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Codification and Its Discontents: the Emergence of »Customary Rights« of Amazonian Kichwa in Ecuador

Abstract

Over the last decades, most Latin American States have been engaged in processes of legal recognition of indigenous rights at the international and constitutional levels. Consequently, the extent to which »indigenous customary norms« should be taken into account by public policies and in the judicial system, and in what form, have become major political issues in contemporary Latin America. Alongside the political dimension of the struggles for their voices to be heard and heeded by policy makers and economic agents, Latin American indigenous peoples also face the difficulty of communicating and codifying their norms; that is, to produce written forms of their »own« norms and principles. The present contribution reflects on these difficulties from an ethnographic perspective. After briefly reviewing the historical background of Latin America's indigenous peoples mobilisation to claim recognition of specific indigenous rights, it discusses how »customary norms« are made at the local level of indigenous assemblies with the aid of an ethnographical vignette taken from fieldwork conducted with an indigenous organisation of the Amazonian region of Ecuador defending the rights of Amazonian Kichwa of the Pastaza region.



Barbara Truffin*

Codification and Its Discontents: the Emergence of »Customary Rights« of Amazonian Kichwa in Ecuador

Over the last decades, most Latin American States have committed themselves internationally and constitutionally to translating their cultural diversity and multi-ethnic composition into juridical terms, which entails concretising the recognition of some specific indigenous or autochthonous rights.¹ This change of most Latin American juridical orders pointedly raises the question as to how domestic laws, judicial decisions and public policies take the so-called »customs« or indigenous norms into account. Indeed, the constitutional and international provisions fall short of the ideal that indigenous peoples' voices should be substantially taken into consideration by public and economic agents. Alongside the political dimension of the struggles for their voices to be heard, Latin American indigenous peoples also face the difficulty of sharing their principles, values and norms in written form. In so doing, they encounter ambiguities endemic to every codification process in a particular context.

The present contribution reflects on these difficulties from an ethnographic perspective. After briefly reviewing the history of the mobilisation of Latin American indigenous peoples to claim recognition of specific rights (I), this paper studies a particular case (II), to wit, the Amazonian Kichwa² of the Pastaza region in the Ecuadorian Amazon. This people is characterised by its particular social organisation and some cultural referents that feature what Amazonian anthropology calls »per-

spectivism«. Since the 2000s, the Amazonian Kichwa have confronted the issues of codifying their norms and of committing these norms to writing in a political context that gives rise to confusion and misunderstandings.

I. A Short History: Legacies of the Colonial Status of »Indians« and its Contemporary Transformation

The reference to a specific legal status for the indigenous peoples in Latin America did not emerge *ex nihilo*, nor as a simple product of 20th century multiculturalism. On the contrary, the idea of a specific body of written rules applied to certain inhabitants of America took root in the violent and fragmented colonial history of this part of the world. The juridical discourse on the »indigenous peoples« has been profoundly marked by the insoluble ambiguities and profound contradictions characterising the colonial status of »Indian«³ that extend into contemporary history.

A. Law in Colonial Rule and »Indian« Subversions

Seen as pagans by the interpreters of the Catholic juridical and religious order, in which they were held to be cultural and civilisational aliens yet still part of humanity and, therefore, subject to

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1 Irène Bellier notes that, in the course of this process, official documents refer increasingly to »autochthonous peoples« (*peuples autochtones*), when published in French, while gradually

abandoning the term »indigenous peoples« (*peuples indigènes*), which corresponds to the Spanish term »*pueblos indígenas*«. BELLIER (2011) 204.

2 The peoples who define themselves nowadays as Amazonian Kichwa have also been called and have defined themselves as Runa during the last decades. Both expressions are used in this article since they appeared in the texts produced by indigenous organisations as well as in the anthropo-

logical literature. They speak Kichwa, which is similar to Quechua in the Andean region, but not reducible to it.

3 The use of »Indian« in this article is not meant to qualify the identity of the indigenous peoples living in America during the Conquest and under Colonial Rule, but only refers to the specific administrative and legal status they were assigned by Colonial law and agents.

conversion, indigenous peoples in the 16th century were conceptually associated by colonial institutions with the territories of a »New World« to conquer. They were assigned a place in a mainly theological natural order to which the colonisers themselves were also supposedly subject in religious terms.⁴ The status of Indian subjects was composite: they were subjects and vassals of the King to whom they owed tribute, yet they were denied rights and duties, and thus fell directly under the »protection« of the religious and political delegations to *encomienderos* or other colonial entrepreneurs associated with the Castilian Crown.

Differently put, the legal institutions and reasoning, as Rodolfo Stavenhagen emphasises, provided the colonial enterprise with a solid foundation.⁵ This, however, implies by no means that this domination was linear or that Indian subjects did not resist. On the contrary, as many historians' works on colonial archives illustrate, indigenous groups and individuals have occasionally succeeded, marginally and in local contexts, in subverting and influencing colonial rule by exploiting its inconsistencies and, in particular, by resorting heavily to colonial judicial remedies.⁶ Among these struggles in court, as Rodrigo Miguez dem-

onstrates in this Focus section, the fight over land was of primary importance.

B. *Formal Abolition of the »Indian Status« in Modern State Laws*

The wars of independence and the institution of new, republican state laws undermined the legitimacy of the colonial status of »Indian«. Legally speaking, this category was set to vanish from the official documents in Latin America. Yet it did not fuse with the new, abstract category of citizen, either. The entrenchment of the »Indian« status, far from fading away along with the decolonisation of America and the drafting of legal documents that ignored them or granted them formal equality,⁷ was merely transformed rather than abolished.

Thus, the law of some countries kept pretending that the Indians had disappeared. Other countries either maintained or recognised in their land law some forms of »Indian« commons,⁸ or *ejidales*, and, taking the indigenism in Mexico and Peru for instance, implemented public policies aimed at assimilation and the dissolution of indigenous communities into the national societies, which themselves were undergoing agrarian reforms.

4 The legal status imposed upon indigenous peoples under the Spanish colonial rule was a combination of three categories of Castilian feudal law, to wit, the rustic, the miserable and the minors. The rustic condition applied to individuals in need of the protection of the Church or the prince because of their social incapacity: indigents, widows, orphans, converts. The status of rustic marked the condition of illiteracy and referred to a marginal position of high culture, whilst the minority condition implied tutelage for members of the family under the age of reason. See OTS CAPDEQUÍ (1945) 464; CLAVERO (1994) 71–72.

5 STAVENHAGEN (1988) 22.

6 This aspect is especially well documented in the numerous publications addressing the ambiguous characteristics of the »judicialisation« of local cultures. See BORAH (1970) 129–142; STAVIG (2000) 77–11; CUTTER (1998) 106; BASTIEN (1979) 101–131. In this last publication, Bastien explains how the appeal to

colonial judges was a tool of resistance for indigenous communities against usurpation of their rights, notably by corrupted caciques. But he also notes the complexity of the consequences of such cases. »Although the magistrates tried to resolve the litigations in favor of the Indians, they didn't understand the nature of the rights which Andeans exercised in regard to land. These rights were flexible, reciprocal and periodical; they were intimately linked to ecological corporate, and cultural structure of the *ayllu*, and each *ayllu* was different. Magistrates attempted to codify these rights, making them permanent and inflexible. This in turn led to more litigations«. BASTIEN (1979) 115. José Enciso Contreras analyses several orders issued by the Kings of Castile that command royal judges to apply all »Indian customs« in criminal cases when not manifestly unfair or contrary to Christian faith or reason. ENCISO CONTRERAS (2006) 240–242. Georgina Endfield observes for the Michoacan region that »the num-

ber of *pleitos* increased throughout the colonial period and became particularly numerous in the eighteenth century when population growth and environmental degradation contributed to land pressure and competition over space«. ENDFIELD (2001) 10.

7 This is the case for the Argentinian Constitution of 1819. Its article 128 provides that »As the Indians are equal in dignity and rights with other citizens, they shall enjoy the same preeminencies and be governed by the same laws. All personal taxes and exactions of service, under whatsoever pretext or denomination they may be, are extinguished. The Legislative Body shall efficaciously promote the welfare of the natives, by means of laws which may ameliorate their condition, till they are placed on a level with the other classes of the State«. The translation comes from WALTON (1819) 42–43.

8 This is the case for Colombia's Law 89 of 1890, which reinstated the colonial form of *resguardo* and *cabildo* for the indigenous peoples.

In this fragmented context, the questions raised by the existence of indigenous communities and identities by no means diminished. The violence and domination they continued to suffer in hierarchical, deeply racialised Latin American societies prevailed. However, points of convergence among indigenous peoples experiencing a long and roughly comparable history of exclusion have emerged since the 1980s. In that decade, the internationalisation of indigenous issues became salient, and its momentum increased as the democratisation process of many Latin-American countries persisted.

C. *Internationalisation of Indigenous Peoples' Rights: A Latin American Imprint*

The recognition of indigenous peoples' rights in Latin America, especially in Ecuador, which is the subject of the case study below, can only be understood in light of its contemporary international dimension.⁹ The visibility earned by the indigenous mobilisations for the recognition of their rights and against the gross violations of human rights during the 1970s brought about several initiatives and gradually enabled the inclusion of indigenous issues onto the agenda of several international organisations.

The state of affairs in 1971 led to the nomination by the Sub-Commission on Prevention of Discrimination and Protection of Minorities of its member, José Martínez Cobo, as Special Rapporteur for the Study on the Problem of Discrimination against Indigenous Populations. His study was published between 1981 and 1984. Meanwhile, the Economic and Social Council created a Working Group on Indigenous Populations in 1982 composed of five independent experts. The Working Group made opening its annual sessions to organisations devoted to indigenous issues a regular practice. The group also supported the drafting of the Declaration on the Rights of Indigenous Peoples (DRIP). Those annual sessions took

place in Geneva until being replaced in 2007 by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP), which was established by the Human Rights Council of the United Nations.

During this period, the International Labour Organization (ILO) discussed partial revision of the C107 Convention on Indigenous and Tribal Populations, which was adopted in 1957. This led to the C169 Convention in 1989.¹⁰ The new C169 Convention shares some characteristics of the C107, to wit, the emphasis on coordinated and systematic government actions and institutions specifically devoted to the development of indigenous groups. C169 renewed the protective approach towards indigenous populations but shifted away from the paternalistic and assimilationist tone that characterised the C107 Convention. Moreover, it was the first international instrument to use the term »peoples« (*»peuples«* in the French version) instead of »population«, though article 1, section 3, insists on the limit that »the use of the term *peoples* in this Convention shall not be construed as having any implications as regards the rights which may attach to the term under international law«. The C169 Convention has been ratified by 22 countries, including 14 in Latin America.¹¹ Such a proportion gives the Convention an undeniably regional colour. Rachel Sieder highlights the fact that the convention has been ratified by more countries in Latin America than elsewhere in the world.¹² Luis Rodríguez-Piñero Royo even talks about the Latin American origin of the international law of indigenous peoples.¹³ Monique Nuijten agrees with the analysis of Sieder and Jessical Witchell that, during that period, »indigenism became a mainstream human rights issue within the international community, prompting indigenous people to increasingly make claims on the basis of ethnic entitlement, deploying a rights-based or multicultural discourse«.¹⁴

Some domestic movements have drawn upon international instruments and brought about some

9 BRYSK (1996) 38–57; KECK/SIKKINK (1998).

10 It was adopted on 27 June 1989 and entered into force on 5 September 1991. ILO Official Bulletin (1989) Vol. 72, Series A, 59–70. [http://www.ilo.org/public/libdoc/ilo/P/096-04/09604\(1989-72-series-A\).pdf](http://www.ilo.org/public/libdoc/ilo/P/096-04/09604(1989-72-series-A).pdf). Last access on the 15th of July 2016.

11 Mexico ratified the convention in 1990, Bolivia and then Colombia in 1991, Paraguay followed by Costa Rica in 1993, Peru and then Honduras in 1994, Guatemala in 1996, Ecuador in 1998, Argentina in 2000, Brazil and subsequently Venezuela in 2002, and Chile in 2008.

12 SIEDER (2007) 214.

13 RODRÍGUEZ-PIÑERO ROYO (2007) 183.

14 NUIJTEN (2010) 245; SIEDER/WITCHELL (2001) 217.

constitutional amendments specifically addressing the protection of indigenous peoples and their rights in the following countries: Nicaragua (1987), Brazil (1988), Colombia (1991), Bolivia (1994–2009), Ecuador (1998–2008), Venezuela (1999) and Argentina (1993). These constitutional changes are closely connected to the simultaneous integration of indigenous issues into the drafts of other documents. Latin American countries were even influenced by or involved in drafting the clauses mentioning indigenous peoples in, for example, the Rio Declaration on Environment and Development of 1992, the declarations on linguistic rights, health or social progress and development. Indigenous peoples' rights are also apparent in the execution of certain programmes sponsored by multilateral organisations, such as the Inter-American Development Bank, the World Bank,¹⁵ and the development programs of the United Nations.

Still, the binding force of those rights is far from secure. Although the C169 Convention is legally binding on the Latin American countries that have ratified it, Willem Assies characterised the rights of indigenous peoples as »emerging« rights.¹⁶ Indeed, even if the issue has affected the drafting of constitutional amendments and the C169 Convention, the rights of indigenous peoples look more like standards and procedural rights, if not reiterations of the protection of the fundamental rights that other international instruments already provide, than they do actionable rights with a well-defined scope.

The internationalisation of the struggle for the recognition of specific rights for indigenous peoples culminated in the General Assembly's adoption of the Declaration on the Rights of Indigenous Peoples (DRIP) on 13 September 2007. Thanks to the sustained effort of the Working Group on Indigenous Peoples, this declaration was adopted after a long negotiation process among the representatives of indigenous peoples and states. 143 states voted for this resolution, 4 states (Australia, Canada, New Zealand and the United States) voted against it, and 11 states abstained (Azerbaijan, Bangladesh, Bhutan, Burundi,

Colombia, Georgia, Kenya, Nigeria, the Russian Federation, Samoa and the Ukraine). As a resolution of the General Assembly, the declaration is not subject to ratification and, therefore, has no binding force by itself in public international law. The question of whether each article of the declaration is binding on the states that voted for it must be analysed case by case. Certainly, part of the DRIP seems to codify existing rights, such as those mentioned in the C169 Convention, and thus, to a certain extent, expresses customary international law. Yet it is problematic to argue that the provisions formulating some rights for the first time in an international instrument are immediately binding. This is the case for the right to informed and prior consent.

Among the clauses that reaffirm and extend the C169 Convention as well as a great deal of Latin American constitutional provisions, article 34 on indigenous customs is especially worth mentioning:

»Indigenous peoples have the right to promote, develop and maintain their institutional structures and their distinctive customs, spirituality, traditions, procedures, practices and, in the cases where they exist, juridical systems or customs, in accordance with international human rights standards«.

This formulation and the recognition of indigenous peoples' right to conserve and promote their respective customs, traditions and particular practices of dispute resolution are widespread in the domestic law of Latin American countries. The law of Ecuador is significant, as the country has long been a forerunner in Latin America among those committed to a certain form of official legal pluralism.¹⁷ In 1998, the Ecuadorian constitution included new passages to improve its protection of the rights enjoyed by what it literally called »indigenous peoples«, who by their own definition are nations with ancestral roots. Among the new amendments, article 191 provided specifically that the indigenous authorities perform the judicial function and apply their norms and procedures

15 For an anthropological analysis of the World Bank's land reform projects in Central America, see HALE (2005) 17–20.

16 ASSIES (2007) 229.

17 On the concept of official legal pluralism, see ASSIES (2001) 83–96; ASSIES (1999) 145–158; HOEKEMA (2000) 216–300.

according to their customs or customary law in the resolution of internal disputes. However, a substantial limit accompanies this provision. Norms, procedures and customary law are ruled out if they violate the constitution or statutes. This article required further legislation to settle the potential conflict between the exercise of those indigenous judicial functions and the state judiciary. Ecuador's parliament has yet to pass an adequate bill, and the constitutional revision of 2008 reiterated the principles regarding the judiciary and the indigenous customary rights. The reiteration took the form of an indigenous judiciary. Article 171 of this constitution provides that indigenous authorities:

perform jurisdictional duties, on the basis of their ancestral traditions and their own system of law, within their own territories, with a guarantee for the participation of, and decision-making by, women. The authorities shall apply their own standards and procedures for the settlement of internal disputes, as long as they are not contrary to the Constitution and human rights enshrined in international instruments.

The State shall guarantee that the decisions of indigenous jurisdiction are observed by public institutions and authorities. These decisions shall be subject to monitoring of their constitutionality. The law shall establish the mechanisms for coordination and cooperation between indigenous jurisdiction and regular jurisdiction.

Two things characterise and justify the choice to focus on Ecuador in the case study below. On the one hand, the constitutional inscription of the specific »customs« of indigenous peoples has been relatively stable in the last few decades, which is reflected here in the term »(one's) own law« (*derecho propio*). On the other hand, Ecuadorian indigenous peoples have a history of actively pursuing the constitutionalisation and internationalisation of their causes.

In the Ecuadorian context, where the constitution embraces the expression of indigenous cus-

tomary norms, I am interested more specifically in the situation of a group of families and communities inhabiting the foothills of the Ecuadorian Amazon basin. My objective is to shed light on some problems that the indigenous peoples confront when they commit themselves to formulating their own norms, customs and principles, as the constitutional and international texts encourage them to do.

II. Amazonian Kichwa from the Ecuadorian Amazon and the Production of Customary Law in Writing

The Runa or Amazonian Kichwa occupy a large region that was integrated into national Ecuadorian territory relatively recently. There have long been discussions about the conquest of the Amazonian region of Bobonaza-Pastaza as well as the extent of control exercised on the jurisdictional circumscription, which is the cartographic expression of Runa lands. The military exploration and the evangelisation of the region started relatively early in the colonial history of America. The first military invasions happened in 1538,¹⁸ and the earliest archives studied by historians and ethnohistorians date to the period between 1530 and 1600.¹⁹ The process of exploration and colonisation of this region varied according to the penetration of missionaries and traders in search of the cinnamon flower (*ishpingo*), gold and, from the end of the 19th century, rubber. Yet the region did not become a province of the Republic of Ecuador until 1960. Although this region has always enjoyed a particular symbolic status, only since the 1950s has it started to change with the growth of small towns.

The Runa, certainly more than other groups of the Pastaza Forest, have a specific cultural ethos that values and integrates outside influences to a certain extent. These include the practices and knowledge introduced by Catholic missionaries, whose presence strengthened over the course of the 19th century and accelerated during the »agrarian

18 Captain Gonzalo Díaz de Piñeda led the first expedition on the Napo River. Francisco de Orellana and Gonzalo Pizarro followed him between 1540 and 1542. See REEVE (1998) 58. The Southern part of the region was

explored by Hernando Benavente around 1550, and the Marañón River was officially explored by Salinas Loyala in 1557. See TAYLOR (1988) 93.

19 REEVE (1998) 58.

colonisation« in the second half of the 20th century. The *Runa* identity in Pastaza revolves around the themes of transformation and »boundaries«. Holding this identity and speaking Kichwa, a contact language, the first groups of so-called »good« and pacified Christian indigenous peoples appeared in the region.²⁰ The expression and the play of the signs associated with the figure of the »good Indian«, *alli runa*, only acquire meaning when contrasted with the opposing figure of the »savage Indian« or those living in the forest, *sacha runa*, whom the *Runa* also value. Norman Whitten carefully described the interplay of these two poles of *Runa* identity in his masterpiece, which has contributed over time to an increasingly meaningful use of the term »Kichwa«.²¹

The experience of the *Runa* in Pastaza exemplifies the difficulties faced by the indigenous peoples who have dealt with the necessity of formulating their norms and principles of life in writing. In the 1980s, many Kichwa families and communities decided to found an organisation to represent the entirety of the indigenous peoples in this vast Amazonian province. This Organization of the Indigenous Peoples of Pastaza, known as OPIP (*Organización de los Pueblos Indígenas del Pastaza*), inspired the unprecedented mobilisation of the 1990s, when the development of oilfields in this area accelerated. Before describing the organisation's extraordinary general assembly in 2001, where they explicitly discussed the question of formulating their »own« norms, I summarise the anthropological literature on the major social and cultural characteristics of the Kichwa families of Pastaza.

A. *The Social Organisation and Cultural Referents of a Border People*

The socio-cultural organisation of *Runa* families, as described by the anthropologists who have worked in and written about the region, rests on the multiplicity of their residence patterns.²² Their daily life revolves around the domestic and productive tasks of a household in collaboration with the parents living in the house (*huasi*).²³ It is based on a gendered division of labour quite well-known in the Amazonian region, where women cultivate manioc in their gardens, while men are supposed to hunt in the forest. Family occupations include, among others, a type of slash-and-burn horticulture of the various gardens, *chacras*, involving cycles of clearing, cultivating and abandoning the gardens to the secondary forest around the houses, brewing manioc beer, producing ceramics finely decorated with abstract mythic symbols referring to supernatural beings of the forest and their transformations, hunting and fishing.

When analysing the kinship system of the *Runa* of this region, anthropologists emphasise the lability of the categories and terminologies used to describe it. *Runa* family members travel and trace the memories of a dense network of social relations across the whole Pastaza forest and the small villages of mixed population nearby. They journey regularly to visit important kin and sustain old gardens in more remote hunting territories. The houses where they go and stay periodically are called *purina*. In the Quechua language, *purina* also means »to walk«, »to travel« and »the fact of traveling«.²⁴

This odological conception of space is intrinsically connected to the lability of family relations and the mobility with which these relations etch traces on the space.²⁵ Another conception of space

20 KARSTEN (1935) 10, 33.

21 »As Christianity made tenuous inroads there developed a duality of ethnic patterning between the native person of the hamlet, of civilization, of Christianity – *Alli Runa* – and the person of the forest, of the animistic universe, of the spirit world – *Sacha Runa*. *Alli Runa / Sacha Runa*, I argue, are one and the same, the former facing the world of Christian conquest, its trade goods, destructive potential, and mystical power, the

latter facing the indigenous world of ecosystem knowledge, society integrated by *ayllu* (>kin< in Quechua) segmentary continuity, intermarriage, and mythology, and by its own system of spiritual power«. WHITTEN (1985) 75. See also WHITTEN (1976); WHITTEN (2008).

22 WHITTEN (1976); WHITTEN (1985); WHITTEN (2008); REEVE (1988); GUZMÁN (1997).

23 Maria Guzmán and Norman Whitten particularly emphasise that the ideal

of self-sufficiency that sustains the conception of the life of couples demarcates the *huasi* (>house< in Quechua) as a social *unit* and institutionalises it as a terminus in the relation of exchange. See WHITTEN (1976) 102; WHITTEN (1985) 64; GUZMÁN (1997) 130.

24 GUZMÁN (1997) 169.

25 On the odological conception of space, see LE ROY (2009) 335 ff.

is topological. The houses standing in its centre correspond to the segments of *ayllu*, »kin« in Quechua.²⁶ The configuration of the *ayllu* is never fixed nor entirely settled in the space. It is rather structured in accordance with the ideal of repeating marriages between different segments on genealogical principles.²⁷ Though parents and parents-in-law are entitled to having their children and children-in-law maintain the relationships among them, the latter may execute those social obligations in different ways. Young couples who, following the Achuar ways of regulating marriage and with whom many Runa marry, opt for a first uxorilocal residence make gifts or share garden harvests or the game they hunt with nearby kin. If distant from one another, they travel to visit their kin and to take part in the greatest tasks of the moment, such as building a new house or a pirogue and slashing and burning for new gardens in the forest. This multiplicity of means to execute kin obligations obviously does not contribute to the spatial concentration of kinship. Rather, it provides more or less effective solutions to overcome the spatial removal with which kin are supposed to cope.

Hence, Runa life cycles involve journey, departure and return as do those of their neighbours and sometimes kin, like the Achuar, Shuar and Shiwiari. In a geographic study conducted in 2000 in the region of Curaray-Villano, Josep Antoni Garí illustrated the diversified uses of space. Across a bank area stretching 180 kilometres along the Villano river, around 25% of the space is occupied by residential sites (*llacta*) and adjacent gardens (*chacra*), more than 50% of the region is dedicated to very low-intensity agriculture and to temporary houses (*purina*) and finally 22% of the riparian ecosystem may fit what ecologists call »pristine forest« (*sacha*). As Garí wrote:

»This ecological survey questions the Western perception of Amazonia as pristine ecosystems that are free of human influence. Indigenous communities use wide forest areas as dwelling space and agricultural places, without eroding biodiversity but integrating unique agrobiodiversity dynamics«.²⁸

The shamanism and epistemological registers that link the Runa to spirits, *supay*, play an important role in the odological and topological representations of space. The Runa take part in a broader cultural framework that the Amazonian anthropology calls »persepctivism«.²⁹ In this framework, relations among beings – humans, animals, plants and spirits – reflect the diversity of their constitutive materials. In this cultural directory, the circulation of substances marks and structures the collective relations ranging from kinship to the obligations owed to the forest spirits. In Pastaza, relations with all kinds of beings and entities that take the form of subjective experiences – songs, dreams and induced visions – affect the daily course of activities. The oneiric manifestation and quest for certain powerful spirits in the journeys induced after taking *ayahuasca* (Banisteriopsis) or *huanduk* (Datura) enhance the knowledge and the power of those who benefit from the spirits' contact and advice. They constitute existential experiences that conflate prediction of the future with the knowledge and the »beings« that exist across different times.³⁰ One shows her success, vigour or force by referring to the personal capacity of incrementally learning to master this huge body of knowledge.³¹ In Guzmán's words:

»For the Runa, the spirits (*supay*), souls and animals are active beings who own some qualities and a vitality that human beings need. The

26 Experts disagree as to the definition and extent of the concept of *ayllu* in the context of the Ecuadorian Amazon. Belonging to the *ayllu* is determined by bilateral criteria and often refers to small local groups founded by a woman and a man. It appears to Maria Guzmán that »the difficulties of defining the *ayllus*, fundamentally, stem from the general flexibility that characterises the definition of family relations«. GUZMÁN (1997) 85.

27 WHITTEN (2008) 52.

28 GARÍ (2001) 24.

29 VIVEIROS DE CASTRO (1992); VIVEIROS DE CASTRO & FAUSTO (1993); DESCOLA (2002); DESCOLA (2005).

30 »Spirits are the beings difficult to observe in normal time. However, one feels their breath and movement everywhere, whether in the forest, *chacras*, or the rivers. Spirits become clearly visible in dreams, especially in the visions triggered by the ingestion of *huanduk* or *ayahuasca*. Thus, another fold of reality is revealed, and it

becomes possible to see the souls of animals and plants as well as to talk with spirits. Spirits are capable of showing one's past experiences or what may occur in the future. These meetings with spirits enable one to see things in a different way and lead to a better understanding of problems and illness«. GUZMÁN (1997) 45–46. Author's translation.

31 Shaman in Quechua is called *yachak*, literally »one who knows«.

access to this vitality is achieved when one establishes some corporeal similarities to the spirits or animals; it might also come with the gift of a thing, even a song, which contains in itself the vigour of spirits and animals. Even though this vitality originates from an external source, it can reinforce one's core, and thus one's abilities to be an active and acting subject. This means that this person is, on the one hand, physically strong and healthy and, on the other, that he/she has the capacity to sustain and establish social relations«. ³²

Good harvests of manioc and successful hunts depend on the establishment of such relations with nonhumans. The women gardeners look to, and identify themselves with, *Nungui*, ³³ the guardian spirit of gardens, in the silent songs that foster the growth of manioc in their *chacras*. The discovery of new hunting paths often rely on agreements reached with the guardians of game, supernatural spirits that contribute to shaping the Runa science of journeying. Thus, the relations with spirits infuse the uses of space and confer on it a mythical and relational aspect at odds with the geometrical representation of space. ³⁴

While such spiritual relations sometimes entail real bans, any talk about the sanctuarisation of space would be tendentious. Indeed, spatial bans are often corollaries of specific authorisations to an individual or to her residential group granted by a *supay*, which can be the guardian of a specific place or of the animals that reside there. As Norman Whitten reports, ³⁵ access to space and natural resources is traditionally explained by referring to the battle between the pioneering traveller and the foreign spirit, *Jurijuri*, who controls the unknown places and the game living there. In order to defeat this spirit, the traveller has to take some hallucinogenic *huanduk* to travel into the spirit world with the help of *Amazanga*, guardian of the forest. Once

the traveller wins the battle, she shares control over the place with *Amazanga* because of their alliance. The former controls the space, the latter, the game and the surrounding rivers. *Amazanga* thus plays a preponderant role in the fertility of the soils. ³⁶ In other words, the relations between the masters of the forest, particularly *Amazanga*, are of special importance when it comes to justifying the priority of access to the resources of a given place. These relations allow the exclusion of the other neighbouring families. The formation of a *llacta* and the subsequent land tenure are, therefore, closely linked with shamanic abilities of at least one of the *llacta*'s founders, ³⁷ a specialist in communicating with different worlds, to wit, those of the Runa, the dead, the *supays*, but also of another language or culture. ³⁸

The travels toward the *purinas*, visiting the house of one's kin, hunting in the forest, life of homes and gardens, all these activities that weave the space of diversified relations have been gradually combined with other activities. These demand a new type of mobility and imply access to other social spaces, like logging a certain kind of precious wood, *abuano*, for timber traders, temporary paid jobs for oil companies, working as a servant or maid and, for the youngest ones, attending school. ³⁹ This mobility is related to a monetary economy that would break the Runa life cycles. Mobility has grown stronger and, since the 1970s, gone hand in hand with the development of new agrarian activities and the geometric conception of space, on which those activities partly rest. Consequently, the cacao and naranjilla sold in the markets of the emerging Amazonian towns appeared along the roads of the region's western fringe. Numerous indigenous families applied to the *Instituto Nacional de Colonización* (National Institute of Colonization) and agricultural finance institutions for grants, ownership titles and mortgages. Money circulates among Runa families, but

32 GUZMÁN (1997) 52.

33 María Guzmán specifies that, in Canelos, *Nungi/Nunguli* is named »*mama chakra*« and also defined in terms of Spanish as »owner/master« (*dueño/amo*) of knowledge necessary for cultivating. GUZMÁN (1997) 67, 77. It is interesting to note that what is borrowed from the concept of ownership has nothing to do with the absoluteness or exclusivity that this

legal concept entails in regard to all the other subjects of rights and obligations. Rather, it refers to the idea of mastering and the knowledge necessary for one to live well.

34 On the difference to manage between the official legal conception of relation to land and the mythical one, see, among others, ABRAMSON (2000) 15–16.

35 WHITTEN (2008) 5.

36 WHITTEN (2008) 5.

37 WHITTEN (2008) 67.

38 WHITTEN (2008) 67.

39 There is now formal, bilingual education run by indigenous leaders in all the provinces across Ecuador. It is the first victory won by the country's indigenous movements in the late 20th century.

it determines neither the vector nor the exclusive measure of the vast majority of social relations.

The mobilisation and creation of indigenous political organisations in the 1990s also show the lability and the »trans-border« character of the socio-cultural organisation of Pastaza's Kichwa families and communities. Following a so-called »federation« model, those organisations, including the OPIP, gained recognition of titles of collective property on thousands of hectares for communities that had been partly formed by the issue of land titles following an extraordinarily strong mobilisation in 1992. Since then, other organisations have emerged with simpler forms than OPIP, yet still combining legal categories available in the constitution, which foresees administrative and territorial districts for the country's indigenous peoples and nations.

Of course, the socio-cultural configuration of Runa space is far from monolithic and displays multiple fissures. As the elements above indicate, though, there is no doubt that the Kichwa modes of life are characterised by the principles, norms and values that are formed as much in the occupation of space as in the relations among kin. Still, there is no easy solution to stabilise in writing the flexibility maintained by those cultural referents and principles in daily life, let alone to systematically codify it. The discussions in OPIP, which used to represent Pastaza's Runa communities in the preparation of a bill aiming to create a Runa territorial district (TAKIP), illustrate this difficulty. I was able to participate and take notes at the discussions that led to an extraordinary general assembly of OPIP in 2001 in the village of Pacayacu and to reconstruct the history of this bill drafted by Runa representatives. It is worth noting that this assembly had decided that the bill was to be sent by OPIP to the Ecuadorian Parliament. However, it still remains in the archives of the organisation.

B. Codification and Elaboration of a »Kichwa law«: the Function of the Customary Law

The need to elaborate and communicate customary norms clearly follows a movement in which the indigenous political organisations, which were very active in the 1990s, aim to ensure that their voices are heard and heeded by policy makers and the economic agents with state sanction to extract resources from their territory. Although Ecuador's constitution has proclaimed

a series of rights for the indigenous peoples since 1998, the country authorised exploitation of the oilfield in the territory they occupy. The oilfield project has divided Kichwa families into opposite camps about its appropriateness and solidified the networks of both solidarity and conflict that had been firmly anchored in the space.

In 2001, leaders of OPIP decided to draft a bill to be submitted to Ecuador's parliament and bring about TAKIP, the autonomous territorial district of the Kichwa of Pastaza. I was among the audience during the preparatory discussions and the assembly, where more than twenty leaders from various regional Kichwa communities attempted to codify the governing principles of the future district. The discussions addressing district issues bespoke the institutional stakes that elaborating and drafting Kichwa »law« and »customs« represent for those leaders. The bill was drafted in OPIP's legal branch with the help of a local activist lawyer from Puyo, where the organisation's headquarters are located.

When the extraordinary general assembly was convened, the text of the bill was divided into 9 chapters (general concepts, administrative organisation; relations of the Kichwa people; the territorial district of the Kichwa people of Pastaza; assets of the autonomous territory; basic concepts regarding TAKIP's natural resources; control and management of TAKIP's natural resources; economic, social and cultural rights; and other general rules). The terms of the text were generic and imprecise. For example, one reads that:

»(1) The objective of this law is to establish norms and general principles regulating the life, functioning and organisation of the Kichwa peoples of Pastaza. (2) [The law] applies to all families, communities and Kichwa peoples inhabiting the Kichwa Territorial District of TAKIP constituted as autonomous government.«

Is it necessary to suppose that no one but the Kichwa resides in or traverses the district's area? Are all the community members self-defined as Kichwa? What »law« applies to tourists spending their vacations in Runa communities or to an Achuar husband of a Kichwa wife who is a member of a certain community? What determines Kichwa identity, and who decides in any given case? There were too many questions to be treated during the assembly. The questions themselves

made clear that the drafting was much more symbolic than truly regulatory.

In addition to the bill, the legal branch had also prepared a charter amendment to specify OPIP's functioning and interim leadership until its transformation into, and recognition as, an autonomous territory by the parliament. Though drafted in parallel, some provisions of the charter amendment contradict parts of the bill. This situation further complicated the discussions in the extraordinary general assembly. As explained below, the bill's drafting in fact allowed the leaders, above all, to affirm their legitimacy, competence and power in order to use the bill in their campaign to get elected to OPIP's board by the end of the extraordinary gathering.

The text of the bill submitted to the general assembly states that the TAKIP district is to be managed by the Kichwa nation's »own norms«. On the day when this point was to be discussed, none of the leaders could suggest any such norms in »duly« deontic terms.⁴⁰ As article 13 of the bill states:

»Regarding ethical and moral matters, the principles of the Kichwa nationality of Pastaza are: *Musky*, expressing the vision, strategy development, orientation; *Yachay*, indicating the knowledge, thought, science, technology; and *Kawsay*, referring to the territory, economy, culture and ecology«.

The discussion about an article treating »ethical and moral principles« continued when the issue of administrative organisation was debated. The reference to ethical and moral aspects next to a bureaucratic topic may surprise, yet it concentrated the contradictions in the process of formalising the judiciary-to-be supported by the Kichwa leaders. These principles, which were to inform the territory's administrating authority, were defined as matters of ethics and morality. However, such

principles could hardly accomplish the meticulous features usually attached to administrative operation. The legal soundness of these principles definitely rests upon the corporeality of writing. However, the participants explicitly opposed the idea of reducing the principles into a simple expression of legal thought, which was connected in their discussions to the cold, amoral discourses of the state and its administration. One of the leaders emphasised this point, arguing that the content of their values is hardly comparable to that of the civil code's articles, which list the consequences of violating a certain norm or how one makes a legally binding commitment.

After this announcement of principles and values, nothing in the texts submitted to the participants for discussion specified the procedures for dispute resolution, such as the institutions in charge, the admissible forms of complaints and so on. Articles 14, 15 and 16 designed TAKIP's executive, legislative, and judicial functions in a quasi-constitutional way.

Art. 14:

»The Executive Function is the highest organ responsible for executive powers and the administration of the Kichwa Peoples of Pastaza. It is exercised (sic) by the Kichwa government – JATUN TANTANAKUYTA PUSHAKKUN – which is composed of the traditional authorities (*Kurakas, Atya, Likwaty*) and elected by the consensus of the Assembly of Kichwa Peoples of Pastaza.«

Art. 15:

»The Legislative Function is the highest organ responsible for the elaboration, expedition, reform, interpretation and repeal of the norms valid in the Kichwa Territorial District of Pastaza. The JATUN LLAKTA TANTANAKUY is composed of the Kichwa People (*Kuraka Ayllukuna*).«⁴¹

40 The legal anthropological literature on colonialism and postcolonialism deconstructed »customary law« long ago as well as the importance anthropologist-managers' interventions in reifying »custom« into »customary law«. Olivia Harris, citing Sally Engle Merry, argues that »customary law was transformed through the colonial impact from a »subtle, adaptable, and

situational code to a system of fixed and formal rules«, from »the embodied, spoken and interpreted text into a fixed, abstracted and disembodied one that was written«». HARRIS (1996) 3; MERRY (1992) 365.

41 Author's translation.

The Judicial Function is defined in the art. 16 as:

»the organ that regulates and exercises the administration of Kichwa peoples' justice in the Territorial Kichwa District of Pastaza. It is composed of the councils of the wise and the governments of TAKIP (*Yachak* and *Kurakas*):

a) The Principles of the Judicial Function, JATUN *LIKWATIKUNA*, are the legal systems of values, norms, usages, customs and procedures that regulate the social order in the Territorial District of the Kichwa Peoples of Pastaza, which is managed by their own institutions and authorities.

b) The Criminal and Disciplinary Institution: it is a system whose objective is the education of the convict (*procesado*) and the restoration of his or her capacity to work, in order to carry out his or her rehabilitation, which enables appropriate social reintegration in the Kichwa territory in harmony with the cultural norms accepted by the Kichwa peoples of Pastaza and article 191 of the Constitution.«

The subsequent articles set out the function of the Assembly of Election, composed of the Council of TAKIP, that is, the *Kurakakuna*⁴² and the *Atyakuna*.⁴³ It is, says the text, in charge of »organising, directing, conducting, controlling and securing the process of the Assemblies of Election of the territorial district«.

The text of the bill that the OPIP leaders submitted was clearly complex and quite vague. Reading it aloud and in Spanish was difficult for the leaders, who are not themselves native speakers. No one dared mention the problem that the text gravely omitted to explain how this *council* constituted as an *assembly*, which was already relatively complex by itself, is to be differentiated from the *council* addressed by art. 14, which deals with the executive function. Both councils consist of *Kuraka*, *Atya* and *Likwati*. The traditional authorities

that compose the organ created by art. 14 are elected by consensus of the *Assembly of the Kichwa People of Pastaza*, which further blurs the relations between the future authorities and the perception of them.

Discussing texts like the ones above is understandably a relatively chaotic exercise, and the expression of customary norms involves in reality many difficulties for those who want to share them in a relatable way to people foreign to the local modes of life. Besides, some participants said that they did not understand how to distinguish a father's authority from *Kuraka*'s. A leader of a certain community stated that, in his opinion, one has to take the state and its ministries as a model and learn to build something for the Kichwa from there, which provides a frame of reference. The question is how Ecuador's *ministries* function in order to describe Runa's *own institutions*. This complicated architecture, with excessive description of institutions and where promising to make something *happen* has priority over stating what *is*, disorients the observer. Here, as in many other cases elsewhere, the legal dimension problematically involves a normative project that acts upon the society, rather describing what *is*, in hopes that it will achieve the normative ideal.

III. Epilogue as Conclusion

In spite of its problems, this paradoxical codification movement was anything but futile, and it enabled non-Runa actors to grasp some facts about Runa of their own. Thus, during the sessions in which I participated, the discussions were conducted in Spanish instead of the leaders' first language, as mentioned above. At one point in the discussion, one of the leaders noted that they were supposed to deal with, according to him, their »own structures« in *runa chimi*, not Spanish. He suggested that the Spanish draft be stopped and

42 This is the plural form of *Kuraka* (»chief«). Author's translation.

43 This is the plural form of *Atya*, which is a term for someone who is very »strong«. *Atya* is »como ser durísimo« (as a very tough being). The Cordero dictionary defines *atipag* as: »adj. *Capaz de vencer, de sobrar o de escaparse huyendo*«.

replaced with another Kichwa document, yet none of the leaders present concurred, and this idea was abandoned after an OPIP leader's surreal comment that no one had a Kichwa-Spanish dictionary on hand.

This small vignette illustrates the extent to which Kichwa leaders attempted to assert, in a tense political context, that they naturally had their »own institutions«, while resorting to a copy-paste operation based on state institutions. In other words, in this scenario, which appears to represent many others, the codification of norms and indigenous institutions takes on a new function, to wit, the production of norms that provide legitimacy and enable the exercise of autonomy.

Paradoxically, the activist lawyer of the town, who assisted the leaders of OPIP, seemed to make the best point when he spoke up at a moment of perplexity to remind the audience that the assembly was playing »legislator« from then on. Thus, it was an outsider's view that identified and recognised a »legal point« in understanding the socio-cultural game that the leaders were directing, but which took them far away from any enterprise of codification. He did it with a concept that, again, has implications and a history, namely »the legislator«, which was certainly not the most relevant for the situation. Nonetheless, legislators or not, what the leaders produced and did constituted something valuable: the affirmation of a common and general interest to the groups gathered in the

extraordinary general assembly relative to the outside.

This slipping between codification and normative elaboration also explains the volatility and tension that characterises the relations between the community leaders and their families. One leader, who was mistrusted, corrupt, partial and distant and was frequently decried by »insiders« as unstoppable when he played with words, was particularly effective when he started to explain how much the development, zoning and replanning of the area as well as the *autonomy*, the new customary norms, are essential for further progress. The price often illiterate members and communities »down below« must pay for future development lies exactly in the power they delegate and concede when convening assemblies in the major organisations, which acknowledge and benefit leaders and technicians. Elaborating a bill for the national congress was supposed to express the force and vitality of the Kichwa people of Pastaza. Consequently, for the leaders there, the issue was to *justify* their role as intermediaries and to produce the conditions to master the people working in »the State« and the protection of common interests in the texts. Yet the texts so produced are unlikely to be read, applied or understood by members of the communities, and they remain stuck in the paradox of a customary time-to-be. ■

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