



Mirror and replica: A socio-legal proposal to restore the face of Mexico

Humberto Ortega-Villaseñor
Universidad de Guadalajara, México
huorvi@gmail.com

Abstract. This research is borne out of a concern for the need to integrate indigenous rights in Mexico so as to enable the peaceful coexistence of the institutions of Mexican positive law and the legal systems of the 62 indigenous peoples living in the country. It is based on the recognition of Mexico as a multiethnic and multicultural society and on the importance of the human rights of its native peoples, as recognized through the reform of articles 1 and 2 of the Constitution of 2001 and 2011. This paper proposes regulatory legislation as an indispensable means of preserving the cultural heritage of Mexico and intercultural dialogue.

Keywords: Indigenous people; native people; legal systems; legal pluralism; interlegality.

Acronyms and abbreviations

Art.	Article
CONASUPO	National Company of Popular Subsistence (Compañía Nacional de Subsistencias Populares)
EZLN	Zapatista Army of National Liberation (Ejército Zapatista de Liberación Nacional)
ILO	International Labor Organization
Para.	Paragraph
UN	United Nations
UNESCO	United Nations Educational, Scientific, and Cultural Organization

1. Background

The world has become an ever-more interconnected place where, every day and at increasing speed, all kinds of phenomena take place in which the juridical and social dimensions impinge upon the life of human beings. Currently, it is not possible to isolate socio-cultural phenomena or generate theoretical models that profess to be absolute truths or overarching proposals that employ any disciplinary criteria.

As Agustí Nicolau Coll and Robert Vachon note: “In the area of the social sciences, culture is generally considered as one dimension of human reality among others [...]. In the final analysis, culture is a set of beliefs, institutions and practices through which a people or a society affirms its presence in the world in a given moment of space and time”¹ (1996, pp. 268-269). From this perspective, it is easy to understand that each of the world’s cultures contains within itself a unique sphere of knowledge that must be preserved for the benefit of all, especially for future generations; this is especially true when it comes to the cultures of peoples that were subjected to processes of colonization, such as the aboriginal or indigenous peoples that live in different areas of nation states.

Now, each culture has a way of formulating, describing, and applying the law that governs its communal life that is valuable and guarantees social cohesion and identity survival into the future. Hence, the study of law from this cultural perspective is of instrumental importance. This explains and articulates the predicament facing a country such as Mexico, which as a result of its recent constitutional recognition as a multiethnic and multicultural nation must now transition from a monocultural state to a multicultural state – that is, from a nation composed of a single ethnicity, a single language, and a single law to a society that is multiethnic, multilingual, and includes a variety of legal regimes.

These changes in Mexico can be attributed to both external and internal factors, including efforts to achieve decolonization by aboriginal communities around the world, on international and national levels, during the last 65 years. It is necessary to take into account that in those peripheral spaces, very similar forms of dispossession, destruction, exploitation, and violation of rights took place during different stages of colonization, subjugating nations and continents for centuries: some earlier, as is the case of Mexico and the Americas; others later, such as the cases of India, Southeast Asia, Africa, Oceania or Hawaii.

1 Translation by *Apuntes*.

Jean E. Jackson and Kay B. Warren (2005) provide a valuable “panoramic” analysis, pointing out that a notable transformation has taken place in this hemisphere during the last 40 years: a movement that has led to the “re-indianization” of many peasant communities as a result of indigenous struggles and movements played out in various regions and for a multiplicity of reasons, including the recognition of rights granted during colonial times; the repartition and distribution of land; peace, autonomy, and self-determination of communities; and opposition to the signing of treaties (such as, in the case of Mexico, free trade agreements). All this gave rise to constitutional reforms that recognized indigenous rights and the multicultural character of countries as nations with “plural citizenships” (such as Argentina, Bolivia, Brazil, Colombia, Ecuador, Guatemala, Mexico, Paraguay, Peru, Nicaragua, and Venezuela).

In the case of Mexico, there were also specific internal factors, such as the conclusion of the Zapatista indigenous armed uprising in the Chiapas region, which began in 1994, for recognition of their ethnic and cultural specificity; and an arduous negotiation process between the Mexican government and the Zapatista National Liberation Army (Ejército Zapatista de Liberación Nacional, EZLN) which led to the constitutional reform. These negotiations, as we all know, were obstructed by ideological excuses and spurious legal arguments put forth by the political class and representatives of the dominant culture in Mexico, and the reform had limited effects in social, historical, and cultural terms because it ultimately assured neither the presence nor the representation of indigenous peoples in the bodies of political representation of the Mexican state.

Despite this, a limited reform was at least achieved with the modification of two constitutional precepts, articles 1 and 2, basically declaring that Mexico is a multiethnic and multicultural country, that the legal regimes of its aboriginal peoples are constitutionally recognized, and that the states of Mexico have autonomy to legislate on these matters.

2. Characterization

Before analyzing this reform, it is useful to provide a historical-cultural framework for understanding Mexico in comparative perspective so as to evaluate the characteristics and distinctiveness of the reform:

- Mexico’s process of liberation, or formal independence, from Spanish colonial rule took place 200 years ago (just as was the case of many other Latin American countries), while elsewhere, countries such as Mozambique, India, Canada, or Australia did not become independent until the mid or late 20th century.

- The indigenous struggles in Mexico started during periods preceding Spanish domination and continued at different stages of their history (including the colonial, independence, and the revolutionary and post-revolutionary periods).
- The ethnic and cultural diversity of Mexico is astonishing in comparison with many other countries; it is among the most culturally diverse countries in the world, with 62 indigenous peoples (Navarrete, 2008, p. 9). The presence of these cultures brings with it a rich mosaic of cosmologies, languages, ways of thinking, and individual and social ways of life. Although these peoples live in specific areas of Mexico, most are scattered throughout its territory (the most dispersed are the Nahuas) or live in several states in the southeast and the Yucatán peninsula (such as the Mayas, Zapotec, and the Mixtec) (Duverger, 2007, p. 15).
- Finally, Mexico is a federal republic with three decision-making levels (federal, state, and local); in this regard, it is important to consider the cultural diaspora in order to appreciate not only that the vast majority of these peoples are ruled by millenarian practices and customs that differ greatly from one another, but also the fundamental importance of current legal restrictions and requirements that affect them, all of which justifies the positioning of our analysis and the significance and scope of our socio-legal proposal.

Unfortunately, it was not until 2011 that the Mexican Constitution explicitly authorized the full application of those international norms the country had signed and ratified. This reform, although regarded as historically overdue by some, was in fact indispensable in facilitating harmonization, and justifies the preparation of a legislative proposal as the fundamental focus of this study.

3. Socio-legal challenges

The analysis of the provisions of a constitution such as that of the United Mexican States – the result of the 2001 reform (articles 1 and 2) – is not an easy task. It is a difficult exercise in untangling asymmetries, aimed at correcting errors and deficiencies within legal systems in order to preserve the recognition of differences in terms of the ethnic and cultural equality of indigenous peoples as an antidote to the standardizing and hegemonic pretensions of western culture; it is also a successful attempt at harmonizing social, cultural, and demographic conditions of this segment of the Mexican population.

What are the basic provisions of these constitutional modifications? In Art. 2, the indigenous people of Mexico are granted generic recognition, and a set of rights is attributed to them and outlined. Paragraph (Para.) 2, for example, states that “The nation has a multicultural character based on its indigenous peoples who are the descendants of the populations that inhabited the current territory of the country when colonization began and that have preserved their own social, economic, cultural and political institutions, or parts thereof”² (*Constitución política de los Estados Unidos Mexicanos*,³ 1917/2017, Art. 2, Para. 2). In this case, the Constitution goes on to list the rights of indigenous peoples, which are recognized in two separate sections: Section A primarily covers political rights that enable indigenous self-determination (the election of their own internal authorities and internal affairs entities, the application of their own normative systems to their internal conflicts, the election of representatives in those municipalities that have an indigenous population, the recognition of their own jurisdiction, etc.); Section B covers the social, economic, and cultural rights of these peoples, recognized by the State as groups requiring economic aid and protection and guardianship of their cultures.

Article 1 expands the concepts of multiculturalism and the principle of liberty and equality in Mexico to benefit not only indigenous peoples but also a large variety of minority groups that are part of the multicultural Mexican society of today. Consequently, “Discrimination based on ethnic or national origin, gender, age, disabilities, social status, medical conditions, religion, sexual preferences, civil status or for any other reason that infringes on human dignity and that has the aim to nullify or undermine the rights and liberties of individuals is prohibited” (*Constitución*, 1917/2017, Art. 1, Para. 5). These groups can have recourse to the State at any time as legal subjects or active subjects of the juridical relationship for the protection of their status as a minority in response to any abuse or behavior by the State itself (Burgoa, 1982, p. 68), by society, or by persons who attempt to subordinate, subjugate, or discriminate against them (González Galván, 2002, pp. 370-371).

Now, the challenge of articulating an indigenous juridical system on the federal level is highly complicated. This led the Mexican congress to later approve (in 2003) two secondary measures: the Law for the Linguistic Rights of Indigenous Peoples⁴ (Congreso de la Unión de los Estados Unidos

2 All translations from the Mexican Constitution are by *Apuntes*.

3 Hereafter: *Constitución*.

4 Ley General de Derechos Lingüísticos de los Pueblos Indígenas

Mexicanos,⁵ 2003a); and the Federal Law for the Prevention and Elimination of Discrimination⁶ (Congreso, 2003b). The latter is a legal instrument that regulates the paragraph cited above, which is part of Art. 1 of the Constitution and consists of six chapters containing a total of 90 articles, five of which are transitional. The general provisions of the law (contained in Chapter 1) are of public and social interest, and have the aim of “preventing and eliminating all forms of discrimination against any person, as specified in Art. 1 of the Constitution, as well as promoting equality of opportunity and treatment” (Congreso, 2003b, Art. 1). This scope of application of this law is federal, since Art. 8 specifies that “federal officials and public entities will engage in the application of this law” (Congreso, 2003b, Art. 1). Meanwhile, the Law for the Linguistic Rights of Indigenous Peoples has its legal basis in various parts of Art. 2 of the Constitution (*Constitución*, 1917/2017; especially Para. 1, Subsection IV, Section A; and Subsection VI; Section B). Although this law does not regulate most of the contents of this constitutional precept, it does regulate concrete matters related to the preservation of linguistic diversity as an expression Mexico’s rich cultural patrimony. The purpose of the law is to recognize, protect, and promote indigenous languages, and to give them status as official languages in the territories and contexts where they are spoken.

Now, although these two laws regulate certain fundamental rights of indigenous people, most of their rights remain unregulated; these are the rights that we regard as the cornerstones of a federal judicial system whose construction has just begun in Mexico. There is a need for a legislature to start work on the preparation of legal frameworks to regulate the changes to come.

What, then, is the purpose of this article? First, to discover if the legal and conceptual bases exist for the design of solid legislation to regulate the fundamental rights guaranteed in Art. 2 of the Constitution in an efficient and relevant manner. And then, to explore whether it is worth identifying areas to regulate in relation to indigenous rights – other than those regarding non-discrimination and linguistic rights – that are enshrined in the Constitution and therefore must be incorporated into an effective proposal for concretion and liaison, in accordance with recent constitutional developments.

In this way, we think that our analysis can be of help in constructing, in a federal state such as Mexico, a normative system that is pluralistic and

5 Hereafter: Congreso.

6 Ley Federal para Prevenir y Eliminar la Discriminación.

integrational, takes advantage of complementarities, and accepts the contradictions arising from cultural diversity and the coexistence and applicability of different legal systems in the same geographical territory.

4. Bases of constitutional substantiation

The previous sections have provided an introductory framework to substantiate a proposal for a law to regulate Art. 2 of the Mexican Constitution. Fortunately, thanks to the most recent reform of Art. 1 of the Constitution (Congreso, 2011; published in the *Diario Oficial de la Federación*), the necessary constitutional bases now exist. The drafters of this reform decided to make various changes in order to overcome the doctrinaire disquisitions of some jurists who, until recently, questioned the existence of social and minority rights in Mexico. For example, the reform changes the title of Chapter I of the Constitution from “Regarding Individual Prerogatives and Immunities” to “Regarding Human Rights and their Guarantees”; this may seem a trivial conceptual distinction, but in the current context it is significant since the chapter explicitly recognizes and explicitly denominates human rights in general – and not only individual rights – as the essential core to be protected or guaranteed; in addition, it substitutes the word “individual” for “person” in the first sentence of Para. 1 of Art. 1: “In the United Mexican States all persons possess human rights.” This reaffirms the will of the drafters of the reform to recognize, without distinction, physical or moral persons as legal subjects; and – in the context that interests us here – as indigenous individuals or peoples, encompassing the individual and social dimension of human rights.

In reference to the difficulties that tend to arise in attempting to sufficiently sustain the general incorporation of international norms into our legal system (given the hierarchical position and the scopes of interpretation of Art. 133 of the Constitution), in this case, the difficulties have been overcome. The new text of Art. 1 of the Constitution allows for the supplementary application of the norms of international law in an ample and precise manner: “The norms regarding human rights shall be interpreted in accordance with this Constitution and international treaties on the subject, favoring in every case the broadest protection of persons” (*Constitución*, 1917/2017, Art. 1, Para. 2).

In this manner, indigenous peoples as well as any other minority groups can have recourse at any time (as legal subjects or active subjects in the legal relationship) to the State in order to protect their minority status in the face of any abuse or conduct by society, officials, or private individuals that has the aim of subordinating them, subjugating them, or discriminating against

them. This is the extensive and comprehensive meaning that seems to have been confirmed by the drafters when a third paragraph was added to Art. 1:

All authorities, in their areas of competency, have the obligation to promote, respect, protect and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility, and progressivity. Therefore, the State shall prevent, investigate, sanction and provide reparations for human rights violations pursuant to the terms established in constitutional law. (Congreso, 2011b)

Thus, the concept of “guarantees” takes on broader dimensions, given that these not only exist as such when the subject of the relationship is faced with the action of an authority, but the person enjoys the “guarantee” at all times, insofar as their fundamental rights as an individual or as a minority group can be affected by the State or private individuals.

In view of the fact that no impediments have existed to the application of the norms of international law for almost two years, what should be done to assure the effectiveness of this criteria when it comes to implementing regulations? It should be ensured that effective norms and mechanisms are included in the implementation of the law, in line with the intention of the drafters of the constitutional reform when they wrote that “the State shall prevent, investigate, sanction and provide reparations for human rights violations in accordance with the terms established in constitutional law” (*Constitución* 1917/2017, Art. 1). That is, precise and clear adjectival or procedural norms are needed that provide the entity charged with applying them with sufficient decision-making authority to promote, defend, and monitor inherent fundamental rights and to guarantee and demand the fulfillment of obligations by imposing sanctions.

5. Pivotal them and conceptual framework

Now, what theoretical elements are there to underpin the thematic contents of a federal regulatory law designed to potentiate these constitutional bases? What conceptual framework could be used to support a proposal of this scope?

First, there is the concept of interlegality, as employed by Marc Amstutz (2005). Amstutz argues that interlegality supposes a momentary suspension of the theory of the primacy of the legal system because it establishes a rigid relationship of supra-subordination between legal norms, allowing for the possibility that a norm agreed upon within a community can prevail at given times over state laws. Why are we interested in this conceptual framework in particular? Because it clarifies the links between the legal systems of

different cultures that are intended not to substitute, replace or interfere with other systems, but solely to harmonize or unify the behavior of these different cultures in a more or less homogeneous manner within the spaces that form part of a unit.

We consider that interlegality exists to some degree in Mexico at the very base of the constitutional reform on indigenous rights, when the recognition of the rights of indigenous peoples is established as the sphere of competency of federal entities where an indigenous population exists. This simple criteria can be very helpful when defining the areas of competency of different levels of government (federal and state) of relevance to our proposal, and to the varied forms of relations that could develop or be generated between the legal systems of the state and those of indigenous people (under the constitutional mandate of consultation or participation of indigenous peoples in decision-making).

It seems to us that the principle could facilitate a systemic relationship at the bases of a decentralized framework as a whole; in addition, insofar as the principle fosters normative compatibilities or points of convergence, it could promote the formation of legal specificities at the local level (as an institutional process of learning that each entity will undergo in its own way, through trial and error, in its interrelations with the legal systems of indigenous people living in their respective territories). It could also operate as a process that makes use of the reflexive potential involving indigenous legal systems in which each people or community can decide how to relate to the different government entities with which they come into contact. The latter comes close to the – for now utopian – ideas of Rachel Sieder that legal pluralism should be seen as a plurality of processes that are interconnected and in continuous evolution (see Jackson & Warren, 2005, p. 563).

In principle, the design of the law under discussion will seek to construct a polycentric legal order, through procedural rather than substantive law. It will not consider the content of each legal system, but deal with the nexus and the methodological doctrines of other national legal instruments related to indigenous legal systems. It will be a rule for defining spheres whenever conflicts of laws exist (and only secondarily as an interpretive norm).

From a general perspective, this proposal based on interlegality favors the development of a new project for a multiethnic and multicultural nation, made up of cultural units that comprise it as elements open to their own social evolution. From the socio-structural point of view, this would be the equivalent of each element of the subsystem being a receptor of the perturbations of the outside world, and consequently it would create for each element the possibility of choosing the manner of leading the subsystem

to wherever it would be the most effective. The resulting value of this case would be self-organization on the state level as a function of the differences inherent in a society and, of course, an equilibrating response to the normative elements that would entail its organic linkage to the federal level.

6. Proposal for a law regulating Article 2 of the Mexican Constitution

The general guidelines of the proposal presented below are twofold. On the one hand, the harmonization of international human rights norms accepted by Mexico as a sovereign state (fundamentally, the United Nations Declaration on the Rights of Indigenous Peoples [United Nations, 2008]; and the Indigenous and Tribal Peoples Convention (No. 169) [International Labor Organization, 1989]; and other applicable international instruments). Insofar as Mexico is subject to the universal jurisdiction of human rights, it is necessary to bring our laws into line with those international treaties and conventions that we have signed. On the other hand, state intervention is proposed to assure the equilibrium of political, economic, social, and cultural disparities between indigenous peoples and society as a whole. To this end, norms are needed that will make it possible to fully respect the fundamental rights set down in the Constitution and preserve the multi-cultural composition of the nation.

a. Objectives and general norms

In consideration of the above, the objectives of our proposal for a regulatory law can be summarized as:

- To guarantee the rights of indigenous peoples and communities recognized in Article 2 of the Constitution, and the international laws, conventions, and covenants to which the State of Mexico is a party, having signed them and ratified them through the Senate of the Republic.
- To guarantee the exercise of the collective and individual rights of indigenous communities and their members.
- To protect the territorial integrity and the lifestyles and sustainable development of indigenous peoples, based on the uniqueness and the singularity of the cognitive and cultural diasporas of these peoples.
- To promote the development of the cultures of aboriginal peoples in a federal and decentralized state such as Mexico.
- To establish mechanisms for relations between indigenous peoples and communities with public entities and other national sectors.

Now, the norms that meet these generic objectives will be both substantive and adjectival. The substantive norms have two interrelated goals or objectives: on the one hand, to establish and coordinate a decentralized legal system that allows the development of legal pluralism in Mexico and assures the political aspects inherent in the self-determination of indigenous peoples, the integrity of their territories, and the harmonious development of legal pluralism in the entities of the country (the regulatory aspect of the normative hypotheses of Section A); and, on the other hand, to ensure general norms that regulate the actions of various levels of government so as to guarantee respect for the fundamental rights of indigenous peoples, including their economic, ecological, social, and cultural rights (the regulatory aspect of the normative hypotheses in Section B). The adjectival or procedural norms define the sphere of attributions of indigenous peoples and communities, the areas of competence of the entities of federal, state, and municipal governments involved in both cases, as well as administrative and judicial procedures.

What are the principles and general provisions of our proposal?

The goal of the design of the provisions outlined below is to combat the unilateral imposition of decisions by government entities or private individuals, which is so common in Mexico in regards to indigenous people and openly violates the spirit of the precepts of Art. 2 of the Constitution (including the general norms and those in sections A and B). Justification for this endeavor can also be found in the large number of observations made on this matter by different international bodies.

While the Committee takes note of the explanations supplied by the State party [Mexico] in relation to the constitutional reforms of 2001 as regards indigenous rights, it regrets that those reforms have not been followed through in practice. The Committee also regrets that indigenous peoples were not consulted during the reform process (Art.2) The Committee recommends that the State party should put into practice the principles set out in the constitutional reform in relation to indigenous matters in close cooperation with indigenous peoples. (International Committee for the Elimination of Racial Discrimination, 2006)

Thus, it is important to make it clear that in our proposal, indigenous peoples have the right to take general control of their own institutions and lifestyles, economic practices, identity, culture, law, mores and customs, education, health, and cosmovision in a world that is governed by totally different economic and cultural interests; moreover, they have the right to

protect their traditional knowledge, the integrity of their habitat and lands, and, in general, maintain and strengthen their development and cultural identity in conditions of equality.⁷

Furthermore, it is necessary to specify that indigenous peoples have the right to participate in the administration, conservation, and utilization of the natural resources that exist in their habitat and lands, with the express purpose of guaranteeing their viability in the future.⁸ In this sense, the State has the obligation to promote and carry out coordinated and systematic actions that guarantee the effective participation of these peoples, the communities of which they are composed, and the organizations that represent them on the national, regional, and local levels. Logically, and at the same time, these indigenous peoples and communities have the right to participate directly or through their representative organizations in the formulation of public policies relating to them, or in any other public policy that could affect them directly or indirectly. From this perspective, the organizations themselves and the legitimate authorities of each participating people or community should be taken into account as an expression of the exercise of their liberty according to their mores and customs.⁹

Therefore, it has to be recognized that indigenous peoples possess juridical personhood as bodies governed by public law and public interest entities, for the purposes of exercising the individual and collective rights that arise from Art. 2 of the Constitution, as well as those that derive from international treaties, covenants, and conventions signed and ratified by Mexico as a sovereign entity among the family of nations. It is worth noting that, along the same lines of reasoning, representation will be determined by indigenous peoples themselves and the communities that comprise them – that is, based on their own form of organization, the norms that govern them, and their traditions, mores and customs, without any limitations other than those established in the Constitution.¹⁰

7 Based on the United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2008, articles, 1, 2, 3, 4, and 5), and the Indigenous and Tribal Peoples Convention (No. 169) of the International Labor Organization (1989, Art. 5), both correlated with the Mexican Constitution (1917/2017, Art. 2, subsections I and V).

8 With reference to the Constitution (1917/2017, Art. 2, Section A, subsections V and VI), the United Nations Declaration on the Rights of Indigenous peoples (United Nations, 2008, Art. 29), and the Indigenous and Tribal Peoples Convention (No. 169) of the International Labor Organization (1989, Art. 7, Subsection 1).

9 See the Mexican Constitution (1917/2017, Art. 2, Section B, Para. 1); the United Nations Declaration on the Rights of Indigenous peoples (United Nations, 2008, Art. 32), and the Indigenous and Tribal Peoples Convention (No. 169) of the International Labor Organization (1989, Art. 7, Subsection 2).

10 Constitution (1917/2017, Art. 2, Para. 4 and Section A, Subsection III).

b. Consultation procedures

These principles or norms declaring basic principles enshrined in the Constitution and correlated with international norms lead us to think that the proposal or draft law should entail, above all, a very detailed generic procedure that will allow all of these fundamental rights to be guaranteed and discerned at once, that is: the right of these peoples to decide about “the preferential use and enjoyment of the natural resources in places where they live and that are occupied by their communities” (in accordance with the provisions of Subsection VI, Section A, Art. 2 of the Constitution); the right to design and operate public projects together with federal, state, and municipal authorities (in accordance with Para. 1, Section B, Art. 2 of the Constitution); and the right to make use of their productive resources without precluding the possibility of their engaging in partnerships with private persons on equal terms (in accordance with the applicable provisions of Subsection VII, Art. 27 of the Constitution, reformed in 1992).

This procedure will be in accordance with Art. 21, Para. 2 of the United Nations Declaration on the Rights of Indigenous peoples: “States shall take effective measures and, where appropriate, special measures to ensure continuing improvement of their economic and social conditions” (United Nations, 2008); and also with that prescribed in Art. 7, Section 3 of the Indigenous and Tribal Peoples Convention (No. 169) (International Labor Organization, 1989).

The proposal presented below includes various detailed explanatory precepts that substantiate the procedure: for example, one that establishes that all activities or public or private projects intended for development or execution within the habitat and lands of indigenous peoples must be presented to the indigenous peoples or communities concerned through a formal project proposal. On the other hand, indigenous peoples will have the right to receive technical and legal assistance during such meetings from representatives of the entity charged with indigenous policy in Mexico, or, where applicable, the local entity, other government bodies, or any local, regional, or national indigenous organizations. In lead-up meetings, individual members of the indigenous people or community concerned will be free to participate.

For obvious reasons, the projects will have to be submitted in writing, in Spanish and in the appropriate indigenous language, and presented to a meeting or assembly of the indigenous people or communities for their consideration sufficiently in advance (two or three months) so that the projects can be studied. If the indigenous peoples or communities concerned express their opposition to a project submitted to them for study,

an opportunity will be provided for the project proponents to present other alternatives, thereby continuing the process of analysis and discussion of proposals in order to reach just agreements that satisfy all the parties. The execution of any project in indigenous habitats or lands by individuals or public or private juridical persons will be prohibited if they have not been previously approved by the indigenous peoples or communities concerned, in accordance with this procedure. In the case of non-compliance, the law may define specific infringements and the corresponding sanctions.

Government organs, bodies, and other entities, as well as private institutions or persons, will not be permitted to carry out activities that undermine or weaken the nature, standing, or function of the legitimate authorities of indigenous people and communities (assemblies of community members, councils of elders, etc.). Indigenous peoples and communities will be able to seek legal injunctions against actions by any public institution or agency that attempts to execute projects within indigenous habitats and lands without their permission and without having fulfilled the procedures set down herein, or before competent courts when there are violations or infringements by private entities or persons. The courts will have the competence to resolve issues related to conformity with Art. 2 of the Constitution and with the provisions of this draft law. Indigenous peoples and communities will be able to request the immediate suspension of activities and the nullification of the concessions or authorizations granted by the State when the proponents or those in charge of executing a project violate an agreement with indigenous peoples and communities, irrespective of any appropriate legal action.

7. Prefiguration of regulatory areas

The configuration of the areas that will form part of our regulatory proposal take into account that the indigenous rights enshrined in Art. 2 of the Constitution are fundamental rights of human beings in their dual dimension – social and individual (in accordance with Para. 1 of Art. 1 of the Constitution). It is necessary now to explain the methodology employed. First, we identified the nature of the legal area to which the various paragraphs of the constitutional precept belong; then, we analyzed the corresponding socio-legal problems; afterwards, we reviewed the legal treatment of issues related to the international norms that we have used as our guide. Then, we considered the possibility of the complementary referral of these international norms to the Mexican internal sphere, evaluating what links, connections, or adjustments would have to be incorporated into the secondary legislation so that this referral would be admissible without contravening or distorting the will of the drafters of the constitution. Finally, we went

on to substantiate the wording within each area and the norms that could represent a satisfactory and viable legal initiative based on an approach that is systemic and considers integral linkages in our legal system.

The areas that we were able to identify are as follows: property rights, economic rights, political rights, cultural rights, social rights, legal competence, institutions, and procedures.

a. Territorial rights

This topic is vast and includes various types of correlated rights that can stem from the precepts enshrined in Art. 2 of the Constitution when they are interpreted as fundamental rights and their treatment is linked to international norms, namely: property, collective property, integrity, ecological use, and sustainable utilization of the habitat, resources, and lands of indigenous peoples as well as the aboriginal peoples of Mexico. The central hypothesis of our proposal for regulation and referral to international norms is that the State, as an active subject of the juridical relation, is obliged to intervene in different spheres to guarantee each one of these rights. This motive justifies and substantiates a new juridical-social regime.

Therefore, the State, first of all, must recognize and guarantee indigenous peoples and communities their habitat and their rights over lands that they have ancestrally and traditionally occupied. At the same time, it should guarantee that the property that these peoples exercise over these spaces is collective in character, given that this condition is indispensable for the development and effective protection of their lifestyles and cultures over the long term. The collective ownership of the habitat and lands of indigenous peoples and communities could pertain to one or more indigenous peoples or one or more indigenous communities depending on the conditions, characteristics, and requirements of the peoples or communities themselves. For the same reason, the lands of indigenous peoples and communities must be deemed to be inalienable, non-derogable, indefeasible, and non-transferable, irrespective of the land tenure system under which they are currently registered according to Art. 27 of the Constitution (private, ejidal or communal) and the agrarian legislation that regulates them.

In this way, although the territories of indigenous people can currently be submitted to different landholding regimes, the reform of Art. 2 of the Constitution (Congreso, 2001), by introducing a process of decentralization that is based on ethnolinguistic and physical occupancy values, seeks to preserve the differentiating elements that correspond to the cultural space of each of the 62 indigenous peoples that live throughout Mexico. For this reason, indigenous territories need special regulation that protects them, in

principle, from their desintegration through whatever means (prescription, dispossession, embargo or other forms of transference or extinction).

The lands that indigenous peoples and communities occupied ancestrally and traditionally that have been tipified as ejidos, communities, or private property will be subject to protection in terms of their demarcation and allocation of titles as indigenous territories in accordance with Art. 2 of this Constitution and current legislation, without prejudice to the rights of third parties. For the same reason, the habitat and lands of indigenous peoples and communities may not in any case be classified as idle, fallow or uncultivated lands for the purpose of transfer or adjudication to third parties according to agrarian legislation currently in force, nor can they be considered as areas of urban expansion to be converted or expropriated for public interest reasons. Indigenous peoples and communities will determine, through common consent and according to their mores and customs, the forms, uses, and succession of their habitat and lands.

Any internal disputes that may arise in relation to this topic will be resolved on the basis of their own laws, jurisdiction, and in conformity with this law. Indigenous peoples have the right to the integrity of their lands. This principle is explicitly enshrined in two provisions of the Constitution: “Conserve and improve the habitat and preserve the integrity of their lands” (1917/2017, Art. 2, Section A, Subsection V) and “the law will protect the integrity of the lands of indigenous groups” (1917/2017, Art. 27, Subsection VII). As noted in Art. 106 of the Agrarian Law, regulating Art. 27: “The lands that correspond to indigenous groups shall be protected by the authorities” (Congreso, 1992) in terms of the law that regulates Art. 4 (that now corresponds to Art. 2 of the current constitution) and Para. 2, Subsection VII, Art. 27 of the Constitution. These norms are in accordance with the provisions of articles 25 and 27 of the United Nations Declaration on the Rights of Indigenous Peoples (United Nations, 2008), and in Art. 13 of the Indigenous and Tribal Peoples Convention (No. 169) (International Labor Organization, 1989).

Finally, we propose the inclusion of a norm which clearly establishes that whenever the State seeks to exploit or utilize the natural resources located in the habitat and lands of an indigenous people (in terms of Art. 27, Para. 4, 5, and 6 of the Constitution), it should also be subject to the procedure of prior consultation in order to comply with the guarantees provided in Art. 2 of the Constitution.

b. Prefiguration of regulatory areas

The procedure we propose and attempt to justify below is positioned within a highly complex sociolegal and political context. It is borne of a lengthy process of agricultural land repartition, the original constitutional and legal framework of which has been modified repeatedly over time. Currently, as described by the United Nations rapporteur:

Peasant struggles for land and its resources are worsened by ambiguities related to rights and land titles, disagreements regarding boundaries between ejidos, communities, and private properties, conflicts regarding the use of collective resources such as forests and waters, illegal invasions and occupations of property and communal lands by loggers, stock raisers or private farmers, the accumulation of properties in the hands of local caciques, etc.¹¹ (Stavenhagen, 2003, p. 7)

In our proposal, it is assumed that the State recognizes and guarantees the aboriginal rights of Mexican indigenous peoples and communities to their habitat and to collective ownership of the lands that they have ancestrally and traditionally occupied. The process of delimitation or demarcation of indigenous territories is indispensable, not only for their systematization and application to the special regime in the terms analyzed above, but also to carry out the process of decentralization of competencies required by Art. 2 of the Constitution regarding indigenous rights (1917/2017, Art. 2, Para. 5 and Section A, Subsection VIII). This requires a period of close collaboration between indigenous peoples and their representatives; the authorities of the areas in which indigenous populations live (inheritors of powers until now centralized in the federal executive branch); and the bodies of the federal executive branch in charge of the titling of rights, agricultural procurement, and registry, namely the Agricultural Reform Secretariat (Secretaría de la Reforma Agraria), the Agrarian Ombudsman (Procuraduría Agraria), and the National Agrarian Registry (Registro Nacional Agrario).

During the processes of demarcation or delimitation and granting of titles, it will be obligatory to respect cultural, ethnological, linguistic, ecological, geographic, and historical realities as well as place names of the indigenous people of Mexico. The habitat and lands of the indigenous peoples and communities that have been designated as nature preserves will be included in the demarcation and granting of titles in accordance with this law and its established procedures.

11 Translation by *Apuntes*.

In order to aid in the tasks of decentralizing and delimitating the territories of indigenous peoples, the Agricultural Reform Secretariat and the National Agrarian Registry will provide the competent state bodies with a study containing historical, statistical, and census information, as well as information on delimitation and documents that aid in identifying these territories in accordance with the criteria established in Art. 2 of the Constitution and the law contained herein (including the original operations and modifications that it has undergone). All this should be done irrespective of whether or not the character of the territories concerned is currently supported by the so-called *Títulos Primordiales* of communities: titles that recognize them as traditional communities, communal or private ejidal property, fallow lands, protected areas, areas owned by the nation, etc. At the same time, this study will provide data about all current associations and or concessions and judicial or administrative divisions that recognize, create, modify, or eliminate ejidal or communal rights to these territories. The analysis will include the following:

- i. The cultural situation of indigenous peoples and communities: detailed information about the people or peoples and the indigenous community or communities to which they belong; their identification; and historical, linguistic, socio-anthropological, and census data related to the indigenous community or groups of communities that make up these peoples.
- ii. The geographic situation of the indigenous peoples and communities – that is, historical maps of the geographic location, geographic expanse, cartographic and topographic mapping, toponymy, characteristics, distinctive elements, and other necessary data for the delimitation of the habitat and indigenous lands.
- iii. The legal situation of the habitat and lands: proposed outline of legal and juridical aspects, indicating whether or not there exists a self-delimitation or titling project of any type which grants rights to indigenous peoples and communities over their habitat and lands.
- iv. The situation of third parties: information about the existence of third party occupants, individuals or legal persons, whether public, private or mixed, national or foreign, that engage in activities within an indigenous habitat or lands, with information on legal instruments that prove exploitation, possession, or ownership in relation to these persons (which will be verified according to the relevant laws).

- v. Possible conflicts that could arise as a consequence of the delimitation or demarcation process, and a proposal for a general solution to these, in fulfillment of the guarantee of the integrity of the territories of indigenous peoples and communities enshrined in Art. 2, Section A, subsections IV and V and Art. 27, subsections IV and V of the Constitution.

The decentralized body of each entity will receive the study, the supporting documentation, and a proposal prepared by the aforementioned federal authorities. Together with the representatives of indigenous peoples and communities (and other indigenous organizations that represent them), this entity will carry out its analysis. In the event that discrepancies or supervening documented testimonies are found, the entity will prepare a proposal for an alternative delimitation, add modifications, and send the proposal to the Agrarian Reform Secretariat to be studied within 70 calendar days, extendable for another 70. This federal entity will accept the supervening evidence submitted by the decentralized body and evaluate the proof or evidence presented in light of the reform of Art. 2 of the Constitution and in accordance with the contents of this law. If the federal entity is in agreement, it will issue a ruling on the titling of indigenous territories to be published in the official gazette (*Diario Oficial de la Federación*), thus initiating the decentralization stage prescribed in Section A of Article 2 and regulated by the law described herein. If the federal entity disagrees, it will send the decentralized body its observations and arguments, proof, and allegations to be evaluated. In case of refutation or a conflict between the two levels of government, the executive organ of the decentralized entity of each entity will propose alternative means of resolving the issue, without infringing the rights of the indigenous peoples and communities nor the decentralization process. If the conflict continues, any one of the parties has the right to refer the matter for resolution to the Supreme Court of Justice (Suprema Corte de Justicia de la Nación).

c. Economic rights

The almost 12 million Mexican indigenous people currently live in a situation of enormous socio-economic inequality. Nevertheless, the general meaning that can be gleaned from the first paragraphs of Section B, Article 2 of the Constitution is that the State should recognize and guarantee the right of indigenous peoples and communities to integral development. This implies, in our interpretation, that these indigenous peoples and communities, in their capacity as active subjects in the juridical relation, not only

have the right to decide their own practices, define their economic model within the framework of local sustainable development, and carry out their traditional productive activities (as part of these economic rights), but also have the right to participate in the national economy, while the State is obliged to support this integral development according to the real needs these groups.¹²

Consequently, a necessary interpretation is that national, state, and municipal development plans concerning the habitat and lands of indigenous peoples and communities should be prepared and developed with the direct and effective participation of indigenous peoples and communities and their organizations, in accordance with this law.

Now, given that the right of every indigenous people and community to participate in the national economy is closely linked with the level of State intervention in the economic sphere (Constitución, 1917/2017, Art. 25 and 28), this leads us to propose that the regulatory law should regulate the intervention of the State to the benefit of indigenous peoples and communities, especially in the areas of commercialization, credit, and training to ensure that they participate in these areas on an equal footing with other social groups. In this case, the draft law proposes a set of norms regarding the duties of the State so that it will act as an active subject in this relationship so that this equality will be achieved.

d. Political rights

For various reasons, the constitutional reform of 2001 did not provide a clear foundation for guaranteeing the political rights of indigenous peoples in federal and local legislatures, and only established the following:

This Constitution recognizes and guarantees the right of indigenous peoples and communities to self-determination, to the autonomy to [...] elect, in municipalities with an indigenous population, representatives to the municipalities. The constitutions and laws of federal entities shall recognize and regulate these rights in municipalities with the purpose of strengthening political participation and representation in conformity with their traditions and internal norms. (*Constitución*, 1917/2017, Art. 2, Section A, Subsection VII).

¹² In accordance with the provisions of the Constitution (1917/2017, Art. 2, Section B, Subsection I), the United Nations Declaration on the Rights of Indigenous peoples (United Nations, 2008, Art. 20), and the Indigenous and Tribal Peoples Convention (No. 169) of the International Labor Organization (1989, Art. 15, subsections 1 and 19).

However, the authors of the constitutional reform of 2001 specified in one of the transitional articles that “in order to establish the territorial boundaries of single-member electoral districts, the location of indigenous peoples and communities should be taken into consideration, when possible, in order to promote their political participation” (Congreso, 2001, Transitional Article 3). Based on this article, the General Council of the Federal Electoral Institute (Consejo General del Instituto Federal Electoral) conducted a federal redistricting process for the 2006 and 2009 elections, which was approved on February 11, 2004 (IFE, 2004).

This redistricting, which was supposed to guarantee indigenous representation – at the very least, to the Chamber of Deputies of the national Congress – was of limited value for various reasons, not least because the configuration of the new districts (which was designed by political parties since indigenous peoples were not consulted) did not include all the entities containing an indigenous population, having established very narrow criteria for certifying that districts did in fact have an indigenous population. Therefore, only 28 single-member seats were reserved to represent indigenous peoples (of the 300 “majority deputies” elected from single-member districts in the Chamber of Deputies). Thus, the redistricting left more than half of the indigenous population of Mexico (calculated at 12 million people) without representation. In addition, since indigenous peoples likewise did not have a role in candidate selection in the different parties during the 2006 federal elections, the majority of those selected as their representatives were not indigenous persons.¹³

Given this absurd situation, we agree with Jorge González Galván regarding the need to carry out a new redistribution design using more realistic and inclusive criteria so that the indigenous population is represented not only at the federal level, but also locally – that is, with multi-member districts (rather than just single-member districts) as per Art. 53 and Art. 116 of the Constitution (González Galván, 2008).

e. Social rights

The social conditions in which indigenous peoples and communities live in Mexico is critical. This is due, in part, to the high cost of the neoliberal measures implemented by the last five federal governments in Mexico, starting with the dismantling of protective tariffs; the privatization of numerous

13 Translator’s note: The Mexican Chamber of Deputies has 500 members, elected using a mixed-member proportional representation electoral system: 300 elected from single-member districts and 200 “party deputies.”

state enterprises that produced seeds, fodder, fertilizer, machinery and inputs for agricultural production; the closure of credit institutions that provide financial support for the agricultural sector; the dismantling of guaranteed prices for basic products and of the National Company for Popular Subsistence (Compañía Nacional de Subsistencias Populares, CONASUPO), which regulated the market; the elimination of supports and subsidies for primary activities as a result of the free trade agreement with the United States and Canada (NAFTA); the entry of Mexico into the World Trade Organization, etc. In general, these were a series of measures whose purpose was to completely eliminate the functions and responsibilities that Mexico had assumed as a social state, with the pertinent modifications of secondary legislation. Today, the international community has expressed concern that economic growth has not taken place in Mexico in recent decades, the population is increasing, the concentration of wealth is ominous, the economy has become trans-nationalized, and the migration of indigenous peoples and communities to the cities and abroad is increasing (Comité de Derechos Económicos, Sociales, y Culturales, 2006).

Nevertheless, as can be seen in subsections III, IV, and VII, Section B, Article 2 of the Constitution, the authors of the Constitution laid the foundations to reestablish the social state in Mexico, at least in regard to the fundamental social rights of indigenous peoples and communities. In this case, our proposal consists in specifying the norms and mechanisms needed to guarantee minimal conditions of social subsistence for these peoples in the areas of work, health, housing, nutrition, basic social services, and measures favoring respect for and dissemination of their culture. When it comes to work, the aim will be to solve endemic labor problems highlighted in recent commentaries and reports by various international bodies. In the area of health, a general norm will be included that declares that peoples or communities enjoy the right to health as a fundamental social right, and the right to access the services and programs of the national health and social security system, which will be provided to indigenous people on the same basis as other social groups in terms of equality of opportunities, equity, and quality of services.

f. Cultural rights

The set of norms in this category will basically regulate Subsection IV, Section A, Art. 2 of the Constitution, with respect to indigenous peoples: “Preserve and enrich their languages, knowledge systems, and all the elements that make up their culture and identity.” The draft law follows this lead and incorporates norms from various international instruments signed

by Mexico – fundamentally, UNESCO’S Convention on the Protection and Promotion of the Diversity of Cultural Expressions (UNESCO, 2005).

This proposal includes various declarative precepts in which the State recognizes and guarantees the right of each indigenous people and indigenous community to practice and develop their own culture and project it into the future. Each indigenous people and indigenous community has the right to freely express, practice, and develop its lifestyles and cultural manifestations, to strengthen its identity, promote the linguistic vitality of its language, preserve its vision of the world, and profess its beliefs and forms of worship. From this perspective, indigenous peoples have the permanent right to strengthen their cultural uniqueness, develop their self-esteem, and freely exercise their personality in the framework of their own cultural patterns, and the use of their traditional dress, attire, and adornments in all spheres of national life, etc. The State, together with indigenous peoples and communities, will protect and preserve archaeological sites located in their habitats and lands, promote knowledge about these as the cultural patrimony of indigenous peoples and the nation.

8. Regarding special indigenous jurisdiction

We have finished the task of prefiguring the juridical areas which could be open to normative options or lead to regulations of indigenous rights in conformity with Art. 2 of the Constitution, and have not yet been promulgated. This prefiguration has been placed within a kind of legal scaffolding, erected upon the harmonization of norms and principles contained in some of the international instruments signed by Mexico, while at the same attempting to follow the recommendations of international bodies as well as addressing specific problems that arise in each of these areas. Nevertheless, our study would be incomplete if, on this same basis, we did not reflect on two essential aspects: indigenous legal systems and the bodies charged with the application of this law.

Therefore, we will now discuss the set of norms that could regulate the part of the Constitution that recognizes and guarantees the right of indigenous peoples and communities to:

Apply their own normative systems in the regulation and solution of internal conflicts, abiding by the general principle of this Constitution, respecting individual guarantees, human rights and, significantly, the dignity and integrity of women. The law establishes the cases and validation procedures by the corresponding judges and tribunals. (*Constitución, 1917/2017, Art. 2, Section A, Subsection II*)

The proposal presented below follows the approach of various international instruments that Mexico has signed, the most important of which is Art. 27 of the United Nations Declaration on the Rights of Indigenous Peoples, which states that:

States shall establish and implement, in conjunction with the indigenous peoples concerned, a fair, independent, impartial, open and transparent process, giving due recognition to indigenous peoples' laws, traditions, customs and land tenure systems, to recognize and adjudicate the rights of indigenous peoples pertaining to their lands, territories and resources, including those which were traditionally owned or otherwise occupied or used. Indigenous peoples shall have the right to participate in this process. (United Nations, 2008)

First, we propose that various declarative instruments be put in place to make it possible to delimit and identify this area. For example, that indigenous law is made up of the set of norms, principles, values, practices, mores and customs, and institutions that each indigenous people considers to be legitimate and obligatory – that is, by a legal system that allows each indigenous people to regulate their social and political life, guarantee public order, establish rights and obligations, resolve conflicts, and take decisions in the internal sphere.

At the same time, it should be specified that indigenous peoples have the freedom for their legitimate authorities to apply legal measures within their territories; this jurisdiction in principle only affects their members. This being the case, a clause is necessary to stipulate who is considered a member (every indigenous person that belongs to the indigenous community and every non-indigenous person that has been integrated through family ties or any other link to the indigenous community, but only if living within it). In this sense, indigenous jurisdiction will consist of the powers that indigenous people have, through their legitimate authorities, to take decisions based on their own law and in accordance with traditional procedures for the solution of disputes that arise between its members on their territory.

In accordance with how it was defined, each special indigenous jurisdiction will also include the power to ascertain, investigate, decide, and execute decisions in matters submitted to them, and the power to reach agreements on reparations for damages as a method of sanction or conflict resolution. Indigenous authorities resolve conflicts using conciliation, dialogue, mediation, compensation and reparations for damages.

The offender and the victim, the family of the victim and the community all participate in the process. The regulations could state that the

decisions taken are *res judicata* on the national level and that, consequently, the parties, the State (on all its levels), and third parties will be obliged to respect and abide by them (provided that they are not incompatible with the fundamental rights established in the Constitution, treaties, pacts, and international conventions signed and ratified by Mexico in accordance with the proposed law).

From this perspective, the special indigenous jurisdictional competence could be substantiated by some basic criteria such as territoriality – the physical area within which legitimate indigenous authorities would have jurisdiction to deal with any incident or conflict arising in their habitat and lands. Another criteria, extraterritoriality, would be applied to those conflicts between members, submitted to indigenous authorities, that take place outside of the indigenous habitat and lands (provided that these are not of a penal character and do not affect the rights of non-indigenous third parties). In this case, the indigenous authority will have the right to decide if it will take on the conflict or not, according to the norms, mores and customs of the indigenous people or community concerned; if the decision is negative, the authority will inform the parties and refer the case to ordinary jurisdiction. A guiding criteria will also be considered when deciding on any conflict or petition, irrespective of what type of issue is being dealt with (except for crimes that are under federal jurisdiction, for example: crimes against the security and integrity of the nation, corruption or crimes against public patrimony, smuggling, illegal trafficking in psychotropic or narcotic substances, arms trafficking, etc.). Finally, the approach employed by the authority will also be based on its personal criteria regarding petitions or conflicts that involve any member of an indigenous people or community (persons who are not members of the community but who, while in an indigenous habitat or community, commit any crime defined in ordinary legislation, can be detained on remand by indigenous authorities, who in turn will put these persons at the disposal of ordinary jurisdiction).

In this section, the links or relations between special indigenous jurisdiction and ordinary jurisdiction have to be carefully regulated by establishing certain principles of coordination. For example, that decisions taken by legitimate indigenous authorities can only be reviewed by ordinary federal jurisdiction when they contravene the fundamental rights established in the Constitution, or the international treaties, covenants, or conventions signed and ratified by the Senate (*Constitución*, 1917/2017, Art. 103, Sub-section 1). In addition, it should be established that when matters or cases that correspond to special indigenous jurisdiction are brought to ordinary jurisdiction, they should be referred to the former for action. Also, it should

be established that special indigenous jurisdiction and ordinary jurisdiction should create links for coordination and cooperation in the investigation of cases as well as in the execution of decisions. Finally, it should be established that any conflict between the two jurisdictions – the special indigenous and the ordinary – will be brought to the Supreme Court of Justice (Suprema Corte de Justicia de la Nación).

What linkage mechanisms should be suggested for the functioning of the legal system as a whole? That is, how to facilitate the systemic link, the application of indigenous law, and the development of the special indigenous jurisdiction of a federal state such as Mexico? The authorities that have the competency to apply or execute the law on the federal and state levels, which we will propose below, could be placed in charge of the design and execution of public policies that promote the dissemination of and respect for indigenous law and the special indigenous jurisdiction. In addition, these authorities can take on the role of proposing training and education programs in legal pluralism, targeted at judges and employees of the courts as well as indigenous authorities (depending on the state in question) in order to facilitate the application of indigenous law and coordination with ordinary jurisdiction. The teaching of law and related careers, educational institutions, and law schools, in conformity with the applicable norms, could incorporate materials relating to multiculturalism, legal pluralism, and indigenous law. Finally, the State would be in charge of providing the necessary means for training on indigenous matters to justice workers, lawyers, and officials in charge of applying the law in entities which have an indigenous population.

Now, how can the question of the rights of indigenous peoples and communities and their members under ordinary jurisdiction be resolved? This will be achieved by refining the provisions of the Constitution and the pertinent secondary norms of Mexican positive law. Indigenous peoples and communities and any indigenous person who is a party in ordinary judicial processes will have the right to know their content, effects, and the recourses available to them, and to have access to qualified legal counsel, all in their own language and with respect of their culture during all stages of the process. Everything set down in this paper will also apply to indigenous people who are the subject of or participate in administrative or special proceedings.

In order to guarantee indigenous persons the right to a defense, a special federal attorney's office as well as state attorney's offices will be created as part of the structure of authorities suggested below. Those appointed as public defenders of indigenous persons must be lawyers who are familiar

with the culture and rights of indigenous peoples and communities. Public defenders will be authorized to exercise the representation and defense of indigenous persons in all matters and before all administrative and judicial entities, national and international.

In the judicial processes to which indigenous peoples and communities or their members are party, the respective judicial body will have at their disposal a socio-anthropological analysis and a report from the indigenous authority or representative indigenous organization, which provides information about the culture and the positive law of the indigenous people or community involved. The socio-anthropological report will be the responsibility of the competent federal or state body, as suggested below.

In the case of criminal prosecution involving indigenous persons, the law could prescribe two rules which we regard as fundamental: first, that indigenous persons cannot be subject to criminal prosecution for actions defined as crimes when in their culture and under their law these actions are permitted (as long as they are not incompatible with the fundamental rights established in the Constitution, international treaties, pacts, and conventions signed and ratified by the Senate); and second, that the judges, when they render their definitive judgement or any preventive measure, consider the socio-economic and cultural conditions of the indigenous persons – that is, the principles of justice and equity. In any case, the judges will endeavor to impose sentences other than imprisonment (in order to facilitate the reintegration of the indigenous person into their socio-cultural environment). When this is not possible, the State will establish special areas for indigenous persons and provide personnel that are familiar with indigenous matters, in the detention centers and jails of those states that have an indigenous population.

9. Regarding the bodies charged with applying the law

Both the constitutional reform of 2001 as well as that of 2011 (articles 2 and 1, respectively) pose a challenge in relation to design and organic connection, which is very difficult to resolve in terms of defining the spheres and levels of authority involved and the areas of competence concerning indigenous rights.

While the general norms in the first paragraphs and in Section A of Art. 2 of the Constitution should be legislated and administrated in a decentralized manner – that is, on the level of each entity in the country that has an indigenous population – Section B establishes a set of rights and obligations that should be fulfilled by federal authorities. In both cases, the consultation of indigenous peoples is required as a mechanism

to legitimize the decisions taken. This implies establishing bodies or spaces for dialogue and negotiation which are protected by the constitution and which decisively affect, in our opinion, the configuration of the bodies that have the decision-making power to apply the law, based on the principle of interlegality which we attempt to substantiate in this study as a theoretical framework which supports and inspires this proposal.

We also have taken into account two very important matters in the design. On the one hand, the two reforms of the constitution, taken together, seem to require the establishment of an integral legal system that, as well as regulating matters related to the fundamental rights of indigenous people in their individual and social dimensions, is capable of effectively protecting the territorial integrity of indigenous peoples as a *sine qua non* requisite for assuring the survival of the diversity of cultures present in Mexico. On the other hand, it is of fundamental importance that there be clarifying regulations that efficiently manage and foster this complexity, given that the existing organizational structure is incapable of doing so.

The body of norms proposed would only regulate the organic part of the law. It presupposes the establishment and operation of combined integration bodies with decision-making power to assure its application, and the co-participation of the representatives of indigenous peoples in its execution. We argue that that its design enables the functioning of a plural entity that is perfectly attuned to the spirit of the precepts enshrined in articles 1 and 2 of the Constitution and, in addition, fulfills the requirements of various international legal instruments that seek to assure the intervention of the State in the area of the fundamental human rights of indigenous people. The starting point for this design are the following two elements:

- f) A decentralized federal entity is to be created as a juridical person and with its own resources as the body that executes the law, with jurisdiction over everything concerning economic, political, and social rights as well as those relating to the use of habitat, in accordance with Section 2, Art. 2 of the Constitution. This body will act in close cooperation with the 62 aboriginal indigenous peoples that live in Mexico. Therefore, this body will consist of an assembly or consultative indigenous body, made up of representatives of the 62 indigenous peoples as well as certain federal authorities. The function of this body will be to design, discuss, and approve policies of intervention to be performed by the State in fulfillment of its obligations to guarantee these rights (Section B) and coordinate the decentralized legal system of the indigenous peoples of Mexico. The powers anticipated for this body are as follows:

1. To promote the rights of indigenous peoples and communities enshrined in Section B, Art. 2 of the Constitution and international treaties, conventions, covenants, and agreements ratified by the Senate, and ensure these rights are guaranteed and respected.
2. To coordinate the decentralized legal system of the indigenous peoples of Mexico.
3. Promote processes of decentralization and demarcation of the indigenous territories of the entities established by this law and guarantee their fulfillment in the terms established in Para. 5, Art. 2 of the Constitution.
4. To assist the competent authorities in the process of redistricting single-member and mixed-member districts, whose purpose is to guarantee access by indigenous peoples and communities to federal and local legislative bodies.
5. To make decisions regarding all types of matters and conflicts that may arise between federal, state, and municipal authorities or private individuals during the processes of electoral redistricting, decentralization, and demarcation of indigenous territories and the aftermath thereof.
6. To assure the fulfillment of procedures for providing information and prior consultation under this law.
7. To advise indigenous peoples and communities and their organizations regarding the control of activities carried out by natural or juridical persons, whether public or private, Mexican or foreign, in the habitat and on the lands of indigenous people.
8. To assure opportune and equitable access of indigenous persons to the social policies of the state, such as health services, education, housing, and labor opportunities, as well as the enjoyment of their rights, without any discrimination.
9. To promote the active participation of indigenous women in their indigenous towns and communities, and in public life on the national and international levels.

This body will also have an executive organ whose functions will be:

1. To prepare studies, plans, and programs and provide everything related to the sphere of competency of the assembly.
2. To execute the decisions approved by the assembly and or the consultative indigenous body.
3. To supervise its work on the state and municipal levels.

4. To provide legal services to indigenous peoples in all matters related to obeying the law in the body's sphere of competency.
 5. To organize and administer the Documentation Unit and the National Register of the Territories of Indigenous Peoples and Communities (Unidad de Documentación y Registro Nacional de los Pueblos y Comunidades Indígenas), based on the data provided by the entities, for purposes of administrative coordination and control of the unity of the country.
 6. To promote the exercise of co-responsibility by the State and indigenous peoples and communities as regards conservation and management of the environment and natural resources, national parks and protected areas, as well as the sustainable development of the indigenous habitat and lands envisioned in this and other laws.
 7. To prepare expert socio-anthropological reports for judicial and administrative processes to which indigenous persons are a party, as well as other technical studies that are requested by public or private entities, given its expertise.
 8. To carry out other activities related to matters that are essential to the functioning of this body (preparation of internal regulations and budgets, labor matters, etc.).
- g) Those federal entities that include an indigenous population, in fulfillment of the provisions of the first paragraphs and all subsections of Section A, Art. 2 of the Constitution (1917/2017), will adjust their respective legal frameworks to the general guidelines of this regulatory law as follows: a decentralized body will be established on the state level, with juridical personhood and its own resources, and will be charged with applying this law in all matters related to the principles of self-determination and political, property, access, tenancy, and cultural rights of the peoples located in the area of each entity, as well as coordinating the process of decentralization of competencies per the provisions of Section A, Art. 2 of the Constitution, and participate in the re-municipalization process referred to in Subsection VII, Section A, Art. 2 of the Constitution. Each entity also will be made up of two authoritative bodies:
- First, a state assembly or consultative body made up of three representatives of the peoples in question and an equivalent number of state government officials. The functions of this organ will be to discuss and agree on ways to integrate, modify, or renovate the legal order of the entities and of indigenous peoples, based on the local constitution, the

special indigenous jurisdiction provided for in this law, and the principle of interlegality in matters that pertain to its competency in accordance with Art. 2, Section A of the Constitution and international conventions signed by Mexico. Each entity will establish the legal regimes necessary to assure the rights to integrality of indigenous territories and the inter-legal mechanisms necessary to contribute to preserving the components of their cultural identity, the exercise of political self-determination, and preventing and resolving political conflicts that may arise between authorities and indigenous peoples, or among the latter. At the same time, this entity will coordinate the process of decentralizing functions, which is currently the responsibility of federal entities in areas with an indigenous population. The representation of indigenous peoples and communities in each entity will be in accordance with the norms and customs of each people, independently of the towns of which they are composed, the municipalities to which they belong, or the state officials involved in agrarian matters.

In addition, the executive organ of this body will have the following functions:

1. To submit to the assembly those matters which are within its competency.
2. To implement the decisions approved by this assembly.
3. To act as legal representative and liaison on behalf of this body to federal, state, and municipal authorities in all matters within its competency.
4. To cooperate with the decentralized federal entity in all activities that lead to the harmonization and integration of the decentralized legal system of the indigenous peoples of Mexico.
5. To design a proposal for procedures that allows the assembly to make decisions regarding the linkage of state and indigenous legal systems in accordance with the principal of interlegality. The proposal will guarantee the right to self-determination of indigenous peoples and to the special indigenous jurisdiction specified in this law.
6. To prepare a proposal for the organization of the Procurator of Justice (Procuración de Justicia) that will attend and legally represent indigenous people in their capacity as subjects of public law or as entities of public interest in all administrative and judicial matters related to the areas of its competency.
7. To formulate a procedure and a proposal for a legal regime to be discussed and summarized by the assembly, whose priority will be to guarantee the right to interlegality and defense of indigenous

lands, in accordance with Art. 2, Section A and Art. 27, Subsection XV (*Constitución*, 1917/2017), considering the judicial systems of the state, of the indigenous people specified, and of the population centers and land tenancy systems currently in place.

8. To propose and coordinate tasks related to the decentralization of property regimes and political and cultural matters of indigenous people within the zone covered by the entity, which is currently under federal jurisdiction, in coordination with the Agrarian Reform Secretariat (Secretaría de la Reforma Agraria), the Agrarian Procurator (Procuraduría Agraria), the National Agrarian Registry (Registro Agrario Nacional), and other federal bodies.
9. To prepare a proposal for the State Property Registry (Registro Estatal de Propiedad) for indigenous lands within the jurisdiction of the entity based on the process of demarcation provided for in this law and take charge of its administration, once approved by the assembly.
10. To present proposals for conciliation to the assembly to resolve political conflicts that arise among indigenous people, private individuals, and state government officials or municipalities, or among communities, ejidos, or population centers, that form part of the indigenous peoples within the jurisdiction of the entity or neighboring states.
11. To prepare proposals for the assembly to preserve cultural rights and protect the knowledge of indigenous peoples in accordance with the law.

10. Conclusions

Now, as we can see, the proposal for regulating Art. 2 of the Constitution that we have attempted to justify, design, and structure throughout this paper has involved an arduous exercise in linkages that, by its very nature, cannot be considered as finished. At the same time, it is an effort at creating interconnections that, again by their very nature, cannot be considered as concluded. More than a proposal for regulatory legislation, it is a series of open propositions that are necessarily incomplete, given the limitations of the author and the specialized critical assessments that are required to flesh it out and turn it into a finished product. This is evident from the complexity and the scale of the human problems that this proposal deals with across various socio-legal areas, the spectrum of disciplines, and the legal levels that are involved – that is, the complexity and scale of the modifications of secondary bodies of law that implementation involves at a given time.

Despite this, in one way or another, the task of exploration, relational study, and systematization of ideas that we have carried out has helped us

understand many aspects we were previously unaware of, some of them crucial. This makes us believe in the possibility that Mexico will one day have secondary federal legislation that will be useful and illuminating with regard to indigenous rights for the country as a whole and for each of the states, since it will be able to complement, guide, and promote the construction of a plural legal system: legislation that will not only allow complementarities to be leveraged, but will also resolve contradictions that arise from cultural diversity and the coexistence and applicability of different legal systems within the same territory.

It would be ideal to expand knowledge about the legal customs that govern the lives of two aboriginal communities, for example, those that live in the state of Jalisco – the legal systems of the Wurrárika (in the north of the state) and those of the Nahuas (who live in the south). This would make it possible to create a more or less open map of systemic-legal interrelations on the local level. Work on this level is pertinent, although beyond the scope of this study.

We know that this would permit us to finally tie together the two socio-legal extremes referred to in this essay and, at the same time, link them to the critical apparatus of the study. That is, on the one hand, the correspondence between international legal custom as the principle source of an imperfect legal system (as international law has been described) with the legal customs of indigenous peoples and with the nature of the norms of indigenous law. The challenge of implementing both international norms that require ratification by signatory states and norms that have to co-exist with legislated legal systems from the viewpoint of dominant cultures, leads to very similar things, suppositions, and situations.

On the other hand, there is the challenge of finding formulas for legal links that are not only efficient because they can be transferred to other spaces in analogous conditions, but because of their impact on the social fabric in the future – that is, the gradual enrichment of a genuine and equal intercultural dialogue, which is necessary to promote the evolution of mentalities and preserve the richness and diversity of Mexico's cultures in fulfillment of the goals set down in the Constitution.

From what little we know of the peoples mentioned above (the Wurrárika and the Nahuas), they maintain lines of communication with each other, with other indigenous people in the country, and with non-traditional actors that participate in international forums and contribute to bringing about important legislative changes, which is interesting from the point of view of socially-binding verification between the global and local spheres. On the other hand, we know that these two indigenous peoples share

common problems that are to be regretted, such as constant pressures on their natural resources, their ancestral knowledge, and the integrity of their lands by powerful domestic and international interest groups and actors who intermittently operate in their respective zones, seek to gain information, explore the surrounding habitat, or impose their own economic interests (for example, research groups, investment groups, mining or timber consortia, transnational corporations that exploit specific resources, etc.). Threats from these actors sometimes translate into incursions, exploration, invasions, or exploitation that cannot be easily evaded, given that these are unilaterally approved by governmental authorities through schemes, permits, and concessions, which compel indigenous peoples to fight for their rights in the courts under very disadvantageous conditions given the lack of well-articulated secondary legislation.

Thus, with a view to formulating a law that efficiently regulates all those subsections of Art. 2 of the Constitution dealing with indigenous rights that have not regulated up to now, we have been able to conclude the following:

- a) The initiative or draft law should be able to link the different regulatory levels that make up the decentralized legal system of Mexico in the area of human rights; incorporate international norms, principles, and commitments related to this area that are currently in force; overcome the lack of clarity or ambiguities in constitutional precepts (such as the case of indigenous rights as fundamental social rights or of indigenous peoples as subjects of public law, in the exercise of general norms and subsections of Section A of Art. 2 of the Constitution); as well as preserve the rights to consultation of these peoples through their incorporation into spaces in which the entities that apply the norms can discuss and reach agreements.
- b) The purpose of the draft law should be to regulate the organization of public authorities that are charged with applying those paragraphs and subsections of Art. 2 of the Constitution that have not yet been regulated, those that have to do with both federal and state authorities, as well as to define procedures to regulate an orderly decentralization of the functions that fall to the federative entities in fulfillment of the provisions of the Constitution.
- c) For the framework of this proposal, it is necessary to employ the concept of interlegality, which involves cohabitation and the dynamic transformation of legal cultures interacting in the same space through dialogue, negotiation, shared learning, and the generation of new legal norms. This theoretical framework – which exists in Mexico in some sense in the bases of the constitutional norm, when referring the rec-

ognition of the rights of indigenous people to the sphere of state competence – is necessary to anticipate the areas of competency of different levels of authority, design an organic structure, and settle on the varied forms of relations that might openly develop between official and indigenous legal systems, keeping in mind the constitutional mandate requiring consultation or participation of indigenous peoples in decision-making processes.

- d) It should also be explained that the norms that make up the proposal are substantive and adjectival. The substantive norms have two interrelated purposes or objectives:
- The establishment and coordination of a decentralized legal regime that facilitates the development of legal pluralism in Mexico, thereby assuring the political aspects inherent in the self-determination of indigenous peoples, their political participation in legislative levels of decision-making, the integrity of their territories, and the harmonious development of legal pluralism (in those entities in the country that fall within the normative hypotheses of Section A, which has still not been regulated).
 - The general norms that regulate the intervention of the different levels of government with the purpose of guaranteeing the fundamental rights of indigenous peoples, including economic, ecological, social, and cultural rights (and which correspond to the regulation of the legal premises of Section B, which has also not been regulated).
- e) The adjectival or procedural norms of the proposal define the sphere of attributions and special jurisdiction of indigenous people on the federal level; the linkages, principles of coordination and relationships between the special indigenous jurisdiction and ordinary jurisdiction as well as the areas of competence and attributions of the federal and state entities charged with applying the law, which will have decision-making power and will be integrated on the federal and state levels by an equidistant number of officials appointed by the State and representatives elected by indigenous peoples, which will guarantee the principle of interlegality.

References

- Amstutz, M. (2005). In-between worlds: marleasing and the emergence of interlegality in legal reasoning. *European Law Journal*, 11(6), 766-784.
- Burgoa Orihuela, I. (1982). *Las garantías individuales*. Mexico City: Porrúa.
- Coll, A. N., & Vachon, R. (1996). Etnicidad y derecho, un diálogo postergado entre científicos sociales. In Ordoñez Cifuentes, J. E. (Coord.), *V Jornadas Lascacianas* (pp. 267-290). Mexico City: Instituto de Investigaciones Jurídicas-UNAM.
- Comité de Derechos Económicos, Sociales y Culturales. (May 19, 2006). Observaciones finales del Comité de Derechos Económicos, Sociales y Culturales al examinar el Cuarto Informe periódico presentado por México al Consejo Económico y Social de las Naciones Unidas sobre la aplicación del Pacto Internacional de derechos Económicos, Sociales y Culturales, de fecha 9 de junio de 2006 (E/C.12/4/ Add.16), aprobadas en las sesiones 13ª, 14ª y 15ª, celebradas los días 9 y 10 de mayo de 2006 y en su 29ª sesión, celebrada el 19 de mayo de 2006. Retrieved from <http://www.unhcr.ch/tbs/doc.nsf/NewhvVAllSPRByCountry?OpenView&Start=1&Count=250&Expand=112#112>
- Committee for the Elimination of Racial Discrimination. (2006). Concluding observations of the Committee on the Elimination of Racial Discrimination. Mexico (CERD/C/MEX/CO/15). "The Committee considered the twelfth to fifteenth periodic reports of Mexico, which were due on 22 December 1998, 2000, 2002 and 2004, respectively, submitted as one document (CERD/C/473/Add.1), at its 1731st and 1732nd meetings (CERD/C/SR.1731 and 1732), held on 20 and 21 February 2006. At its 1752nd and 1753rd meeting (CERD/C/SR.1752 and 1753), held on 7 March 2006, it adopted the following concluding observations." Retrieved on November 3, 2017 from: http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CERD%2FC%2FMEX%2FCO%2F15&Lang=en
- Congreso de la Unión de los Estados Unidos Mexicanos. (February 26, 1992). Ley agraria. *Diario Oficial de la Federación*. Retrieved from <http://www.diputados.gob.mx/LeyesBiblio/pdf/13.pdf>
- Congreso de la Unión de los Estados Unidos Mexicanos. (August 14, 2001). Decreto por el que se aprueba el diverso en el que se adicionan un segundo y tercer párrafos al artículo 1º., se reforma el artículo 2º., se deroga el párrafo primero del artículo 4º.; y se adicionan un sexto párrafo al artículo 18, y un último párrafo a la fracción tercera del artículo 115 de la Constitución política de los Estados Unidos Mexicanos. *Diario Oficial de la Federación*, 1º secc., 2-4. Retrieved from <http://www.juridicas.unam.mx/infjur/leg/constmex/pdf/rc151.pdf>
- Congreso de la Unión de los Estados Unidos Mexicanos. (March 13, 2003a). Ley general de derechos lingüísticos de los pueblos indígenas, *Diario Oficial de la Federación*. Retrieved from <http://www.diputados.gob.mx/LeyesBiblio/pdf/257.pdf>
- Congreso de la Unión de los Estados Unidos Mexicanos. (June 11, 2003b). Ley federal para prevenir y eliminar la discriminación. *Diario Oficial de la Federación*. Retrieved from <http://www.diputados.gob.mx/LeyesBiblio/pdf/262.pdf>

- Congreso de la Unión de los Estados Unidos Mexicanos. (June 10, 2011). Decreto por el que se modifica la denominación del capítulo I del título primero y reforma diversos artículos de la Constitución política de los Estados Unidos Mexicanos. *Diario Oficial de la Federación*. Retrieved from http://www.dof.gob.mx/nota_detalle.php?codigo=5194486&fecha=10/06/2011
- Constitución política de los Estados Unidos Mexicanos*. (November 13, 1917/ November 13, 2017). *Diario Oficial de la Federación*. Retrieved from http://transparencia.edomex.gob.mx/seiem/htm/marcojur/pdfs/constitucion_politica.pdf
- Duverger, C. (2007). *El primer mestizaje, la clave para entender el pasado mesoamericano*. Mexico City: Santillana, Consejo Nacional para la Cultura y las Artes, Instituto Nacional de Antropología e Historia, Universidad Nacional Autónoma de México.
- González Galván, J. A. (1998). La reforma indígena: hacia una Constitución plurinacional y pluricultural. In Rabasa, E. O. (coord.), *Ochenta años de vida constitucional en México* (pp. 85-106). Mexico City: Instituto de Investigaciones Jurídicas-UNAM.
- González Galván, J. A. (2002). Los derechos indígenas en México: ¿hacia un paradigma constitucional pluricultural? In Carbonell, M. (Coord.), *Derechos fundamentales y Estado. Memoria del VII Congreso Iberoamericano de Derecho Constitucional* (pp. 370-371). Mexico City: Instituto de Investigaciones Jurídicas-UNAM.
- González Galván, J. A. (2008). La redistribución electoral y la participación política de los pueblos indígenas en México. Balance y perspectivas (2006-2009). *Boletín Mexicano de Derecho Comparado* 41(121), 173-211.
- Instituto Federal Electoral, IFE. (August 17, 2004). Acuerdo CG104/2004 del Consejo General del IFE del 15 de julio de 2004, por el que se aprueban los criterios y consideraciones operativas que se utilizarán en la formulación de los proyectos de división del territorio nacional en 300 distritos electorales federales uninominales, así como la creación del Comité Técnico para el Seguimiento y Evaluación de los Trabajos de Distritación. *Diario Oficial de la Federación*. Retrieved from: http://dof.gob.mx/nota_detalle_popup.php?codigo=679141
- International Labor Organization. (1989). Indigenous and Tribal Peoples Convention (No. 169). Retrieved on November 2, 2017 from http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID,P12100_LANG_CODE:312314,en:NO
- Jackson, J. E., & Warren, K. B. (2005). Indigenous movement in Latin American 1992-2004: Controversies, ironies, new directions. *The Annual Review of Anthropology* 34, 549-573.
- López Bárcenas, F. (2002). Territorios, tierras y recursos naturales de los pueblos indígenas en México. In González Galván, J. A. (Coord.), *Constitución y derechos indígenas* (pp. 121-143). Mexico City: Instituto de Investigaciones Jurídicas-UNAM.
- Montes A. R. (2004). Diversidad y autonomía, un aporte desde la experiencia indígena mexicana. *Renglones*, (56), 15-23.
- Navarrete Linares, F. (2008). *Los pueblos indígenas de México. Pueblos indígenas del México contemporáneo*. Mexico City: Comisión Nacional para el Desarrollo de los Pueblos Indígenas. Retrieved from http://www.cdi.gob.mx/dmdocuments/monografia_nacional_pueblos_indigenas_mexico.pdf

- Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura, Unesco. (2005). *Convención sobre la protección y la promoción de la diversidad de las expresiones culturales*. Retrieved from http://portal.unesco.org/culture/es/ev.php-URL_ID=33232&URL_DO=DO_TOPIC&URL_SECTION=201.html
- Stavenhagen, R. (December 23, 2003). Informe del relator especial sobre la situación de los derechos humanos y libertades fundamentales de los indígenas en visita oficial a México del 1º al 18 de junio de 2003. Naciones Unidas. Consejo Económico y Social. Retrieved from <http://www.acnur.org/t3/fileadmin/Documentos/BDL/2006/4357.pdf?view=1>
- UNESCO. (2005). The Convention on the Protection and Promotion of the Diversity of Cultural Expressions. Retrieved on November 6, 2017 from <http://en.unesco.org/creativity/sites/creativity/files/passeport-convention2005-web2.pdf>
- United Nations. (2008). United Nations Declaration on the Rights of Indigenous Peoples. Retrieved on November 2, 2017 from http://www.un.org/esa/socdev/unpfi/documents/DRIPS_en.pdf
- Valcárcel, M. (2014). ¿En qué países viven más indígenas y mejor en la región? Ranking Infolatam. Retrieved from <http://www.coordinadoracaoi.org/web/noticias/ranking-infolatam-en-que-paises-viven-mas-indigenas-y-mejor-en-la-region/>