely, that the establishment of the communal tribunal did not empower Purépecha communities or authorities.

An additional aspect that must be considered here is that in both cases (as with most of the cases that were ruled on during the period of the research) the logic of the justice of the *tenencia* judges—that conflicts within the community should be decided mainly according to indigenous communitarian rules—was disrupted, despite the fact that they were judged in the Purépecha language and by some members of the community. This fact is central to understanding the new configuration of indigenous justice in Michoacán, driven by the state, which is no longer settled through relatively stable entities and practices centered on the community, but in the context of a new and broader legibility performed by the state (Scott 1998) centered on the category of indigenous people.

Conclusion

This article has discussed the formalization of “indigenous” justice in Michoacán, which has not resulted in greater empowerment for indigenous communities. However, from a different angle, one might argue that indigenous justices, or versions of them, have gained visibility and legitimacy within the scope of the STJEM through the implementation of communal tribunals. In the same vein, it would be possible to conceive of the Purépecha communal tribunal as a new field to be negotiated for Michoacán's indigenous communities. And one might also speculate that the inclusion of the Purépecha communal tribunal in the legal system could potentially lead to greater tolerance and use of indigenous justice and languages within the STJEM.

These arguments are not sufficient, however, to override the analysis above that points to the lack of empowerment the Purépecha have experienced within the current legal system. On the contrary, they indicate the limits, ambiguity, and complexity of the reform. In fact, the measures under which the communal tribunals were created could be claimed to be an “indigenous reform,” despite

being a legal framework that excludes indigenous communities and peoples in Michoacán from its formulation and implementation.

My argument is further reinforced by more recent acts of resistance against the attempt to eliminate *tenencia* judges. Although all the cases heard by the communal tribunal in Uruapan originated in only three nearby Purépecha communities (indicating its marginality to Purépecha communal life), in April 2013 STJEM authorities instructed their judges to go to the *tenencias*—where lay judges continued to mediate conflicts (despite having been effectively excluded by the new legal arrangements)—to collect the old official seal. This mandate provoked the mobilization of more than a dozen Purépecha communities, demanding that the STJEM respect and recognize the *tenencia* judges, as they considered them to be part of their culture and tradition. The result of this mobilization is yet to be seen, but it is a sign of the limited acceptance of the Purépecha communal tribunal among the communities of this indigenous people.

The experience in Michoacán clearly shows the shifting political balance throughout this judicial reform process. The creation of new indigenous tribunals by the Mexican state, and in some cases the suppression of older forms of indigenous justice, illustrates the challenges and the difficulties of incorporating diverse forms of indigenous justice within a neoliberal legal and institutional agenda.

Notes

¹Unlike in some common law traditions, justice here does not make reference to judges or magistrates, rather it refers to the justice systems performed by or related to indigenous peoples in Mexico. This article aims to a comparison and balance between at least two different indigenous justices experiences: that of *tenencia* judges and that of communal tribunals that were instrumentalized by the state of Michoacán in the latest reform to its judiciary.

²Quintana Roo was the first state to create this kind of court in 1997, under the designation “indigenous tribunal” (Buenrostro Alba 2012). One year later, analogous figures were created in Chiapas—called “tribunals of peace and indigenous reconciliation” (Adonon 2006).

³For example, only three *tenencia* judges studied in Purépecha communities (Capacuaro, Co-machuen, Cucuchucho, Pamatacuaro, Poucuaro, San Andrés Tziron-daro, San Jerónimo Purechecuario, Santa Ana Zirosto, Tacuro, and Urapicho) and handled matters of “peace and order of the town” that could be considered criminal cases. In most communities such matters came under the jurisdiction of the chief of the *tenencia*, the other authority with whom the *tenencia* judges shared power and competed in functions. In cases that could be roughly classified as “family” issues, the resolution would also be shared between the *tenencia* judges and the chief of the *tenencia*. Such conflicts involved the legal union of couples, usually of young people, in the communities. Debt-related conflicts were placed in the same category, and could be solved by either of these authorities. On the other hand, conflicts over the limits of land borders within the community and problems arising from inheritance matters were most often shared by the *tenencia* judges in the period of my research. To a lesser extent, I was also able to see how, depending on each community, the *tenencia* judges exercised responsibilities beyond the remit of the judiciary, such as religious responsibilities linked directly to the system of charges, as a structure of political responsibilities, of communal governance (Aragón 2013).

⁴Michoacán has indigenous peoples considered to be originary: the Purépecha (which is the largest), the Nahua, the Mazahua, and the Otomí. Aside from these, many indigenous persons migrated to Michoacán seeking employment. According to the population census of the National Institute of Statistics, Geography and Informatics (Instituto Nacional de Estadística, Geografía e Informática, INEGI) only 3.5 percent of Michoacán's population is indigenous. However, this number must be regarded with some scepticism because it is based on indigenous language speakers as a criterion to define ethnicity. See: <http://cuentame.inegi.org.mx/monografias/informacion/mich/poblacion/diversidad.aspx?tema=me&e=16>, accessed June 5, 2014.

⁵The map was taken from the webpage of the INEGI, available at: http://cuentame.inegi.org.mx/mapas/pdf/entidades/div_municipal/michmpioscolor.pdf, accessed June 5, 2014.

⁶For example, in the first year in which the communal tribunals were in operation, indigenous officials tried to establish a closer relationship to the communities by inviting them to give an opinion, or even help to resolve a conflict. However, they were soon reprimanded by STJSM authorities and began working in a manner increasingly distanced from the community authorities and closer to the dictates of the STJSM. In the case of the communal tribunal of Coahuayana, the relationship between its workers and the STJEM authorities was different, due to the court's marginality (the communal tribunal in Coahuayana is considered to be the starting point for a judicial career, unlike the communal tribunal in Uruapan, which is the second most relevant in Michoacán).

⁷The map was taken from the webpage of the INEGI, available at: http://www.cdi.gob.mx/index.php?option=com_content&task=view&id=604&Itemid=62, accessed June 5, 2014.

⁸In 2009, one U.S. dollar was equivalent to about 13.5 Mexican pesos.

⁹In a precautionary embargo, some of the belongings of the person are taken to guarantee a payment, to be returned if the trial favors the person or when the payment is made.

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