

The Rights of Indigenous Peoples in Mexico*

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I. BACKGROUND

Addressing the indigenous peoples situation in any given country implies analyzing several facts: the general recognition of rights, culture, land use, language, agrarian rights, natural resources, socioeconomic differences, education, customs, traditions, authorities (elections), judgments, the situation of women, protection in trials and procedures, etc.

Mexico has a very complex set of norms that tries to deal with every aspect of indigenous groups' lives, an obviously difficult task. There are those who claim we have done very little yet the approaches to the problem are as diverse as the indigenous peoples themselves.

Furthermore, the socio-economic conditions are not the same, particularly if you compare the developed north with the poor south, or the coastal tribes with the highlands settlements. Because of this, I, for one, am very skeptic when there is talk of generic solutions to the situation of all groups. The Yaquis in Sonora manage a successful agribusinesses and drive brand new pick up trucks, while the Zapotec of Oaxaca dwell in arid and barren land. By the same token, the latter are much more traditional, with their institution of "El Tequio" still ruling community life. The Yaquis have lost a good deal of uses and customs.

How can you offer the same rules to such a different people?

Nevertheless there are some voices that pretend to speak on behalf of the totality of our indigenous peoples, without legitimacy and/or formal

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representation; but that phenomena can be explained from a political stand point, not from the human rights perspective.

So let me review whatever norms we have and I will let you be the judge.

On top of our legal structure we have the Federal Constitution, but before I review our constitutional norms regarding indigenous people's rights, it is important to mention a recent and very controversial amendment, approved by the "Permanent Constitutional Power." The only way to reform the Constitution is through a process established in the Constitution itself, which consists of approval by two thirds of the members of the Senate, as well as the House of Deputies, and the Legislatures of the federated States. There was an initiative presented by President Fox, based upon the result of the negotiations with the Zapatista movement, but it was modified at the Senate, allegedly to give it legal coherence, and the result was not altogether palatable to some militant groups.

II. THE CONSTITUTION

The Mexican Government is a Federation, composed of 31 States and a Federal District. There are three levels of government: Federal, State and Municipal.

The Constitution provides that any subject matter not expressly conferred to the Federal Government shall be reserved for States. Indigenous people rights and institutions are mostly of a federal nature, as is anything regarding land, water and agrarian reform.

The new text of article IV contains the controversial provisions: The Mexican Nation has a multicultural composition sustained originally by her indigenous peoples. The Law shall protect and promote the development of their languages, cultures, uses, customs, resources and specific forms of social organization and it will guarantee to them effective access to the State's jurisdiction.¹

In Mexico, we went through a complex and painful process of Agrarian Reform, labeled mostly in favor of indigenous settlements. However, not all population centers favored by agrarian laws are indigenous, and not all agribusinesses excluded from said benefits are non-indigenous. Nevertheless, the Constitution guarantees that in all processes and trials of an agrarian nature where they are parties, their practices and juridical customs shall be taken into account, in accordance with the provisions of the Law.

Article 27 states that the legal capacity of ejido and communal population centers is recognized, as well as their property rights over the

1. MEXICAN CONST. art. 4 (amended in 1992).

land, both for settlements and productive activities.² The Law shall protect the integrity of indigenous groups' land. Whenever a process might result in the loss of property or possession of land, water, grazing land and their fruits, by ejidos or communes, the court shall procure any evidence in their favor, and the procedure shall not be suspended and/or ended against their interest because of terms and technicalities of a mere procedural nature, unless it is in their favor. Once started, the representation of the ejido or commune shall not desist or decline to continue a process unless it is agreed upon by the majority through formal vote in an assembly.

What are "ejido" and "communal" population centers?

Ever since the Spanish conquistadores started to organize agriculture production, the indigenous peoples' land property was recognized. They figured every settlement had a parcel of land worked for the benefit of the community, but there were two different systems for the use and exploitation of said land. On the one hand, if the land was distributed and assigned to a certain member of the town, who worked and harvested it for his family and for the community, it was called "ejido". On the other hand, if all the land was worked by all the townsfolk for the benefit of everybody, then it was a commune. In both cases the town owned the land, therefore, the "ejidatario" or town member responsible for a certain parcel did not own it, he only possessed it.

Later, the system suffered an overhaul and now each "ejidatario" has a choice: either to remain as possessor in accordance to the all traditional uses, or to become a proprietor of the land he works on. In accordance with our legal pyramid, we rank our international commitments right after the Constitution, provided they are the result of treaties approved by the Senate.

III. INTERNATIONAL LABOR ORGANIZATION AGREEMENT³

Members of the ILO must guarantee indigenous peoples the enjoyment of the same rights and opportunities that national legislation gives to the rest of the population.⁴ The indigenous peoples' social, economic and cultural rights must be promoted by the State, always respectful of their social and cultural identity, as well as their traditions, uses and institutions.⁵ Help will be provided to them for the purpose of eliminating socio-economic differences that might exist between indigenous and other members of the

2. *Id.* art. 27.

3. ILO Convention No. 169, June 27, 1989, reprinted in 28 I.L.M. 1382 (1991).

4. *Id.* art. 2.

5. *Id.*

national community, in a compatible way with their aspirations and way of life.⁶

Customs and customary law shall be considered when national legislation is applied to indigenous peoples.⁷ They will retain the right to maintain their customs and institutions, provided that these are not incompatible with fundamental rights as defined by internal law, or human rights recognized by International Law.⁸ Whenever necessary, procedures will be implemented in order to resolve possible conflicts deriving from this principle.

Implementation of these norms for the specific case of indigenous peoples will not affect their right to exercise all prerogatives and assume the duties guaranteed to the citizens of a country.⁹

The State will recognize property and possession rights of indigenous peoples to the land traditionally occupied by them.¹⁰ Furthermore, when appropriate, measures shall be taken in order to safeguard the right of indigenous peoples to the use of land not exclusively occupied by them, but to which they have had access traditionally. Special attention shall be given to the situation of nomad peoples and migratory agriculture.

IV. OTHER LAWS

In many aspects of life, Mexico's legislation must be geared towards the protection of indigenous peoples.

With respect to ecology, the establishment of protected areas pursue the protection of nature, monuments, archeological sites, historic and tourist attractions, as well as important areas for the recreation, culture and identity of indigenous peoples. Indigenous groups can request the establishment of natural protected areas in their land when it is reserved for protection, preservation or restoration of biodiversity. They shall administer said areas.

As regards education, basic education in the federal, state and municipal levels shall be adopted to respond to linguistic and cultural characteristics of each diverse indigenous groups as well as dispersed population and migrant groups of the country.

With respect to penal law administration, judges shall impose sentences based upon the seriousness of the crime and the degree of responsibility of the accused, but shall take into account age, education level, social and

6. *Id.*

7. *Id.* art. 8, ¶ 1.

8. *Id.* art. 8, ¶ 2.

9. *Id.* art. 8, ¶ 3.

10. *Id.* art. 14.

economic conditions and motive. If the accused is a member of an indigenous group, the Judge shall also consider uses and customs of said group.

With respect to women, the State shall promote, within the framework of traditional practices of indigenous communities, the integral participation of women in all activities of the group, with the aim of achieving the full realization of their potential while respecting their dignity. Indigenous women have the right to bilingual education, as well as training in order to achieve their integral personal development.

V. THE CHIAPAS PROBLEM

Chiapas exploded into the scene the morning of January 1, 1994, when a group of rebels launched a surprise attack against the military garrison of San Cristobal, killing several soldiers and successfully taking control of the city. The army recovered quickly and brought reinforcements that retook the city the same day, but the indispensable show of force and the evident disparity of resources, gave the international media a chance to turn the rebels into heroes.

The actual war lasted a few hours, not one shot has been fired since that fateful morning, but the media war has continued and, from the army's standpoint, it was hopelessly lost since the beginning. No one remembers now that the original manifesto declared war on the government; no one wants to remember the call to arms in favor of a "socialist" revolution. "Sub Commander" Marcos, a white man, smelled right away the shift in the media's attention towards the *struggle for the rights of indigenous peoples*, and he adjusted his political discourse accordingly.

For the last seven years, the Chiapas movement has transformed itself into the voice of the Indians, with or without their knowledge, and both the press and some international NGO's have eaten it up. Because of its prolonged duration, as well as the potential for escalation, Chiapas has been kept at the front of the National Security agenda. It is however doubtful there is a real threat there, at least one that could imperil our national security, neither has it been proven that the "zapatistas" represent all the diverse indigenous population of the country.

There is little doubt that indigenous peoples have some exclusive rights derived from their origin: precedence and uniqueness. The problem seems to be in the how, not in the what. In other words, there has to be a line where their rights begin, but also where those rights end. Drawing such a line has proven quite elusive. Let me give you some examples.

In accordance with the initiative presented by the Commission for the peace process in Chiapas, indigenous peoples have the right of self

determination and autonomy, as *part of the Mexican State*, in order to decide their internal ways of life, as well as social, economic and political organization; and to apply their own norms and rules in the solution of internal conflicts, respectful of individual prerogatives, human rights — particularly the dignity and integrity of women. The jurisdictional authorities of the State shall validate their procedures and resolutions. If all resolutions have to be validated, however, this becomes only a rubber stamp process with little objective value. Further, they have the right to elect their authorities and to use their own internal government systems, in accordance with their norms *within the scope of their autonomy*, always respectful of women participation in conditions of equality. Such scope is however not determined or defined. More imperatively, they have the right to accede *in a collective fashion* to the use and enjoyment of the natural resources of their land, defined as the total habitat that the indigenous peoples use and occupy, except those resources reserved by Law for the direct dominium of the nation. Why it has to be exclusive in a collective fashion is not explained. Corollarily, they also have the right to preserve and enrich their languages, knowledge and all other elements that conform their culture and identity and to acquire, operate and administrate communication means (radio and Television broadcasting). Since the right to obtain radio or Television concessions was not banned before, it is not clear why this should be stated.

President Zedillo presented his own initiative which provides: Indigenous peoples shall be able to apply their own normative systems in the regulation and solution of internal conflicts, always respectful of individual prerogatives, human rights, and in particular the dignity and integrity of women; their procedures and judgments *can be validated*, as provided by law, through jurisdictional authorities of the State. Here, the possibility of validation is limited by the rule of law. It is not mandatory or automatic. Also, President Zedillo's proposal stated that the right to have their own means of communication is limited by law, or better said, they can only acquire such rights if they comply with the provisions of the law. In his view, it cannot be an automatic and unregulated right.

Oaxaca's law provides that "Traditions and *democratic practices* used so far by indigenous communities for the election of their authorities will be protected by law." This of course implies that only those practices considered "democratic" (it does not say by whom) are protected by law; or perhaps it means all indigenous practices are democratic per se, which is of course debatable.

The passion with which this theme is approached is only compared to the abortion controversy. Those in favor of unlimited respect for the rights of indigenous peoples are willing to go to the extreme in defense of their cause; while those opposed to any concessions sometimes consider them as foreigners, as traitors, as threats to national security.