

Gioconda Herrera • Carmen Gómez
Editors

Migration in South America

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Chapter 7

The Legality of (Im)mobility: Migration, Coyoterismo, and Indigenous Justice in Southern Ecuador



Ulla D. Berg and Lucía Pérez Martínez

7.1 Introduction

In the past decade, migration and mobility trends in South America have become increasingly complex and multi-directional. Migration to the United States remains a key feature in Latin America; however, intraregional migration within South America itself has grown significantly due to economic crises and political instability, violence and conflict, and environmental and climate change (IOM, 2019). The ongoing political and economic crisis in Venezuela is the most acute example of this tendency; a crisis which has displaced an estimated five million Venezuelans to the entire subcontinent. The subcontinent has also seen an increase in transit migrants from other parts of the world, including Africa and Asia, heading towards the United States. These population movements and mobilities have been met with new forms of migration management, border control and surveillance, most recently as a result of the shutdown of national borders due to COVID-19. But even prior to the pandemic, the lack of flexible immigration and visa policies allowing migrants and refugees to migrate safely and with authorization has contributed to deepening the markets for human smuggling operations. A growing body of literature has documented the existence of numerous profitable human smuggling operations not only along the U.S.-Mexico border (Sanchez, 2016, 2018), but throughout the US-Mexico-Central America corridor where migrants travelling north attempt to bypass border controls in Central America and Mexico (Brigden, 2018; Sanchez, 2018; Velasco, 2018).

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Accurate data on migrant smuggling is complicated and hard to come about for various reasons. Baird and van Liempt (2015) have suggested that due to the difficulties of differentiating entirely between trafficking and smuggling, there is a double disadvantage – conceptual and methodological – in studying migrant smuggling. Smuggling and trafficking, they argue, are mostly distinguished “by the fact that the latter implies the involvement of victims, but smuggling does not” (2015, p. 3).¹ Most research, they conclude, has been marked by a polarity that is difficult to overcome, one that either criminalizes or victimizes the migrants who move through unauthorized routes. To get beyond this conceptual and methodological impasse, Baird and van Liempt advocate instead for the need for new approaches which can both generate empirics about migrant smuggling but also engage the ethics of knowledge production about such processes and systems.

In this article we strive to overcome some of the limitations in existing studies identified by Baird and van Liempt. We both distance ourselves radically from the criminalizing gaze on migrant smuggling and recognize with great emphasis the agency of migrants in these practices, an approach which also distances our work from victimizing glances. In Latin America, “migrant smuggling,” or *tráfico de migrantes* in Spanish, is a term used by the State and the media to describe the unauthorized transportation of migrants across national borders often implying financial gain and exploitation, but it does not typically reflect everyday understandings within migrant communities regarding available travel options. As we shall see below, coyoterismo is a long-standing institution in Southern Ecuador, especially in Cañar province where it is embedded in community life, migration practices, and even in the political, organizational and community justice structure. We approach coyoterismo from the perspective of family and trust networks and consider the historical-cultural factor that centers the role of the community in everyday life in indigenous communities of Cañar. Although we position ourselves in favor of approaches that recognize human rights, our analysis here does not focus on the tension between control and state protection inherent to this perspective. We instead focus on other legal systems in play such as indigenous justice (*justicia indígena*) in contexts of migration from the region. Indigenous justice is here understood as a set of rules, procedures, and local customs of coexistence and social control that indigenous peoples utilize to regulate their internal affairs.

While Ecuadorian migration to the US has been ongoing since the 1960s, the migration of indigenous Ecuadorians from Cañar – or *Kañaris* – is much more recent.² Since the 2000s, members of communities in Cañar have travelled north in significant numbers via clandestine routes using a network of migration facilitators – coyoters, guides, smugglers and moneylenders – which make up the area’s migration infrastructure. Clandestine migration is expensive and involves significant investments on behalf of prospective migrants and their families. Some coyotes

¹For the UN definition of human trafficking see OHCHR (2000).

²In this chapter we use the Kichwa spelling – *Kañari* – to name the indigenous ethnic group which inhabits the territories of the modern provinces of Cañar and Azuay.

therefore offer migrants a second and even a third chance when and if they are detained and deported when attempting to cross the U.S.-Mexico border. Some migrants deported from this border decline the offer to re-migrate and decide instead to stay in Cañar and attempt to recover their investment using indigenous justice (*justicia indígena*) since the regular Ecuadorian justice system is not very efficient for this purpose. If there are excessive or additional expenses in case of kidnappings, if the coyotero has not reported back on the whereabouts of the traveler, or if the migrant has been detained at the US-Mexico border, indigenous lawyers contracted by migrants' families may also use indigenous justice to intervene, recover investments, and attempt to repair any damages.

This chapter examines the strategic uses of multiple legal systems among migrant families and communities which shape Kañari understandings of their own migration projects including the relationship between migrants and facilitators, the opportunities afforded through migration, and the risks inherent in irregularized migration. In the following sections, we first give some necessary context to the social institutions of indigenous societies in Ecuador and to the history of migration in the area. We then examine the judicialization of coyoterismo and explore the tensions between indigenous and ordinary justice systems. We build on recent scholarship on coyoterismo, migrant smuggling and migration facilitation, which go beyond abstract and normative discussions of migrant smuggling as a matter of cruel villains and innocent victims (Zhang et al., 2018; Triandafyllidou, 2018), and offer instead an empirically grounded analysis which illustrates how the migration infrastructure in Cañar – as in other places in the Global South – is made up of complex social and economic networks at the intersection of family, community, individual and collective mobility aspirations, and political relationships.³ While the focus in much recent critical scholarship on migrant smuggling has been on migration facilitation as a service and a strategy through which migrants can increase the odds of success and reduce risks underway (Sanchez, 2017), scant attention has been paid to how migrants and their communities mobilize multiple justice systems to confront and hold smugglers accountable to the safe arrival and well-being of migrants en-route. In this chapter, we offer a case study of coyoterismo and the judicialization of migrant smuggling in Cañar with the aim of contributing to a broader understanding of the intersection of irregularized migration and legal pluralism which characterize much contemporary migration not only in Ecuador, but also elsewhere in the Global South.

³The chapter is based on ethnographic data gathered between 2016 and 2019 in the Province of Cañar and among Kañari migrant communities in the United States in the context of a multi-year research project on the migration-deportation cycle in Cañar directed by Ulla D. Berg (Rutgers University) and Gioconda Herrera (FLACSO-Ecuador) with the support of the Wenner Gren Foundation, FLACSO-Ecuador, and Rutgers University.

7.2 Migration and Indigenous Society in Southern Ecuador

Canton Cañar is located in the southern highlands of Ecuador, also called the Austro region. According to Ecuador's 2010 census, Canton Cañar had approximately 60,000 inhabitants of which about 80% correspond to the rural population (ODNA, 2008). Poverty is widespread in the area, especially in the sectors with the largest indigenous population, and largely related to socio-economic issues such as the minifundization of land tenure, lack of access to water, and unemployment (Berg & Herrera, 2022; Fock & Krener, 1977/2019). At the national level the multidimensional poverty rate reaches 68.7% for the rural population, while in the cities it is 26.8% (INEC, 2020).

Cañar's economy is sustained by multiple activities. Its economically active population combines agricultural activities, temporary jobs as construction laborers, and informal commerce. In the last 20 years, migration to the United States has become one of the main economic strategies to diversify household earnings.

Ecuadorian migration to the United States was minimal prior to the 1960s and primarily related to the Panama hat trade (Kyle, 2000). At the end of the 1970s and beginning of the 1980s, the provinces of Azuay and Cañar became the region with the highest out-migration rate in the country (Álvarez Velasco et al., 2020). The first significant wave of migrants came from cities and rural communities in Azuay and Cañar, including Ecuador's third-largest city, Cuenca. These migrants settled primarily in New York City (Pribilsky, 2007; Miles, 2004). Many of these earlier migrants acquired lawful permanent residency status in the United States with IRCA's amnesty provision in 1986 and later sponsored the legal migration of other family members (Jokisch & Pribilsky, 2002). A second wave of migrants left Ecuador in the late 1990s when the country experienced a severe economic crisis. Many Ecuadorians continued to emigrate to the United States while others went to Spain and Italy (Gratton, 2007; Herrera, 2012).

Emigration from Ecuador decreased between 2007 and 2014, but since 2014 it has increased again, following cycles of economic growth and depression (Álvarez Velasco et al., 2020, p. 16). Migration from the province of Cañar specifically has not decreased in more than 20 years except briefly during the beginning of the COVID-19 pandemic when many countries in the region closed their borders to migrants.⁴

The condition of irregularity which characterizes US-bound migration flows from Southern Ecuador prevents migrants from returning regularly to their home communities and they are often absent for years at a time, or even decades. Many migrants opt to bring their family members to the United States, thus increasing the demand for coyote services. Involuntary returns from the United States in the form of deportations have also occurred regularly over the past decades (Hiemstra, 2019) and many deported migrants will return to the United States at the first

⁴ See the (Im)mobilities in the Americas (2020) project for an overview of the impact of COVID-19 on migration flows in the region.

opportunity (Berg & Herrera, 2022). Despite these limitations on mobility, studies show that this is a deeply transnational territory with high-level circulation of people and resources through remittances, constant communication mediated by a variety of technologies, and the quasi-institutionalization of coyoterismo (Herrera, 2013; Miles, 2004; Pribilsky, 2007; Pedone, 2006). This context of intersecting mobilities has impacted not only the reconfiguration of transnational families (Berg & Herrera, 2022), but also the organization of local community institutions and practices. One of these is the indigenous justice system whose entanglement with transnational migration has been little studied in both the migration literature and in studies of human smuggling.

Although indigenous justice has been practiced ancestrally in Ecuador's indigenous communities, it was not recognized until the country's penultimate constitution of 1998 (Article 191); however, this recognition did not grant jurisdictional functions for its exercise. It was not until the Constitution of 2008 that universal citizenship and the plurinational state were recognized. Article 171 of the 2008 Constitution states that peoples and nationalities can exercise indigenous justice within their territories, under the observance of the Constitution, and within the framework of human rights. Still, there were no clear mechanisms to resolve the incompatibilities between customary indigenous law and international human rights law endorsed by the Ecuadorian state. One initiative which came about in tandem with the constitutional mandate, was the creation of Indigenous Prosecutors' Offices under the State Attorney General's Office, with the aim of creating a bridge between indigenous practices of justice and the ordinary justice system. Despite the change with the 2008 Constitution, and the development of some secondary regulations, such as the Organic Law of Constitutional Guarantees and the Code of the Judicial Function, their practical application has not ceased to be cumbersome and conflictive (Grijalva Jiménez, 2012). This becomes particularly evident in the legal tensions surrounding coyoterismo practices in Ecuador's migrant sending regions where the State and local communities frequently have different views on how migration-related conflict should be resolved and penalties applied in migration-related disputes. But before going into the details of the judicialization of coyoterismo, we first briefly review the role of coyoterismo in facilitating and maintaining networks of migration from Cañar.

7.3 Coyoterismo and the Infrastructure of Irregularized Migration in Cañar

Popular media and official anti-trafficking policy discourses in Ecuador and globally typically frame migrant smuggling as organized crime where smugglers are pictured as hardened male criminals who prey on vulnerable migrants and subject them to cycles of violence, abuse, and exploitation (Sanchez, 2017). Sometimes migrant smuggling is also conflated with drug smuggling, even if the two

infrequently intersect (Izcara-Palacios, 2015). Such representations are based on normative views of legitimate versus illegitimate mobility and often accompanied by persistent constructions of migrants as agency-less victims. But coyoterismo is deeply rooted in rural communities of Cañar and migrants are often complicit in maintaining the institution because they rely on it for their present and future mobility projects. In this section, we examine this community aspects of coyoterismo and show how clandestine migration facilitation is rooted in local social structures and mobilized within networks of family, kin, and co-ethnics, based on practices of reciprocity and social obligation. In analyzing the complexities of the institution of coyoterismo including the social role of the coyote in the community and the agency of migrants who use these services, we highlight the social mechanisms in place to hold coyotes accountable to local migrant-sending communities.

Migration from Cañar to the United States has since its beginnings occurred largely via unauthorized routes and using various kinds of “migration merchants” (Kyle, 2000), most commonly referred to as coyotes or coyotereros and chulqueros, the latter referring to local money lenders whose presence is long-standing in the Austro region (Carpio Benalcazar, 1992; Kyle & Liang, 2001). The Kañari refer to this form of irregularized migration which takes place in the context of already transnational family and social networks as “irse por el camino,” “por la chacra,” or “por la pampa” (Pribilsky, 2007).

During the first wave of emigration from Ecuador, a few middle-class mestizo families, mostly from Cuenca, controlled both the coyoterismo and the chulquero markets. Kyle (2000, p. 66) writes that typically a transaction would begin with a tramitador making a “sales pitch” to the prospective migrant in their home village, offering to arrange all necessary documentation and travel arrangements for the trip. The tramitador will then connect the prospective migrant with a chulquero, or money-lender, who at a considerable interest rate will finance the cost of the trip taking family land, property, or cattle as collateral (Pribilsky, 2007).

With the increase in indigenous migration from Cañar since the 2000s, knowledge about the migration process proliferated in local social and family networks and some networks grew into more formally established indigenous-owned coyoterismo businesses. In addition to this “indigenization” of the institution of coyoterismo, there is also an ongoing broadening of participating actors including women.⁵ Prospective migrants have in past years increasingly contracted coyote and chulquero services locally, even within their own community or extended family. Stone-Cadena and Álvarez Velasco (2018) suggest how this change in the ethnic and regional composition of the coyotero industry might end up favoring indigenous migrants due to expectations that ethnic solidarity will hold indigenous coyotes more accountable since the coyotereros and their customers are members of the same community (2018, pp. 201–202). However, as we show below, these transactions rarely occur without conflict and indigenous justice plays a key role in establishing

⁵ See Sanchez (2016) for a discussion of women’s participation in clandestine human smuggling operations, especially in the U.S. Southwest.

accountability structures to regulate the relationship between coyotes, chulqueros, and their migrant customers.

The coyote is often a well-known and respected figure in the communities of Cañar. It is not uncommon that individual coyotes or coyotero families amass substantial political and economic power even if their activities are only supplemental to other economic activities and remain public secrets. Despite national campaigns in Ecuador to criminalize irregularized migration as “migrant smuggling” or “trafficking” (Ruiz Muriel & Álvarez Velasco, 2019), local communities do not generally view coyoterismo as a criminal activity but as a necessary service to facilitate mobility project and ensure safe passage to the United States. There is a transactional aspect to the relationship and an expectation that both sides will comply with the often orally sealed contract. Trust is key here and as community members themselves coyotes have little incentive to cheat or short-change their customers. Many coyotes offer several travel attempts should a prospective migrant be returned before or upon arrival at the US-Mexico border. Migrants will confront coyotes and seek reimbursement mostly if the coyote declines to offer additional attempts in case of a “failed” migration, or if the migrant does not wish to try again. In those cases, migrants selectively use legal tools from both ordinary and indigenous justice systems to confront the coyotes or chulqueros.

As such coyoterismo is a malleable institution. As global and regional migration control policies change over time, coyotes must adapt their services to changing policy contexts, markets, and customer demands. Clandestine migration routes north have changed significantly over the last decades and continue to change. For example, before 2000, the first leg of the trip from Ecuador used the maritime route from the northern coast of Ecuador and up along the Pacific coast to Guatemala (Thompson & Ochoa, 2004). In Guatemala, migrants would disembark and continue north through Mexico using a gamut of transportation options including walking for segments of the journey. The coyote who arranged for this first leg of the trip mostly handed migrants over to other guides as they moved north. In more recent years, travel arrangements have commonly involved flights to Honduras and lately Mexico where Ecuadorians between 2018 and 2021 didn’t require a visa.⁶ From there, migrants travel the last part of the trip over land to the US-Mexico border. In 2020, a new maritime route via the Bahamas appeared as migrants sought new ways of escaping the economic hardship produced by the coronavirus pandemic (Guambaña, 2021).

The users of migrant smuggling services in Ecuador has also changed over time. Previously, the typical migrant was the male breadwinner leaving his family in Cañar. Now, more women than ever before migrate North and the number of unaccompanied children whose migrant parents are already in the United States is also growing (Berg & Herrera, 2022; Ruiz Muriel & Álvarez Velasco, 2019). With increased deportations from the United States back to the Austro region – 29,026

⁶In August 2021, the government of Mexico suspended the visa waiver for Ecuadorians to “help ensure that Ecuadorians do not fall prey to human trafficking networks” (Gobierno de México, 2021).

deported Ecuadorians between 2001 and 2019 (Berg & Herrera, 2022) – incidents of remigration after deportation are also common. Furthermore, Ecuador is also an important transit country for extra-continental migrants from Africa, the Caribbean, and the Middle East passing through Ecuador en route to the United States (Álvarez Velasco, 2020).

Given these new scenarios of multiple mobilities, it is not surprising that human smuggling needs and services have proliferated. Scholars have found that migrants are recruited into smuggling networks at different points during the trip North (Brigden, 2018; Quito Heredia, 2014) including when stuck in transit through the Central America-Mexico-U.S. transit corridor (Frank-Vitale, 2020). Migrants who have accumulated experience through several trips north may take other migrants along and little-by-little establish themselves as coyotes. Indeed, several deported migrants in our study reported using their previous migration experience to make the trip from Ecuador to Honduras or Mexico on their own. If they brought a friend or two, they could even make some money to pay for their own crossing into the United States.

The proliferation of forms of migration facilitation also presents the need to activate mechanisms of accountability to avoid swindling, fraud, and exploitation of prospective migrants and their families. If a migration journey fails, the traveler has several options. They can either re-attempt the trip within a given timeframe or decide to stay in Ecuador and try to recover part of their investment. This can happen by appealing informally to the coyote or by using either indigenous or ordinary justice mechanisms to remedy the losses.

7.4 Legal Pluralism and the Judicialization of Migrant Smuggling in Cañar Migrante

Throughout Ecuador's colonial and postcolonial history, indigenous justice has coexisted with ordinary justice, partly due to the lack of state presence throughout the national territory, especially in areas where inhabitants have been systematically subalternized and excluded from the national project. Not surprisingly, this coexistence between justice systems has been fraught with conflict due to frequent clashes of jurisdictions between indigenous communities and national/official judges and sometimes led to direct criminalization of those who execute indigenous justice and to a certain clandestineness of its practice. Yet studies have shown that an important characteristic of indigenous justice, rooted as it is in local cultural practices and ability to circumvent the rigidity of a written norm, is its capacity to adapt to different environments and situations (Llásag, 2012a, 2012b; Brandt, 2017). Despite these tensions, indigenous communities have persistently exercised indigenous justice both to resolve conflicts internal to their communities or between communities and as a form of resistance “from below” to the white mestizo national project (De

Sousa Santos, 2012). This form of malleability and refusal to conform to the authority of the state is alive and well among the Kañaris.

In Cañar migrante, the combined exercise of justice to process conflicts and litigation that affect inhabitants in changing social and mobile contexts has also produced a specialization within this complex judicial system. Thus, for example, we find indigenous lawyers with university degrees who are formally accredited by the State as professionals in this branch, who specialize in indigenous justice procedures and are themselves Kichwa speakers. These professionals own law firms and clinics, generally located in the capital city of Cañar province, or in more urbanized towns of the surrounding area, and catering to indigenous residents who turn to them with different requests often related to migration. Clients include migrants including deportees who have hired coyote services and want to recover their investments or families whose relatives have disappeared en route to the United States but who are still required by coyotes to pay for the service in full. Clients also include coyotes themselves who face situations with their own migrant clients or legal issues within the ordinary justice system; women whose migrant partners have stopped sending remittances for their children; and finally, migrants abroad whose remittances have been misused by relatives in Ecuador. The indigenous lawyers, using both legal systems at their disposal, provide their clients with alternatives to attempt to solve each situation. Below, we specifically analyze conflict resolution in situations related to US-bound migration and coyoterismo.

One Indigenous Affairs prosecutor – the positions created by the state in 2008 in the regions with the highest percentage of indigenous population (De Sousa Santos, 2012) – described the strengthening of indigenous justice among the Kañari in the following way:

Indigenous justice in the last six or seven years has gained a lot of strength here in the province. Around the year 2000 there were many cases of theft (*hurto*) and rustling (*cuatrerismo*) in which communities acted just to act, without any direction. But since 2005 there has been a boom and now there are professional people, mostly lawyers, in each community who, together with their leaders, have promoted the administration of indigenous justice and they have consolidated the organization. Just in the province of Cañar, there must be more than twenty indigenous lawyers, some with degrees up to the fourth level and some studying for Ph. D. (Interview with Prosecutor for Indigenous Affairs in Canton Cañar, July 25, 2017)

Whereas the Indigenous Prosecutors report to the State Attorney's General Office, the role of indigenous lawyers is to advise communities so that they can exercise indigenous justice without conflicts with the State. However, the important judicial decisions are made by and carried out within the community organizations. An office clerk to one indigenous lawyer operating in the area told us:

(...) We simply advise. It is the communities that solve the issue, not us. We as lawyers are there simply as one more member of the community and nothing more. We tell those who write down: write like this, write like that, and we advise them: don't do this, this is wrong, this is good, but it is the community that solves, not us. (Interview with legal clerk in Cañar, July 30, 2017)

During our research in Cañar, we observed how indigenous justice operates in localities and communities transformed by human mobility and sometimes produces tensions with the ordinary legal system. We also observed how the transnational dimension and reach of the institution of coyoterismo produces a complex intersection of official legal systems across international borders. Below we discuss three situations with local and transnational dimensions in which both indigenous justice and ordinary justice intervene to resolve migration-related disputes.

7.4.1 Failed Migrations, Reparations, and Coyote Accountability

When migrants are “returned” by migration authorities in the North, the coyote typically offers up to two additional attempts to complete the trip for the same payment. However, traumatic experiences en route ranging from extortion by irregular groups and mafias, robberies, sexual violence, murders, or accidents during strenuous journeys (Aguilar, 2014; De León, 2015; Frank-Vitale, 2020; Quito Heredia, 2014; Thompson & Ochoa, 2004) sometimes cause “returned” migrants to give up on the migration project entirely. In these situations, the contracting party claims before the indigenous justice the full or partial refund of the payment (up to \$17,000 per traveler in 2019). This money is often borrowed from the migrant’s relatives or from local chulqueros. Due to the informal nature of coyoterismo, there is often no written contract between the migrants and the “señores coyotes”, as some locals call them indicating a certain class position. This becomes important when seeking to resolve a dispute. Juan Guamán,⁷ one of the Prosecutor for Indigenous Affairs in Canton Cañar, relates these cases as follows:

Above all, when the person traveling has been detained, whether in Mexico or in Arizona, and deported to Ecuador, then the victim or the traveler will have deposited about 10 to 12 thousand dollars to the coyotes; but let’s say they no longer want to try because the trip has been terrible, a pure path of suffering (un viacrucis); then they go to the coyote and say: “Give me back the money,” and the coyote says: “No, because I already spent x amount of money on your trip, I can’t give your money back now. (Interview, Prosecutor for Indigenous Affairs in Canton Cañar, July 25, 2017)

To resolve such a situation the ordinary justice system is not very effective. It is slow and involves high economic costs and levels of corruption and even a high chance of imprisonment and deprivation of liberty for the poorest citizens (Nuñez, 2006; Cobo, 2015). Richard, one of the members of the San Pedro Indigenous Justice Consortium whose story we will share later in the chapter, reflects on the limitation of ordinary justice for indigenous communities:

Well, here in Cañar, problems between families, and problems with rustlers and coyotes abound. If someone brings in a coyote to seek justice, what do the authorities do? Say, I am

⁷All names used in the sections below are pseudonyms.

a coyote, you report me, I have money, they put me in prison and my family goes to the prosecutor's office and says: 'here take this [money]' - and they 'warm his hand,' they give him, say, five thousand dollars - but ask them to let me go. What are the authorities doing? They leave the coyote free, and the injured party can't do anything about it. Is that justice?! Instead, what does indigenous justice do? It chases the coyote! The indigenous justice has even tracked down a State Prosecutor who stole US\$10,000 from a man from Ingapirca [a nearby town]. The indigenous justice system made him return the money! If it had not been for indigenous justice, the prosecutor would have stolen the \$10,000. (Interview with Richard, July 28, 2017)

Richard's statement is supported by the data shared with us by the Prosecutor for Indigenous Affairs in Cañar when interviewed for this study. In his assessment, there are about 30–40 cases of illegal trafficking of migrants each year, but only in exceptional cases do these complaints reach a sentence. Victor, one of the indigenous lawyers interviewed, compared coyoterismo in the area to a mafia:

There is resistance and there are also retaliations. The practice of putting pressure is happening a lot. You know, coyoterismo is a mafia and there are always networks. If there are complaints [against the coyotes], there will always be persecutions, threats, and sometimes intimidation, and many times they end up reversing processes. Sometimes the complaints are abandoned, no evidence is provided, and that is why there is no conviction. The prosecutor has one year to gather evidence and if no evidence is generated, the case is archived. That has happened too. (Interview with Victor [pseudonym], July 28, 2017)

Contrary to the opinion given by the Indigenous Prosecutor's office, this lawyer considers that ordinary justice is incapable of achieving "redress" or reparation for "victims" whose migration has failed. In fact, indigenous justice seems to be much more efficient in this regard, since it obligates the perpetrator to repair the material damage caused and generally returning at least part of the money to the victim. To achieve such agreements, the lawyer mediates between the parties with the goal of getting the coyote, who is also part of the community, to give in:

(...) These claims have been resolved in the community, especially the well-organized communities exercise this right. The action is collective: the accused is arrested, and the community meets with 50 or 100 delegates, the investigation begins, and there is significant social or psychological pressure [on the accused]. This may produce the returns or compensations immediately, or alternatively, a document with deadlines is signed. (Interview, Prosecutor for Indigenous Affairs in Canton Cañar, July 25, 2017)

Despite the possible retaliations, on occasion, victims may file criminal complaints through the ordinary justice system to pressure the coyote to recognize the damage. Once this objective is completed, the complaint is withdrawn. However, in case of massive scams, for example, if a coyote has taken advantage of a whole group of travelers, this strategy does not work, since the defendant will prefer to pay with jail if the total amount claimed is too high. Victor, one of the indigenous lawyers interviewed, puts it this way:

In cases where the coyotes manage to compensate the damages and settle in investigation phase, the judicial process culminates. But in cases of massive fraud when the amounts add up to hundreds of thousands of dollars, and if there are no deaths, the defendants are left with a sentence of 5 to 7 years, and the case just fades away because there is no patrimony. The majority [of coyotes] do not have patrimony [in their name], that is all premeditated.

All assets acquired illegally are simply disposed of or hidden in the name of third parties. When prosecuted these assets do not appear, there is nothing on record, and that is one of the ways in which they manage to settle. Out of desperation people compromise up to half the amount, if they paid \$10,000, they sometimes end up getting only \$5,000 back. (Interview with Victor, July 31, 2017)

Despite that very few cases of coyoterismo are prosecuted through the ordinary justice system, another indigenous lawyer, León, who collaborates with Prosecutor Guamán, indicates that the legal mandate to compensate victims sometimes harms the coyotes, whom he also sees as potential victims of scams:

Whenever possible, [the victims] get more out of the poor coyote by lying about the amount. Maybe they paid \$9,000, but they make a complaint under oath for \$14,000, because someone advised them to get more out of it. But this also depends on the lawyer who files the complaint. (Interview with León, July 30, 2017)

What cases like this shows is that, on the one hand, the ordinary justice system alone cannot resolve the litigation of coyoterismo in the canton; on the contrary, impunity, threats and high economic costs are the norm. On the other hand, indigenous justice can also not operate in a completely autonomous way either and must use the ordinary justice system in complex ways and according to each situation to be more efficient.

In the following section, we show how the positionalities of the different actors in these situations fluctuate in complex ways between one justice system and the other, and that indigenous justice itself is a field of dispute constituting a crucial realm of political power within the social and ethnic group in question.

7.4.2 *Migrant Deaths and Ordinary Justice*

According to Ecuador's constitution, criminal cases must, in principle, be treated by ordinary justice; however, in Ecuador, unlike in Peru, indigenous justice intervenes more frequently in criminal matters (Brandt, 2017). This is one of the most critical points of tension with the State and several indigenous communities, including those of Cañar, typically seek to intervene with indigenous justice in criminal matters, given that these matters deeply disturb the harmony of the community.⁸

The ordinary justice system, which classifies coyoterismo as a criminal matter, intervenes most frequently in cases of coyoterismo when it involves the death of a migrant, especially in cases that have reached national or international news. This is consistent with the caricatured manner in which the Ecuadorian state constantly stages its "efforts" to contain irregular migration while at the same time taking limited action to solve the origin of the problem of irregular migration (Ruiz Muriel & Álvarez Velasco, 2019). These contradictions can be observed, for example, when a

⁸ See for example the case of La Cocha in Cotopaxi (Llásag, 2012b) and the case of San Lucas in Saraguro (Ávila Linzán, 2012).

special police unit await the arrival of migrants deported from the United States twice a month at the Guayaquil airport to investigate “signs of trafficking.” Most deported migrants have lived abroad for substantial periods of time and are not up to date with available coyote services. Additionally, they hardly have any incentives to offer any information to the State about the ways coyotes operate their businesses should they even have such information.

The case of Noemí Álvarez Quillay, which became the object of both national and international attention in 2014, illustrates the intervention of the ordinary justice system when a migrant death becomes a politicized media event. Every year hundreds of migrants die on their way to the United States especially while crossing the border in desert states like Arizona (De León, 2015). In March 2014, a 12-year-old girl, Noemí, left her home in the community of El Rosario to reunite with her parents in the Bronx, NY. A month later, the police detained her with a coyote in Ciudad Juárez, Mexico. The Mexican authorities took her to a shelter for unaccompanied migrant children. According to the news reports, she was in a precarious emotional state and had suffered different types of abuse (Sosa, 2014). A few days later, she was found hanging from a shower curtain rod in the shelter’s bathroom. Her death was determined a suicide by the Mexican authorities. Noemí’s case received extensive national and international attention (Dwyer, 2014; Sosa, 2014). Former President Correa even issued a public statement during the Sabatina, a widely viewed televised report offered to the nation every Saturday during his tenure as president. As a result of the public attention, an investigation was initiated *ex officio* and in the absence of any complaint. The National Prosecutor’s Office coordinated directly with the Mexican justice system to identify those responsible for Noemí’s death and eventually captured a Guatemalan coyote with networks in Cañar. Those involved were sentenced to 16 years in prison. Unfortunately, Noemí’s case is not an isolated event. Between 2007 and 2013, the whereabouts of 992 unaccompanied minors who left Ecuador by air to Honduras and did not return to the country remain unknown (Aguilar, 2014).

According to interviews conducted for this study, Noemí Álvarez Quillay had left with local coyotes from El Tambo. An Indigenous prosecutor from the area told us that members of the family and the community tried to route Noemí’s case through the indigenous justice system to avoid the imprisonment of the main coyote who was a relative, but ultimately didn’t succeed. They stated:

In the case of Noemí Álvarez, the community did an indigenous justice process, but once the ordinary justice begins the criminal process, the indigenous justice system must send its leaders [to announce] the “decline of jurisdiction”, according to article 345, 346, 347 of the Organic Code of the Judicial Function. They say that they proceed with the decline. Once they have presented before the judge of penal guarantees, the judge opens the period of evidence for three days. He says: ‘gentlemen, you must “prove” that you are indigenous and that you are legally constituted in your community.’ In the case of Noemí, the decline of jurisdiction was presented before the judge of penal guarantees, but the judge did not budge; then it was presented before the Court of Criminal Guarantees, who also did not give in. Subsequently, in the Provincial Court of Justice, they requested the decline and presented the trial record indicating that no person can be tried twice for the same crime, and still the court did not give in. Finally, it went to the Constitutional Court, and this court has also not

given way. Why? Because these are cases of crimes involving death, and the prosecution will never allow the crime to remain in impunity. (Interview with Indigenous prosecutor, July 25, 2017)

It is striking that an indigenous prosecutor would associate indigenous punishment, or *ajusticiamiento*, with impunity. What this tension between justice systems reveals is a complex and sometimes contradictory economy of life and death; a moral economy in which the State in a very capricious way selects which lives deserve justice and how such justice should be achieved. Likewise, it also reveals that justice itself is a field of dispute between different groups and legal systems where some want to safeguard the sovereign image of the State, and others want to guarantee that irregular migration, in the absence of a regular option, remains accessible for subalternized communities. We also learned from an indigenous lawyer who intervened partially in this case from the indigenous justice perspective that the grandfather with whom Noemí lived in the community, had requested a mediation with the coyotes in order to be financially compensated. This process was carried out in parallel to the state judicial process. This example shows how the ordinary and indigenous justice systems not only occasionally overlap but can also operate informally in entirely parallel ways.

It is clear to us that the community's incentive to initiate the case as indigenous justice or "lower it from ordinary justice to indigenous justice," as indicated by the Indigenous Prosecutor of El Tambo, is a strategy to protect the coyote and thus guarantee future possibilities of migration through such networks. However, such efforts do not resolve the issue of impunity, the desire of individuals who are scammed to recover their money and, more importantly, ease the pain of the loss of family members to the arduous journey north.

7.5 Youth Gangs, Migration, and New Challenges for Indigenous Justice

Richard is a community member and part of the San Pedro Indigenous Justice Consortium, an organization formed in Alto Cañar in 2014. His participation in disputes between justice systems have a political and ethnic dimension, which illustrates the transversality of migration in processes of social change.

Richard traveled to the United States at the end of the 1990s with a coyote from Cuenca for whom his father worked as a recruiter (*enganchador*). He left in part because of a problem with the ordinary justice system which had prosecuted him for alleged theft of a lost crop in the modality *al partir*.⁹ After a decade living in the United States, Richard is detained and deported after a fight in a bar. Upon his return

⁹The modality 'al partir' is a modality of cultivation of land common in Ecuador, in which peasants who do not have property work the land of another. By way of rent, they pay the owner of the land with half of the harvest (Fock & Krener, 1977/2019).

to Ecuador, he reinserts himself into the community but is later condemned again by ordinary justice precisely and paradoxically so for participating in the exercise of indigenous justice in a conflict related to international migration in his community. Richard's story shows how justice, or justice systems, both shape and is shaped by vital migratory experiences of the Kañari while also changing their communities in tandem with larger changes within the urban, market-oriented majority society (Brandt, 2017, p. 7). These societal transformations including migration have an important impact on both local conflicts and the ways in which indigenous justice functions. For example, Ávila Linzán (2012) has analyzed how the Saraguros, who have a significant record of international migration to Spain, see their community's migration experience as a "flight of leaders" that would concomitantly affect the exercise of indigenous justice at home (leaders need to be present for indigenous justice to be exercised). Above all "the impact occurs in the appearance of new community conflicts that they (the community members) see as a direct consequence of the migratory phenomenon" (Ávila Linzán, 2012, pp. 426–427). Llásag (2012b) makes the same observation among the indigenous people of Cotopaxi, who have experienced significant internal migration and urbanization processes.

The cultural transformations that migration produces among the youth is one of the conflicts that communities of Cañar, like those of Cotopaxi and Saraguro, must face. These are sometimes related to alcoholism, drugs, and the formation of gangs by return migrants from the United States. In the case of Cañar, one such gang made up of young migrants or children of migrants is Las Sombras Negras (The Black Shadows). Richard participated in a community process of punishing and bringing to justice (*ajusticiamiento*) some of the boys from this gang – an action which was later described in a 2017 report published by the regional human rights organization INREDH:

Las Sombras Negras were formed by migrants who returned from the United States and wanted to implement an organization like the Central American mara gang. They became involved in micro-trafficking and working as recruiters for coyoters, robberies and are also seen as the authors of some murders. Several young people began to steal small objects in order to obtain money to buy drugs and stay in the gang. (Saavedra et al., 2017, pp. 9–10)

The community members of the San Pedro Indigenous Justice Consortium punished these young people and concluded the process with what they call a healing act. This act involves baths in cold water and the use of nettle and other medicinal plants. These practices were questioned by the ordinary justice system which sees them as a violation of Human Rights, however, from the perspective of the indigenous communities, they have a ritual and exemplary significance. Richard shares his perspective and frustration with us:

The governor himself brought us two leaders of the gang "Las Sombras Negras", to bring them to justice, indigenous justice. If indigenous justice was wrong, then why did the governor bring the two leaders of the gang to us? If we are kidnappers, why did he bring us the two leaders? Of the two, one turns out well and the other turns out bad. The one that turned out wrong continues with the same routines, and the one who turned out well came [back] and said: thanks to indigenous justice my life has changed. Do you really think that [he] would have changed with ordinary justice? No way!

Richard's point is that whereas ordinary justice only punishes for wrong-doings, indigenous justice seeks to change behaviors for the long term. But the indigenous leaders in San Pedro who dealt with the case of Las Sombras Negras soon faced another lawsuit as retaliation. A resentful community member who according to Richard had swindled his aunt and fraudulently appropriated her land played a key role in the unfolding of events. When this community member was brought before the law of the community for the issue with his aunt, he filed a complaint for kidnapping before the ordinary justice, alleging that he had been forcibly taken from his home against his will to be present at the time of the trial assembly.¹⁰ This complaint was followed by others who ended up causing Richard and other members of the indigenous justice consortium to be accused of kidnapping and extortion by the official state justice system (Saavedra et al., 2017). Six community leaders from San Pedro were imprisoned because of this conflict and only received an amnesty in June 2020.¹¹

Such conflicts between community members and between justice systems is linked to the political polarization that the country experienced under the presidency of Rafael Correa (2007–2017), who despite his progressive profile persistently persecuted social leaders, especially from indigenous communities and organizations. The Attorney General's Office itself acknowledged that between 2009 and 2014 there had been at least 400 judicial processes every year for crimes against the security of the State, among them, more than a hundred per year for crimes of sabotage and terrorism directed at indigenous leaders (Ospina, 2021). According to the INREDH investigation (Saavedra et al., 2017), what happened with the Indigenous Justice Consortium in San Pedro could be defined as a persecution against community leaders of indigenous justice. During the judicial process, Richard had the opportunity to meet with government officials who accompanied the process in Cañar and he related his conversation with them to us:

Indigenous justice has done things which ordinary justice has not been able to do. Ordinary justice, do you know what it is for? It only serves to steal money, that's what it is good for. On this occasion, I said to the Minister: 'You, the government delegate, the vice-president's delegate, I will give you an example and you please answer me. You have 20 heads of cattle, and when they take ten, how many do you keep? Ten, correct. Now, the 10 heads that were stolen from you, are you going to leave those alone? Let the thieves take them away? You are not going to do that, right? You are going to file a complaint with the Prosecutor's Office and for that you are going to have to pay for a lawyer. The lawyer, what is he going to say? And the Prosecutor's office, what are they going to say? They will tell you to go to the place where the cows were taken. Very well, they all go there to see if there are any witnesses. There is nothing! The case ends there. So, you lose! You lose the cows, you lose the money for the lawyer. On the other hand, the indigenous justice, what can it do? The indigenous justice persecutes the guilty person until finding their whereabouts, and when that occurs, what will we have achieved? We have recovered the cattle, and even given a "punishment" to the person who stole it. What is ordinary justice going to do? Nothing. (Interview with Richard, July 28, 2017)

¹⁰It was not the first time this community member was implicated in an event of indigenous justice. Previously, a coyote had charged him for the migration of his daughter. The migration failed and through indigenous justice this community member was able to recover part of his investment.

¹¹For more information, see INREDH (2020).

The perceived effectiveness of indigenous justice described here has increased significantly since the conflict in San Pedro. Many Kañari have good reasons to distrust the ordinary Ecuadorian legal system due to the historic abuses they have suffered as indigenous peoples. The processes of irregularization, historic subalternization, and political criminalization of indigenous leadership have together pushed indigenous communities to use their own institutions as the only alternative to access true justice and to build accountability around the local institution of coyoterismo which is crucial to livelihoods and social reproduction in the region.

7.6 Conclusions

This chapter has explored the intersection between irregularized migration and indigenous justice in Southern Ecuador. By starting from an understanding of coyoterismo as a community-based activity embedded in the social fabric of migrant-sending communities, we have examined the limits of the contractual relationships established between smugglers (coyoteros), money-lenders (chulqueros), and migrants and their families who rely on these services to sustain their transnationally mobile livelihoods. Specifically, we have shown how indigenous migrants from Cañar make use of multiple legal systems to assert their agency and establish accountability vis-a-vis the coyotes who facilitate the region's ongoing migration to the United States.

Although the chapter deals with a very particular case, it contributes to broadening our knowledge of migrant smuggling in the Global South as a grounded social and cultural practice through which people access international migration. Considering both transnational dimensions and local understandings of opportunities and risks in migrants' places of origin and calling into question taken-for-granted conceptions about victims and victimizers, our study contributes ethnographic evidence to understand how subalternized populations in Latin America confront their lack of legal options for migration. In this effort to empirically situate migrant smuggling as something other than just ruthless criminal activity with dire consequences for innocent victims, we have focused on how local communities use both indigenous and ordinary justice to reduce loss and remedy potential abuses in irregular migration.

On the one hand, we have shown how indigenous justice is mobilized in contexts of migration most importantly around the issue of recovering money from coyotes when migration fails. Sometimes ordinary justice is also used for this purpose, but the Kañari have little confidence in this system. On the other hand, indigenous justice is also preferred when a community seeks to prevent a member from being imprisoned for coyoterismo within the ordinary system. In this way, indigenous justice allows for the protection of the institution of coyoterismo, which is beneficial to both sellers and buyers of migration facilitation services. For the coyote, satisfied customers means referrals to other family members, increased economic gains, and a reputation of reliability which might turn into social and political

capital. For the prospective migrant and their families and communities in the area, coyoterismo is a necessary social and economic infrastructure to ensure ongoing mobility projects. It should be remembered here that these strategies are motivated by the significant differences between the two systems. While ordinary justice is punitive and seeks to imprison those it deems guilty, indigenous justice is both reparative and corrective: the accused is obliged to return what was stolen through material reparation, and healing and reintegration into the community is understood to be more effective than the punitive logic of imprisonment, because the accused is ultimately an ongoing member of the community. Finally, the indigenous justice system is also applied to cases of conflicts in the community that its members understand to derive from the migration process including gang activity. Young migrants or children of migrants are seen as having been harmed and/or “corrupted” in the United States and must be coached back into the ranks by indigenous justice.

We want to end by making a final comment about the national and transnational context. The progressive Ecuadorian Constitution of 2008 produced two crucial paradoxes affecting the life and social organization of the Kañari. On the one hand, the progressive declaration of “universal citizenship” did not cease to be selective to those who have economic resources and class and racial privilege and can emigrate – or immigrate – through regular channels. On the other hand, the recognition of plurinationality in the 2008 Constitution accepts indigenous justice but only within their own local jurisdictions or territories and under the observance of the State and international human rights regimes. These paradoxes have become open forms of discrimination and criminalization of communities who must use coyoterismo to fulfill their migratory and vital projects and of indigenous people who use indigenous justice systems to recreate their communities and sustain them in the light of ongoing state coloniality and global transformations. For the Kañari both paradoxes are part of their ongoing predicament as indigenous peoples in a racist and neocolonial state and in a globalized capitalist system. To this must be added that the social condition produced by the irregularity of their migration follows the Kañari to their destination. With very few options for migrating with state authorization most Kañari have been persistently forced to migrate via irregular routes and live as undocumented migrants. The only form of “family reunification” available to them is to continue to use the facilitation services of migrant smugglers to bring their family members to the United States.

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