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**Feminist Anthropology and Legal Activism:
The Paradoxes of using Expert Witness Reports
in the Defense of Indigenous Justice Systems**

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Abstract:	In this article I analyze the challenges and contradictions involved in developing cultural expert witness reports to defend indigenous justice systems in contexts marked by violence and by the criminalization of organized indigenous movements. Through the analytical window provided by my experience as an expert witness in the defense of Nestora Salgado —leader of the community police organization in Olinalá, Guerrero, and a member of the regional system for indigenous justice Coordinadora Regional de Autoridades Comunitarias (Regional Coordinator of Community Authorities, or CRAC)— I would like to reflect upon the limitations as well as the possibilities of such reports in a context where the law has become an instrument of state violence and a means to justify the repression of autonomic indigenous projects.

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In this article I analyze the challenges and contradictions involved in developing cultural expert witness reports to defend indigenous justice systems in contexts marked by violence and by the criminalization of organized indigenous movements. Through the analytical window provided by my experience as an expert witness in the defense of Nestora Salgado —leader of the community police organization in Olinalá, Guerrero, and a member of the regional system for indigenous justice Coordinadora Regional de Autoridades Comunitarias (Regional Coordinator of Community Authorities, or CRAC)— I would like to reflect upon the limitations as well as the possibilities of such reports in a context where the law has become an instrument of state violence and a means to justify the repression of autonomic indigenous projects.

The multicultural reforms of the last decade have brought changes to the procedures of penal codes in several countries in Latin America, which now allow the use of cultural expert witness reports. These *anthropological affidavits* are reports developed by experts who contribute to the recognition and understanding of the cultural context of the defendant or the claimant, depending in the case. The main purpose of these reports is to provide the judging body with information about the relevance of cultural difference to a specific case. For many anthropologists who support the use of cultural expert witness reports, these changes represent a step toward better access to justice for indigenous peoples (see Valladares 2012:11-13).

In the case of Mexico, the changes to Article 2 of the Constitution in August 2001, known as Ley de Derechos y Cultura Indígena (Indigenous Culture and Rights Act) in turn resulted in changes to the Federal Code of Penal Procedures which now recognizes the right of the defendant or claimant to have a translator when they are not fluent in Spanish, and the possibility of presenting expert witness reports regarding the cultural factors which influence the facts to be judged. ¹ In 2008, a transition from the inquisitive model of justice inherited from

¹ In the case of Mexico City, these changes to the Code of Penal Procedures

colonial rule to an adversarial model based on oral public trials began after further reform to Articles 16 to 20 of the Constitution (See Ramírez 2012). Although this reform does not mention the case of indigenous peoples, the 2009 reforms to the Federal Code of Penal Procedures do include specific dispositions for members and communities of indigenous peoples, such as Article 220 Bis, which establishes that “When the defendant belongs to an indigenous ethnic group, an effort will be made to procure expert witness reports in order for the judge to gain a better understanding of the defendant’s personality and be able to see the cultural difference of this person from that of *mainstream national culture*” (my italics), and article 223, which establishes that “Expert witnesses must have an officially recognized degree in the art or science pertaining to the matter to be judged, if the art or science is legally recognized; otherwise, practical expert witnesses may be called. When the defendant belongs to an ethnic indigenous group, a practical expert witnesses may be a person belonging to the same group.”²

Previous to these reforms, attorneys defending members of indigenous groups—sometimes working pro-bono through the Instituto Nacional Indigenista (National Institute for Indigenous Peoples or INI), would, in order to reduce a penalty or to free a prisoner, appeal to the now repealed Article 49 Bis of the Federal Code of Penal Procedures, which considered the possibility of such a reduction for “people suffering from extreme cultural backwardness”, that is to say, they appealed to an article that reproduced the racism of Mexican society. In spite of the multicultural reform, this argument continues to be used by lawyers who in spite of their “good intentions” are reifying and reproducing racist perspectives of indigenous peoples while working in their defense (See Escalante 2015).

Although the use of expert witness reports can be understood to represent an improvement compared with the racist perspectives that appealed to “cultural backwardness”, anthropologists who practice legal activism should be aware that, as a legal tool, they carry their own ethical and epistemological dilemmas.

have been in place since 1991, when the right to translators and expert witness reports was recognized in legislation that pioneered cultural reforms in the sphere of justice.

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Hierarchies of knowledge are reproduced when anthropologists who act as expert witnesses use their expertise about the culture of an indigenous defendant or claimant in a legal procedure. The knowledge of the anthropologist (regardless of their belonging or not to an indigenous ethnic group) is legitimized over that of the actual members of the indigenous ethnic group who participate in the procedure. It is us, as anthropologists, who hold the legitimate cultural knowledge that can be recognized by the operators of justice, and in that sense we have the last word on what represents “true cultural practice” or what constitutes “true indigenous law” (See Escalante 2012:41).

The role of the anthropologist as cultural translator before the operators of state justice becomes further complicated by having to accept the rules of legal discourse, where the complex and contextual perspectives of anthropological analysis often have no room (See Brown and Halley 2002, Trigger, 2004). Legal process, for example, requires “positive truths” about the culture of indigenous peoples which many times imply reproducing essentialist representations of their cultures where the internal diversity of the community and the variety of perspectives on culture and tradition that exist between genders and across generations, is erased by homogenizing cultural descriptions. In other publications I have analyzed this dilemma through my experience as expert witness at the Inter-American Court of Human Rights in the case of two Mephaa women who were raped by members of the Mexican Army, to show how expert witness reports can be constructed through collaborative methodologies, so that indigenous actors can review and discuss the reports and make sure that their voices and perspectives are accurately included (See XXXX 2016).

In this article I would like to demonstrate that it is possible to think critically about discourses and legal practices as systems of knowledge-power, and to show the productive potential they have in the context of criminalized social protest, and at the same time, how the law and legal frameworks can be used as counter-hegemonic emancipatory tools, taking

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3 advantage of grey areas within the Mexican State.³
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7 My anti-essentialist perspectives about indigenous cultures and my criticism of the
8 ways in which anthropologists in places such as Colombia are becoming the “purist guardians
9 of indigenous culture” through expert witness reports (See Sánchez Botero 2001), have made
10 me very selective of the kind of legal processes on which I work, always taking in
11 consideration the need to construct the reports on the basis of dialogical methodologies.
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16 17 **The criminalization of indigenous justice systems and the CRAC** 18 19

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21 The same multicultural reforms which made available the use of expert witness reports in
22 the defense of the members of indigenous ethnic groups also created the legal framework for the
23 recognition of indigenous jurisdictions. In Mexico in 2010, an Act called Ley de Derecho y
24 Cultura Indígena (Indigenous Culture and Rights Act) modified Article 2 of the Constitution to
25 recognize the right of indigenous peoples to their own systems of justice.
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30 Indigenous normative systems and their spaces of justice have a long history linked to
31 colonial and neocolonial processes in Mexico. The co-existence of parallel spaces of indigenous
32 government and justice began during the colonial period, when the *Leyes de Indios* recognized
33 indigenous jurisdictions subordinated to the Spanish Crown, ⁴ such “justicias indígenas”
34 (indigenous justice systems), as they have been known traditionally, have gone through a variety
35 of re-constitution processes in permanent dialogue with the justices of the postcolonial nation
36 state. Rather than “ancestral justices”, they are historical products that assimilate the principles
37 and epistemologies of indigenous peoples, but also religious and moral practices from
38 Catholicism, the product of five-hundred years of colonial occupation, as well as procedures
39 from state justice. Although the liberal reforms of the XIX century sought to impose legal
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48 ³ For a discussion of law as a tool for emancipation, see De Sousa Santos 1998; for an analysis
49 of the concept of “grey areas” in spaces of domination, see Levi 1989; in relation to
50 anthropological expert witness reports, see Geldres González 2016.
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52 ⁴ The *Leyes de Indios*, Book 5, establishes legislation on a variety of aspects of public law,
53 including the jurisdiction, functions, competence and attributions of mayors, justices and other
54 minor indigenous authorities.
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monism, these parallel systems continued to work *de facto*, and in many contexts were tolerated because of the state’s inability to respond to the demands for justice in indigenous regions.

Beginning in the 1990’s, -discourses and practices on liberal, monocultural, and exclusive citizenship began to be openly questioned by a growing continental indigenous movement which decried the practices of internal colonialism and reclaimed not only recognition as legitimate cultures but also autonomic and territorial rights.

It was in this cultural climate and in the face of growing violence and impunity in the state of Guerrero that in October 1995, the first *Policía Comunitaria* (Community Police or PC) is founded in Santa Cruz del Rincón, in the municipality of Malinaltepec, with the organization of 28 villages of Nahua, Mixteco and mestizo origin across three municipalities in the Costa Chica and Montaña de Guerrero regions⁵. The founding charter of the organization states as one of the reasons for its formation the exacerbated levels of violence in the region and corruption of state police institutions in the region. (See Sierra 2014)

By 1998, the community police in the region come together to form the Regional Community System for Public Security, Justice and Re-education, represented in turn by the Regional Coordinator of Community Authorities - Community Police (CRAC-PC or *Coordinadora Regional de Autoridades Comunitarias – Policía Comunitaria*).—⁶ The *Coordinadora* created a network of support among primarily indigenous communities and peoples with different traditions, cosmovisions and languages, who had each developed their own strategies for the resolution of conflicts, and created a common system of self-protection and justice. This system of public security and justice is based on a structure of authority lead by

⁵ Later several Afromexican communities also joined the system.

⁶ There is abundant literature about the CRAC, María Teresa Sierra has been doing activist research with them for almost 13 years and has published abundantly in English and Spanish about their justice system (2009, 2013a, 2013b; 2014a; 2014 b, 2015). Several of our students have done dissertations that later became books as the pioneer work of José Joaquín Flores Felix (2007), the PhD dissertation of Liliana López López (2015) and the master thesis of Ana Cecilia Arteaga (2013). Most recently, John Gledhill analyzed this experience mainly based on secondary sources (Gledhill 2015).

a regional assembly, in turn based on community assemblies, which guarantee the transparency and democratic exercise.

The community work of the members of the CRAC, known locally as “Los comunitarios”, has had a considerable impact on the crime rate and their processes of re-education has contributed to stop organized crime from recruiting members among its youth. But it is important to recognize that the expansion of the system in different regions of Guerrero has created certain autonomy among the different branches, thus weakening the system as an integrated body. In this context of internal fragmentation it has been easier for the Mexican State to criminalize the organization. In spite of the fact that the CRAC is recognized by Act 701: Recognition, Rights and Culture of Indigenous Peoples of the State of Guerrero, and by Article 2 of the Constitution, in the last five years many of their leaders have been criminalized and jailed accused of “kidnapping” because they detained criminals and submitted them to re-education processes.

Repeatedly, when the interventions of the CRAC endanger the interest of local governments with links to organized crime, accusations of their “illegitimacy” fly and their legal processes are criminalized. Such was the case of Nestora Salgado García, Commander of the Community Police force for Olinalá, and of Arturo Campos Hernández and eleven other members of the CRAC in Paraíso, in the municipality of Ayutla.

The community police of Olinalá, has its own political genealogy and was created in the process of expansion of the CRAC system. It was the context of impunity in which the organized crime in Olinalá was acting that influenced the decision to create an autonomous civic police. After the femicide of two young women, the kidnapping and extortion of local merchants and the murder of a young taxi driver in 2012, the inhabitants of Olinalá decided to create their own security system to organize for their own self-protection. In October 27, 2012, a young man from the community, Cecilio Morales Guevara, was kidnapped by members of local narco-traffickers and later his body was found on the outskirts of the town. After this tragic event, community members organized assemblies in the eight *barrios* (neighborhoods) that form part of the town of Olinalá: San Francisco, San José, Texalpa, Paraíso, San Isidro, San Diego (o Tomaxtla), San Sebastián y Tlacomulco. In those community gatherings the inhabitants decided to create their

own Civic Police and elected a Coordinating Council formed by representatives of each neighborhood.⁷

Before this community police system was created, there were other communitarian police experiences in the Nahua community of Temalacatzingo, and in the neighboring municipalities of—Huamuxtitlán and Cualac. So the inhabitants of Olinalá were already familiar with the conciliatory processes and the re-education experiences of indigenous justice. These previous links with the other communitarian police systems influenced the decision to invite the authorities of the CRAC to hold a workshop in Olinalá.

In December 2012, two months after the Community Police of Olinalá was formed, a workshop was imparted on indigenous justice and the operation principles of the CRAC. Close to four-hundred community police members attended the workshop, among them the men and women who form the community’s “elders of knowledge”, some of whom had taken part in the *Rondas Campesinas*, a form of volunteer rural security patrols early in the last century, and were familiar with the principles of indigenous justice.

After the workshop, there was a process of community polls and neighborhood assemblies, as well as house by house visits in order to comply with all the requirements to become a member of the CRAC. The community had to commit to the “Internal Rules of the Community System of Security, Justice and Reeducation of the Montaña and Costa Chica Regions”, and establish links with the *Casa de Justicia* in the town of El Paraíso in the region to comply with the re-education processes of the citizens who committed crimes.

From a town civic police system, they evolved to a communitarian security and justice system integrated into the vast network of the CRAC. They received the recognition and even support of the government, that gave them uniforms and a pick-up truck. But in 2013 the CRAC registered a series of detentions of its members after the Community Police jailed criminals linked to the local mafias in Guerrero. The detentions took place in the time frame of confluences in the interests of organized crime and government officials in the region. In the last three years the criminalization of the Community Police has handicapped their performance, weakening the organization and exacerbating internal divisions and rivalry for leadership.

⁷ Workshop with the members of the Olinalá Community Police, July 23, 2015.

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3 In the Costa and Montaña de Guerrero regions, where the CRAC had been playing an
4 important role safeguarding communities, the attacks on the organization and the aggravated
5 internal divisions mean the support it is able to provide has weakened considerably.
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10 In the municipality of Olinalá, criminal groups such as as “Los Ardillos”, “Los Rojos”, or
11 “Guerreros Unidos” operate with impunity, extorting communities, collecting “protection fees”
12 from businesses and kidnapping young women later sold into prostitution cartels. The complicity
13 of the local authorities with these groups is an open secret: everyone in the region knows about
14 it.
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19 Such was the context in which Nestora Salgado García was arrested on the 21st of August
20 2013, along with 30 members of the community police, accused of kidnapping and organized
21 crime. Nestora was taken to a high security prison in Tepic, Nayarit, where she remained in-
22 communicated until May 28, 2015, when she managed to get transferred to a prison in Mexico
23 City by staging a hunger strike that nearly killed her. Once in Mexico City the human rights
24 lawyers Leonel and Sandino Rivero took on her legal defense and invited -Héctor Ortiz Elizondo
25 and myself to write the expert witness reports about the legitimacy of Nestora’s actions as a
26 member of an indigenous system of justice.
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34 **The request for an expert witness report and the challenges we faced**

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37 In April 2015, Sandino and Leonel Rivera, the attorneys of the human rights law firm
38 Defensa Legal Estratégica en Derechos Humanos (Strategic Legal Defense in Human Rights) ,
39 approached our team of legal anthropologists at XXXX to request our support to make an expert
40 witness report that could be used in defense of Nestora Salgado García. The members of our
41 team, XXXXXX and myself had been working for many years in areas related to the defense of
42 indigenous rights, legal pluralism and autonomic processes and several of us had experience
43 elaborating anthropological expert witness reports.
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51 As a team, we are interested in linking our academic research with specific strategies in
52 support of the struggle for justice of the actors with whom we work, and this has led us to take
53 part in a variety of experiences as expert witness, (See XXXX 2016, Sierra y Lopez in this
54 edition, Mora in press). At the same time, María Teresa Sierra and some of our students had done
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collaborative research with the CRAC (See Footnote 6). However, at the time we were asked to participate in this case, there were two main obstacles to overcome: on the one hand, the process of internal rupture that the CRAC was undergoing added new difficulties to the defense of indigenous justice systems, and on the other, the intensification of violence in connection with organized crime in the region made carrying out the field work a more demanding (and risky) endeavor. After considering our availability and capacity, I was the one that accepted the commitment with the support of my colleague Hector Ortiz Elizondo .⁸

Although it was evident the case was one more instance of criminalization of indigenous justice, the lawyers hoped to take advantage of what has been called the “grey areas” of the State (Geldres González 2016), or the fissures of hegemonic control (XXXX 2001), that is, the possibilities of finding within the hegemonic discourse and practice of legal monism, judges who were open to understanding and recognizing legal pluralism. Such had been the case of Judge José Luis Arroyo Alcantar, who in 2014 had revoked the prison sentence against Nestora, in a decision that argued she was performing her duty as community authority and which explained the various state, national and international legislation that give community police bodies legal legitimacy.⁹ In spite of the finality of these arguments, the Judge’s decision did not lead to the liberation of Nestora Salgado, because she was charged with new “crimes”. When the team from Strategic Legal Defense in Human Rights took on Nestora’s defense, there were three different processes open against her which we had to consider in our expert witness report.

The first process was related to a case of cattle rustling, and she was accused of aggravated kidnapping and illegal detention of six men accused of stealing cows whom the

⁸ Hector Ortiz Elizondo and I have collaborated in different projects for more than 25 years and worked on the expert witness report in the case of Inés Fernández Ortega vs. the Mexican State before the Inter-American Human Rights Court; our work can be read at <http://www.rosalvaaidahernandez.com/wp-content/uploads/2016/08/peritaje-ines-fernandez.pdf>; an analysis of the report is included in Hernández Castillo 2016.

⁹ Ruling by Judge José Luis Arroyo Alcantar, Magistrate of the Primer Tribunal Unitario del Vigésimo Primer Circuito, in Acapulco, from Nestora Salgado García legal record.

Community Police of Olinalá had detained and sent to the Justice House of Paraíso in the municipality of Ayutla de los Libres in Guerrero for their re-education (Causa penal 48-2014).

The second process was for the illegal detention of 43 individuals who were detained and were undergoing a process of re-education in the *Casa de Justicia* in Paraíso, who were liberated when the army broke and entered the place in August 2013 (Causa penal 05/2014-I).

The third case was the most delicate because it involved minors. Four girls had gone missing for several days, so their mothers sought out the intervention of the Community Police to search for them. The girls were found in a neighboring community where they admitted they had gone “partying” with two grown-up men. Because prostitution networks are known to recruit in the region, the mothers asked in writing for the CRAC to send the girls away as a strategy to protect them from the networks of organized crime that exist in the municipality. The young women were sent to Ayutla de los Libres under the care of families who were part of the Community Police, a decision for which Nestora Salgado was accused of aggravated kidnapping. (Causa Penal CAUSA PENAL: 05/2014-I).

The accusations against Nestora were not free of racist overtones, and they made a caricature of indigenous systems of justice, comparing the process of re-education in the Indigenous Houses of Justice (Casas de Justicia Indígena) with the kidnappings of organized crime. The legal defense of Nestora was taking place on a legal and political space crisscrossed by different interests: those of organized crime in the region, conservative perspectives opposed to indigenous justice and autonomic processes, the complicity of local authorities with criminals, among others.

Writing the report meant working with Nestora for several months, reconstructing the main events in her life and understanding the political circumstances that led her to take part in organizing the people of Olinalá to become members of the Regional Coordinator of Community Authorities. We also worked with focal groups to gather information from different sectors of the CRAC-Olinalá. At the methodological level, we had to reconstruct the historical and anthropological background of the indigenous population, mostly of Nahuatl speakers, in the Municipality of Olinalá and neighboring communities.¹⁰ We made six field visits to the

¹⁰ Olinalá (Olinatzin is the name of the town in the original náhuatl), where Nestora Salgado García was born, had a population of 24,723 in the 2010 census, of which 56%, that is,

municipality of Olinalá and to other neighboring communities which are under the jurisdiction of the CRAC, where we interviewed at length members of the Community Police Organization, people who had undergone the re-education process as well as elders from Olinalá who were familiar with the history of community justice in the region. At the same time we reviewed internal documents of the CRAC, such as the “Internal Rules of the Community System of Security, Justice and Re-education of the Montaña and Costa Chica de Guerrero”, as well as the documentation on the three criminal procedures.

An important part of the research for which I was responsible were seven in-depth interviews, each about three hours long, with Nestora Salgado. At the time she was imprisoned at the *Torre Médica de Tepepan*, a hospital unit for prisoners serving their sentences in Mexico City.

Writing the report meant we had to translate into academic terms so that the judges and lawyers would be able to understand the activities and responsibilities -that Nestora had already described in her legal depositions. At the same time, in order to describe the actions of the Community Police of Olinalá in the context of indigenous communities reconstruction of justice, and to place the practice of people’s own justice in a national and international legal framework, we had to systematize the collective memory of members of the CRAC, a project that the legal anthropology team of CIESAS had been working on for several years. Our report required revisiting previous reserach in order to contextualize the work of the CRAC-Olinalá in the larger framework of reconstitution of indigenous justice.

We also had to demonstrate in the report that the civic police Nestora Salgado commanded belonged to the system of indigenous justice and security known as CRAC-PC and therefore their actions to administer justice were legally recognized in article 37 of the Act 701 of *Recognition, Rights and Culture of Indigenous Peoples of the State of Guerrrero*.

In the case of the minors, we had to show that Nestora’s actions when she had them removed from their community responded to strategies of protection of minors that the CRAC had been using successfully. Through our field work we were able to demonstrate that the minors

13,957 people, considered themselves members of an ethnic indigenous group. For this reason Comisión para el Desarrollo de los Pueblos Indígenas (CDI) defines the municipality as primarily indigenous. The municipality is formed by 277 villages, 255 of which have over 40% indigenousprimarily population.

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3 were sent to a re-education process as requested by their mothers, and that there was a previous
4 history of detention at the request of parents both in the jurisdiction of Olinalá and in the House
5 of Justice in San Luis Acatlán. We were able to interview one 13 year-old girl who had been
6 through the process of re-education in Olinalá. After her mother died, the alcoholic father, who
7 be situated absent for long periods of time, abandoned the girl. The girl was in charge of the care
8 of her younger siblings and looked for support and food at the homes of relatives and neighbors.
9 Finally she started spending time with young men who had links to local organized crime. The
10 father asked the Community Police to find her. Once brought back, the girl refused to return to
11 her father's home, and he requested that his daughter begin a process of re-education. The
12 Counsel's decision was to place her in custody with the community system in Huamuxtitlán,
13 where she finished her re-education process with a local family. When we interviewed her she
14 was grateful not only towards the family that hosted her but also to the CRAC for having
15 provided her an alternative to the violence in which she was growing up. After almost a year of
16 living with the family assigned by the CRAC she officially returned to her relatives, who decided
17 she would live with one of her aunts. (Entrevista H.O. agosto 2015, Olinalá).

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19 We were not able to interview any of the four young women involved in the case, who
20 refused to talk because they for fear of reprisals. One of the girls and her mother, pressured by
21 several local actors, ended up testifying against Nestora. We were able to interview one young
22 man who had been detained at the same time and who was in the House of Justice in El Paraíso
23 when the minors underwent re-education. In the interview the young man said he was grateful to
24 the Community Police because they were able to stop him before he was detained by the State
25 police, who would have sent him to prison for a longer period of time because of the bad
26 company he was keeping. The young man said he was treated respectfully and described the
27 process of re-education to which all the persons detained had to undergo, which consisted of
28 community work according to each's capacity and ability, as well as regular talks with the elders
29 and authorities of the CRAC about the importance of changing their attitudes and behaviors that
30 led to their detention. All the participants in the process of re-education were in communication
31 with their families and communities. (Entrevista a F.J. Septiembre 2015).

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33 It was quite challenging for us to carry out the interviews in an atmosphere of fear and
34 mistrust. The field visits to Olinalá were made in a very tense atmosphere, since it was well
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known that a criminal group called “Los Rojos” were extorting merchants, charging “protection” fees and controlling networks of child pornography and prostitution.

The creation of the Community Police in Olinalá confronted these factual powers, denounced their actions and managed to arrest some of the criminals. During the time Commander Nestora Salgado headed the Community Police, she confronted several times the local mafia and in one occasion managed to confiscate child pornography materials, which she turned over to the federal authorities in the region, who then “lost” the evidence (Interview with Nestora Salgado, July 17, 2015, Torre Médica de Tepepan, Mexico D.F.).

The presence of organized crime and the complicity of local government authorities were mentioned in several interviews. Regarding this, a fellow member of the Olinalá Community Police, also a woman, said:

“We were catching the criminals, but when we turned them in to the army or the federal police, they would just let them go. We had plenty of evidence of what they were doing (the criminals). Once they left behind a computer. At that time we couldn’t open it because it was locked with a password. Nestora with other *comunitarios* took it to the Marines. But I don’t think Nestora ever got a document to prove they had received this evidence. That time they also found mobile phones, memory sticks, they even found a girl, drugged and semi-naked. That was when the *sicarios* (hitmen) fled, and the people of the town went to open the house. And all that evidence Nestora turned in to the military, but she never obtained in writing a statement about having turned evidence to them, and what kind of evidence it was. There never was a document. So when I joined the Community Police as a representative of the barrio I would repeat to Nestora that we must insist on getting documents in every case, because often evidence just gets lost.” (Entrevista a M.J. julio 2015)

It was in such a context of complicity between the local authorities with organized crime that we had to carry out the ethnographic research. Our first field trip, on July 23, 2015 was made in almost complete secrecy. When we arrived in Olinalá we could feel the tension and fear in the air. We had to establish our own security protocols, which among other things required that we remain together at all times and always accompanied by a relative of Nestora or a member of the CRAC. The Community Police had almost disbanded; only a few came out to

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3 patrol and to comply with the basic security measures, but many had resigned after the detention
4 of Nestora. The desertions had caused divisions and mistrust within the community;
5 nevertheless, when Saira Rodríguez García, Nestora's daughter, called for a meeting to introduce
6 us, the conflicts were set aside and both members and those who had previously resigned sat
7 together with the common objective of supporting the defense of their Commander, Nestora.
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12 Through both collective and individual interviews we recovered the memory of the
13 history of the people of Olinalá on community justice and the more recent processes through
14 which they decided to become part of the regional system of indigenous justice. We documented
15 how, in the context of a worsening situation of violence and impunity, faced with the strong
16 presence of organized crime in the municipality, the people of the community invited regional
17 coordinators of the CRAC to share their experience in building a justice system based on a
18 people's right to justice.
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24 The 43 "kidnapped" individuals, of whose "illegal" detention Nestora was accused,
25 were citizens who were undergoing a re-education process in the Casa de Justicia in Paraíso,
26 Ayutla de los Libres, Guerrero, who were liberated by the army in a regional operative in 2013.
27 These individuals had been arrested in different incidents by members of the Community Police.
28 None of those liberated mentioned the name of Nestora Salgado in their depositions, and they
29 never appeared in court to verify the accusations. Through interviews with some of those who
30 had been detained we could document the kinds of activities they were asked to perform during
31 the re-education process, which were all related with community work according to each
32 person's capabilities and abilities, as well as regular conversations with elders about changing
33 the behaviors and attitudes that led to their detention.
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41 Rather than going into the details of the three reports we wrote, each linked to a different
42 legal process¹¹, my interest here is rather to point out the challenges and pitfalls that legal
43 activism entails, not only due to the context of violence in which the research has to take place,
44 but also because our expert witness reports can themselves reify hierarchies of power.
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49 ¹¹ The three expert witness reports written by ethnologist Héctor Ortiz Elizondo and the author of
50 this chapter, refer to Penal Case 05/2014 for aggravated kidnapping, relating to the detention of
51 four minors, with written authorization by their mothers, with the intention of rescuing them
52 from organized crime networks. Penal Case 196/2013-I, relating to illegal detention of 43 persons
53 held at the Casa de Justicia in Paraíso. Penal Cause 48/2014 relating to illegal detention of 5
54 persons involved in cattle stealing.
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All of these processes had already been described in Nestora’s depositions; our work was limited to systematizing, contextualizing, and making an analytic description of the principles of indigenous systems of justice in the region and how they work.

Once again we were faced with the ethical and political challenge of reproducing epistemological hierarchies that placed our specialized knowledge above the local knowledge of the men and women of the CRAC. We chose to give a central place in our report to the oral history of the members of the CRAC, not just the members of the Policía Comunitaria of Olinalá but also those who had faced imprisonment, such as Gonzalo Molina, the Coordinator of the Casa de Justicia in El Paraíso, who was imprisoned in Chilpancingo since November 2013, after taking part in a series of mobilizations in protest of Nestora Salgado’s arrest.

Nestora’s personal history at the center of the report

Another strategy that we found very important in de-stabilizing the hierarchies of knowledge that anthropological expert reports tend to reproduce was to give a central place to local knowledge and oral history both in Nestora’s voice as in that of other members of the CRAC. The methodologies I had been developing to document life histories as part of an editorial prison project ¹², turned out to be fundamental in reconstructing, from an intersectional perspective, the genealogy of exclusion that marked the life of Nestora and ultimately influenced her joining the CRAC as well as her reivindication of women’s rights in the framework of indigenous peoples collective rights. (ver XXXX 2016)

Answering the question, “May the experts explain the social and cultural circumstances that led the defendant to participate in the CRAC’s system of justice and security,” implied reconstructing, in dialogue with Nestora, her life history and her trajectories of exclusion.

¹² Since 2008 I am part of a publishing collective formed by women in prison, “Hermanas en la Sombra” through which women prisoners use these methodologies to create life histories in which they reflect critically about the many different systems of inequality that led to their imprisonment. The women learn to write with a literary voice and to their publish books; to date the collective boasts twelve books written, designed, and published by women prisoners. To find out more see

http://www.rosalvaaidahernandez.com/?page_id=42

Because of the strict rules of Mexico's penal system, we were not authorized to bring recorders into the prison; therefore, the interviews were performed with the support of historian Nancy Salais, who took notes of our dialogues and later transcribed them. This same material was reviewed in the following session by Nestora, and it served to deepen the reflection on the context of state violence, racism, and criminalization of indigenous justice in which her detention took place. The translation from Nestora's oral testimony to Nancy's written words often implied changing the textual style in which things were said and the metaphors used, which were often left out of the transcription due to time limitations. Nestora carefully reviewed the written text and, if she recognized in it a voice that was not hers, she patiently corrected our version of her story, explaining the importance of the details we had overlooked. This almost archeological work of memory reconstruction provoked many emotions in her and in us, and we often ended up weeping together because of the impotence we felt in the face of impunity. The neutral and distant ethnographer, whose sole task is to describe a reality to be later analyzed, was never present in these dialogues among women, where we shared the same concern to give form and meaning to a version of reality that was silenced by legal discourse. The life history narrated by Nestora contrasted with what we found in her criminal record, where her voice had been transformed into a deposition transcribed and summarized by a secretary whose language was marked by legal discourse.

The intersectional perspective allowed me to see the way in which racism against community systems of justice would take specific shapes when the criminalized leader was a woman. In addition to the racist disqualification of indigenous justice systems, Nestora was the target of sexist insults that questioned her sexual behavior and morals, and considered her behavior inappropriate because she was a married woman who was always surrounded by men and because she came and went freely around the region. Her transgression of socially assigned gender roles was answered by efforts to intimidate her before, during and after her imprisonment, and she received constant threats of sexual violence against her and her daughters.

Writing the witness report implied not only demonstrating how the CRAC's indigenous justice system works today, but also documenting the multiple exclusions that marked Nestora Salgado's life and that continue to characterize her experience before the Mexican state's criminal justice system.

The almost one hundred pages of her life history were reduced to three 15-page reports,

which left out all the metaphors, anecdotes, and experiences of pain and impotence that characterized her narration. Despite our concern for being as faithful as possible to her version of the story, the report required an extension and a format that once again implied imposing the language of legality. The transcribed material, however, is waiting for Nestora to be able to rework it so that she can tell her own story.

Throughout our work on the reports, we never lost sight of the fact that the counter-hegemonic use of the law only makes sense when accompanied by other collective political efforts that support diverse discourses and experiences to speak in the name of justice and legality.

The three reports were presented by the experts on November 2015 at the First Lower Court for Criminal Matters of the Judicial District of Morelos, in the city of Tlapa de Comonfort, Guerrero.

On April 18, 2016, five months after the expert witness reports were presented in Court, Nestora Salgado was set free. Her liberation was the result of a struggle which articulated the efforts of her lawyers, Sandino and Leonel Rivero with national and international solidarity and political pressure from the United Nations Work Group on Arbitrary Detention. Our reports were one of many elements in a larger political and legal strategy. Nestora's detention had political origins, and political pressure from different sectors in Mexico and international solidarity were crucial for her release.

Nestora's liberation and the organized struggle around her case demonstrated the legitimacy of indigenous systems of justice in Mexico. It was a successful example of what can be achieved through political alliances in the struggle against the criminalization of indigenous women. Today Nestora Salgado leads an international struggle for the liberation of Mexican political prisoners. Her strong commitment to social justice has taken her to other countries to denounce the criminalization of indigenous activism and social organizing in Mexico.

Final Thoughts

Anthropological witness reports used in the defense of indigenous peoples are one more tool in the long history of legal activism in which Mexican and international anthropologists have taken part.

However, this history is poorly documented, and in general anthropologists have reflected and documented little of our own practices of activism in a variety of struggles for

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3 social justice, which in many cases runs parallel to our own academic research. In this issue we
4 wanted to break these silences and think about our role as cultural experts in the spaces of
5 justice.
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8 The recognition of *anthropological affidavits* as expert witness reports in Courts of
9 justice has opened new scopes of application for our discipline, but at the same time it brings
10 new political and epistemological challenges. As cultural critics we have come a long way in the
11 analysis of legal systems as power structures which legitimize certain world-views, so it is
12 contradictory to use the very discourses on rights that we have been deconstructing as tools in
13 our activist work. In the face of this dilemma, the methodological proposal I have bet on is to
14 establish intercultural dialogues with the men and women actors with whom I work to discuss
15 ideas of justice and rights as wielded by the State. To reflect collectively on the possibilities and
16 limitations of the law and to question the regulatory discourses of the State has led me to de-
17 stabilize my own certainties around justice and emancipation.
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20 As a feminist, my collaborative work on legal anthropology with indigenous women and
21 specifically in this case with Nestora Salgado and the women of the CRAC led to a revision of
22 my own conceptions of gender rights, and to a self-critical review of my own complicity in
23 processes of -“erasure” of other conceptions and expectations in relation to women and justice.
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26 Nestora’s testimony is a source of theorization that speaks to us of other ways of understanding
27 women’s rights and their links to the collective rights of indigenous peoples. The theorizations
28 born out of collective spaces such as these and others that are being created in different regions
29 of Latin America speak of the new utopical horizons that indigenous women are building as they
30 recover the historical memory of their peoples. With the resource of community knowledge and
31 reliance in their own systems of security and justice, indigenous men and women are confronting
32 the violence that is done to their territories in myriad ways.
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35 It may seem absurd to wish to use the legality of the state in contexts in which the
36 institutions of the state have failed, and in places where organized crime is working from inside
37 the state system. However, the heterogeneity of the Mexican state is such that while some state
38 actors are trying to criminalize indigenous movements, others are defending the recognition of
39 their legitimate rights (see Sierra, Hernández Castillo y Sieder 2013). It is in these grey areas
40 between criminalization and recognition that the expert witness report can have some weight in
41 the struggle for access to justice. (see Geldres Gonzalez 2016).
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It is important to recognize that doing anthropological affidavits in contexts marked by violence and grave violations to human rights implies a commitment to report on the structural reasons for this violence. It is also very important to develop collective security strategies that allow us to put our knowledge at the service of the social actors with whom we are working, without placing them, or ourselves, at risk. During the work on Nestora Salgado’s defense, these strategies included constructing international alliances that denounced the criminalization of indigenous justice and included legal activism at the United Nations.

At an epistemological level, producing knowledge based on the dialogs between forms of knowledge implies changing our understanding of theory, methodology and, in a wider sense, our role as men and women anthropologists in a world that is increasingly characterized by inequality, violence and impunity.

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