



**The judicialization of the right to self-government in indigenous municipalities of Mexico:  
Cherán, Ayutla, Oxchuc**

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**Abstract:**

The purpose of this article is to analyse the autonomous processes that are taking place in several indigenous municipalities in Mexico, in order to examine how indigenous peoples exercise their right to self-government at the municipal level. From a socio-legal approach, the methodology is based on a comparative analysis of three case studies: the municipalities of Cherán, Ayutla and Oxchuc, in the states of Michoacan, Guerrero and Chiapas, respectively. These municipalities have elected new local governments in recent years, not through the mainstream electoral-partisan system, but through their own normative systems that have been legally recognized. The text is divided into eight sections: an introduction, a section on indigenous municipalities in Mexico, one section for each of the three case studies, another for the comparative analysis itself, a penultimate section with the results of this exercise, as well as some final thoughts. The main finding of the investigation refers to a process of judicialization of the right to self-government that places indigenous peoples before a paradox, typical of the tension that intrinsically strains the legal recognition of their autonomous processes.

**Keywords:**

Judicialization, right, government, municipality, indigenous peoples.

**Resumen:**

Este artículo tiene como objeto analizar los procesos autonómicos de jure que están teniendo lugar en varios municipios indígenas de México, con el fin de examinar cómo los

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pueblos originarios ejercen su derecho al autogobierno en el ámbito municipal. Desde un enfoque de derecho, su metodología se basa en un análisis comparado de tres casos de estudio: los municipios de Cherán, Ayutla y Oxchuc, en los estados de Michoacán, Guerrero y Chiapas, respectivamente, debido a que estos se han dotado de nuevos gobiernos locales en los últimos años, no por el sistema electoral de partidos tradicional, sino por medio de sistemas normativos propios que han logrado ser legalmente reconocidos. Para ello, el texto se divide en ocho apartados: una introducción; una sección sobre la problemática de los municipios indígenas en México; tres apartados sobre cada uno de los casos de estudio; otro apartado con el análisis comparado en sí; un penúltimo apartado con los resultados de este ejercicio; y unas reflexiones finales. El principal hallazgo de la investigación remite a un proceso de judicialización del derecho al autogobierno que coloca a los pueblos indígenas frente a una paradoja, intrínseca a la contradicción que tensiona en su seno los procesos autonómicos de jure.

### Palabras clave:

Judicialización, derecho, gobierno, municipio, pueblos indígenas.

## 1. INTRODUCTION

In Mexico, the last decade has been marked by transformations of great relevance for municipalities and the functioning of local governments. Among them stand out cases that reveal a new exercise of self-government at the municipal level and in indigenous regions. This is the case of Cherán, for example, where a form of local government – different from the municipal council (*ayuntamiento*) – was constituted through internal normative systems and was legally recognized by the Mexican State. The purpose of this article is to analyse how indigenous peoples in Mexico are exercising their right to self-government at the municipal level – understood as part of the right to self-determination applied to the municipality (Aparicio and Morell i Torra 2021) – by creating new forms of political and normative organization, based on three case studies: Cherán, Ayutla and Oxchuc.

The perspective we adopt is based on a socio-legal approach that will be limited to the study of municipal self-government processes that have reached a formal level of official recognition by state authorities. Therefore, we will not review in anthropological terms the inner workings of these processes. Nor will we take into account the *de facto* autonomous local governments that function outside the State, which have emerged in several indigenous regions following the 1994 Zapatista uprising in Chiapas (Bravo 2009) and differ from governments with official recognition mainly because of the budget issue. Indeed, perhaps the main difference to be considered from the outset between the legally recognized autonomous governments and the *de facto* ones lies in the fact that the former, unlike the latter, do have access to the Mexican State budget and direct management of public finances. On the other hand, the study will also be limited to the municipal scale. So, we will not be interested in the experiences of self-government at the sub-municipal level, understood in Mexico as a “fourth level of government” (Aragón 2020).

At the methodological level, the research responds to a case-oriented comparative analysis (Della Porta 2008, Ragin 2014) that allows us to work for a small number of cases (Rueschemeyer 2003). This method consists of identifying a series of elements that intervene among the necessary conditions for a phenomenon to occur or an outcome of interest to be produced: in this case, officially recognized self-government in indigenous municipalities. This type of comparative analysis can be used to study similarities as well as differences. Here we will focus on the similarities between the three case studies. Identifying the elements they share could provide clues for interpreting the transformation of municipal government that we observe today in different indigenous regions of Mexico, and which we are interested in understanding.

The comparative analysis will be applied to a sample of three cases: the municipalities of Cherán, Ayutla and Oxchuc, located in the states of Michoacán, Guerrero and Chiapas. We chose these three municipalities because they are the first governments ruled by internal normative systems officially recognised as such by the Mexican state, which were legally elected in 2012, 2018 and 2019, respectively. These are therefore recent cases, whose autonomous processes are inscribed –it is important to note this– in the scenario of the so-called “drug war” and the generalized violence that it unleashed in contemporary Mexico. It is for this reason that, for example, the Cherán and Ayutla processes stem from self-defense movements against organized crime. In turn, although the three cases are concentrated in the south of the country, they present diverse demographic characteristics in terms of the indigenous peoples that live in these municipalities: P’urhépecha (Purepecha) in Cherán; Ñuu Savi (Mixtec) and Me’phaa (Tlapanec) in Ayutla; and Tzeltal (Mayan) in Oxchuc (Table 1).

TABLE 1

Municipality	Cherán	Ayutla	Oxchuc
State	Michoacán	Guerrero	Chiapas
Population*	20,000	70,000**	55,000
Localities	3	140**	142
Neighbourhoods	4		25
Indigenous people	P’urhépecha (Purepecha)	Ñuu Savi (Mixtec) Me’phaa (Tlapanec)	Tzeltal (Maya)

Table 1. Case studies. Made by the authors.

\*Approximate number

\*\*Prior to the creation of the new municipality of Ñuu Savi and its separation from Ayutla in 2021.

For the analysis, the information sources used were primary in the case of Ayutla, based on ethnographic work carried out in the municipality (Gaussens 2020), and secondary in the cases of Cherán and Oxchuc, based on a documentary analysis of the main research studies on the autonomy process in each municipality. In the case of Cherán, there is extensive literature that we have had to circumscribe to research that shares with our study a socio-legal focus (Bailón 2019, Aparicio and Morell i Torra 2021), as well as an inquisitive concern for the exercise of political autonomy (Ventura 2018, Gasparello 2018, Fuentes *et al.* 2021). Of particular importance in this regard has been the work of anthropologist Orlando Aragón Andrade (2018, 2019, 2020), who has been directly involved in the dispute as one of the community’s lawyers. In the case of Oxchuc, which is the most recent process of the three cases, studies are still relatively scarce (Jiménez and Ocampo 2019,

Becerra 2020, Ocampo 2020, Pérez Sánchez 2021). Among them, the research work of anthropologist Araceli Burguete Cal y Mayor (2020a, 2021, 2022) stands out.

The article is divided into eight sections, including this introduction. In the following section, we will raise the issue of indigenous municipalities and their government in Mexico, in order to introduce the subject being discussed. We will then go on to describe each of the three case studies in chronological order, with Cherán first, Ayutla second and Oxchuc third. Once the cases have been presented, we will use comparative analysis of them and, in the penultimate section, we will review the main result obtained from this exercise: the judicialization of the right to self-government of indigenous peoples. Finally, we will close the text with some final thoughts on the paradox embodied by the legal recognition of autonomy processes.

## 2. INDIGENOUS MUNICIPALITIES IN MEXICO

In Mexico, the figure of the indigenous municipality has received jurisdictional recognition through the case of Cherán – which we will describe in the following section –. Through a May 2014 ruling, the Supreme Court of Justice of the Nation (SCJN) recognised Cherán as an *indigenous municipality* because its government is by *usos y costumbres* (customs and traditions) (Ventura 2018). In this sense, indigenous municipalities generally refer to municipalities in which the majority of the population is indigenous. They have one or more indigenous peoples inhabiting them, and these peoples have their own normative systems that govern the political organisation of their communities and overlap with the municipality's official institutionality (Bravo 2009).

These normative systems, today referred to as “internal” are the heirs of what Mesoamericanist anthropology theorised as the cargo system,<sup>1</sup> and of what are commonly known in Latin America as *usos y costumbres*. However, to speak of the latter is problematic because the expression itself is polysemic, has ideological connotations and is a source of confusion, since it suggests an ancient, local and purely traditional origin of power. The reference to custom alludes to a static vision of indigenous peoples. This is why the term *usos y costumbres* has been strongly criticised, both in the social sciences and by organisations and their leaders, as it minimises the condition of a complex legal system found in community governments and thus undermines the validity of customary law in the face of positive law.

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<sup>1</sup> The cargo system represents an institutional set of political practices that has historically characterized the social organization of rural, peasant and indigenous communities in Mexico, particularly in the south of the country. It is based on an imperative of service to the community, understood as a civic duty to which all adults or married persons in the locality are subject. This principle of community service refers to the performance of duties whose tasks are prescribed by law and custom. In general, community service expresses the interdependence between individuals and the group and, in turn, between households and the community, by constituting a requirement of belonging to the community. Its principle rests on an unspoken covenant that service is a prerequisite for the individual provider and their family to access the rights and resources that the community grants them as members. However, it is important to note from now on that the cargo system has traditionally obeyed a principle of patriarchal and gerontocratic domination. Therefore, both women and youth have been excluded from community positions of authority until recently (Rodríguez 2017, Cortés 2017). For further explanations about the cargo system in Mexico, see: Korsbaek 1996, Millán 2005, Topete 2014, Topete and Díaz 2014, and about its contradictions: Lisbona 2005, Recondo 2007 and Gómez Hernández 2014.

Despite their recognition in international law – particularly in the International Labour Organisation (ILO) Convention 169 – *usos y costumbres* refer to social practices that show high degrees of heterogeneity. Rather than pure tradition, they are in fact made up of a highly variable combination of two seemingly distinct sources of law, namely local custom and state law (Stavenhagen and Iturralde 1990). From this dialectical perspective, in Mexico’s indigenous municipalities throughout the 20th century, custom and law combined to give rise to hybrid local governments in which customary and official structures intertwined in a wide variety of configurations.

On the legal side, the political system of the post-revolutionary one-party regime adapted to this cultural particularity. As David Recondo (2013, 29) points out,

custom and the system of political representation centred around the state party were completely imbricated; even when the state tolerated a margin of autonomy in the election of municipal authorities, custom ultimately was part of the internal procedures for selecting the official party’s candidates.

For decades, the election of the council was restricted to the main city or village of the municipality. It took place in an assembly or meeting organised by and for the “strong men” of the main families of the place. The new authorities were then registered as part of the Institutional Revolutionary Party (PRI) in the framework of the one-party regime, a procedure that was assumed by the majority as normal, and as part of the custom (Rus 1995).

The indigenous peoples appropriated the municipal council to provide it with their own cultural practices, beyond – and even against – what the law stipulates. “This process of appropriation has been done through the adaptation and transfer of political, normative and cultural mechanisms (...) to the official municipal form of organisation” (Bravo 2009, 98). Thus, the authorities of indigenous municipalities have exercised the functions of government based on local normative systems rather than on existing legislation, often in conjunction with traditional authorities, both civil and religious. Furthermore, these authorities were not usually elected through the electoral party system but appointed in assembly or by a council of elders (*concejo de ancianos*). The eligibility criteria did not derive from the law, but from the community service that underlies the cargo system.

Although the post-revolutionary regime incorporated this peculiarity within the broader device of official corporatism, aimed at the rural, indigenous and peasant sectors, this situation of cultural hybridism in the exercise of municipal government never achieved a form of official recognition. This “legal blindness” (López Bárcenas 2007) ended in the 1990s, marked by the rise of indigenous movements in Latin America and the Zapatista uprising in Mexico (Sánchez 1999). In this sense, the 1990s marked a break that led to the recognition of customary law for the autonomous political organisation of indigenous peoples. In the political regime change at the end of the century, what had hitherto been instrumentalised or simply tolerated became validated by law.

Thus, the so-called *usos y costumbres* were legally recognised in 1995 in the state of Oaxaca for the election of municipal authorities (Anaya 2006, Recondo 2007). Through a legal reform, the local Congress formally authorised the municipalities – the vast majority of which are indigenous – to appoint the council in public assemblies, outside of the official

date and without the intervention of political parties. In this sense, “the recognition of *usos y costumbres* as norms and practices for the appointment of municipal authorities in Oaxaca created an unprecedented situation in Mexico and Latin America” (Recondo 2013, 11). However, beyond its unprecedented character, this recognition remained limited. Although it changed the election of municipal authorities, it did not alter the form of government established by article 115 of the Constitution: the municipal council (*ayuntamiento*), neither its presidentialism and its structural dependence on the higher levels of government (state and federal).

At the constitutional level, two important reforms in the matter should be mentioned. The first one is the municipal reform of 1999 that changed this article 115. The Mexican municipality ceased to be a simple administrative entity to become the third level of government of the Mexican State (after the federal and the state). In this way, it obtained an area of exclusive jurisdiction, dedicated public funding and governmental powers on basic services. The second one is the 2001 reform that modified article 2 of the Constitution to give recognition to indigenous peoples and communities. Even though this reform was contrary to the San Andrés accords signed between the State and the Zapatista Army (Gómez Rivera 2013), the reformed second article continues to be the normative point of reference for the rights of indigenous peoples in Mexico to date. It is based on it that the judicial authorities support their decisions regarding indigenous municipalities and their forms of government.

Nevertheless, the Oaxacan case led to the belief for several years that *usos y costumbres* could be reduced to a simple customary electoral system, with which only the mode of election of municipal authorities would change in comparison to the party system. The problem with this legalistic stance is that it locked the transformative potential of *usos y costumbres* into a procedural straitjacket, denying indigenous peoples the right to self-determination, autonomy and self-government. Likewise, there was a tendency to ignore the complexity of their normative systems, which not only represent substantive ways of electing authorities, but also of conceiving and exercising political power, as shown by the cases of Cherán and Ayutla where the municipal government regime changed. This is what we will see below in the three case studies whose autonomous processes we will briefly describe, one by one, in chronological order.

### 3. SAN FRANCISCO DE CHERÁN

Cherán is the best known of the three case studies, not only because it has pioneered the jurisdictional recognition of the right to municipal self-government for indigenous peoples in Mexico, but also because of the success of its achievements. This autonomous process formally began on April 15, 2011, when the population rose up against the criminal group that orchestrated the illegal logging of forests in the municipality. A community defence movement formed because of this uprising (Fuentes and Fini 2018). Because of it, the criminals and the local authorities colluding with them fled. However, unlike other self-defence movements in Michoacán, the process of social mobilisation was not limited to security and justice with the constitution of a self-organised armed group – the Ronda Comunitaria – and its own jurisdictional body – the Commission of Honour and Justice – (Gaspardo 2018), but also focused on the municipality’s political reorganisation.

The innovative character of the autonomy process in Cherán is that the reappropriation of public space enabled by the community defence movement was related to the recovery of a collective practice (the nightly bonfires). In turn, this practice reactivated the common spaces of deliberation around the neighbourhood assemblies. In the face of collusion of official authorities with criminal activity, this revitalisation of collective decision-making mechanisms soon led to a comprehensive questioning of the local government, its functioning as a municipal council and the party system in general. Therefore, an alternative was sought in the months following the uprising, with the appointment in assembly of a communal government based on the normative systems of the P'urhépecha people (Fuentes *et al.* 2021). The goal was for the system to also be legally recognised by the state authorities, so the decision was to litigate before these authorities to achieve this recognition. This hybrid strategy, combining direct action and legal action, was driven by a practical necessity:

We understood the importance of keeping a foot in the legal door to (...) counteract, even in the short term, the negative campaign that political party leaders were waging within the community about the fact that the movement's demand was illegal, unconstitutional, and so on. On the other hand, we would give the movement more room to manoeuvre vis-à-vis the government, by keeping one foot in the institutional system and the other in social mobilisation (...) and propose an instrumental use of the law to convert it, in a de-fetishized form, into another weapon of political struggle for the Cherán movement. (Aragón 2019, 60-62)

The legal path taken by the Cherán community (Table 2) began on June 6, 2011. A request was submitted to the Electoral Institute of Michoacán (IEM) demanding the election of municipal authorities by *usos y costumbres*, ahead of the local elections officially scheduled for November 2011. In its September 9 response, the IEM declared itself unable to resolve the request, so the Cherán community decided to go to the Electoral Tribunal of the Federal Judiciary (TEPJF) to defend its right to self-government. Thus, on November 2, the Superior Chamber of the TEPJF issued a landmark ruling (SUP-JDC-9167/2011) for Mexico's indigenous peoples (Bailón 2019), based on the direct applicability of international human rights treaties (among them ILO Convention 169) allowed by a recent constitutional reform (Carbonell and Salazar 2011), which we will explain later. The TEPJF's ruling

not only legitimises the election of Cherán's municipal authorities by *usos y costumbres*, something already assumed in the constitutions of other Mexican states [such as Oaxaca], but also, for the first time, assumes as part of the right to indigenous self-determination, recognised in article two of the Federal Constitution of Mexico, the structuring of municipal government by *usos y costumbres*, recognising as official authorities of Cherán the structures of collective self-government instituted during the uprising and setting an important jurisdictional precedent that was used by other indigenous communities in Michoacán and other Mexican states to set up their governments according to *usos y costumbres*. (Aparicio and Morell i Torra 2021, 38-39)

TABLE 2

Date	Event	Result
06-06-11	Request to the Electoral Institute of Michoacán	-
09-09-11	Electoral Institute Agreement CG-38	Negative
02-11-11	TEPJF Ruling SUP-JDC-9167/2011	Positive
18-12-11	Popular Consultation	Positive
22-01-12	Election of the Major Council of Government	Positive
16-03-12	Constitutional reform on indigenous rights by the local Congress	Negative
02-05-12	Filing of a constitutional controversy before the SCJN for lack of a consultation process	-
28-05-14	SCJN ruling on constitutional controversy JCC 32/2012	Positive
2014/2015	Litigation before the TEPJF for lawsuits brought by political parties	Positive
03-05-15	Election of a new Major Council of Government	Positive
08-09-15	Promulgation of the Law on Citizen Participation Mechanisms by the local Congress	Positive
04-16	Presentation of a legislative initiative for the reform of Article 115 of the Federal Constitution before the Senate	Negative
27-05-18	Election of a new Major Council of Government	Positive
03-21	Promulgation of the new Municipal Organic Law of Michoacán	Positive
23-05-21	Election of a new Major Council of Government	Positive

Table 2. Timeline of the legal process in the Cherán case (2011-2021). Made by the authors. Source: Aragón 2019.

The TEPJF ruling also ordered the IEM to organise a popular consultation as a requirement to determine whether the majority of the municipality's population agreed with the election of its authorities by *usos y costumbres*, with a positive final result. On January 22, 2012, a Major Council of Government was elected in an assembly to run the municipality of Cherán. For the first time in the country's legal history, a municipal government other than the constitutional entity of the municipal council was officially elected and recognised as such, setting a fundamental precedent for the other indigenous peoples of Mexico.

Nevertheless, attempts to reverse this achievement did not stop, particularly from the Michoacán state government institutions. On March 16, 2012, in response to the election of the Major Council, the local Congress approved a constitutional reform on indigenous rights that did not even consider the election of municipal authorities by *usos y costumbres*, in a clear attempt to ignore Cherán's judicial victory. As a result, the community decided to file a Constitutional Controversy Trial (JCC) before the SCJN because the reform had not been discussed with the state's indigenous peoples, despite the obligatory nature of the consultation (López Córdova and Gaussens 2021). In its May 28, 2014 ruling (JCC 32/2012), the SCJN ruled in favour of Cherán, which thus achieved a second judicial victory. For the first time, "an indigenous community succeeded in overturning a constitutional reform for violation of the right to prior, free and informed consultation" (Aragón 2019, 168).



In 2015, a new Major Council of Government was elected, a renewal that would also take place in 2018 and 2021. These successive elections gave continuity to the experience of the community government in Cherán, despite the bureaucratic obstacles it encountered at the highest levels of government in the exercise of its functions and the management of the municipal treasury. On the other hand, the autonomy process managed to transcend its achievements in the jurisdictional sphere to take shape at the legislative level: 1) with the adoption by the local Congress, in 2015, of a Law on Citizen Participation Mechanisms in which the Cherán community participated directly by drafting a chapter on the right to binding consultation; 2) with the presentation of a legislative initiative for the reform of Article 115 of the Federal Constitution before the Senate (Aragón 2019); and, finally, 3) with the enactment in 2021 of the new Organic Municipal Law of Michoacán, which recognises the entity of customary government and its power to exercise functions. In summary,

the case of San Francisco de Cherán poses a particular and novel path both in the indigenous repertoires of collective mobilisation, which combine direct action (self-protection of rights) with legal action (litigation), and in the forms of state recognition of indigenous autonomy. (Aparicio and Morell i Torra 2021, 36-37)

In this case, both the 2011 TEPJF ruling and the 2014 SCJN ruling are milestones that lay the foundations for a jurisprudence guaranteeing the right to self-government in Mexico's indigenous municipalities. As Orlando Aragón (2020, 58) rightly points out, “these cases were precedents of primary importance so that other municipalities in Guerrero (Ayutla de los Libres) and Chiapas (Oxchuc) could years later obtain the same legal recognition as Cherán”.

#### 4. AYUTLA DE LOS LIBRES

Although less well known, the case of Ayutla is no less important for the achievements of its autonomy process (Gaussens 2019b, Benítez *et al.* 2021), following the legal path opened by Cherán a few years earlier. In 2018, elections were held under internal normative systems that officially appointed a Community Council as the new municipal government. This feat was born out of an initiative directly inspired by the example of Cherán, which sought to take advantage of people's fatigue with party politics to promote local elections by *usos y costumbres*.

The initiative was sponsored by a particular social organisation: the Union of Peoples and Organisations of Guerrero State (UPOEG) (Warnholtz 2017, De Buck 2019). This organisation is mainly known for having sheltered the self-defence movement that emerged in the Costa Chica region in 2013 (Gaussens 2018). However, it has been considered since its creation as an organisation that manages resources to promote the development of rural communities, not only in matters of security, but also in production, government, education, energy, health and roads (Paulino 2022). Thus, this managerial function has led the UPOEG to develop a socio-legal strategy whose actions “opened up new perspectives in debates about the emancipatory capacity of law from below” (De Buck 2019, 112).

As in the case of Cherán, the legal road travelled in the case of Ayutla was long and tortuous (Table 3). It began in 2012, also with a petition to the Electoral and Citizen Participation

Institute (IEPC) of the state of Guerrero to hold elections by *usos y costumbres* in the municipality of San Luis Acatlán, where the core UPOEG leadership (Mixtec) is from. However, due to adverse factors, the consultation process that finally took place in February 2015 had a negative outcome, i.e., contrary to the customary system and favourable to the partisan one (Sierra and López 2019).

TABLE 3

Date	Event	Municipality	Result
27-02-12	Request to the IEPC	-	Negative
22-03-12	Request to the IEPC	Several	Negative
09-06-12	Complaint to the TEPJF	San Luis Acatlán	-
13-03-13	TEPJF Ruling SUP-JDC-1740/2012	San Luis Acatlán	Positive
20-08-13	Anthropological expertise	San Luis Acatlán	Positive
26-06-14	Request to the IEPC	Ayutla	Negative
08-10-14	TEPJF Ruling SUP-JDC-525/2014 and 2066/2014	San Luis Acatlán	Positive
02/15-02-15	Popular consultation	San Luis Acatlán	Negative
28-05-15	Request to the IEPC	Ayutla	Negative
04-06-15	Complaint before the TEPJF	Ayutla	-
25-06-15	TEPJF Ruling SDF-JDC-545/2015	Ayutla	Positive
20-08-15	Anthropological expertise	Ayutla	Positive
17/18-10-15	Popular consultation	Ayutla	Positive
29-07-16	TEPJF Ruling SDF-JDC-295/2016	Ayutla	Positive
01-02-17	Decree 431 of the local Congress	Ayutla	Negative
09-05-17	Agreement 022 of the IEPC	Ayutla	Negative
10/11-06-17	Second popular consultation	Ayutla	Positive
15-07-18	Election in municipal assembly of the new customary government	Ayutla	Positive
30-09-18	Inauguration of the Community Council	Ayutla	Positive
30-05-21	Election in municipal assembly of a new Community Council	Ayutla	Positive

Table 3. Timeline of the legal process in the Ayutla case (2012-2021).

Made by the authors. Source: IEPC.

UPOEG drew several lessons from this failure. The organisation refocused its legal strategy and political mobilisation towards the neighbouring municipality of Ayutla de los Libres, where it had previously seen success in the wake of the 2013 self-defence movement. Thus, at the same time as the process in San Luis Acatlán, in June 2014 the UPOEG presented another request to the IEPC, with the same demand, but this time signed by authorities from the Ñuu savi (Mixtec), Me'phaa (Tlapaneca), mestizo and Afro-descendant communities of Ayutla. Here, as in the case of Cherán, the legal path was repeated: faced with the refusal of the local electoral institute, they sought the TEPJF, which once again ruled in favour of the plaintiff community (Gaussens 2019a). The popular consultation was

held in October 2015, with a result that was now favourable to the customary system despite – once again – a campaign against it by the political parties.

This first electoral triumph, however, led to a new legal labyrinth due to multiple resources and challenges used by the political parties – as in the case of the TEPJF ruling SDF-JDC-295/2016 – not without the complicity of government institutions at the state level. This partisan opposition led to a second consultation in May 2017, this time on the election procedure, which resulted in the victory of the assembly over the state system. Thus, after five years of judicial battles and electoral contests, Ayutla became the first municipality in Guerrero to be able to legally elect its governing body, not through party politics, but through internal normative systems.

Now, it is important to point out that both consultations allowed to vote in the local elections through the normative systems of the localities. What formally changed was the mode of election of the municipal council, now by assembly, but not its internal functioning. Moreover, after the second consultation, the state government implemented a series of measures whose main objective was to prevent a change in the form of municipal government. For example, in February 2017, the local Congress issued a decree (number 431) to regulate the elections in Ayutla. This one established as a “padlock” – in its second transitory article – that the elected council shall be composed in accordance with the Organic Law of the Free Municipality of Guerrero State, that is, by a council headed by a municipal president.

The next step for socio-legal mobilisation was therefore to prepare not only for electoral regime change, but also for the transformation of the form of government. To this end, strategy shifted from judicial logic to a new process of politicisation. Thus, after the victory in the courts and the triumph at the ballot box, the mobilisation returned to the political arena, this time to dispute how to govern the municipality, again following the example of Cherán. In the first months of 2018, assemblies were held in all the localities of Ayutla to appoint the members of a municipal assembly, with four representatives per locality – counting representatives and alternates – in strict gender parity. Composed of more than 200 community representatives, this great assembly met on July 15, 2018. There, they decided to scrap the municipal council model and instead appoint a Community Council as the new governing body. The strength of the social mobilisation forced the IEPC and the state government to recognise the validity of the municipal assembly, as well as the formation of the Council despite its unprecedented character.

Ayutla then became the second Mexican municipality, after Cherán, to establish a community government based on internal normative systems. The figure of president gave way to an assembly, the municipal council was transformed into a community and the town hall was renamed the *Casa de los Pueblos* (House of the Peoples).<sup>2</sup> For this reason, like the community of Cherán, the new municipal government of Ayutla encountered difficulties in its first years in office – especially in the exercise of its budget –. Its members faced numerous administrative obstacles owing to its *sui generis* character, coupled with diffuse political opposition among higher levels of government. In spite of this, in the next elections, in May 2021, the municipal assembly was renewed to appoint new authorities.

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<sup>2</sup> For more information on the internal structure of the new municipal government, see the theses by Anacleto (2020) and Paulino (2022).

The figure of the Community Council was ratified, giving continuity to the experience of self-government.

## 5. OXCHUC

The case of Oxchuc in Chiapas is the most recent of the three case studies. It has also been the most contentious and violent autonomy process so far in relative terms. From its very beginnings, it has been fuelled by the conflict-ridden municipal politics of the 2015-2018 triennium, characterised by caciquism and factional struggles that have often resorted to physical violence.<sup>3</sup> As Araceli Burguete (2021, 261) recounts,

it begins with an internal political dispute in the PRI (February 2015) against the procedure that named María Gloria Sánchez Gómez as its candidate for the presidency of that municipality, who would run for the second time (she had already been president in 2005-2007), succeeding her husband (Norberto Sántiz López, who had been president in 2012-2015, and 2002-2004, as well as federal deputy 1997-2000). In three lustrums this couple concentrated power (...) it allowed them to set up a cacique rule,<sup>4</sup> characterised by opacity in the management of public resources and violence against their adversaries.

As a result of this scenario, the July 2015 election of María Gloria Sánchez Gómez as the new municipal president – not even for the PRI, but for the Green Ecologist Party of Mexico (PVEM) – triggered a post-electoral conflict in which the main opposition camp coalesced around a collective: the Permanent Commission for Peace and Indigenous Justice of Oxchuc (CPJIO). In the following months, the conflict continued to escalate in intensity and violence. This dynamic ended up shaping the autonomy process under the impetus of the CPJIO, on the one hand, and precipitated the fall of the elected president, on the other. Indeed, under pressure from the state government – interested in putting an end to the conflict – María Gloria Sánchez Gómez formally requested a leave of absence on 4 February 2016. A week later, the Chiapas state Congress did not approve her request, but instead arbitrarily decreed her resignation as municipal president, which led to a long and winding legal process (Becerra 2020) in a manner similar to the Cherán and Ayutla cases (Table 4).

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<sup>3</sup> On caciquism in Mexico, see Knight and Pansters (2005).

<sup>4</sup> For further details on the cacicazgo of Norberto Sántiz and Gloria Sánchez, see Burguete (2020a). This cacique configuration of the municipal order, in which political power is concentrated in a particular faction, was also observed in the case of Ayutla. There, the Castro-Aldaco family controlled the municipal council during the two triennia prior to the election of a new government by *usos y costumbres*, first with the husband as municipal president (2012-2015) and then his wife (2015-2018), who intended to nominate their daughter for the next triennium. In this sense, the caciquism of municipal politics was a crucial factor against which the autonomy process unfolded in both Oxchuc and Ayutla (Gaussens 2021).

TABLE 4

Date	Event	Result
07-15	Election of María Gloria Sánchez Gómez as the new municipal president	Negative
04-02-16	Application for leave of absence from the position of municipal president before the local Congress	-
11-02-16	Decree 161 establishes the resignation from office	Positive
16-02-16	Proclamation of a new council in an assembly	Positive
10-03-16	Decree 178 of the local congress ratifies the new council	Positive
31-08-16	TEPJF ruling SUP-JDC-1756/2016 orders the reinstatement of the elected president in office	Negative
11-11-16	CPJIO's request to the local Electoral Institute (IEPC) to hold elections by internal normative systems	Negative
28-06-17	Ruling TEECH/ JDC/19/2017 of the local Electoral Tribunal	Positive
24-01-18	Attack on CPJIO members and assassination of Ovidio López Sántiz, member of the new council	Negative
19-02-18	Impeachment of the elected president and appointment of a municipal council by the local Congress	Positive
05-01-19	Consultation results	Positive
23-01-19	Decree 135 mandates the IEPC to organise the local elections by usos y costumbres	Positive
13-04-19	Election of the council in a municipal assembly	Positive
23-04-19	Inauguration of the new municipal council	Positive
15-12-21	Armed confrontation during the municipal assembly electing a new municipal president, but without a council	Negative
31-12-21	Appointment of a substitute council by the local Congress	Negative
10-02-22	Election result annulled and provisional council declared illegal by the local Electoral Tribunal, calling for the organisation of a new election	Negative

Table 4. Timeline of the legal process in the Oxchuc case (2015-2022).

Made by the authors. Source: Ocampo 2020, Burguete 2021, 2022.

Just five days after the “resignation decree”, on February 16, 2016, the CPJIO gathered its supporters in the central square of the city of Oxchuc, constituted itself into an assembly and instituted a new council by self-proclamation. The goal was to pre-empt the decision of the local Congress, which was legally responsible for appointing an elected council member to replace the deposed president. In this way,

the assembly of dissidents named Oscar Gómez López as interim municipal president and added Juan Encinos and Ovidio López Sántiz as members of the self-proclaimed council. These were people who at different times had been close adherents of the Zapatista Army of National Liberation. (Burguete 2021, 262)

Despite its *de facto* character, the local Congress preferred to ratify the new council by decree on March 10, thus consummating the CPJIO’s takeover of municipal power. However, the deposed president filed an appeal before the TEPJF, which ruled in an August 31, 2016 ruling (SUP-JDC-1756/2016) that the resignation from office decreed by the Congress of Chiapas was unfounded. Therefore, the complainant should be reinstated in her functions. Faced with a judicial setback, the CPJIO opted for a dual strategy, similar to the socio-legal strategy adopted in the two previous cases. On the side of social mobilisation, the TEPJF ruling was rejected and María Gloria Sánchez Gómez’s return was denied. On the side of law, litigation proceeded to guarantee the autonomous right to government by internal normative systems, according to the *usos y costumbres* of the Tzeltal communities that inhabit the municipality of Oxchuc, again following the path paved by Cherán.

It is in this sense that the CPJIO filed a request before the IEPC of the state of Chiapas on November 11, 2016 – just as the Cherán and Ayutla communards had done before in their respective entities. Faced with the Institute’s refusal, the CPJIO went to the TEPJF, which channelled the complaint to the Electoral Tribunal of the State of Chiapas (TEECH) as a first and necessary step. On June 28, 2017, the local court issued a ruling (TEECH/JDC/19/2017) in favour of the CPJIO: it ordered an anthropological expertise and mandated the IEPC to organise a consultation process to determine the feasibility of implementing local elections by internal normative systems. This new ruling exacerbated the political conflict and pushed the opposing faction, led by the deposed president, towards the use of violence:

On January 24, 2018, members of the CPJIO leadership suffered an armed attack in which four people were killed, including Ovidio López Sántiz – a member of the self-proclaimed council – while ten other communards were wounded. President María Gloria Sánchez was identified as the intellectual author of these acts and the members of her municipal council as the material authors and probable perpetrators of various crimes, which led to her impeachment. (Burguete 2021, 264)

On February 19, 2018, the local Congress approved the impeachment and proceeded to appoint a municipal council composed of the main CPJIO leadership – with Óscar Gómez as president – thus ratifying the council that was self-proclaimed two years earlier. From that moment on, the process ordered by the TEECH could take place peacefully throughout 2018, with the completion of the anthropological expertise (Megchun *et al.* 2018) and the organisation of the consultation, in accordance with the standards of ILO Convention 169. This way, the IEPC

then set about preparing and deploying the consultation process, holding more than three hundred community assemblies, thereby contributing to paving the way for the single community general assembly, which the IEPC itself had determined would be the legal and legitimate space for electing the new municipal council (Burguete 2021, 265).<sup>5</sup>

The consultation results were published on January 5, 2019. There were favourable to the customary system, so the local Congress mandated the IEPC to organise local elections by *usos y costumbres*. On April 13, 2019, the 11,921 members of the Municipal Assembly gathered on the esplanade of the town's central square to vote by a show of hands to renew their municipal council. Ten days later, the elected council was sworn in during an event that was celebrated as a party – just as in Ayutla a year earlier.

However, after the celebrations, the management difficulties that had also arisen in Cherán and Ayutla began. Although the preservation of the municipal council (*ayuntamiento*) as a form of government – unlike in the other cases – facilitated its administrative operation, in political terms, the elected council's management was hindered by its lack of internal cohesion, as well as the inexperience of its members. On the other hand, the new government was also confronted with the persistence of old clientelist and factional practices (Jiménez and Ocampo 2019) that ended up undermining its authority.

The erosion of the government elected by *usos y costumbres* gradually rekindled the political conflict within the municipality, intensifying the rivalry between factions (Pérez Sánchez 2021) ahead of the 2021 elections. It is precisely this conflict that erupted during the General Community Assembly held on December 15, 2021, to renew the municipal council. This assembly was attended by more than 11,000 representatives from the 142 communities of the municipality and the 25 neighbourhoods of the head city. There, the hands raised were divided between the two main candidates for election as council president: Hugo Gómez Sántiz and Enrique Gómez López. According to Araceli Burguete's eyewitness testimony (2022), it was not possible to determine which of the two actually received more votes. A violent confrontation then broke out between supporters of both candidates, with firearms being used. At least one person was killed and several injured, leading to the dissolution of the assembly.

In this violent scenario, the Community Electoral Body (OEC) in charge of the organisation of the electoral process declared a recess in the electoral process, but not before declaring Professor Enrique Gómez López as the winner of the election for the position of municipal president for the 2022-2024 period. The declaration was made despite the uncertainty of the results at first sight. (Burguete 2022, 4)

As a result, in the following months the conflict sparked by the failed assembly did not cease to escalate. Several violent acts took place throughout the municipality, “where it was now a daily occurrence to hear gunshots being fired, as well as road blockades on the main tourist routes (...) homes and vehicles were also burned” (Burguete 2022, 6). Faced with this situation of generalised violence, the local Congress proceeded by appointing a

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<sup>5</sup> Here we find another similarity with Ayutla, where the IEPC of the state of Guerrero also convened community assemblies in all the localities of the municipality between 2017 and 2018, in order to carry out the process of consultation and integration of the Municipal Assembly that would elect the new municipal government.

substitute council, presided over by a third party (Roberto Sántiz Gómez), as an emergency measure to avoid a power vacuum in the municipality. However, the person appointed could not take physical possession of the office. He had to install an alternative provisional office in the city of San Cristóbal, “which did not prevent his home located in an Oxchuc community from being burned down by opponents to his appointment” (Burguete 2022, 7).

On February 10, 2022, the TEECH decided to annul the result of the December 15 assembly for failing to comply with the guidelines that the assembly of the municipality’s communities and neighbourhoods had previously established. It also declared the council that had been appointed by the local Congress illegal, due to the inadequacy of its composition in legal terms. The Court instructed the legislature to propose a new provisional council. Finally, it called for new elections by internal normative systems, without specifying dates or how these would be held, leaving it to the OEC (Burguete 2022).

## 6. CHERÁN, AYUTLA, OXCHUC: COMPARATIVE ANALYSIS

The autonomous processes of the three cases we have described here contain sufficient elements for the comparative analysis we seek to develop. As mentioned in the introduction, we are particularly interested in the similarities between the case studies, insofar as the elements they share provide interpretative clues about the transformation of municipal government that we observe in different indigenous regions of Mexico today. In this sense, we can structure the comparative analysis around four main axes, which are common to all cases:

1. The forms of social mobilisation in each autonomous process: its immediate precedent, the main social organisation, its repertoire of action and its legal activism;
2. The characteristics of the new municipal government elected by internal normative systems: the election years, the constituent and constituted bodies, the nature of the appointment, the election method, the criteria for political representation and respect for gender parity;
3. The official recognition reached at first instance: its nature, the guarantor institution, the key ruling and the procedure followed; and,
4. Opposition factors: political parties, government institutions and opposing actors, as well as the use of political violence (Table 5).



TABLE 5

Case	Cherán	Ayutla	Oxchuc
<b>FORMS OF SOCIAL MOBILISATION</b>			
<b>Precedent</b>	Self-defence movement (2011)	Self-defence movement (2013)	Post-election conflict (2015)
<b>Organisation</b>	-	UPOEG	CPJIO
<b>Repertoire</b>	Direct, legal action	Direct, legal action	Direct, legal action
<b>Legal activism</b>	Allied lawyers	Community lawyers	Community lawyers
<b>NEW MUNICIPAL GOVERNMENT</b>			
<b>First election</b>	2012	2018	2019
<b>Re-election</b>	2015 / 2018 / 2021	2021	2021
<b>Constituent Body</b>	General assembly	Municipal assembly	Municipal assembly
<b>Constituted Body</b>	Major Council of Government (12 members)	Community Council (3 members)	Municipal Council (15 members)
<b>Appointment</b>	de facto	de jure	de facto
<b>Election method</b>	Assembly	Assembly	Assembly
<b>Representation criteria</b>	Geographic (by neighbourhood)	Ethnic and geographic (by group and locality)	Geographic (by locality)
<b>Gender parity</b>	No	Yes	Yes
<b>OFFICIAL RECOGNITION</b>			
<b>Type</b>	Jurisdictional ex post	Jurisdictional prior	Jurisdictional ex post
<b>Guarantor</b>	TEPJF and SCJN	TEPJF	Local election court
<b>Key ruling</b>	SUP-JDC-9167/2011	SDF-JDC-545/2015	TEECH-JDC-19/2017
<b>Procedure</b>	Consultation in community assemblies	Anthropological expertise and consultation	Anthropological expertise and consultation
<b>OPPOSING FACTORS</b>			
<b>Main factors</b>	Factionalism	Caciquism / Racism	Caciquism / Factionalism
<b>Political parties<sup>6</sup></b>	PRD / PRI / PAN	PVEM/PRD/PRI/MC/PAN	PVEM / PRI
<b>Institutions and stakeholders</b>	Local electoral institute Local congress Governorship	Local electoral institute Local electoral tribunal Local Congress	Governorship Women's associations Armed groups
<b>Political violence</b>	No	No	Yes

Table 5. Comparative analysis of the case studies.  
Made by the authors.

Regarding the first axis of analysis, concerning the forms of social mobilisation, we can observe that the three case studies share a hybrid repertoire that combines direct action (*de facto*) with legal action (*de jure*) by seeking official recognition of the results of the former through the latter. Thus, the three autonomous processes develop a legal activism that takes litigation to the courts. Its goal is not only to guarantee the right to self-government of indigenous peoples, but to maintain a foothold within state institutions in their interlocution with government authorities. This activism involves the work of “allied” lawyers – as in the

<sup>6</sup> PRD: Democratic Revolution Party / PAN: National Action Party / MC: Citizen's Movement

case of Cherán with the *Emancipaciones* collective (Aragón 2018) – or from within the same social organisation – as in the cases of Ayutla (UPOEG) and Oxchuc (CPJIO). On the other hand, the main difference – which we will return to later – lies at the level of the precedent: while the Cherán and Ayutla processes arise from an armed self-defence movement, the Oxchuc process stems from a post-electoral conflict.

Regarding the form of municipal government elected by *usos y costumbres*, the three cases show important similarities. Their constituent body, that is, their highest governing body, is found in a general or municipal assembly in which all of the municipality's neighbourhoods and communities are represented, based on geographical criteria and an assembly-type election method.<sup>7</sup> However, they also retain differences, particularly in the form of government: while Cherán and Ayutla opted for the entity of a community council as a constituted body, Oxchuc maintained the traditional scheme of the municipal council. In the opinion of Manuel Ocampo (2020, 422),

an underlying reason for maintaining the municipal council may be the design of the fiscal policies and the fiscal system of the federal entities that favour this form of government. For indigenous government councils, formal processes such as signing official documents, especially bank documents, are difficult.

Likewise, while Cherán and Oxchuc elected their new municipal government by *de facto* means and later achieved official recognition, in the case of Ayutla the election by internal normative systems observed the legal path set by state authorities (*de jure*).

In terms of gender parity, although it was formally complied with as a legal requirement in Ayutla and Oxchuc – unlike Cherán – the three cases share the same underlying problem: the historical discrimination that indigenous women have suffered in the sphere of government and political participation, from which they tend to be marginalised even in the framework of autonomous processes (Sierra 2009, Hernández Castillo 2016, Sieder 2017). This exclusion is especially visible when it comes to positions of authority. In Cherán, for example, the first Major Council of Government elected in 2012 had only one woman, while the second (2015) and third (2018) had only three women out of a total of twelve members (Aragón 2019). As for Oxchuc, gender parity was feigned: “in fact, the incorporation of women was a simulation. The male-female pairs were spouses. In this way ‘parity’ was fulfilled, but in simulation” (Burguete 2021, 269).<sup>8</sup> In this sense, gender equality continues to be one of the greatest challenges facing the autonomous processes studied, in order to deepen the democratisation of municipal governments through internal normative systems.

Regarding the official recognition they obtained in the first instance, the three case studies share the fundamental fact that this recognition has been jurisdictional in nature. It was a court that recognised the validity of their internal normative systems as a way of electing and organising the municipal government. The only difference is that Ayutla achieved this recognition previously, while the other two cases achieved it subsequently (*ex post*). The guarantor institution has always been an electoral court, be it the local (TEECH) for

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<sup>7</sup> In the case of Ayutla, geographical representation is combined with an ethnic criterion, which governs the election of the Community Council in such a way that its three members represent the three peoples (Ñuu savi, Me'phaa and Afro-mestizo) that inhabit the municipality.

<sup>8</sup> For further developments on the problems of implementing gender parity in the indigenous municipalities of Chiapas, see Burguete (2020b).

Oxchuc or the federal (TEPJF) for Ayutla and Cherán – in addition to the SCJN in the latter case –. Key rulings have guaranteed the right to self-government of indigenous peoples and its exercise at the municipal level of government. At this point, it is worth highlighting the central role played by the TEPJF, both in general (Recondo 2013) and in particular for the Cherán (Aragón 2019) and Ayutla (Gaussens 2019a) cases.

Finally, the three cases also share a similar procedure, dictated by these rulings. This one is articulated around a consultation process in community or neighbourhood assemblies. It is also supported (except in the case of Cherán) by anthropological expertise to guarantee that the change to *usos y costumbres* responds to the majority will of the municipality's population. In this regard, the systematic recourse to the work of anthropologists as expert evidence, as required by state authorities – in this case, jurisdictional – to determine from the outside whether or not the claimant communities can be considered as indigenous, is still problematic.<sup>9</sup>

As for the fourth and last axis of analysis regarding the opposing factors faced by the autonomy processes, in all cases we observed a certain homogeneity among them. The first adverse factor is factionalism in municipal politics, which was replicated within the autonomy process despite the formal exclusion of political parties, as Denisse Román (2019) in Cherán and Erick Pérez Sánchez (2021) in Oxchuc demonstrate. In the same vein, the caciquism with which local power has traditionally been exercised is another factor contrary to the autonomisation of municipal government. It is not only because the autonomic processes challenged the domain of a particular cacicazgo, as in the cases of Ayutla (Gaussens 2021) and Oxchuc (Jiménez and Ocampo 2019), but also because, in the same way as factionalism, caciquism could reproduce itself within it.<sup>10</sup> In the case of Ayutla, in addition, there was also the problem of racism, used by the political opposition to refer to the regime of the badly named *usos y costumbres*.

Moreover, in all three case studies we observed fierce opposition from the major national parties (PRI, PRD, PAN, PVEM, MC) through their local headquarters. Regardless of party acronyms, they undertook political campaigns and legal actions to counteract and try to reverse the autonomy process. Similarly, we can see that at the level of government institutions, political opposition was concentrated at the state's intermediate level (between the municipal and federal levels), whether in the government of Michoacán, Guerrero or Chiapas. At this level in particular, the hostility of institutions such as the governor's office, the local Congress and the electoral institute, from which political parties – linked to factional and cacique interests – operated to obstruct the demands of indigenous communities, has been notable. Hence the need for these communities to resort to federal and jurisdictional bodies to achieve greater autonomy from political parties and local contests.

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<sup>9</sup> On the contradictions of anthropological expertise in indigenous rights, see Loperena *et al.* (2018), Martínez (2018), Sierra and López (2019), among others.

<sup>10</sup> In this sense, Araceli Burguete notes that the municipal president of Oxchuc elected in 2019, Alfredo Sántiz Gómez, is the brother-in-law of the outgoing council president, Óscar Gómez López. In Ayutla, we can mention the case of one of the three coordinators of the Community Council elected in 2018, Isidro Remigio Cantú, representative of the Me'phaa people and brother of a well-known local cacique (Romualdo), who had to be removed from his position as municipal treasurer due to acts of corruption.

Finally, if we had to focus on one difference between the three processes studied, it would be the political violence that characterises the Oxchuc experience, unlike that of Cherán and Ayutla. It has meant greater difficulties for exercising self-government in this case. In this respect, one possible explanation for this distinctive feature of the Oxchuc case is that its autonomous process did not originate from a community defence movement. In the cases of Cherán and Ayutla, the constitution of autonomous police forces and justice bodies has produced a significant social pacification effect, reflected in a reduction in the levels of violence (Gaussens and Ayvar 2023). On the contrary, the Oxchuc experience is triggered by a post-electoral conflict, which makes the case a highly contentious process from the outset. Its political violence has not ceased, with two critical episodes resulting in several deaths and injuries.

## 7. THE JUDICIALIZATION OF THE RIGHT TO SELF-GOVERNMENT

The main result of our comparative analysis is the importance of the process of *judicialization of the right to self-government* of indigenous peoples for its exercise in the sphere of municipal government. By judicialization, we refer to the growing recourse to tribunals and courts by indigenous communities to litigate their claims as part of collective action repertoires whose mobilisations are increasingly taking on a socio-legal character. In other words, the judicial sphere has become a privileged space for the political contest for the rights of indigenous peoples, with Cherán as a watershed for the future of self-government in Mexico's indigenous municipalities.

One of the constituent elements of this new stage, which began in the second decade of this century, was made possible by a series of transformations in the field of state law that led to the displacement of the struggle for the rights of indigenous peoples from the legal to the judicial terrain. (Aragón 2020, 57)

In Mexico, the general process of judicialization of indigenous peoples' rights is fuelled by at least three major factors which have transformed the field of state law. Firstly, there is the increased role of the courts in a reformed state in the wake of the neoliberal shift of the 1990s. In particular, two courts – the SCJN and the TEPJF – are increasingly intervening to settle conflicts between state institutions as new arbiters of political power disputes (Ríos-Figueroa 2007). On the one hand, it is no coincidence to find both courts as guarantors of the right to self-government. On the other hand, the judicialization of indigenous peoples' rights is also part of a more general process of judicialization of politics in Latin America (Sieder *et al.* 2011).

Second, there is the 2011 constitutional reform on human rights (Carbonell and Salazar 2011), which we have already mentioned. This reform modified the first article of the Federal Constitution to allow for the direct applicability of international human rights treaties, including ILO Convention 169, which guarantees the rights to self-determination, autonomy and self-government of indigenous peoples, together with the right to consultation. In that sense, it represented a paradigm shift of great importance without which it would have been difficult to achieve recognition of the autonomous processes studied here. In effect, the direct application of international human rights treaties turned the courts into more propitious arenas for indigenous communities to demand the justiciability of their rights. It led to a jurisdictional recognition that implied “a much

broader and more favourable regulation than that established until then in Mexican state law” (Aragón 2020, 69).

Third, at the same time as this openness towards international law, there was a shift in jurisprudence in favour of normative systems (Alejos 2018). Recondo (2013, 53) notes with a certain irony:

the evolution of federal electoral jurisprudence is striking: from a position of apparent distrust of electoral procedures judged to be unclear and subject to manipulation, there was a shift towards an assessment – not exempt from idealisation – of assembly norms and practices considered highly democratic.

It is because of this turn of events that the Cherán case has transcended to become the watershed that it is today, with profound repercussions among the indigenous peoples of Mexico for the judicialization of their rights, beyond the cases of Ayutla and Oxchuc. The growing prominence of the high courts – such as the TEPJF – and their development of a jurisprudence that guarantees indigenous normative systems, supported by international law, have created a structure of political opportunities (McAdam 1996) that is more favourable – albeit limited – for the justiciability of the right to self-government.

In turn, the judicialization of indigenous peoples’ rights is part of a broader process of *juridification* (Sieder 2020) that now characterises their repertoires of action (Kirsch 2012) as communities increasingly and actively use the law to advance their demands. This legal activism answers to what Boaventura de Sousa Santos (2009) has theorised from legal sociology as “emancipatory potential” and “counter-hegemonic use of law”. Both concepts have been applied to analyse the Cherán (Aragón 2019) and Ayutla (Gaussens 2019b) processes. Indeed, for these communities, the search for municipal autonomy in contexts of extreme violence must necessarily involve a hybrid strategy that combines political mobilisation with parallel legal action that allows them to remain within state institutionality. It is about covering a minimum margin for manoeuvre and negotiation with government bodies and, above all, ensuring that the social struggle is not outlawed and their protest criminalised.

On the other hand, legal activism also expresses the need to overcome the administrative obstacles that autonomous processes have constantly encountered in their path. In all the cases studied here, the exercise of municipal government through internal normative systems has faced what Orlando Aragón (2019) has conceptualised as “legal schizophrenia”, that is, the coexistence of highly differentiated legal spheres with avant-garde jurisprudence on the one hand, and anachronistic and retrograde regulation on the other, which not only ignores the progress achieved but often contradicts it. In practice, the imbalances resulting from this lack of harmonisation have resulted in myriad bureaucratic obstacles to the exercise of customary government functions.

Likewise, the normative gap has led to ignorance and discrimination among state institutions. In the first case, “it has allowed many state government officials to refuse to recognise some organs of the Cherán municipal government, alleging their non-existence in secondary legislation” (Aragón 2019, 174). The same has occurred in the Ayutla case, whose authorities have been frequent victims of discrimination in the exercise of their functions by higher government institutions, particularly at the state level. A similar problem

has also arisen in Oxchuc. Faced with multiple conflicts and the weakness of the elected government, “actors outside the municipality, operators from the federal and state governments and the state Congress, have had to intervene as mediators, so the municipality has lost autonomy” (Burguete 2021, 273).

In this sense, the process of juridification in which the judicialization of indigenous peoples’ rights is inscribed responds to multiple needs for the communities, which they seek to resolve – albeit partially – through legal activism based on a counter-hegemonic use of the law. The case study that best illustrates this trend is Cherán, whose community has tried to influence legislative output at both the local and federal level. Thus, once jurisdictional recognition has been achieved, this process can transcend the judicialization phase to take root in other spheres of socio-legal action, in addition to the judicial sphere alone.

## 8. FINAL THOUGHTS

The autonomy processes in Cherán, Ayutla and Oxchuc analysed here have as a common denominator the judicialization of the right to self-government. They also reflect the difficulty of building municipal autonomy from below by indigenous communities. In the three cases studied, this is a process built with *de facto* actions and measures, based on internal normative systems, but not therefore removed from state institutionality. The political contest was not only fought at the level of social organisation and assemblies, against political parties and some government institutions, but also in the courts and at the ballot box, with court triumphs and electoral victories. These were not struggles against the Mexican State, but struggles to transform it in ways favourable to the exercise of the rights of indigenous peoples in their municipalities.

Although this paradox might be uncomfortable on a political level, it is nevertheless fertile in analytical terms because it prevents any Manichean interpretation of the struggles of indigenous communities per se. Their quest for municipal autonomy moves in the shadows of a grey zone between emancipation and regulation. As Asier Martínez de Bringas (2018, 104) rightly warns, the paradox speaks of an “immanent tension” between “the emancipatory-critical dimension of indigenous autonomy and the legitimising dimension of the forms of state governance”, in which the latter could metabolise the former at any time. As the right to self-government becomes judicialized, the will to exercise *de facto* political autonomy is confronted with an institutional dependence on the state, particularly visible in the question of the municipal treasury.

In short, the paradox is about the tension between *de facto* and *de jure* autonomy (Ventura 2018) with legal activism, even in a counter-hegemonic way. Likewise, there is a risk of legal fetishism that would turn judicialization into the route par excellence for the exercise of indigenous peoples’ rights. In this sense, it is important not to lose sight of the fact that, if legal – in this case, jurisdictional – recognition can strengthen the construction of autonomous processes, it is not automatically or by decree, but only when this autonomy is the product of prior and sustained social mobilisation. The challenge is to use the state law tactically, without being carried away by the force of law (Bourdieu and Teubner 2000) whose legalisation effects could lead to the depoliticization of social struggle.

The exercise of self-government in municipalities such as Cherán, Ayutla and Oxchuc, through legally recognised normative systems, is nonetheless an important achievement. It represents a milestone that will guide the struggles of indigenous peoples in the following decades to realise the constitutional formula of a free and autonomous municipality. The case of Cherán sets a precedent that will guide the compasses of municipalism in the country. Through these three case studies and their comparative analysis, what we intend to demonstrate is the historical importance of these processes for the construction of autonomy from below and the concrete exercise of self-government.

## References

- Alejos, A., 2018. La interpretación judicial electoral sobre el derecho de autonomía política indígena: cambio de régimen de la elección de autoridades municipales. *Revista Mexicana de Estudios Electorales*, 2(20), 77-107.
- Anacleto, S., 2020. *Sistema de autogobierno: Ayutla de los Libres, Guerrero*. Tesis de Maestría en Ciencias Políticas. Benemérita Universidad Autónoma de Puebla.
- Anaya, A., 2006. *Autonomía indígena, gobernabilidad y legitimidad en México: La legalización de usos y costumbres electorales en Oaxaca*. Ciudad de México: Universidad Iberoamericana/Plaza y Valdés.
- Aparicio, M., and Morell i Torra, P., 2021. Autodeterminación indígena: una mirada comparada desde las concepciones y prácticas de los pueblos indígenas. *Revista d'Estudis Autonòmics i Federals*, 34, 15-57.
- Aragón, O., 2018. Otro derecho es posible. Una biografía (intelectual y militante) del Colectivo Emancipaciones. *Oñati Socio-Legal Series*, 8(5), 703-721.
- Aragón, O., 2019. *El derecho en insurrección. Hacia una antropología jurídica militante desde la experiencia de Cherán, México*. Morelia: ENES-UNAM.
- Aragón, O., 2020. La emergencia del cuarto nivel de gobierno y la lucha por el autogobierno indígena en Michoacán, México. *Cahiers des Amériques Latines*, 94, 57-81.
- Bailón, M., 2019. Del artículo 115 al artículo 2 constitucional. La trascendencia para el respeto a la autonomía y los derechos de los pueblos indígenas: el caso de San Francisco Cherán. In: F. de la Mata, M. Gómez and N. Loza, eds., *Justicia electoral y derechos humanos*. Ciudad de México: TEPJF, 81-102.
- Becerra, P., ed., 2020. *Oxchuc, debates jurídicos en torno al reconocimiento de sistemas normativos indígenas en Chiapas*. Ciudad de México: Tirant Lo Blanch.
- Benítez, D., Warnholtz, M., and Vargas, L., eds., 2021. *¡Porque Ayutla es de los libres! La disputa por la autonomía municipal en Guerrero*. Ciudad de México: UAM-X.

- Bourdieu, P., and Teubner, G., 2000. *La fuerza del derecho*. Bogotá: Siglo del Hombre.
- Bravo, Y., 2009. El municipio indígena desde dos experiencias: Oaxaca y Chiapas. *In: S. Soriano, ed., Los indígenas y su caminar por la autonomía*. Ciudad de México: CIALC-UNAM, 93-128.
- Burguete, A., 2020a. La reinención del derecho electoral consuetudinario en Oxchuc: reconfiguraciones en una larga duración. *In: P. Becerra, ed., Oxchuc, debates jurídicos en torno al reconocimiento de sistemas normativos indígenas en Chiapas*. Ciudad de México: Tirant Lo Blanch, 51-146.
- Burguete, A., 2020b. *Paridad y violencia política en razón de género en municipios indígenas de Chiapas (2015-2018): una aproximación con perspectiva intercultural*. Cuadernillos de divulgación (3). Tuxtla Gutiérrez: Instituto de Elecciones y Participación Ciudadana de Chiapas.
- Burguete, A., 2021. La reconstitución de la asamblea en Oxchuc, Chiapas. Elecciones por Sistemas Normativos Indígenas (2015-2019). *In: M. González et al., eds., Autonomías y autogobierno en la América diversa*. Quito: Abya-Yala, 255-284.
- Burguete, A., 2022. Oxchuc, Chiapas: disputas en la elección por Sistemas Normativos Indígenas 2021, desafíos para la autonomía. *Algarrobo-MEL*, 10, 1-9.
- Carbonell, M., and Salazar, P., eds., 2011. *La reforma constitucional de derechos humanos: un nuevo paradigma*. Ciudad de México: IJ-UNAM.
- Cortés, D., 2017. Los jóvenes hñahñú en contextos de migración y su participación en el sistema de cargos comunitarios. *In: M. Pérez and L. Valladares, eds., Juventudes indígenas: de hip hop y protesta social en América Latina*. Ciudad de México: INAH, 385-417.
- De Buck, M., 2019. Policía Ciudadana y activismo jurídico en la encrucijada: fricciones y aperturas políticas de la UPOEG. *In: D. Benítez and P. GausSENS, eds., Por los laberintos del Sur. Movimientos sociales y luchas políticas en Guerrero*. Ciudad de México: UAM-X, 107-142.
- Della Porta, D., 2008. Comparative Analysis: Case-oriented Versus Variable-oriented Research. *In: D. della Porta and M. Keating, eds. Approaches and Methodologies in the Social Sciences*. Cambridge University Press, 198-222.
- Fuentes, A., and Fini, D., eds., 2018. *Defender al pueblo. Autodefensas y policías comunitarias en México*. Puebla: BUAP.
- Fuentes, A., Moreno, R., and Rivero, L., 2021. El autogobierno de Cherán K'eri en la defensa del territorio. *Revista d'Estudis Autònòmics i Federals*, 34, 205-232.



- Gasparello, G., 2018. Respuestas comunitarias a la violencia en Cherán: seguridad, participación, reconstrucción del territorio y de la sociedad. *In: A. Fuentes and D. Fini, eds., Defender al pueblo. Autodefensas y policías comunitarias en México.* Puebla: BUAP, 177-202.
- Gaussens, P., 2018. Antecedentes y surgimiento de la Policía Ciudadana de la UPOEG en Ayutla de los Libres. *In: A. Fuentes and D. Fini, eds., Defender al pueblo. Autodefensas y policías comunitarias en México.* Puebla: BUAP, 83-107.
- Gaussens, P., 2019a. El papel del Tribunal Electoral federal en la contienda por los usos y costumbres en la Costa Chica de Guerrero. *In: F. de la Mata, M. Gómez and N. Loza, eds., Justicia electoral y derechos humanos.* Ciudad de México: TEPJF, 35-49.
- Gaussens, P., 2019b. En busca de autonomía municipal: Ayutla y el municipalismo autonómico en Guerrero. *In: G. Makaran, P. López and J. Wahren, eds. Vuelta a la autonomía. Debates y experiencias para la emancipación social desde América Latina.* Ciudad de México: Bajo Tierra A.C./CIALC-UNAM, 179-202.
- Gaussens, P., 2020. *El nuevo plan de Ayutla. Génesis de las autodefensas guerrerenses (1998-2013).* Ciudad de México: Colmex.
- Gaussens, P., 2021. Contra el caciquismo de la política municipal. *In: D. Benítez, M. Warnholtz and L. Vargas, eds., ¿Porque Ayutla es de los libres! La disputa por la autonomía municipal en Guerrero.* Ciudad de México: UAM-X, 103-138.
- Gaussens, P., and Ayvar, I., forthcoming 2023. Medir la construcción de paz: el caso de los grupos de defensa comunitaria en Guerrero. *In: Z. Orozco et al., eds., Metodologías para la seguridad y la paz social.* Ciudad de México: UABC/Colmex/UNAM.
- Gómez Hernández, A., 2014. *La asamblea ejidal, arena de poder y negociación.* Tuxtla Gutiérrez: UNACH.
- Gómez Rivera, M., 2013. Los pueblos indígenas y la razón de Estado en México: elementos para un balance. *Nueva antropología*, 26(78), 43-62.
- Hernández Castillo, A., 2016. *Multiple Injustices. Indigenous Women, Law, and Political Struggle in Latin America.* Tucson: The University of Arizona Press.
- Jiménez, O., and Ocampo, M., 2019. El derecho a la libre determinación en materia política y su judicialización. La interlegalidad electoral reconocida en Oxchuc, Chiapas. *In: P. Ortelli and L. Rodríguez, eds., Experiencias contemporáneas de participación política y ciudadana en México y Colombia.* Tuxtla Gutiérrez: UACH, 49-84.

- Kirsch, S., 2012. Juridification of Indigenous Politics. *In: J. Eckert et al., eds., Law Against the State*. Cambridge University Press, 23-43.
- Knight, A., and Pansters, W., eds., 2005. *Caciquismo in Twentieth Century Mexico*. Oxford University Press.
- Korsbaek, L., ed., 1996. *Introducción al sistema de cargos: antología*. Toluca: UAEM.
- Lisbona, M., ed., 2005. *La comunidad a debate. Reflexiones sobre el concepto de comunidad en el México contemporáneo*. Zamora/Tuxtla Gutiérrez: COLMICH/UNICACH.
- Loperena, C., Hernández Castillo, A., and Mora, M., 2018. Los retos del peritaje cultural. El antropólogo como perito en la defensa de los derechos indígenas. *Desacatos*, 57, 8-19.
- López Bárcenas, F., 2007. Ensayo sobre la ceguera... jurídica: las teorías jurídicas y el derecho entre los ñuú savi. *In: O. Correas, ed., Pluralismo jurídico*. Ciudad de México: UNAM/Ediciones Coyoacán, 67-120.
- López Córdova, C., and Gaussens, P., 2021. El derecho a la consulta de los pueblos indígenas: una sistematización para el caso mexicano. *Cuestiones Constitucionales*, 45, 469-497.
- Martínez de Bringas, A., 2018. Autonomías indígenas en América Latina. Una mirada comparada a partir de las dificultades para la construcción de un Derecho intercultural. *Revista d'Estudis Autonòmics i Federals*, 28, 101-138.
- Martínez, J.C., 2018. Anthropological Expert Work in Today's Legal Field. Between Legitimizing the State Judicial Arena and Seeking Justice for Indigenous Peoples. *American Anthropologist*, 122(3), 632-638.
- McAdam, D., 1996. Political Opportunities: Conceptual Origins, Current Problems, Future Directions. *In: D. McAdam, J. McCarthy and M. Zald, eds. Comparative Perspectives on Social Movements: Political Opportunities, Mobilizing Structures, and Cultural Framings*. Cambridge University Press, 23-40.
- Megchun, R., et al., 2018. *Dictamen antropológico. Sistema normativo indígena para la designación de autoridades en el municipio de Santo Tomás Oxchuc*. Ciudad de México: INAH.
- Millán, S., 2005. Los cargos en el sistema. *In: H. Topete, L. Korsbaek and M. Sepúlveda, eds., La organización social y el ceremonial*. Ciudad de México: INAH.
- Ocampo, M., 2020. La judicialización del derecho a la libre determinación de los pueblos originarios de México: la elección municipal bajo sistemas normativos

internos en Oxchuc, Chiapas. *Revista de la Facultad de Derecho y Ciencias Políticas*, 50(133), 386-411.

- Paulino, J.C., 2022. *La territorialización de la Unión de Pueblos y Organizaciones del Estado de Guerrero (UPOEG) en Ayutla de los Libres, Guerrero. 2011-2021*. PhD Thesis. UNAM.
- Pérez Sánchez, E., 2021. *Carnaval y conflicto faccional en Oxchuc, Chiapas*. Maestría en Antropología. UNAM.
- Ragin, C., 2014. *The Comparative Method*. Oakland: University of California Press.
- Recondo, D., 2007. *La política del gatopardo. Multiculturalismo y democracia en Oaxaca*. Mexico: CIESAS-CEMCA.
- Recondo, D., 2013. *La jurisprudencia del TEPJF en elecciones regidas por el derecho consuetudinario*. Ciudad de México: TEPJF.
- Ríos-Figueroa, J., 2007. Fragmentation of Power and the Emergence of an Effective Judiciary in Mexico, 1994-2002. *Latin American Politics and Society*, 49(1), 31-57.
- Rodríguez, M. T., 2017. Mujeres y sistema de cargos en el siglo XXI. Un acercamiento desde la sierra de Zongolica, Veracruz. *Diálogo Andino*, 52, 45-55.
- Román, D., 2019. Las temporalidades de la inseguridad y el contexto político del “antes”. Diferenciación social y faccionalismo en Cherán. In: M. Ventura and J. Uzeta, eds., *Derechos indígenas en disputa: legislaciones estatales y tensiones locales en México*. Zamora: Colmich, 359-390.
- Rueschemeyer, D., 2003. Can One or a Few Cases Yield Theoretical Gains? In: J. Mahoney and D. Rueschemeyer, eds., *Comparative Historical Analysis in the Social Sciences*. Cambridge University Press, 305-336.
- Rus, J., 1995. La comunidad revolucionaria institucional: la subversión del gobierno indígena en los Altos de Chiapas, 1936-1968. In: J. Viqueira and M. Ruz, eds., *Chiapas: los rumbos de otra historia*. Ciudad de México: UNAM/CIESAS/CEMCA/UAG, 251-277.
- Sánchez, C., 1999. *Los pueblos indígenas: del indigenismo a la autonomía*. Ciudad de México: Siglo XXI.
- Santos, B.S., 2009. *Sociología jurídica crítica. Para un nuevo sentido común en el derecho*. Madrid: Trotta.
- Sieder, R., 2020. The Juridification of Politics. In: M.C. Foblets et al., eds., *The Oxford Handbook of Law and Anthropology*. Oxford University Press, 701-715.

- Sieder, R., ed., 2017. *Demanding Justice and Security. Indigenous Women and Legal Pluralities in Latin America*. New Brunswick: Rutgers University Press.
- Sieder, R., Schjolden, L., and Angell, A., eds., 2011. *La judicialización de la política en América Latina*. Ciudad de México: CIESAS/Universidad Externado de Colombia.
- Sierra, T., 2009. Las mujeres indígenas ante la justicia comunitaria. Perspectivas desde la interculturalidad y los derechos. *Desacatos*, 31, 73-88.
- Sierra, T., and López, L., 2019. Anthropological Expert Witness and the Judicialization of Indigenous Rights in Mexican Electoral Politics. *Urban Anthropology and Studies of Cultural Systems and World Economic Development*, 48(3-4), 225-262.
- Stavenhagen, R., and Iturralde, D., eds., 1990. *Entre la ley y la costumbre. El derecho consuetudinario indígena en América Latina*. Ciudad de México: Instituto Indigenista Interamericano.
- Topete, H., 2014. Los gobiernos locales, los cargos civiles y los cargos religiosos en las recientes etnografías en el estado de Oaxaca. *Diálogo Andino*, 43, 9-16.
- Topete, H., and Díaz, A., 2014. Sistema de cargos y organización social en Mesoamérica. *Diálogo Andino*, 43, 3-7.
- Ventura, M.C., 2018. Emergencia indígena en Michoacán. Ejercicio de derechos de facto y de jure. *Espiral*, 25(73), 161-201.
- Warnholtz, M., 2017. *Recuperar la dignidad. Historia de la Unión de Pueblos y Organizaciones del Estado de Guerrero*. Ciudad de México: PUIC-UNAM.