

# Multiculturalism and fundamental rights in Northwestern Mexico: The case of the Yaqui Tribe

## Multiculturalismo y derechos fundamentales en el noroeste de México: El caso de la tribu yaqui

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### Abstract

The objective of this article is to propose a discussion on the role of multiculturalism and its implications within the Mexican nation-state from the methodology of legal studies, given the lack of legal and institutional tools to address the growing challenge of a multi ethnic society that aspires to a peaceful co-existence; where the indigenous peoples of Mexico uphold old demands on compliance with and respect for their Fundamental Rights, now based on international law and jurisprudence. The proposed analysis shows that despite the constitutional reforms of 2001 and 2011, it is necessary to introduce major legal reforms, including pluralism and interculturality in the public agenda and institutional space. The case of the Yaqui tribe is paradigmatic because they are waging a legal and peaceful struggle for their fundamental rights against the dispossession of their ancestral territories and its natural resources.

Keywords: multiculturalism, fundamental rights, Yaqui Tribe.

### Resumen

El objetivo del presente artículo es proponer una discusión sobre el papel de la multiculturalidad y sus implicaciones dentro del Estado nación mexicano desde la metodología del Derecho, dada la carencia de las herramientas jurídicas e institucionales para encausar el creciente reto de una sociedad multiétnica que aspira a una convivencia pacífica; donde los pueblos indígenas de México sostienen viejas demandas sobre el cumplimiento y respeto de sus derechos fundamentales, sustentadas ahora en el derecho y en la jurisprudencia internacionales. El análisis propuesto arroja que a pesar de las reformas constitucionales de 2001 y de 2011, es necesario ajustar el marco jurídico interno, introducir el pluralismo jurídico y la interculturalidad en la agenda pública y el espacio institucional. El caso de la tri-

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bu yaqui es paradigmático porque enarbola una lucha legal y pacífica por sus derechos fundamentales contra el despojo de sus territorios ancestrales y sus recursos naturales.

Palabras clave: multiculturalismo, derechos fundamentales, tribu yaqui.

## Introduction

This work proposes the discussion of the role of multiculturalism and fundamental rights in the face of the dispossession of natural resources and ancestral lands suffered by indigenous peoples, in a multiethnic and culturally diverse society such as the Mexican one, through the analysis of the Yaqui tribe of Sonora. This case shows that despite the progress made in the constitutionalizing of the international law of the indigenous peoples, there is a breach and violation of it by all kinds of public and private actors to the detriment of the Yaquis. This situation, which can be extended to the case of other indigenous peoples in Mexico and Latin America, calls for major changes in the legal, political and institutional order to make indigenous peoples a priority issue of the greatest public interest, given their historical significance and importance, as well as the delays and social, political, and legal problems suffered by this population, but which also affect the general public to a greater or lesser extent.

Over the past few years, the different societies of the world have seen the emergence of indigenous social movements, especially the fundamental human rights of indigenous peoples around the world<sup>1</sup>, which are a subject of growing international interest due to their multiple social implications, ranging from the constitutional to the environmental, and the political to the cultural.

Thus, the hypothesis proposed is that despite the constitutional acknowledgement by Mexico of the international treaties as sources of fundamental rights, with full force and effect in the internal legal order and of the recognized plurinationality of the Mexican nation in the current Constitution, the matter of illegal dispossession of natural resources from the Yaqui tribe in Sonora, proves that the institutional judicial framework of the Mexican nation does not have the judicial and institutional tools necessary to acknowledge diversity and to channel it peacefully, respecting the fundamental rights of indigenous peoples, and of Yaqui people in particular, to autonomy, justice or previous free, informed and good-natured consultation in order to obtain their consent; as well as their right to the protection of their ancestral land and the valuable natural resources that they contain.

In the case of Mexico, the subject is particularly important for several reasons. Among the main ones is the strong indigenous presence in Mexico, but also the

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<sup>1</sup> "Indigenous Peoples" in terms of human collectives self-identifying as an indigenous community in the context of a nation state (C169-Convenio sobre pueblos indígenas y tribales, 1989, (1991); Corte Interamericana de Derechos Humanos [Corte IDH], (n.d.); Declaración de las Naciones Unidas sobre los Derechos de los Pueblos Indígenas, 2007).

number of historical offenses and injustices suffered by the indigenous peoples<sup>2</sup>, which makes them a social minority that is highly vulnerable due to its conditions of lag, marginalization, and poverty. This is largely due to the growing social conflict associated with these people today, as well as the current concern about the legitimacy or legality of the dominant models of economic growth, which privilege the extraction of natural resources without the prior consultation or consent of the populations settled in the territories of extraction or of the indigenous peoples that ancestrally inhabit these territories, a situation that poses growing risks to the very existence of the Yaqui tribe. Thus, the right to the free determination or previous free and informed consultation, as well as access to the land and territory or to expedite justice, are fundamental rights of the indigenous peoples, but also legal obligations for the states of the nation according to the standards of international law.

Here we present some evidence and support in this regard. Article 2 of the Political Constitution of the United Mexican States recognizes and establishes the plurinationality of the Mexican nation, based essentially on its original peoples. For its part, Article 1 of the Constitution elevates human rights recognized in international treaties to the rank of fundamental rights in the domestic order since 2011. In addition, the first paragraph of article 4 of the Constitution explicitly recognizes the fundamental right to a healthy environment, and then recognizes the fundamental human right to drinking water and sanitation<sup>3</sup>. Moreover, if in the international order Mexico<sup>4</sup> is a signatory party of all the conventions and international treaties concerning the rights of the indigenous peoples, then what is the cause of the growing social conflict in the physical and geographical environment of these peoples in Mexico? What are the reasons behind them? The case of the Yaqui tribe in Sonora is a paradigmatic case as it serves to validate, with facts, that the current regulatory systems that protect the rights of indigenous peoples have not been implemented or applied in the internal order to respect their fundamental rights in the face of extractive projects, also called “mega projects” or “development projects”, on the ancestral lands of the indigenous peoples without their knowledge or prior consent. This is evidence of the breakdown of the democratic rule of law and calls into question the effectiveness of these regulations, as well as the lack of intercultural public institutions and the entire validity of the rule of law in a State that defines itself as plurinational and democratic and governed by the rule of law (Carbonell, 2010).

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<sup>2</sup> It would not be an exaggeration to say that the book *Brevísima relación de la destrucción de las Indias*, written in 1552 by Bartolomé de las Casas and addressed to Prince Felipe of Spain, was the first report on the massive violation of human rights in history. The observation is by Jan Jarab, representative in Mexico of the United Nations High Commissioner for Human Rights (Oficina en México del Alto Comisionado de Naciones Unidas para los Derechos Humanos, 2018).

<sup>3</sup> The Committee on Economic, Social and Cultural Rights, in its General Comments on the right to water (ESCR GC 15), has stated that:

The states should ensure sufficient access to water for subsistence agriculture and to ensure the survival of indigenous peoples. In relation to the latter, States are urged to provide resources to enable communities to plan, implement, and control their access to water (Observación general N° 15: El derecho al agua, n.d., arts. 11 and 12).

<sup>4</sup> Self-defined as pluricultural (see Constitución Política de los Estados Unidos Mexicanos, 2001, art. 2; Gutiérrez, 2018).

Concerning the dispossession of natural resources to the detriment of ancestral indigenous territories, we can say, in a general context, for the present study that by 2015 the world had experienced approximately 1 500 documented socio-environmental conflicts. Focusing on Ibero-America, half of these conflicts occurred in the environment of these peoples, who are often located in the so-called “frontiers of extraction” (Martínez, 2015). The idea of this work is based on this observation, which was made by different working groups throughout the region. According to the United Nations (UN), there are at least 5 000 indigenous groups in the world, comprising some 370 million people, living in more than 70 countries on five continents. The indigenous peoples of the Ibero-American region currently number some 55 million people, according to the same source, distributed among 33 countries, which speak some 300 indigenous languages, according to the same source (ONU, n.d.).

In Mexico, there are some 16 million self-recognized indigenous people, belonging to some 65-68 different ethnic groups, who represent approximately 15-16% of the total population of the country (this is an estimate by the National Institute of Geography and Statistics [Inegi] for the case of Mexico, in 2015, with information from the National Commission for the Development of Indigenous Peoples [CDI]). Thus, given the great ethnic diversity of its population, around 68 native languages are still spoken in Mexico in 2018, this, in addition to Spanish which is the only “official” language of Mexico. However, in this context, indigenous peoples comprise a real discriminated minority. According to Inegi, 7 out of 10 Mexican indigenous people live in poverty (Inegi, 2016). Paradoxically, indigenous presence and its marginalization and poverty are more prevalent in the regions with more natural resources,<sup>5</sup> which have attracted the greed of extractivism, domestic and offshore, as shown, among others, in the work of Toledo, Garrido and Barrera-Bassols (2015) or Martínez (2015); and it is in this manner that the situation of these people is not better than in the recent past as is established, for example, in the recent report by The World Bank (2015).

## Multiculturalism and Fundamental Rights

The term multiculturalism is one of many terms that we read and hear repeatedly in everyday life together with others such as globalization, sustainability or digital society, for example. Multiculturality<sup>6</sup> is also one of the key concepts that have expanded to several areas of social knowledge as it allows a better understanding of the world in which we live. The meaning of the word, as it is simply and literally understood, alludes to the obvious existence and co-existence of several cultures in a specific time and place.

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<sup>5</sup> The serious human rights violations against indigenous peoples and communities in Mexico occur in two main areas: violence in the context of mega-projects on ancestral lands and territories authorized without due process of consultation and prior, free, and informed consent, or in the framework of land claims and lack of due process of law. On several occasions, the granting of concessions by the State to private companies in violation of the right to prior consultation has been denounced. As a result of the struggle for their lands, information has also been received on the criminalization of defenders of the rights of indigenous peoples and communities (CIDH & OEA, 2015, p. 124).

<sup>6</sup> “Multiculturality: The coexistence of different cultures” (Real Academia Española, 2016).

However, beyond this simple definition, since the 1980s, the term multiculturalism has been used in different ways, in different contexts and by different authors to characterize the current situation of many populations and societies in certain countries of the world, especially the most culturally diverse ones (Calderón, 2009).

From a very general point of view, we can then say that multiculturalism can be defined simply as the coexistence within a territory of minority groups that demand recognition of their identity and their right to difference from the respective national states that have assimilated them or made them part of their subjects or citizens at some point in history. (Kymlicka, 2007).

Thus, according to some estimates, more than 90% of the States in the world contain a plurality of ethnic, linguistic, or religious groups, which means that less than 10% of States have a homogeneous composition (Torbisco, 2000). Thus, Torbisco rightly asserts that diversity is more than an argument, a resounding social fact that is difficult to debate. It therefore stands out that during the past forty or fifty years, the world has witnessed a real revolution in relations between nation states and their ethnic and cultural minorities, given that the old model of the State, which was assimilationist and homogenizing, is being strongly questioned and in some cases replaced by new multicultural models of State and citizenship<sup>7</sup>. This has been reflected, in some cases, on the acceptance of autonomy and the rights of national minorities, as well as on the acknowledgement of land demands and rights to self-governance for indigenous peoples (Kymlicka, 2007). Thus, in an attempt to look at the term multiculturalism in a comprehensive manner, it is necessary for the social sciences to broaden their field to include several interconnected disciplines in order to obtain the necessary nourishment from other branches of knowledge that will make it possible to ascertain the relevance and pertinence of this term for regional development, for the realization of the democratic and social state of law and, of course, for social peace, where such peace can be understood positively. That is to say, not only as the absence of violence, but in terms of “positive peace” as defined by Johan Galtung: “*Positive Peace, the counterpart to Negative Peace, is the presence of the attitudes, institutions and structures that create and sustain peaceful societies*” (Galtung, 1996, p. 314).

From the foregoing derives the more recent notion of the search for a common denominator, and a minimum standard of irreducible human dignity, which can be valid and accepted by the societies of the world or by the majority of them, with the risk that this implies for the western conception of human rights, by rejecting as “atypical” the collective rights of different cultures or ethnic minorities that advocate historical inequalities (Santos, 1998). If law and legal norms are based on common values that affect not only the basic organization of society but also coexistence in a coherent legal system created by a sovereign State within a more or less homogeneous nation State, then what does multiculturalism mean for the social sciences in general and

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<sup>7</sup> Philosopher Luis Villoro Toranzo explained that two founding ideas formed the so-called “modernity” and that both were derived from a universal concept of an unique and single reason, the same for all men and women in all times. These founding ideas were, firstly, that it was the nation state the absolute protagonist of our time; and secondly, that of the constant progress of humanity towards a “rational” culture. But the end of so-called modernity and its current results throughout the world, allow us to see that these unique ideas of civilization and reason came to an end. Thus, the world can no longer be seen as a forum of permanent and constant struggle between nation states, but as a unity of peoples, cultures and ethnic groups, where reason must be understood as the result of an inexhaustible cultural plurality.

for the legal sciences in particular? Can it range from regionalism, social demands and the politics of visible or invisible minorities to the construction of a “mestizo” world society? (Casorla, 2010). Is it possible to have a right that is both globalized and “mixed-race” or mestizo? How do we face the challenges of the global market in the face of social and cultural particularities? Based on these questions, authors such as Ferrajoli (2004) consider that the rights that must be guaranteed because of their importance are those whose defense is necessary for peace, the rights of equality of minorities that guarantee multiculturalism and the rights that protect the weak from the strongest (Ferrajoli, 2006).

Thus, the state should not only guarantee fundamental rights at the different levels of public action and authority, but also and specially at the private levels, including the economic, social, cultural and environmental rights in the framework of international law (those called ESCR);<sup>8</sup> so that to face the crisis of a constitutionalism that seems impotent in the face of the effects of “localized globalization” (Santos, 1998) in a world-system in which subaltern or developing countries are characterized by having no rules or controls, which accentuates the differences between countries, between regions and between people, dangerously polarizing national societies, as is the case of the Mexican population. (García, Fuentes & Montes, 2012).

In the case of Mexico, this is self-defined as “Pluricultural” in its Constitution since 2001 under the following terms:

The Nation has a pluricultural composition originally based on its indigenous peoples, who are those who descend from populations that lived in the current territory of the country at the beginning of colonization and who conserve their own social, economic, cultural, and political institutions or part of them (Constitución Política de los Estados Unidos Mexicanos, 2001, art. 2).

On the other hand, the constitutional reform of 2011 assumed the human rights derived from all the international treaties and conventions signed by Mexico, in constitutional norm. Thus, article 1 of the Constitution states the following:

In the United Mexican States everyone shall enjoy the human rights recognized in this Constitution and in the international treaties to which the Mexican State is a party, as well as the guarantees for their protection [...] Human rights norms shall be interpreted in accordance with this Constitution and with the international treaties on the subject, at all times favoring the broadest protection of persons. All authorities, within the scope of their competence, have the obligation to promote, respect, protect, and guarantee human rights in accordance with the principles of universality, interdependence, indivisibility, and progressivity (Constitución Política de los Estados Unidos Mexicanos, 2011, art. 1).

However, according to various sources and indicators, Mexico today suffers from a consolidated democratic State governed by the rule of law, described as follows:

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<sup>8</sup> Statutes in the International Covenant on Economic, Social and Cultural Rights (ICESCR) adopted by resolution of the United Nations General Assembly in 1996 and subsequently included in the Inter-American System of Protection through the so-called Protocol of San Salvador of 1998.



Mexico has been going through a serious crisis of violence and insecurity for several years. [...] with the start of the so-called “war on drugs” in 2006, the serious situations of violence increased to alarming levels, including the consequent loss of more than one hundred thousand people, thousands of disappearances, and a context that has led to the displacement of thousands of people in the country (Comisión Interamericana de Derechos Humanos [CIDH] & Organización de los Estados Americanos [OEA], 2015, p. 124).

Or: “Mexico ranks 92nd out of 113 countries analyzed”, according to the study: The Rule of Law Index 2017-2018 (World Justice Project, 2018, p. 17); this is a situation that is accompanied by growing complexity and a severe social, economic, and political crisis (Ackerman, 2016).

## Multiculturalism and the Rights of Minorities

The sociological and non-legal concept of multiculturalism was originally conceived in Canada and the United States of America, federated nation states and immigrant countries, multilingual and multicultural by nature since their very foundation. Thus, in the broad theoretical panorama of multiculturalism (Arango 2002; Cortina, 2005; Sartori, 2001), Kymlicka’s thesis within the multicultural liberalism current stand out for their referential character. This thesis could be framed within the theoretical framework of political liberalism (Rawls, Gray, Taylor) and the liberal principles of tolerance, by which the neutrality of the State in the face of the various individual options regarding what is to be a “good life” is proposed. For Kymlicka (1996), a State is multicultural when its members belong to different nations, a situation which he calls “multicultural State”, and when, due to personal or family emigration, they come from other nations, a situation considered “polyethnic State”. Therefore, according to the author, national and ethnic differences are the backbone of multiculturalism. Under such guidelines, a society based on the principles of liberal tolerance should treat all its members with equal consideration and respect, as expressly requested by the Italian Constitution in its Article 3, stating the principle of constitutional theory of formal equality before the law:

All citizens shall have equal social dignity and shall be equal before the law, without distinction to sex, race, language, religion, political opinions or personal and social circumstances. It is the obligation of the Republic to remove the economic and social obstacles which, by effectively limiting the freedom and equality of citizens, prevent the full development of the human person and the effective participation of all workers in the political, economic and social organization of the country (Constitución de la República Italiana, 1948, art. 3).

Thus, from a liberal standpoint, it would be inadmissible for there to be a social dualism that classifies citizens according to their group and cultural origin into class A citizens (those from majority and dominant groups) and class B citizens (those from minority, marginal or relegated groups). To prevent said dualism, it is necessary to build a positive environment for mutual and reciprocal recognition between

citizens. This positive context should enable citizens (regardless of their group of affiliation) to perceive each other as equals and to recognize each other (Taylor, 1993). Multiculturalism then emerges in law when it becomes multiculturalist, that is, when the State no longer constitutes the framework of individuals, but of groups that nest “solidarities and common values”, so that legislation must be passed for or against groups in parallel with the rights of individuals. From a liberal standpoint, this “weakens” the classical principle of equality before the law<sup>9</sup> of the constitutional theory that exists in several constitutions around the world, and even in several international treaties and agreements<sup>10</sup>.

On the other hand, the liberal theory of multiculturalism alludes to the principle of “reasonable accommodation”, which is an Anglo-Saxon, specifically Canadian, legal notion that allows the capacity of law to manage pluralism to be put to the test, since it is true that so-called “communitarianism” (which is a major influence on contemporary political philosophy; which, unlike liberalism, communitarianism criticizes individualism and neutrality) is a major influence on contemporary political philosophy (Santiago, 2010).

This is because the humanism of enlightenment, following the idea of Kant, which is already present in the thinking of Rousseau, although it was later eliminated by liberal discourse (Santos, 1998), sought to construct identity not in relation to tradition and memory, but on the basis of the principles that constitute the freedom of the members of a community, the submission of all to a general and unique legislation, and the equality of all as citizens. But the theory of the primacy of the community over the individual implies that it must be erected as a subject of rights, being the individual defined by the values of the group, the context in which it exercises its freedom. Such a conception challenges the notion of neutrality of public institutions when the State decides to impose policies based on culture, religion or tradition. Thus, the term “multicultural society” refers to a plural society marked by the diversity of the groups that make it up and which claim not to lose their identity. This is clearly contrary to the French tradition of assimilation and to the Anglo-Saxon pluralist conception, which pursues social cohesion and national unity through the inclusion of diversity, where cultural identities are not only publicly recognized and tolerated, but sometimes even institutionalized. Thus, in the face of the so-called “legal realism” that posed the need for the State to recognize the homogeneity of its citizens, it seems that today legal multiculturalism is based on the recognition of difference and multiethnicity, which is what preserves what is called

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<sup>9</sup> “Men are born and remain free and equal in rights”, stated in article 1 of the Declaration of the Rights of Man, approved by the French National Assembly (Declaración de los Derechos del Hombre y del Ciudadano de 1789, 1789, art. 1<sup>o</sup>). This is undoubtedly the starting point of modern constitutionalism and liberal state theory.

<sup>10</sup> This is the case of article 4 of the American Convention on Human Rights signed at the Inter-American Specialized Conference on Human Rights (B-32) (1969), which states: “All persons are equal before the law. Consequently, they are entitled, without discrimination, to equal protection of the law.” Also, article 26 of the International Covenant on Civil and Political Rights:

All people are equal before the law and are entitled without discrimination to equal protection of the law. In this regard, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status (Pacto Internacional de Derechos Civiles y Políticos, 1976, art. 26).



“ethnic”. It is therefore said that ideally, in a process of more favorable articulation of an ethnic group with the State, it does not require a shared identity, but the identification of an indigenous people as a speaker and of the State as a listener<sup>11</sup>. Both have the objective of the indigenous people, but also of the State, of an express recognition that is incorporated into the constitutional norms and, therefore, into the rest of the legal system. Thus, the idea of liberal multiculturalism would give way to the idea of interculturality, which is basically defined as a horizontal practice of dialogue between different but equal people. Interculturality therefore means a model of society that stands for three principles: 1) equal opportunities for all people to share and live in a space; 2) respect for diversity; and 3) the creation of social environments that facilitate the exchange and mutual enrichment of subjects with different ethnic or cultural backgrounds. These are “all situations in which non-violence is chosen” (Jiménez, 2016, p. 19). In this regard, Habermas already pointed out that, in general, discrimination can be abolished not through independence, which has also not been historically claimed by Mexican indigenous peoples, but through inclusion that is sufficiently sensitive to specific cultural differences, both individual and as a group. The matter of minorities that “appear” or “may appear” in any plural society and which is exacerbated in societies comprised of many different cultures, means that when such societies are organized as democratic states governed by the rule of law, there are always ways to sensitively include differences, such as the federal-regional distribution of powers, the transfer of specific competencies, autonomy—which is understood as the specific rights of each group—, positive discrimination, equalization, and other policies for the protection of minorities. However, inclusion always involves rules that break with the subordination that changes institutionalized rules, recognizing differences (Habermas, 1999). Nevertheless, almost none of this has yet occurred in Mexico in relation to its indigenous peoples; therefore, it is important to present in this national context the ideas taken from the debates on multiculturalism and interculturality.

## Fundamental Rights of the Indigenous Peoples

What has been the impact of the development of international human rights law and its application by each nation State? What happened to the fundamental rights of the indigenous peoples of the Americas during the existence of the Universal System (1948) and the regional system for the protection of human rights (American Declaration of the Rights and Duties of Man of 1948), the Charter of the Organization of American States (1948), and the American Convention on Human Rights (Convención Americana sobre Derechos Humanos, 1969)?

Thanks, in large part to the human rights movement initiated by the 1948 Declaration, indigenous peoples “burst” onto the international scene (Bengoa, 2009), claiming their place as a true subjects of international law (Gómez, 2002). Thus, indigenous presence and self-affiliation is alive in almost all regions of Mexico. In 2015, 6.5% of the population aged three years and over (out of the total population)

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<sup>11</sup> Of acknowledgement, as Habermas would say.

spoke some indigenous language, while 24.4 million people recognized themselves as indigenous (Inegi, 2016). After centuries of marginalization, or in the best of cases, a paternalistic assimilation, they comprise a real discriminated minority. Paradoxically, said indigenous presence with its historical characteristics of poverty and marginalization is more significant where most of the wealth is concentrated in terms of natural resources<sup>12</sup>, which have naturally attracted the greed of domestic and transnational extractivism, as demonstrated, among others, by the works of Stavenhagen (1992), Toledo *et al.* (2015), and de Martínez (2015). This is how the situation of indigenous peoples in 2016, more than 20 years after the indigenous rising at Los Altos de Chiapas, was no better than the recent past (The World Bank, 2015).

Among the deliberations carried out by the indigenous peoples of Mexico, a balance sheet was presented in August 2014 that portrayed up to 29 cases of dispossession and ongoing resistance movements, which were accompanied by a report on criminalization, assassinations, disappearances, and various types of harassment:

Today, the neoliberal capitalists, with the support of all the political parties, and the bad governments, are applying the same large-scale policies of dispossession that were applied by the liberals of the 19<sup>th</sup> century, the *carranzas*, the *obregones*, underpinned by militarization and para-militarization, advised by the U.S. intelligence agencies in those regions where the resistance is facing plundering (...) No one is going to come and save us, no one, absolutely no one is going to fight for us. No political parties, no politicians, no laws, there is nothing for us (Bermejillo, 1997).

We also know that the old or new indigenous demands now transformed into social movements in Ibero-America and also in Mexico, do not necessarily involve independence or the configuration of indigenous national States, but the full recognition of their rights, which are also the duties of States at the international level (and even at the domestic level). Specifically, through recognition of and respect for the right to autonomy, to free, prior and informed consultation in good faith, and to the use and enjoyment of territories and lands. These rights are fully recognized by the *corpus juris* of the international and regional human rights system (ILO Convention No. 169 concerning Indigenous and Tribal Peoples [Convenio Núm. 169 de la OIT sobre pueblos indígenas y tribales, 2014] on the Rights of Indigenous Peoples, American Declaration on Indigenous Rights, and International Convention on All Forms of Racial Discrimination [ICERD]) and also by the practice of the Inter-American Commission on Human Rights (IACHR) and the jurisprudence of the Inter-American Court of Human Rights.

Jurgen Habermas had already indicated that a communicative reason is present in daily relations, and it is this that allows reaching agreements or postponing the solving of conflicts, a greater democracy, and a better social balance that ask for

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<sup>12</sup> The serious human rights violations against indigenous peoples and communities in Mexico occur in two main areas: violence in the context of mega-projects on ancestral lands and territories authorized without due process of consultation and prior, free and informed consent, or in the framework of land claims and lack of due process of law. On several occasions, the granting of concessions by the State to private companies in violation of the right to prior consultation has been denounced. As a result of the struggle for their lands, information has also been received on the criminalization of human rights defenders and defenders of the rights of indigenous peoples and communities (CIDH & OEA, 2015, p. 124).

the amendment of the democratic regulations, where the Rule of Law is not only a rule of law concerning regulations, but also in fact, because there is tension between normative approaches that always run the risk of losing contact with reality and objectivists, which eliminate all normative aspects. In order to resolve conflicts, normative regulation arises in the complex social interaction, which is what makes law a category of social mediation. For Habermas, this is the problem of the feasibility and validity of law in a democracy (Habermas, 1988).

However, after almost the first quarter of the 21<sup>st</sup> century, it turns out that this nation, formally defined as “pluricultural” in its Political Constitution, is the scene of an unfinished democratic transition and of all kinds of extractive activities of private and public origin,<sup>13</sup> which leaves national societies—especially the most vulnerable sectors and minorities, such as indigenous peoples—at serious risk of social exclusion and backwardness for centuries (Ackerman, 2016)<sup>14</sup>.

Thus, exterminating or condemning forced migration does not seem to be valid and acceptable alternatives today to address indigenous issues, not only because they involve serious violations of the fundamental rights of broad minority groups, but because indigenous peoples are mobilizing in their own defense more than ever before and also mobilizing other non-indigenous social actors within and outside Mexico in solidarity with their causes; fighting against the secular violation of their fundamental rights with many of the legal and non-legal tools of the liberal state, making themselves visible, empowering themselves socially, and gaining greater solidarity among the rest of the majority society. Perhaps one of the most notorious cases, almost the first quarter of the 21<sup>st</sup> century having passed, has been the Yaqui struggle, which in the 21<sup>st</sup> century has been legal and peaceful, unlike the wars of the late 19<sup>th</sup> and early 20<sup>th</sup> centuries. Certainly, the indigenous issue irretrievably burst into the national realities of more and more countries, or as Bengoa (2009) defines them: an “indigenous emergency”, where the Mexican case is especially pointed out for many reasons, such as its high ethnic and linguistic diversity, but also coincides in its characteristics with a pattern of continental struggle against the dispossession of territories and natural resources.

Based on the evidence of the Yaqui case in the Mexican context, we can say that the constitutional reforms of 2001 and 2011 (which gave rise to the plurinational recognition of the nation, as well as the recognition of the international human rights

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<sup>13</sup> Societies of the late 16<sup>th</sup> century were marked by “globalization” resulting from the conquest and colonization of America, which was characterized by a triangular trade between Europe, America, and Africa that was later reproduced in European enclaves in Asia. The “new” contemporary globalization is characterized by the marginalization of large sectors, the intensive exploitation of labor, the breakdown of the social fabric, and the trafficking of people. One of the paradoxes of globalization is that the phenomenon is intended to be global when it is fundamentally particular and advocates a single thought associated with an economic and social model based on the Western paradigm, and especially, trying to reproduce the American model (Gómez, 2002).

<sup>14</sup> The modern history of the territory that is today the United Mexican States, begins with a process that could be called, citing the term coined by David Harvey (2004), of “accumulation by dispossession”, where colonial extraction links the territory with an interconnected global system, based on the accumulation and circulation of capital. This dispossession takes place for centuries, and refers not only to external extraction, but also to internal extraction. Forced expulsion of peasants and indigenous peoples, loss of community rights, and transformation of the various forms of property into one: private property. Such accumulation suppresses alternative forms of production and consumption, monetizes the value of trade and introduces slavery, trade, banks, debt, and a generalized credit system.

framework in the domestic system) have not been sufficient to guarantee the existence of an alternative right that would require the recognition of indigenous peoples as nations rather than cultures, which is precisely one of the explicit demands historically made by minority groups, such as the Yaqui tribe (Meyer, 2014). However, the international trend followed by international conventions and covenants and regional human rights protection systems aims to reinforce the right already established in the international forum to self-determination of peoples, where indigenous rights are “mainstreamed” through constitutional texts (Declaración de las Naciones Unidas sobre los derechos de los pueblos, 2007).

So now, plurinational constitutionalism (Yrigoyen, 2011) proposes recognizing these differences on two levels: the enunciation in the constitutional dogma, on the one hand, but also, and more importantly, in the guarantees of execution and implementation procedures, proper to the organic part of a Constitution.<sup>15</sup> This could be explained by the argument that from the monistic perspective of the State and the law, the incorporation of the category of collective rights of indigenous peoples into the national law of each country would raise a series of questions about their nature and their link with individual rights, with which it would clash head-on. Others, however, have defined it more as a theoretical problem than a practical one. Rodolfo Stavenhagen saw it as a subject that can be explained through the relationship between the nucleus and the periphery, where the nucleus are individual rights and the periphery collective rights, since the fulfilment of the former necessarily depends on the fulfilment of the latter. Thus, as analogues, they are not opposed to each other, but complement one another, explained the author (Stavenhagen, 1992). Stavenhagen’s vision is basically in line with the essential content of Article 8.2 of ILO Convention No. 169 concerning Indigenous and Tribal Peoples (Convenio Núm. 169 de la OIT sobre pueblos indígenas y tribales, 2014): “Such peoples shall have the right to retain their customs and have institutions of their own, provided that they are not incompatible with the fundamental rights defined by the national legal system or with internationally recognized Human Rights”.

Reality seems to be moving in another direction, however, since the so-called “structural reforms”, the multiple mining concessions, the water transfers, the megaprojects of urbanization (agro-industrial, tourism or infrastructure) authorized by the governments on all levels and political colors throughout Mexico without having the prior informed consent and consultation, in good faith and with the aim of obtaining the consent of indigenous peoples, when such projects clearly affect them, poses a serious challenge to the very existence of such peoples.

This has been the case with the project to transfer water between basins through the construction of an aqueduct on the Yaqui River (called “Acueducto Independencia” by the government of Sonora), without prior information or free and informed consultation, in good faith and the purpose of obtaining the consent of the tribe, as clearly mandated by the standard established by international treaties and conventions

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<sup>15</sup> In the specific case, the Political Constitution of the United Mexican States, which, after the indigenous Zapatista uprising of 1994 in the highlands of Chiapas, recognized the Nation as pluricultural, while establishing a series of constitutional rights in favor of indigenous peoples, but not much more than these declarative acknowledgements, which 14 years later find no articulation, normative development or clear guarantees of exercise and compliance in the national legal system, as demonstrated by the case of the conflicts of the different public and private actors against the indigenous peoples of Mexico.

and the jurisprudence of the Inter-American Court. However, these regulations were signed and ratified by the Mexican State, which is why they oblige it to do so internationally. For example, ILO Convention No. 169 concerning Indigenous and Tribal Peoples (2014) has been interpreted progressively<sup>16</sup> by the IACHR repeatedly in many cases throughout the continent. Relevant examples include some paradigmatic rulings of the Inter-American Court of Human Rights, such as: *Rio Negro Massacres versus Guatemala*, *Saramaka versus Suriname*, *Kuna and Emberá versus Panama*, *Belo Monte versus Brazil* (Corte IDH, n.d.). In view of this, the Yaqui struggle and the indigenous movements in general are rearticulated regionally with other new movements, whether they be alter-globalists, anarchists, pacifists, feminists or ecologists, to confront the dynamics of the conflict posed by the aggression against their ancestral territories, the valuable natural resources they contain and their traditional ways of life, where the State has not been able to co-opt with its traditional corporate methods to the organized indigenous movements, many, in the case of Mexico, articulated and grouped now through the National Indigenous Congress (CNI), whose origins go back to the National Indigenous Forum convened in 1996 by the Zapatista Army of National Liberation (EZLN).

Thus, in addition to access to land for cultivation and collective access to property, more and more indigenous Mexicans are also considering the legitimate right to an autonomous territory that allows them to reproduce their culture. The figure of the territory is partially recognized by ILO Convention No. 169 concerning Indigenous and Tribal Peoples (Convenio Núm. 169 de la OIT sobre pueblos indígenas y tribales, 2014), as mentioned above, a convention already ratified by the Mexican State, and to which Mexican indigenous people have clung to in the disputes undertaken throughout the country. It should be clarified here, in the words of Francisco López Bárcenas, a lawyer of Mixtec origin, that:

The property of indigenous peoples is predominantly collective in nature, distinguished from other types of property by its cultural rather than economic trait, and its basis is not recognition by the State, while recognizing that it has an obligation to protect such a right, but possession of them on the basis of its own customary law. As can be seen, the legal recognition of the existence of this type of property marks a radical difference with the type of private property, whose nature is individual, its existence is due to an economic need for accumulation, and its foundation is in the state recognition of them (López, 2015, 121).

Or in the words of Villoro: “there is no contradiction between individual and collective rights, but it is the latter that lay the foundations for the former to flourish” (Villoro cited in Bermejillo, 1997).

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<sup>16</sup> Progressive or evolutionary interpretation generally means that which the judge or judges judgment is not only in accordance with the law, but also by appealing to justice and adapting the rules to the concrete reality to be judged.

## Violation and Defense of the Fundamental Rights of the Yaqui Tribe

In the current state of Sonora, there are nine ethnic groups originating from the region, which together total about 138 000 people, representing about 5% of the total population of the state. Of these, about 51 000 are Yaqui (Zarate, 2016). In line with the national situation, indigenous peoples represent the social group with the greatest social lag in Sonora as well, as is the case in the rest of the country.

Then, it also turns out that, as it happens at the national level, the state of Sonora recognized in its Political Constitution (as does the Political Constitution of the United Mexican States) as a pluricultural state that is founded on its original peoples, to which it must pay special attention regarding their demands. (Luque *et al.*, 2012, p. 60):

The state of Sonora has a pluricultural composition originally based on indigenous peoples, who are those descended from populations that lived in the current territory of the State at the time of the beginning of colonization and who conserve their own social, economic, cultural and political institutions, or part of them. This Constitution recognizes and guarantees the right of indigenous peoples and communities to free determination and, consequently, to autonomy.

However, it is known that throughout the history of the northwestern region of Mexico, the Yaqui tribe, settled in eight towns or communities on the right bank of the river of the same name within the territory of the current state of Sonora, has always survived war, exile, and slavery. Such was the case after the slow and late colonization of northwestern Mexico, as the region was considered by the viceregal government to be part of a remote "Great North" (Jiménez, 2006), devoid of important cities or towns to conquer, and inhospitable.

Between 1790 and 1832 and then between 1876 and 1909, the Yaquis maintained armed conflicts (the so-called "Yaqui Wars") against the viceregal government and also against the various governments of Sonora as a state of Mexican republic. Finally, they also went against the national government of the then president, General Porfirio Díaz, whose policy against the Yaquis (unconditional surrender or war, death or exile) was no different from the previous ones, since these governments favored various landowners, both local and foreign, to the detriment of the Yaqui interest, and took possession of most of the original territory of the tribe with their official consent. Thus, after being decimated and defeated militarily in 1909<sup>17</sup>, a significant number of tribe members were deported in slavery or semi-slavery to the henequen fields of the haciendas in Yucatan or to plantations in Oaxaca, in the southeast of the country. The following description comes from the American journalist John Kenneth Turner, who traveled from California to the Yaqui region in 1908:

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<sup>17</sup> Some sources speak of a historical and constant presence of Yaqui settlements in the territory of what is now Arizona, but the truth is that there is at least one other important group of the Yaqui self-defined population in the community called "Pascua Yaqui". The group fled from Sonora during the persecution of the tribe in the early 20<sup>th</sup> century and settled near Tucson, Arizona. Subsequently, the Yaquis of Easter Yaqui have been recognized by the Government of the United States as indigenous people. This makes the Yaquis trilingual indigenous people, like others in northern Mexico. Such is the case of the Pima (Tohono o' odham) of Sonora, or the Cucapas of Baja California.



The Yaquis are being exterminated, rapidly. There is no room for controversy in this regard: the only possible discussion is only whether or not the Yaquis deserve to be exterminated. It is certainly true that some of them have refused to accept the fate that the government has pointed out to them. On the other hand, there are those who affirm that the Yaquis are worth as much as any other Mexican and deserve the same consideration from their rulers (Turner, 1910, pp. 37-38).

Thus, it is estimated that more than 25 000 people, including women and children, died in that period. Therefore, by modern standards it would be appropriate to describe this event as genocide in all its forms:

Genocide is an international crime that entails any act committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. These acts include the killing of and serious injury to the physical or mental integrity of the members of the group, the intentional infliction of conditions of life on the group that would result in its physical destruction, in whole or in part, measures aimed at preventing births within the group, the forced transfer of children from the group to another group (Estatuto de Roma de la Corte Penal Internacional, 2002, art. 6).

Therefore, it is necessary to remember that in the case of the Yaqui tribe, it no longer seems to be an alternative to resorting to the ethnic cleansing practiced in the past (Padilla, 2011; Taibo II, 2014; Turner, 1910), nor a path that can be walked by the authorities and the majority of society; even more so when the Yaqui case, being one of the best known, is by no means the only one<sup>18</sup>. In the same northwestern region, and specifically in Sonora, other relevant and similar cases stand out, such as that of the Macurawe (Guarijíos) or the Comcaac (Seris) (Martínez, 2008) to whom the extractive concessions granted without their consent by recent governments on their ancestral territories have led to forced migration and almost extermination (Luque *et al.*, 2012).

As a result of this long history of violent conflicts in the Yaqui region, largely due to the appropriation and domination of natural resources, the Yaquis managed to restore part of their ancestral territories in 1937 after the Mexican Revolution, through a presidential decree under the government of General Lázaro Cárdenas, in addition to certain administrative autonomy in 1939 (Lerma, 2014). However, those ancestral rights already recognized were seriously affected in recent years by the violent and authoritarian drift of the human rights crisis already pointed out by the IACHR and other organizations in Mexico, as well as by this new extractivism overlapping from the different strata of the State (Lerma, 2014; Luque *et al.*, 2012; Moreno, 2014). But also, by the open or covert criminalization of protest and indigenous leadership (López, 2014a; 2014b).

Thus, in recent years and especially since 2010, following the beginning of the construction of the so-called Independence Aqueduct, the latent social conflict in the Yaqui region has escalated and acquired greater relevance, given the revival of the old conflict between the Yaqui tribe and other social actors in Sonora (Moreno, 2014). Notably against the government of that state and the different

<sup>18</sup> See García (2015) or Martínez, Murillo and Paré (2017).

dependencies and delegations of the federal government in the region<sup>19</sup>. The reason was none other than the beginning and execution of a megaproject consisting of the construction of an aqueduct for the transfer of water from the Yaqui River by the state government and a number of private construction companies in the region. This was done in a natural environment characterized by high temperatures during most of the year and known geographically as the Sonoran Desert<sup>20</sup>, where water is a scarce and valuable commodity, as observed by the BBC in a report titled “Yaquis: The Fighters of the First Water War in Mexico” (Nájar, 2015).

Although it is true that some scholars who had lived among the Yaquis before, especially the anthropologist Spicer in the second half of the twentieth century, had already noted a high latent conflict over the issue of water in the region since the middle of the last century, which he did not hesitate to call “water war”<sup>21</sup> before 1980, when his book about the Yaquis first appeared (Spicer, 1994). In other words, the war for water, which seems to have taken on sudden importance in 2010 and subsequent years, was a predictable conflict that has its antecedents several decades ago, in the period after the Mexican Revolution, between 1941, when the construction of the La Angostura dam was completed in the Yaqui river basin, and 1964, when the El Novillo dam was completed, passing through the Oviachic dam in 1945 (Spicer, 1994). So, in view of the recent escalation of the conflict over water in the Yaqui River Basin, it was in 2010 that the tribe and other social actors in the region began peaceful resistance and certain legal actions against the works of the so-called Independence Aqueduct, an infrastructure megaproject carried out by the government of Sonora with the support of the federal government.

The idea of this aqueduct mainly entailed the transfer of water, decided by the government of Sonora and without informing or consulting the Yaquis (Moreno, 2014), which evidently makes the planning and execution of this project a violation of the fundamental rights of the Yaqui tribe. And not only that, because the constitutional rights to drinking water and sanitation, which are denied by transferring water for human consumption, also violates the fundamental human rights of the general population—not only of indigenous people—of the region. So it is at this stage of the renewed conflict with the Yaquis that not only the lack of respect for the international and constitutional framework in force by the authorities of Sonora is observed, but also the lack of a multicultural or better said, intercultural vision, capable of effectively mediating between the actors in conflict to seek and find solutions and alternatives through the effect of international conventions in the so-called “particularisms”, both,

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<sup>19</sup> This confrontation, which occurs historically between Yaquis and Yoris (by exclusion, those who are not Yaquis, since in the Yaqui idiosyncrasy the others, the Yoris, are the “ferocious” whites and mestizos) is not new, since it has occurred in different dimensions in the history of this region since the 16<sup>th</sup> century, with the first European explorations in the so-called “Great North” of New Spain, always associated with the intermittent but almost permanent dispute over the territory and its natural resources.

<sup>20</sup> The Sonoran Desert is considered the largest desert in North America and covers a territory comprised by the northwest of Mexico and part of the southwest of the United States; in Mexico most of the states of Sinaloa, Sonora, Baja California, and in the United States both California and Arizona, with an approximate extension of 310 000 km<sup>2</sup>.

<sup>21</sup> The term “water wars” has subsequently become widespread by the academic and activist Vandana Shiva in India, to refer to the situation of growing social groups dispossessed in India, but which are comparable to many societies in the world (Shiva, 2004).

regional and local, given the decades of socio-environmental conflicts in the Yaqui region of Sonora.

More than a hundred years after the bloody end of the “Yaqui Wars”, the Yaquis now face what could be a definitive battle for their survival, as they struggle to preserve the integrity of their ancestral territories and their water reserves; but unlike the past in which they have always opted for armed confrontation, they have so far done so by peaceful means, with the tools of social mobilization and legal challenge at their disposal.

It is in this way, supported by the current legal framework, that they maintain that their existence is at risk due to the operation of an aqueduct built without their consultation and consent<sup>22</sup>. “To take away our water would condemn our existence in the short and medium-term”, stated Tomás Rojas, traditional authority of the tribe (Nájar, 2015, para. 4). “We would have to leave our land. If we think the worst, we see a policy of extermination against us”, denounces Rojas (Nájar, 2015, para. 5). The government of Sonora, however, maintained that the aqueduct was fundamental for supplying water to the capital of Sonora, Hermosillo, and argued that: “No one is affected, no one is deprived of a drop of water and instead the problem of scarcity is solved” (Nájar, 2015, para. 7). It is clear, however, that this conflict transcends at a state and even a national level because the pattern of water resource dispossession is constant throughout the region, as documented by Martínez (2015) and Toledo *et al.* (2015).

The truth, however, is that the Yaqui region, as has been documented, suffers from what is called “water stress” due to the overexploitation of its water resources (“Peritaje Antropológico”, 2015), so that until now it has not been possible to reconcile the intensive use of water with the right of the Yaqui, among other communities, to use it to survive. That is why the water problem in Sonora goes beyond the aqueduct that carries water from the El Novillo dam, within Yaqui territory (Moreno, 2014), as in 1940 a presidential decree assigned half of the flow of the Yaqui River to the tribe, which is the most important in the region (Lerma, 2014). Years later, when the cities grew, and agriculture increased in the area, a quota of 250 million cubic meters per year was established for the tribe. Most of the water is used in agricultural fields in the area and, in 2010, construction began on the aqueduct to supply the state capital.

The construction of the aqueduct was legally challenged from the beginning, as the Yaquis argued that the state government had irregularly appropriated the permits to use a water resource that belonged to them. For their part, state authorities have repeatedly stated that the assignment of these concessions is legal, something that the Supreme Court of Justice of the Nation invalidated by a final judgment, handed down in suit for “Amparo” (Juicio de Amparo means a Constitutional Trial where The Yaqui Tribe sues the sonoran government) filed by the tribe (Suprema Corte de Justicia de la Nación, n.d.). However, this decision of the Supreme Court, which is firm and final, did not end the conflict, because the work and subsequent operation of the aqueduct

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<sup>22</sup> Corrupt governments do not care about us, they do not care about our health or our survival as ancestral peoples. Here in the yaqui, thousands of children, women, and the elderly are forced to consume contaminated water every day; while bad government monopolizes and diverts the Yaqui River, it privileges others, takes our water to the big cities where it is used for industrial purposes and sold to rich agricultural and livestock entrepreneurs and mines... NAMA KASIA!!! (Luna, 2018 [Spokesman of the Yaqui Traditional Authority]).

was never stopped, despite the numerous provisional and final suspensions granted by federal judges. Finally, the contested aqueduct entered into operation despite the favorable judgments obtained by the Yaquis, so the violation of their fundamental rights has continued until now.

Nevertheless, the aforementioned ruling of the Court marked an undeniable milestone in the recent history of the struggle of indigenous peoples in Mexico to gain respect for their fundamental rights, because for the first time the highest court in the nation expressly recognized the right of indigenous peoples to be consulted in advance before the implementation of infrastructure projects that affect them. At this point, it is also a notorious fact that the aqueduct was built without prior consultation with the tribe, as required by international standards, and that the authorities responsible did not comply with the interlocutory and final judgments that ordered the suspension of the works and subsequent operation of the aqueduct.

What the authorities omitted to do in order to save time to finish the work and put the aqueduct into operation was to go to the Court to ask for a questionable clarification of the sentence, since it condemned them to consult the tribe. In response, the Court ordered the federal government to conduct a consultation on the impact of the work on the environment of the affected area, which should demonstrate the possible damage to the Yaqui people. Such a consultation was underway in 2016, not without repeated questioning of its legitimacy by the tribe. In the face of uncertainty, and to defend the water of a river that they literally consider the source of their ancestral culture and collective life<sup>23</sup>, the Yaquis peacefully blocked the main northwest highway (Mexico-Nogales) for many months and carried out caravans to Mexico City, in addition to the legal defense undertaken. "It is a low-intensity war", said Tomás Rojas (Nájar, 2015), while the state and federal governments continued to operate the aqueduct. Subsequently, two members of the tribe known for their activism, Fernando Jiménez and Mario Luna, secretary and spokesman of the traditional authority, respectively, were arrested and imprisoned. They were accused of kidnapping, in a worrying criminalization of the social movement undertaken against them by the Sonoran government, which apparently meant a state policy of repressing protest and mobilization rather than resolving or giving way to social conflict. However, so far it is not clear if the aqueduct will cease to function, since the legal processes undertaken by other social actors in the region, equally affected by the water transfer, are not over yet, but everything seems to indicate that the government of Sonora has no intention of complying with the various sentences issued. The tribe denounces that some 5 000 hectares of their territory are virtually dead from deep salinization, as the course of the Yaqui River has been drastically reduced. In this regard, Rojas stated: "The history of our people has always been the struggle for land and water" (Nájar, 2015, p. 38). By the end of 2015, the Yaqui leaders had been released for lack of evidence against them, after several months in prison and given the widespread social mobilization in support of their cause, where protests continued, albeit at a lower level than in 2013

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<sup>23</sup> We consider the river to be a living being, not a conduit or a canal. If it stops leaking, you leave him in agony and condemned to death. It is not only the Yaqui that require this water for their own consumption, there are not only humans, there are also animals and the forest, as well as an underworld. The water connects the Yaqui to the river and space. It is a portal, if you could call it that. But biologically speaking, it damages the water cycle, the ambient humidity, the recharge of the subsoil and the microclimate that feeds mosquitoes, cacti, us, and the subsoil. (Luna, 2017, para. 14).

and 2014, when the biggest roadblocks were carried out. “Any action whose purpose is to make disappear, attack or aggrieve the people is a form of war,” said Tomás Rojas (Nájar, 2015, para. 30).

Examples such as this have led the indigenous movement to consider it a priority to fight for autonomy and the defense of their ancestral territories and natural resources against the plundering of various social actors with economic and political power. Resistance is also supported by different strategies, such as legal ones, which involve litigation in court, with results that are as positive as they are ineffective until now (Ramírez, 2014).

This scenario shows us that the focus of the fight of these peoples is the defense of their autonomous and territorial rights and when we bring the magnifying glass closer to each of them, we can see that their resistance is supported by different strategies (...) The San Andrés Agreements became the program of the peoples, which is expressed in resistance and defense strategies, not to mention the reason of State that defined its own since 2001 in order to offer to the political and culturalist peoples the assistance that has nothing to do with autonomy and self-determination. For this reason, they do not respect the Court rulings in favor of the Yaqui tribe for the violation of their territorial right to water without even going through the right to consultation... (Gómez, 2015, paras. 6-7).

## Conclusions

Liberal multiculturalism helps to explain the challenges and meaning of multiethnic societies in a broad and global context. In the case of Mexico, it is necessary to move from a multicultural explanation to the practice of an intercultural dialogue that achieves peaceful coexistence in its positive sense. Such an intercultural practice has the potential to transform institutional practice into one that adopts a plural state and law, corresponding to the social realities of a multiethnic and highly diverse nation-state, such as Mexico.

Progress in the constitutionalizing of fundamental rights, especially the fundamental rights of indigenous peoples in Mexico through the incorporation of international treaties and conventions, as embodied in the 2001 and 2011 constitutional reforms, laid the foundations for a change in the protection of the fundamental human rights of indigenous peoples in Mexico, but they have not been sufficient to guarantee the full exercise of their fundamental rights to self-determination, free and informed prior consultation or to the use of ancestral territories and lands; nor have they protected them against extraction and the dispossession of their natural resources and extractive projects.

The right to free, prior and informed consultation, in good faith and with the purpose of obtaining consent, is not only a collective right of indigenous peoples, but also a duty of nation-states in terms of international standards, and of course, a duty that can be demanded of the Mexican State as a whole, since it is voluntarily bound by international agreements, pacts, conventions, and mechanisms in this area.

The fundamental rights of indigenous peoples have been disregarded by public authorities in Mexico, especially in the case of the state of Sonora, where infrastructure and extractive projects have been carried out without consultation, seriously affecting the way of life and threatening the very existence of the Yaqui tribe as a distinct people.

The legal and peaceful struggle of the Yaquis in 2010, which reached the Supreme Court of Justice of the Nation in 2013, has set a very important precedent in terms of the fundamental rights of indigenous peoples, and in particular the fundamental right to consultation.

The success of the Yaqui struggle, however, has not been enough, as the various public authorities have deliberately failed to comply with the rulings that ordered them to suspend the work undertaken and to consult the tribe.

The case presented shows that a national society that is as culturally diverse as Mexico calls for progress towards the construction of new models of law, justice, and the State that fully recognize and value the right to difference. This certainly implies proposing a plural conception of justice and law, if we consider that there can be as many rights as there are different cultures, since it turns out that the liberal state is built on legal monism, which has not traditionally recognized the right to exist of the other, the different, or to be more precise: of the “Indian”, in a tradition that goes back to ancient times, where the very legal viceregal parallelism that prevailed in New Spain for almost 300 years separated the “Indians” and the “Creoles” or “peninsulars” into different “republics” (Cossío, 2000).

The indigenous peoples of Mexico are collective subjects and holders of fundamental rights fully recognized by the domestic and international legal order, although not by Mexican institutional practice. This minority lives and survives within state structures that tend, at best, to seek to integrate or assimilate them. The northwest region of Mexico is no exception to these dilemmas posed by multiculturalism. It is, therefore, necessary to reflect on the rights of indigenous peoples, both in their individual and collective dimensions; on the relationship between them and with the majority mestizo society and on the normative significance of a society that is normatively self-identified as plurinational, given the multiple institutional and social implications of this recognition for the law and laws of a given legal system.

In light of the failure to comply with regulations and the criminalization of the social movement, the indigenous struggle has ceased to be the struggle for a return to an “ethnic and virginal” past (Wallerstein, 2015), and is now focused on the construction and reconstruction of community democracy and legal pluralism, and also to become a political, politicized, and national movement (the case of the CNI Indigenous National Congress and its Government Council is relevant here, of which the Yaqui tribe is a member, electing a pre-candidate for the Presidency of the Republic and campaigning throughout the country at the end of 2017 and beginning of 2018). In indigenous mobilization, the aspiration to autonomy is essential, as it is the way in which indigenous peoples will access one of the widespread demands of citizenship in Mexico: a substantial, non-formal democracy. Hence the importance of linking the indigenous ideology with the new and old struggles of social movements in Mexico and the rest of the world, as well as the effective enforcement and justiciability of their fundamental rights.



The emancipatory struggles and the Ibero-American social movements in the different nation-states have been pushing for legal pluralism from a more or less multicultural constitutionalism to a plurinational constitutionalism, where the cases of Bolivia and Ecuador are particularly noteworthy (Yrigoyen, 2011). In this context, the claims of indigenous groups to maintain their cultural patterns and collective values are of a different tone. Thus, some dilemmas arise, such as the following: Are we capable of undertaking public policies for development that will introduce differentiated rights in each case? Can we support an inevitable multiculturalism, which is the basis for peaceful coexistence and exchange of different cultural values and which moves towards interculturality as a state policy?

Beyond the treatment of the subject in the different social contexts, constitutional texts and normative contents, it is necessary to unravel a vision that articulates elements of the constitutional law, international human rights law, legal sociology, as well as comparative law in order to ask oneself: should the constitutional State of the 21<sup>st</sup> century recognize legal pluralism as a pillar of its composition? In other words, can and must the nation-state recognize the existence of several legal orders that coexist in space and time due to different cultural needs?

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