

SYMPOSIUM ON THE ANTHROPOLOGY OF INTERNATIONAL LAW

ANTHROPOLOGICAL CONTRIBUTIONS TO INTERNATIONAL LEGAL APPROACHES TO VIOLENCE AGAINST INDIGENOUS WOMEN

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Since the early 1990s, the law and development paradigm of “violence against women” (VAW) has framed gender-based violence against girls and women, especially intimate partner violence, as a grave violation of women’s fundamental human rights and a major public health problem demanding concerted state action.¹ Although women of all ages, social classes, races, religions, and ethnicities suffer gender-based violence, international law recognizes that VAW affecting indigenous women is compounded by historical and ongoing racial discrimination.² This essay signals the contributions of indigenous women and allied anthropologists in Latin America who draw on decolonial, intersectional, and locally-grounded feminist perspectives to consider the challenges of addressing gender-based VAW. Working in collaboration with different women’s collectives and organizational processes, anthropologists have conceptualized and documented the specific, myriad forms of violence affecting indigenous women. In their efforts to understand the origins, nature, and effects of violence, and to envisage possible remedies, they privilege indigenous women’s voices, standpoints, and demands for collective self-determination. In this way they have contributed to international legal debates on VAW by highlighting the shortcomings and limitations of universal constructs of women and gender violence.

Indigenous Women’s Reconceptualization of VAW

Transnational feminist struggles for women’s rights to live without violence have built on recommendations in the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) to eliminate all forms of discrimination against women and girls by securing regional conventions that define gender-based VAW as a human rights violation. According to the interpretation of courts and other expert bodies, states are required to not only ensure that officials do not engage in gender-based VAW, but also to adopt appropriate measures to prevent VAW from being carried out by private actors; investigate and punish such acts; and provide support and protection for

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¹ [THE LEGAL PROTECTION OF WOMEN FROM VIOLENCE: NORMATIVE GAPS IN INTERNATIONAL LAW](#) (Rashida Manjoo & Jackie Jones eds., 2019); SARA DE VIDO, [VIOLENCE AGAINST WOMEN’S HEALTH IN INTERNATIONAL LAW](#) (2020).

² The UN Declaration on the Rights of Indigenous Peoples and the OAS American Declaration on the Rights of Indigenous Peoples state that indigenous women are affected by different forms of discrimination and poverty that increase their vulnerability to all forms of violence. These instruments call on states, together with indigenous peoples, to prevent and eradicate all forms of violence and discrimination against indigenous women and girls as part of their commitments to respecting the collective rights of indigenous peoples.

survivors.³ In Latin America, new laws passed in the 2000s define different forms of VAW, including economic, physical, psychological, sexual and intrafamilial violence, and femicide (gender-motivated murder of women and girls).⁴ Yet although these laws stipulate tough prison sentences for individual perpetrators and introduce important institutional innovations such as specialized courts, systemic impunity combined with the continued normalization of violence against women means that a massive implementation gap remains between VAW laws on-the-books and VAW prevention in practice.

Indigenous women's organizations in Latin America have pointed to the racially unequal impacts of this implementation gap. They also question dominant legal conceptions of VAW as individual, person-on-person patriarchal violence. Echoing black feminists' intersectional theory,⁵ they argue that gender inequalities are only one of multiple power relationships contributing to the oppression of indigenous women and women of color, who suffer not only gender violence but also extreme and structural forms of harm that are a result of ongoing colonial histories of systematic dispossession, discrimination, and exclusion.⁶

Territorial dispossession over more than five centuries, combined with the imposition of patriarchal forms of land distribution and socio-political organization, has made women poorer and more vulnerable to exploitation and violence by state and non-state actors. During the recent armed conflicts in Guatemala, Peru, and Colombia, indigenous peoples suffered grave and disproportionate human rights violations, including forced displacement, massacres, forced disappearances, and torture. Indigenous women were subjected to extreme violence, including gang rape and sexual slavery. Across the continent, extractivist industries continue to generate environmental contamination and destruction of lands and water resources that disproportionately affect the health and security of indigenous as well as afro-descendant and campesino peoples. In addition to the fact that women shoulder most of the responsibility for healthcare (and thus the burdens of environmental damage), socio-environmental conflicts over extractive industries have often involved the gendered targeting of women community activists who are subjected to criminalization, rape, sexual harassment, forced displacement, torture, and murder.⁷

Anthropologists have documented these phenomena, and the ways in which indigenous, afro-descendant, and campesino women are more vulnerable to domestic violence, forced disappearance, human trafficking, and femicide. Drawing on a range of decolonial perspectives and community-based feminisms, they have theorized the links between violence against indigenous peoples' territories and bodies, and the gendered dimensions of these processes.⁸ These perspectives insist that international and domestic policies towards VAW be historicized

³ INT'L WOMEN'S RIGHTS ACTION WATCH ASIA PACIFIC, [GENDER-BASED VIOLENCE AGAINST WOMEN AND INTERNATIONAL HUMAN RIGHTS LAW: OPTIONS FOR STRENGTHENING THE INTERNATIONAL FRAMEWORK](#) 4.

⁴ Feminists, surviving victims, and academics across Latin America and the Caribbean have conceptualized and debated femicide/femicide, and produced comparative evidence of the phenomenon, justifying its typification as a crime with reference to international human rights law.

⁵ Kimberle Crenshaw, *Mapping the Margins: Intersectionality, Identity Politics and Violence Against Women of Color*, 43 STAN. L. REV. 1241 (1991).

⁶ Enlace Continental de Mujeres Indígenas de las Américas, [Violencias y Mujeres Indígenas](#) (2013); Mairin Iwanka Raya, [Indigenous Women Stand Against Violence: A Companion Report to the United Nations Secretary General's Study on Violence Against Women](#) (2006).

⁷ [UN Report of the Special Rapporteur on the Situation of Human Rights Defenders](#), UN Doc. A/71/281 (2016); Daysi Flores & Patricia Ardon, *Berta Lives! COPINH Continues: A Legacy for Life and the Earth*, SUR INT'L J. HUM. RTS. (2017).

⁸ Dolores Figueroa Romero & Natalia De Marinis, [Perspectivas Interseccionales y Comparadas de la \(In\)Justicia de Género y Violencia Extrema contra Mujeres Afro e Indígenas](#), 4 REVISTA SOBRE ACCESO A JUSTIÇA E DIREITOS NAS AMÉRICAS BRASÍLIA (2020); Paulina García Moral, [The Murders of Indigenous Women in Canada as Femicide: Towards a Decolonial Intersectional Reconceptualization of Femicide](#), 43 SIGNS: J. WOMEN IN CULTURE & SOC'Y 929 (2018); Lorena Cabnal, *El Relato de las Violencias Desde mi Cuerpo-Territorio*, in EN TIEMPOS DE MUERTE: CUERPOS, REBELDIAS, RESISTENCIAS (Xochitl Leyva & Rosalba Icaza eds., 2019).

and contextualized so that structural, normalized forms of violence are not eclipsed by an emphasis on the physical, visible manifestations of gendered violence.⁹ They also emphasize the need to take situated ontologies, epistemologies, and standpoints into account when deliberating preventative measures and reparations.¹⁰

Anthropological Documentation of Legal Responses to VAW

Ethnographic research has critically interrogated international law and state justice systems that seek to address different forms of VAW. A significant influence on this diverse body of research is anthropologist Sally Merry's foundational work analyzing the myriad ways in which international VAW norms are taken up and deployed in different local contexts and struggles across the world, a phenomenon she refers to as "vernacularization."¹¹ Merry underlines the strategic and contested uses of human rights norms by different state and non-state actors and points to the often ambiguous and unanticipated consequences of these complex transnational processes of translation and negotiation.¹² Anthropologists have also highlighted the racialized and gendered forms of violence at play in criminal and transitional justice proceedings, pointing to the specific complexities involved in juridified translations and negotiations involving indigenous peoples. For example, Maria Luz García's research in the context of the historic genocide trial in Guatemala reveals the "miscommunication" involved in courtroom translation of Ixil Maya survivors' testimonies, underlining the importance of language and the complexities of the "discursive expectations" that legal processes place on indigenous witnesses.¹³

Many significant anthropological contributions to debates on VAW focused on experiences of transitional justice, particularly those related to sexual violence, signal the effects of positionality, translation, and racialized, colonial hierarchies.¹⁴ For example, the Sepur Zarco trial in Guatemala set an international precedent as the first case where military officers were convicted of crimes against humanity in a domestic court, including the torture and sexual slavery of fifteen Maya Q'eqchi' women whose husbands were forcibly disappeared by the army during the counterinsurgency, following their claims for land rights.¹⁵ However, although the guilty verdict was celebrated within the domestic and international human rights communities—and by the survivors themselves—anthropologists directly allied with the survivors pointed to the ongoing tensions between penal and other, non-legal forms of justice.¹⁶ In a similar vein, Kimberly Theidon's research in Peru questions the extent to which formal legal processes can ever be expected to effect justice for sexual violence during armed conflict. She shows how although

⁹ Int'l Work Group for Indigenous Affairs, [Submission to the Committee on the Elimination of Discrimination Against Women](#) (2021).

¹⁰ Aura Cumes, *Colonialismo patriarcal y patriarcado colonial. Las violencias y despojos en las sociedades que nos forman*, in EN TIEMPOS DE MUERTE: CUERPOS, REBELDIAS, RESISTENCIAS (Xochitl Leyva & Rosalba Icaza eds., 2019); Emma Cervone & Cristina Cucuri, [Gender Inequality, Indigenous Justice and the Intercultural State in Chimborazo, Ecuador](#), in DEMANDING JUSTICE AND SECURITY: INDIGENOUS WOMEN AND LEGAL PLURALITIES IN LATIN AMERICA 120 (Rachel Sieder ed., 2017).

¹¹ SALLY ENGLE MERRY, [HUMAN RIGHTS AND GENDER VIOLENCE: TRANSLATING INTERNATIONAL LAW INTO LOCAL JUSTICE](#) (2006); *see also* Sally Engle Merry, [Transnational Human Rights and Local Activism: Mapping the Middle](#), 108 AM. ANTHROPOLOGIST 38 (2006).

¹² MERRY, *supra* note 11; Merry, *supra* note 11.

¹³ Maria Luz García, [Translated Justice? The Ixil Maya and the 2013 Trial of José Efraín Ríos Montt for Genocide in Guatemala](#), 121 AM. ANTHROPOLOGIST 311 (2019).

¹⁴ PASCHA BUENO-HANSEN, [FEMINIST AND HUMAN RIGHTS STRUGGLES IN PERU: DECOLONIZING TRANSITIONAL JUSTICE](#) (2015).

¹⁵ Brisna Caxaj Álvarez et al., [Changing The Face Of Justice: Keys to the Strategic Litigation of the Sepur Zarco Case](#) (2017); Jo Marie Burt & Paulo Estrada, [Court Ratifies Historic Sepur Zarco Sexual Violence Judgement](#), INT'L JUSTICE MONITOR (2017).

¹⁶ ALISON CROSBY & BRINTON LYKES, [BEYOND REPAIR? MAYAN WOMEN'S PROTAGONISM IN THE AFTERMATH OF GENOCIDAL HARM](#) (2019); Amandine Fulchiron, La "Ley de Mujeres": Amor, Poder Propio y Autoridad. Mujeres Sobrevivientes de Violación Sexual en Guerra Reinventan la Justicia desde el Cuerpo, la Vida y la Comunidad (unpublished Ph.D. thesis, Nat'l Autonomous Univ. Mexico, 2018).

indigenous victims of rape in Peru had supposedly “kept silent” during the hearings of the truth and reconciliation commission, they in fact engaged in social shaming of perpetrators and the communities who had failed to protect them through naming practices for children born of military rape.¹⁷

Beyond transitional justice settings, anthropologists have documented the systematic forms of institutional racism and gender discrimination that indigenous women face within ordinary justice systems. For example, indigenous and afro-descendant women’s collectives and anthropologists have engaged in collaborative research in Mexico to reveal the official underreporting of femicides. They interpret it as a consequence of “racialized geographies”—institutional racism which naturalizes violence against poor women of color in areas of the country severely affected by organized crime and impunity—and call for disaggregated data to develop more effective public policies.¹⁸ In related exercises of applied anthropology, anthropologists’ special expert reports in paradigmatic legal cases addressing state violations of human rights against indigenous women have underlined the impossibility of separating sexual from other structural forms of violence, analyzing how different forms of violence (historical, military, economic, political, cultural, sexual, etc.) are enacted on the bodies of indigenous women.¹⁹

Ethnographic research has also documented the ways in which indigenous women and men address gender-based violence through revitalized community-based justice systems and different kinds of healing processes.²⁰ Against universalist positions that condemn “customary law” as patriarchal and unable to provide justice for women suffering gender-based violence (or worse, racist, colonial readings of indigenous “culture” as inherently sexist), anthropologists have adopted a critical and nuanced approach towards indigenous legal systems. They recognize that patriarchal discrimination exists within some indigenous societies, reflecting continuums of colonial violence²¹ and the historical entanglement of state law and indigenous law. At the same time, they also emphasize the dynamic nature of indigenous law and analyze resources within indigenous traditions and histories that can contribute to greater gender justice and strengthen indigenous self-determination.²² Greater participation of women in community governance structures is a central factor driving change.

In response to such transformations on the ground and critiques framed by feminist anthropologists who challenge the racism and sexism of international efforts to reform “indigenous gender practices,”²³ international law has increasingly recognized the need to accept “customary law” as a social reality and to work with rather than against it to identify the most effective strategies to address violence against women at the community level. For example, a general recommendation made in 2015 by CEDAW’s monitoring committee refers to states’

¹⁷ Kimberly Theidon, *Hidden in Plain Sight. Children Born of Wartime Sexual Violence*, 56 CURRENT ANTHROPOLOGY 191 (2015).

¹⁸ Dolores Figueroa Romero & María Teresa Sierra Camacho, *Gender Alert Calls and Violence Against Indigenous Women: Intersectional Violence and Community Resistance in Guerrero*, 45 CAN. J. LATIN AM. & CARIBBEAN STUD. 26 (2020).

¹⁹ IRMA ALICIA VELÁSQUEZ NIMATUJ, “LA JUSTICIA NUNCA ESTUVO DE NUESTRO LADO”: PERITAJE CULTURAL SOBRE CONFLICTO ARMADO Y VIOLENCIA SEXUAL EN EL CASO SEPUR ZARCO, GUATEMALA (2019); Rosalba Aida Hernández Castillo & Héctor Ortiz Elizondo, *Violación de una Indígena Me’phaa por Miembros del Ejército Mexicano Presentado ante la Corte Interamericana de Derechos Humanos*, BOLETÍN COLEGIO DE ETNÓLOGOS Y ANTROPÓLOGOS SOCIALES 67 (2012).

²⁰ María Teresa Sierra, *Indigenous Women Fight for Justice: Gender Rights and Legal Pluralism in Mexico*, in GENDER JUSTICE AND LEGAL PLURALITIES, LATIN AMERICAN AND AFRICAN PERSPECTIVES 83 (Rachel Sieder & John McNeish eds., 2013); GRUPO DE MUJERES KAQLA. CAMINOS PARA LA PLENITUD DE LAS MUJERES MAYAS Y NUESTROS PUEBLOS. PROPUESTA METODOLÓGICA A PARTIR DE LA EXPERIENCIA DE LAS MUJERES MAYA KAQLA (2010).

²¹ Aura Cumes, *Sufrimos Vergüenza: Mujeres K’iche’ Frente a la Justicia Comunitaria*, 31 DESACATOS 99 (2009).

²² Emily Snyder et al., *Gender and Violence: Drawing on Indigenous Legal Resources*, 48 UBC L. REV. 593 (2015).

²³ Rahil Roodsaz & An Van Raemdonck, *The Traps of International Scripts: Making a Case for a Critical Anthropology of Gender and Sexuality in Development*, 16 SOC. INCLUSION 6 (2018).

obligations to ensure appropriate judicial and non-judicial means for women victims of violence to secure restitution, compensation, and rehabilitation, and affirms that women's access to justice includes "plural justice systems" or community or customary justice.²⁴ This shift towards greater acceptance within international law of the role indigenous justice systems can play in addressing VAW responds to the demands of indigenous women's organizations (such as the Enlace Continental de Mujeres Indígenas de las Américas and the Foro Internacional de Mujeres Indígenas) that criticize patriarchal power structures within indigenous communities and organizations while at the same time demanding recognition of indigenous peoples' collective rights, including respect for customary or ancestral forms of law which they are working to strengthen and transform.²⁵

In sum, perspectives on VAW and its prevention vary enormously according to context, cautioning against generalizations, universalisms, and essentializations. Indigenous and afro-descendant activists have deployed different cultural practices in the documentation of systematic violations perpetrated against peoples and their territories, and specifically gendered forms of harm, such as the sexual violence and torture of women. They underline the importance of collective memory and the reaffirmation of ancestral territories as a form of healing and resistance, while at the same time demanding the criminal prosecution of perpetrators by the state.²⁶ At the same time, some community-based activists also question whether incarceration and tough prison sentences are the best form of remedy for all forms of VAW, particularly those perpetrated by men within their families. In specific cases, communal authorities may opt for criminal proceedings against perpetrators, but in others they have drawn on their own worldviews and forms of spirituality to analyze causes and possible remedies for VAW within indigenous legal systems.²⁷ While the decisions and procedures of these non-state forms of justice may be locally contested, they represent grounded alternatives to hegemonic standards for addressing VAW, at the same time as evidencing the processes of "vernacularization" theorized by Merry.²⁸

Conclusion

Anthropological research in Latin America highlights the critiques that indigenous (and afro-descendant and campesino) women pose to international paradigms and state policies to address VAW. It points to the need for a diversity of contextually grounded approaches to gender-based VAW that occurs both within and against their communities, combining elements of international law, state law, and indigenous legal systems. Underlining the importance of maintaining a critical stance toward top-down definitions of "justice" and one-size-fits-all universalist legal approaches, anthropological research signals the need for culturally grounded, context-specific forms of justice that also challenge colonial and racist readings of indigenous law as discriminatory against women. Anthropologists have analyzed how indigenous women defenders across Latin America strategically use state,

²⁴ CEDAW, [General Recommendation 33](#), UN Doc. CEDAW/C/GC/33, (July 23, 2013).

²⁵ ANA BARRERA, [VIOLENCE AGAINST WOMEN IN LEGALLY PLURAL SETTINGS: EXPERIENCES AND LESSONS FROM THE ANDES](#) (2015); Enlace Continental de Mujeres Indígenas de las Américas, [Violencias y Mujeres Indígenas](#) (2013); Mairin Iwanka Raya, [Indigenous Women Stand Against Violence: A Companion Report to the United Nations Secretary General's Study on Violence Against Women](#) (2006).

²⁶ TEJIDO MUJER DE LA CXHANWALA KIWE ASOCIACIÓN DE CABILDOS INDÍGENAS DEL NORTE DE CAUCA (ACIN), [TEJEMOS LA HISTORIA PARA SANAR LA MEMORIA](#) (2020) (Report presented to Colombia's national truth commission).

²⁷ Rachel Sieder & Morna Macleod, *Género, Derecho y Cosmovisión Maya en Guatemala*, 51 DESACATOS 31 (2009); Dolores Figueroa & Arely Barbeyto Rodríguez, *Restoring Damage or Pursuing Justice? The Dilemma of Communitarian Miskitu Women Seeking a Life Free of Violence*, 370 BULL. LATIN AM. RES. 35 (2016).

²⁸ MERRY, *supra* note 11.

international, and indigenous law to address different manifestations of gender-based violence, at the same time as revealing the underlying racist, colonial logics and practices of state law and international law. As this essay has argued, anthropological research contributes to critical legal debates about the limitations of punitive, state-centered institutional responses to VAW, and broadens discussions about appropriate forms of reparation and prevention.