Legal pluralism in Bolivia:
from the Guaraní people’s perspective

Indigenous justice recognizes that communities have their own organizational structures and allows them to execute their own norms under the guarantee of the nation-state. In this sense, the law promotes harmonious social coexistence and cooperation between ordinary, Indigenous and agro-environmental justice. Despite the existence of a broad regulatory framework that recognizes the plurality of jurisdictions, there are still many obstacles to the exercise of and respect for Indigenous law. It is necessary that Indigenous peoples strengthen their organizations, know their norms and teach the importance of these norms to the new generations.

By Mónica Guzmán and Bruno Elías Domínguez - November 1st 2022

In the Guaraní nation there are norms, principles, values and specific ways of proceeding. Conflicts break the harmony of the community and generate instability. When someone commits a fault for the first time, whether for theft or internal conflicts, they may receive a warning as a coercive measure. These cases must be resolved in an assembly together with the leaders and an adequate solution must be provided so that there is no unrest within the community.

Coercive measures include community sanctions, punishments, apprenticeships and community work. The application of punishments is decided in a large assembly through consensus, i.e., everyone must be in agreement. If they do not manage to resolve the conflict by themselves, the assembly may lose order and cause chaos in the social fabric. In these cases, which often occur, the ordinary justice system intervenes to provide a solution to the community's problems.

Indigenous justice from the other eyes

When speaking of Indigenous justice, it is necessary to differentiate between justice for Indigenous peoples and justice of Indigenous peoples. When we speak of justice for indigenous
peoples, we are referring to the process through which the nation-state seeks to vindicate and remedy the historical events in which Indigenous peoples were subjected, harmed and, in many cases, massacred. This type of process seeks to respect recognized rights: to promote their self-determination, autonomy and good governance; to revalue cultural identities; to support the care of territories and their natural resources; and to promote their economic development.

The notion of justice for Indigenous peoples is worked from a critical and holistic position: economic justice, environmental justice, cultural justice, social justice, political justice and emotional justice. These types of justice are interrelated. As stated in the book *Justicia ambiental y autonomía indígena de base territorial en Bolívia* (Environmental justice and territorially based Indigenous autonomy):"In Latin America, the struggles for environmental justice are largely linked to demands for autonomy and self-determination of Indigenous peoples, who have been carving an original path towards sustainability based on the construction of new environmental, cultural and collective rights in the region".

On the other hand, justice of Indigenous peoples implies the recognition that the communities have their own organizational structures: they respond to a socio-culturally constructed cosmovision, configure the private and public life of their peoples, and generate their own normative systems and conflict resolution mechanisms. In this way, indigenous jurisdiction allows peoples to freely execute their particular mechanisms and norms under the guarantee of the nation-state.

In this framework, we can affirm that the exercise of their own law and the application of their own rules of social control are another form of exercising autonomy, that is, the right to self-determination: *"In countries where the recognition of cultural difference has been made effective in legal frameworks, the recognition of Indigenous legal systems with their own judicial authorities, institutions, rules, procedures and instances has been made explicit".*

**Indigenous jurisdiction in Bolivia**

When the State recognizes that each Indigenous people has its own worldviews, notions of justice, organizational structures and normative systems, we are talking about legal pluralism. The *Protocol of Intercultural Performance of Judges in the Framework of Equal Legal Pluralism*
states: "It is agreed upon from different theoretical perspectives that legal pluralism constitutes an opposition to legal monism, that is, that to one State corresponds only one right and vice versa, and that it supposes the idea of the Nation-State – implying a single people, with a single culture, a single language, a single religion and a single normative system".

Thus, *legal pluralism* makes it possible to recognize the multiplicity of legal expressions or practices in the same space and the hierarchical equality of the different jurisdictions, which must relate and dialogue with each other. As stated by specialists Mercedes Nostas Ardaya and Carmen Elena Sanabria: "Therefore, the decisions of the Indigenous authorities have a coercive character, must be compulsorily complied with and obeyed by individuals and public authorities; and their decisions are unreviewable".

At the national level, the following provisions of national legislation recognize Indigenous justice systems:

- Political Constitution of the Plurinational State of Bolivia.
- Law No. 025 of the Judicial Branch of 2010.
- Law No. 463 of the Plurinational Public Defense Service.
- General Law No. 269 on Linguistic Rights and Policies.

In our country, the Indigenous peasant communities and organizations have ample experience in applying their justice to solve problems arising between members of their communities.
However, despite the existence of a regulatory and institutional framework that recognizes the plurality of jurisdictions in Bolivia, there are still many obstacles and difficulties for the exercise of Indigenous law and, in general, to achieve justice for Indigenous people.

**Jurisdiction and cooperation between Indigenous and ordinary justice systems**

*Law No. 073 of Jurisdictional Demarcation* is of great relevance since it determines the areas of jurisdiction of the Indigenous native peasant jurisdiction in Bolivia, in relation to the ordinary jurisdiction and the agro-environmental jurisdiction. It also determines the cooperation and coordination mechanisms between the different jurisdictions. A key feature of the law is the *intercultural interpretation*, that is, the consideration of the context, identity, practices and cultural factors of the environment.

In the first place, Law No. 073 of Jurisdictional Demarcation determines the area in which the Indigenous justice is in force, that is, the territory of the Indigenous peasant community where the events or legal relations take place. Likewise, it is established that the original Indigenous peasant jurisdiction is exercised in the areas of personal, material and territorial validity, when they concur simultaneously.

In addition, the law establishes that the decisions of the authorities of the Indigenous peasant jurisdiction are of obligatory compliance and will be obeyed by all persons and authorities, at the same time that they are unreviewable by the ordinary, agro-environmental and other legally recognized jurisdictions. However, there are still difficulties within the ordinary justice system: for example, only some courts take into account the authorities as interpreters or translators.

Within the framework of legal pluralism, the law establishes that the different jurisdictions must agree on "means and efforts to achieve harmonious social coexistence". Cooperation may be through systems of transparent access to information on facts and background of persons, spaces for dialogue on the application of human rights in resolutions, exchange of experiences on methods or other coordination mechanisms, which may emerge as a function of the application of this law.
Progress and setbacks of Indigenous justice in Bolivia

Thinking about progress forces us to go beyond the discursive and rhetorical. It is necessary to be critical and systematic since it is a very broad topic.

In relation to the organizational capacity of the Indigenous communities, many have managed to consolidate their communal organizations and affiliate with grassroots organizations. This is very important for the exercise of their own jurisdiction because the greater the degree of social integration, the greater the probability of coordinating the fulfillment of communal norms and guaranteeing internal wellbeing.

However, there have also been setbacks. On the one hand, political parties have interfered in community organizations and have contaminated them with foreign interests, to the point of generating confrontations between brothers and sisters. In many cases, the leadership has abandoned its bases, at the same time that small structures have been weakened. At the level of justice, the leaders do not know what is happening in the communities or why there are people who have been sued.

At the same time, it is important to analyze what is happening with the construction of communal norms. Many communities have consolidated their own Organic Statutes and communal norms. At the same time, many have their norms as a mere bureaucratic requirement: the norms are neither known nor complied with, there are low degrees of social coercion and the authorities are not respected. In this context, it is necessary to strengthen the organizational sphere, to know our rules, to respect them and to teach the new generations about their importance. Our norms should respond to our worldview, not to political interests.

Finally, although there are norms within the community and even in the Political Constitution of the State, many are not complied with or exercised. There is a fear that if action is taken, the community may see it as wrong or the state may alter the norms.

Cultural identity, ignorance and environmental concerns

Both international agreements and the Political Constitution of the State establish respect for cultural identity. However, there is still discrimination and prejudice by public officials towards
Indigenous peoples. In the ordinary jurisdiction, there is a lack of knowledge of the Indigenous reality, the diverse cultures and their cosmovisions.

Another important point is related to their own practices and procedures. On the one hand, Law No. 031 Framework of Autonomies and Decentralization "Andrés Ibáñez" and the Law of Demarcation allow the communities to exercise their notion of justice under their own practices and procedures. However, ordinary justice officials do not know the practices and procedures of the Indigenous peoples. In turn, there are no trained professionals and the cultural interpretation of the factual circumstances is difficult. For this reason, it is necessary to have cultural expert witnesses.

From the environmental point of view, many communities have managed to advance and establish mechanisms to protect their territories and natural resources. On the other hand, governments do not support the protection of the territories from different threats, as is the case with the fires in the Chiquitania. Finally, management plans for the territories and self-management are not efficiently implemented.

Without nature, without territories and natural resources, there is no Indigenous justice. At the same time, there is still machismo towards women in the communities themselves. Without respect for women's rights, there is no justice either.

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