

Why Indigenous Rights?

The community is the most concrete and general expression of the indigenous peoples. Yet what legal and constitutional recognition is there for the rights of the community? Adelfo Regino of the Mexican National Indigenous Congress outlines the demands of the indigenous in light of the San Andres accords between government and the Zapatistas.

A presentation by Adelfo Regino
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To relate the injustices committed against our communities and our peoples does not cause us pity or compassion, but pain and sorrow because it is our own story.

The reality of our communities, the integrity and effectiveness of our customs and traditions, are the reasons why we can argue to continue our legitimate rights which are not recognized by the laws of our nation. Once accomplished, this, in the best of cases, can avoid serious interference in the life of our communities and persuade our indigenous authorities to apply a "norm" from our own culture. Until today, there has not been a legal framework which recognizes our proceedings and our own way of life.

For the authorities of the State the only "rights" are those which are discussed, sanctioned, and publicized by the State. Our rights, even when they hold an obligatory significance and they are effective in resolving conflicts and achieving harmony in our communities, do not have value and cannot be applied by the state. They argue "authority can only do what is permitted by law" and obviously our rights do not exist within the law.

What can be done then so that these rights have value and can be fully applied?

The answer is simple: convert our demands and grievances - manifest in indigenous rights - into legal concepts in the Constitution. In order to make these proposals concrete, it has been necessary to expose and create consensus among the different indigenous peoples the contents which should be inserted into the Constitution. This task has been given impetus by the State, through the national consultations of indigenous peoples promoted concretely by the legislative power, as well as by organizations, communities and peoples who make up the indigenous movement.

The work developed by our organizations, communities and peoples has generated an entire process which becomes accelerated after January of 1994 through public forums, assemblies and congresses. The activity of creating consensus was configured basically after listening to the voice of the communities and putting them together with theoretical elaborations and international instruments which already contain some of our principal demands. At the present time we have gained considerable agreements which are acceptable to us all and which are the minimum agreements which should appear in the Constitution. Our diverse realities share common points and very similar aspirations.

In this way, the concepts of autonomy, as expressed through self-determination, territory and community, remain as a triad of demands upon which should sit all the other indigenous rights. Complementing these were the rights of culture and indigenous law, the latter understood as the present judicial system which now exists in each of our communities, all of which would not make sense if the first three did not exist. This explains why the existing Article 4 of the Constitution, which has some cultural content, was rejected as an effective guardian of our rights.

We present some theoretical details in terms of our concepts of community and autonomy;

"There are fundamentally two ways of utilizing the concept of community. In its first

definition it refers to the whole of citizens who make up a country [...] the second definition is that which refers to the whole of traits which characterize a human gathering in territorial, historic, cultural, ethnic, terms which give it a sense of identity.

(Rodolfo Stavenhagen: "Indigenous rights; some conceptual problems." Magazine of the IIDH, vol.15, Costa Rica, 1992, p:138).

To some extent, legal instruments such as covenant 169 of the International Organization of Labor [OIT] say;

"Art.1.b).-To the indigenous peoples in independent countries, considered indigenous because they descend from populations which inhabited the country or a geographical region belonging to the country during the era of the conquest or colonization and the establishment of the actual borders of the present states and which, no matter their legal situation, still preserve all their appropriate social, economic, cultural institutions or remnants of them."

The International Pact on Civil and Political Rights and the International Pact of economic, social and cultural rights also say in their Article 1:

"1.-All the communities have the right to free determination. In virtue of this right they freely establish their political condition and provide therefore for their social, economic and cultural development.

2.- In order to achieve their ends, all the communities can freely dispose of their natural wealth and resources, without jeopardy from the obligations derived from international economic cooperation."

Given the previous, it should be pointed out that autonomy will be no more concrete than the one the indigenous peoples of Mexico are freely choosing ..the right to self-determination of the peoples.

We will now try to examine why the demands for indigenous autonomy have as their base the recognition of the community as a legal public entity and the possibility of association of the communities and municipalities which recognize that they belong to an indigenous community in order to coordinate their actions.

The community is the most concrete and general expression of the indigenous peoples. Within it take place the most diverse activities to fulfill human needs and the specificity of our cultures. If we seek an example of how an indigenous norm is applied, of how it is expressed in the relationship with nature, of the means of participation as a collective member, of the conception of authority, the participation of the elderly, the process of creation of norms, or even a document of collective property over the lands, we must necessarily look toward a community.

It is in the community where we indigenous have a certain level of autonomy. It is in this environment where we elect our authorities according to our own procedures and without the intervention of political parties. We can also say with all confidence that the community is where, according to norms and procedures the conflicts and problems which occur within it are resolved. The assembly is a collective organism, it is the primordial authority even in non-agrarian issues. The responsibilities and tasks which a member of the collective must carry out have reason only within the context of the community and for its own ends. In this way the community is the space where culture is created and re-created.

It should be noted that the indigenous community, in its actions, is not limited to consider only the

agrarian aspects. It goes beyond and covers those broad social aspects I have just described, such as politics, the meting out of justice, and cultural reproduction.

That is why it is necessary to recognize in the Constitution what is already a reality; the community as an integral collective, and not just its agrarian aspect.

Now it is important to emphasize that the entirety of communities with a common origin make possible the construction of indigenous communities as collective entities. To propose our reconstruction as peoples, we must necessarily contemplate the question of municipalities now seated in indigenous territories. The municipal entity, as it has been in the past, was imposed ignoring the social, cultural and geographic reality of indigenous peoples. The municipality as an institution attempted to destroy it, by imposing its own ways of organization and election of authorities.

At this point we do not attempt to destroy the municipality as an institution, but to adjust it to indigenous reality. The experience of Oaxaca has shown us it is possible to make compatible indigenous forms of organization within the municipal entity, and with the general system of political parties. We do not attempt to exclude one or the other, but to make them compatible and fortify the municipality even more.

The task of reconstituting our indigenous communities will occur within the association of communities and municipalities which recognize that they belong to an indigenous people, in order to coordinate the common actions of so many peoples. With this we do not attack the structure of government of the Mexican State. We also do not attack the spirit of everyday life in our communities.

We can affirm that the proposals for constitutional reforms which we are proposing according to the Agreements of San Andres (gathered and reflected by the COCOPA) constitute a response to the recommendations emitted in 1987 by the Special Report of the United Nations in its Study of the Problems of Discrimination against Indigenous peoples Vol. V. The content of said proposals can be synthesized in this way:

1. We present our demand to be recognized as peoples and as such, the right to self-determination. Nevertheless, our proposal does not use all the strength contained in those concepts in international instruments. We accept the fact that we belong to the Mexican State. At the same time we demand a new relationship with the state with our peoples, a need which each day grows more urgent in these times.

2. Autonomy is demanded as a means by which we can freely determine our existence within the Mexican state; as a collective right to be different and to have our diversity respected. Similarly, we say that it is an indispensable condition for enjoying the fundamental rights of our peoples and determining our future.

3. We take into account the reality of indigenous peoples so that;

- A. We seek recognition of the community as a public entity with a legal character.

- B. We propose to reinforce the municipality as an institution which must be adapted in a realistic manner to the particular situation of indigenous peoples.

- C. This opens the possibility that municipalities may become associated among themselves as indigenous communities in order to coordinate their actions.

4. The intent of all reforms, at least those which are to have practical application, in other words, effective ones; make no sense if it is known beforehand that they cannot be applied.

5. To an extent the recognition of indigenous rights becomes a formal way of breaking with the traditional schemes of Western culture, it does not demand individualistic rights or norms at the service of the State. It points out clearly to the recognition of a legal regime which reflects the plurality of the Mexican State.

Our demands have been repeated individually and collectively. It is a fact that we preserve them in every day life in our communities. It is also a fact that the lack of respect for many others is a constant reality in many tribunals and before certain state authorities. To continue to ignore these rights will result in hundreds of jails filled with indigenous people and will continue the genocide which began more than 500 years ago.

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