



# PROTOCOL FOR ADVOCATES

## OF THE POLITICAL AND ELECTORAL RIGHTS OF INDIGENOUS PEOPLES AND COMMUNITIES

FIRST EDITION



**Protocol for Advocates  
of the Political and Electoral Rights  
of Indigenous Peoples and Communities**

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of Indigenous Peoples and Communities

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**Protocol for Advocates  
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of Indigenous Peoples and Communities**



# Preface



Mexico is a multicultural nation: more than one fifth of the population (25.7 million people) self-identifies as indigenous. Our country is distinguished for its important ethnic and language diversity, with 62 indigenous peoples and 11 different language families, divided into 68 groupings and 364 variants. This diversity, which contributes to the richness of our culture and society, needs to be protected and defended.

As the Universal Declaration on Cultural Diversity states, defending diversity is an ethical imperative and involves a commitment to respecting human rights and fundamental freedoms, particularly the rights of minorities and indigenous peoples. In the same vein, the main purpose of the 2001 reforms of article 2 of the Federal Constitution of the United Mexican States (FCUMS) was to encourage the participation of indigenous persons in the democratic processes and mechanisms in order for their voices to be heard in the deliberation and definition of public policy. To achieve this, the constitutional reform formally recognized their forms of organization in certain government levels or bodies, and their traditional practices as sources of the legal system, provided that these are consistent with the basic constitutional principles and with human rights.

Thus, the Mexican state attempted to strengthen its democratic system, taking into account the different world views of the indigenous peoples and communities. The assertion of the rights of the indigenous collectives is the legal response to the call to recognize the equality of status of this vulnerable group, which was excluded—for all practical effects—from the founding pact and the constitutions that have arisen from it.

In this context, the recognition of the rights to self-determination, self-organization and, more broadly, the right to political participation of indigenous peoples and communities requires effective protection mechanisms and guarantees of access to justice. However, access to justice of indigenous peoples and communities tends to be hindered, fundamentally, because of their socioeconomic and linguistic conditions. In many cases, they do not speak Spanish, lack the resources to hire counsel, and are unfamiliar with the legal proceedings of the state system, which is completely separate from their authorities and mechanisms to resolve conflicts.

As a result, all state bodies have an obligation to take the actions needed to effectively comply with the principles mentioned, reverting the dynamic of exclusion that persists in society. In the case of the courts, this implies the obligation to deliver justice with an intercultural and gender perspective.

In this regard, the Inter-American Court of Human Rights (IACHR) has found that, in order to guarantee access to justice without barriers and without discrimination, “the State shall guarantee, as far as possible, that the victims of the present case [indigenous peoples] do not have to make excessive or exaggerated efforts to access the centers for the administration of justice” (IACHR, Case of Tiu Tojín v. Guatemala, 2008, par. 100) and that “their economic and social characteristics, as well as their situation of special vulnerability” (IACHR, Case of the Yakye Axa Indigenous Community v. Paraguay, 2005, par. 63; Case of the Sawhoyamaxa Indigenous Community v. Paraguay, 2006, par. 82-3) shall be taken into account and given specialized attention.

For this reason, in addition to making important efforts and achieving significant progress in the political equality between men and women, the Electoral Tribunal of the Federal Judiciary of Mexico (TEPJF, *Tribunal Electoral del Poder Judicial de la Federación*) has placed special emphasis on the measures needed to guarantee the rights of the indigenous peoples and communities, particularly, the realization of the constitutional right to fully access State justice, in order to ensure the effectiveness of the other protected rights.

To ensure full access to electoral justice, the Electoral Tribunal created the Office of the Electoral Ombudsman for Indigenous Peoples and Communities. This Office offers counsel on cases tried before a local court to members of indigenous communities, and also acts in their representation in complaints brought before the Chambers of the TEPJF.

In its first year, the Office of the Ombudsman has presented 135 cases, which has led to the consolidation of good practices in favor of the members of the indigenous communities. This experience is added to the body of knowledge accumulated by the Tribunal in its substantive work, specifically the rulings on the rights of the indigenous peoples and communities issued over the last decades. These are valuable inputs that permit the creation of parameters for appropriate action in cases that require the support or counsel of an advocate to achieve the protection of the rights of indigenous persons.

The purpose of this document is to recommend good practices for those who advocate for indigenous political and electoral rights in specific cases, in full observance of the new constitutional obligations and with an intercultural perspective. Therefore, the Protocol includes basic concepts, legal precedents and examples of relevant rulings —from both national and regional courts—, in order to demonstrate effective ways to foster the defense of both individual and collective rights.

In this manner, the Protocol aims to contribute to overcoming the existing barriers to the effective defense of the rights of indigenous peoples, as well as to advancing towards the reversal of historic injustices and the neutralization of structural inequalities.

The protection of these rights is expected to reduce social and economic disadvantages, in comparison with other segments of society, encouraging the full and effective participation of the indigenous peoples and communities in the adoption of decisions on all matters that concern their rights, lives, communities, lands, territories and resources, based on consultation and consent, especially regarding decisions that affect development at all levels, from the international to the local.

The Protocol is an action undertaken by the TEPJF to contribute to the effective defense and full exercise of the political and electoral rights of indigenous peoples and communities and of their members. At the Electoral Tribunal, we believe that, through the joint efforts of the authorities and advocates and everyone involved in protecting the rights of indigenous peoples and communities, we can balance the asymmetries of power and the exclusions they generate, in order to revert the effects of discrimination through our rulings.

Janine M. Otálora Malassis  
*Presiding Justice of the  
Electoral Tribunal of the Federal Judiciary*



# Foreword

*Moral excellence comes about as a result of habit.*

*We become just by doing just acts,  
temperate by doing temperate acts,  
brave by doing brave acts.*

Aristotle (384-322 B.C.)

Our identity as a multicultural nation lies in our indigenous peoples. Considering that Mexico has the third largest indigenous population in Latin America, we have an enormous responsibility and obligation to ensure that their customs and traditions stay alive, but even more so to support the activation and increase of participation of the indigenous populations in Mexico's political life.

An advocate is defined as a person that advocates for and defends the interests of the parties in a trial or dispute; a person who, as Aristotle rightly said, does just, temperate and brave acts.

The purpose of this *Protocol for Advocates of the Political and Electoral Rights of Indigenous Peoples and Communities*, issued by the Electoral Tribunal of the Federal Judiciary, is to support the men and women of the indigenous peoples and communities in Mexico who find themselves needing to turn to the electoral courts and institutions to exercise their political rights when they believe that these rights have been or could be violated, consolidating probable scenarios that could affect these peoples and the violations they experience.

Furthermore, the Protocol is inspired by the different declarations and treaties ratified by the Mexican State, which recognize the rights of indigenous people both as individuals and collectively within their communities, with due respect for their self-determination and autonomy, as established by the ILO-Convention 169 and, more recently, the American Declaration on the Rights of Indigenous Peoples, international instruments that protect the rights of indigenous peoples.

This Protocol is a contribution of the Office of the Electoral Ombudsman for Indigenous Peoples and Communities for the people that provide electoral counsel and advocacy to follow as useful guidelines to achieve a positive response in the protection of political and electoral rights, fully respecting the guiding principles of the electoral function.

I conclude by stressing that the linguistic and cultural diversity of Mexico does not mean division or differences, but rather richness and greatness. As the Peruvian author and poet José María Arguedas Altamirano said:

Insofar as the indigenous sphere spreads and colors other groups and realities; insofar that it is projected onto them, the diversity of blood, culture and interests takes on a coarse freshness with new hope, and the absorbed wisdom of those who begin to recognize their strength.

It is up to you, advocates, that it remains this way.

Marina Martha López Santiago  
*Head of the Office of the Electoral Ombudsman  
for Indigenous Peoples and Communities  
(Defensoría Pública Electoral para Pueblos y Comunidades Indígenas)  
of the Electoral Tribunal of the Federal Judiciary*





**Who is  
considered  
an indigenous  
person?**



The purpose of the public advocates for indigenous peoples and communities is to provide support in legal proceedings before the courts in defense of the rights of the members of these groups, as individuals or in representation of their community.

But, how can we determine if the individual who seeks the services of the Office of the Ombudsman is an indigenous person?

First, we need to define what is meant by indigenous peoples and communities. Article 2 of the Mexican Constitution states that these are:

descendants of those inhabiting the country before colonization and that preserve their own social, economic, cultural and political institutions, or some of them.

[...]

An indigenous community is defined as the community that constitutes a cultural, economic and social unit settled in a territory and that recognizes its own authorities, according to its customs.

This definition is in keeping with the international standards expressed in Convention 169 of the International Labor Organization on indigenous and tribal peoples (Convention 169), article 1 of which distinguishes between tribal peoples and indigenous peoples:

a. tribal peoples in independent countries [are those] whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations;

b. peoples in independent countries [are those] who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

From these definitions we can extract different criteria to determine membership to an indigenous people or community. One of these, and perhaps the most common, is the use of an indigenous language. According to this criterion and 2015 data provided by the Mexican Institute of Statistics and Geography (INEGI, 2015), of a

total 119,938,473 Mexicans, there are 7,382,785 people in our country who speak an indigenous language, representing 6.5% of the national total.

Despite these figures and percentages, the INEGI 2015 Intercensal Survey shows that there is an increased sense of ethnic identity among the Mexican population, regardless of whether an indigenous language is spoken or not. As a result, there are approximately 25.7 million people who self-identify as indigenous, representing 21.5% of the Mexican population (INEGI, 2015).

The fundamental criterion to determine who is indigenous is self-identification, therefore, the defense of this sector (individually or as a collective) should always begin with this recognition, since this is a starting point for a series of rights that are enforceable before the different bodies and authorities.

In this regard, the principle of self-identification recognizes that it is not outside persons or institutions that define who is indigenous, rather it is up each person to self-identify as indigenous because of their identity or due to wholly or partially preserving their own institutions. It is important to take into account that this includes people who have changed their place of residence.

The High Chamber of the TEPJF has held that:

the statement of the person suffices to accredit this fact, and this should be sufficient for the court. The State is not authorized to define who is indigenous, nor to issue certificates or records of membership, nor to dispute the statement of the person who has defined themselves as indigenous. Therefore, the person that self-identifies as indigenous does not hold the burden to prove this condition, since it is not a biological condition or an observable characteristic, nor are there specific and unchanging points of reference, rather this is a subjective identification with a cultural identity (SUP-REC-193/2016).

The principle of self-identification is the fundamental criterion to determine who is indigenous.

The TEPJF has found in different rulings that it is sufficient for the person to state that they belong to an indigenous community (consciousness of identity) for the court to recognize them as indigenous and, with this, the associated rights, including access to justice with flexible rules.<sup>1</sup>

<sup>1</sup> Established in binding case law 4/2012. INDIGENOUS COMMUNITIES. THE CONSCIOUSNESS OF IDENTITY IS SUFFICIENT FOR THE ADMISSIBILITY OF THE ACTION FOR THE PROTECTION OF POLITICAL AND

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## Rights of the Afro-Mexican community

Besides the indigenous peoples, the Afro-Mexican community has also remained excluded and marginalized in the political, economic and social life in our country. These are the descendants of slaves brought from Africa in the 16th century to work on the colonial farms. The forced migration and their situation as slaves have been the principal causes for their exclusion from the political sphere, made more severe due to their educational and economic marginalization.

According to the INEGI 2015 Intercensal Survey, there are 1,381,853 people of African descent in our country, representing 1.2% of the national population. Out of this number, 676,924 are men and 704,929 women. There is currently Afro-Mexican presence throughout the country, with the largest proportion of this population living in the states of Guerrero (49%), Oaxaca (35%), Veracruz (24%), Morelos (17%), Baja California (11%), Michoacán (9%), and Yucatan (6%). These communities suffer from high rates of economic and social marginalization, evidenced in a lack of access to basic infrastructure, education and health services, as well as in the lack of enjoyment of other political, social and cultural rights (Velázquez and Iturralde Nieto, 2012, 99).

The communities of persons of African-descent or of Afro-Mexicans demand to be recognized as a minority by the Mexican State, given that, although the constitutional reform of article 2 recognized the multicultural nature of our nation, it did not address the existence of populations of African descent. To date, only the state constitutions of Guerrero and Oaxaca have made this recognition. It should be noted that the same instrument which for decades has supported the struggle of the indigenous also applies in this situation: Convention 169 of the International Labor Organization, which recognizes that tribal consciousness (self-identification) must be the fundamental criterion for determining the groups that should receive special treatment by the State (article 1.2).

In this regard, we must aid in advancing the recognition of the rights of the Afro-Mexican communities, treating cases that involve the defense of their political and electoral rights with an intercultural perspective, just as in the cases involving indigenous communities.

## Representation of an indigenous group

In some cases, it is possible that one or more persons bring proceedings before the courts in representation of the group to which they belong. This may be members of the indigenous authorities, or it could be a group of people who, having a grievance, wish to represent their community.

In the case of members of the indigenous authorities, we must consider that the authority structure in indigenous communities may be different from the structure that municipal authorities might normally have. This is the case since the indigenous legal systems tend to distinguish between traditional (religious), civil (related to the community's organizational structure) and agrarian (could be members of the Ejidal or Common Lands Commission)<sup>2</sup> authorities. Also, we may see cases where the indigenous government has all three types of authorities (Cruz and Elizondo, 2016).

Therefore, the persons or bodies that, in the exercise of their self-determination, constitute the community assembly are considered representatives of the community.

In Mexico, more than 54% of the country's territory is in the hands of ejidos and farming communities (Godoy, 2014). Article 27 of the Constitution recognizes this legal figure and grants special protection to their lands, while the Agrarian Law establishes that the assembly is the highest decision-making body and sets out, in articles 22 to 32, the requirements for its installation.

In this regard, it should be noted that the IACHR considers that the recognition of the legal personality is one way, though not the only one, to ensure that the whole community fully enjoys and exercises their rights. Article IX of the recent American Declaration on the Rights of Indigenous Peoples states that the "States shall recognize fully the juridical personality of indigenous peoples, respecting indigenous forms of organization and promoting the full exercise of the rights recognized in this Declaration" (OEA, 2016).

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<sup>2</sup> It is important to recall that, according to the Agrarian Law, the three members of the Commission must act jointly (unless the internal rules of procedure or customary statutes for the body establish otherwise).

The criteria of the TEPJF state that, on certifying that the plaintiff is an indigenous authority, a free, open and comprehensive study must be undertaken of the characteristics of the peoples or communities, without incurring in excessive formalities or rigorism (SUP-JDC-2542/2007) that could impede access to State justice. Therefore, it is important to avoid, to the extent possible, enforcing requirements or measures that, being part of the ordinary system of access to the electoral jurisdiction, are not warranted to uphold or defend this human right, a compelling constitutional need, or an urgent potential interest. This is especially true when this would create a barrier to the administration of justice and the exercise of any right or its recognition in favor of the groups mentioned.<sup>3</sup>

Moreover, it is essential to observe the local constitutional provisions, given that, as stated in article 2 of the Mexican Constitution, indigenous peoples and communities are recognized in these state constitutions and laws, which should take into consideration, in addition to the principles established in the article mentioned, ethno-linguistic criteria and physical settlement. Municipal legislation is especially relevant in order to know what kind of representation is recognized in that sphere and the procedures in place for their appointment. The advocates involved in the case will provide support by gathering the documents (assembly minutes, records, appointments and voter identification cards) necessary to certify the judicial personality in the legal proceedings brought before the courts.

In the second scenario, when a group of people is acting on behalf and in defense of the rights of the collective, it is important to keep in mind that the violation of a political or electoral right of an indigenous community is frequently also a violation of the same right as an individual.<sup>4</sup>

In this regard, the Mexican Federal Supreme Court (SCJN, *Suprema Corte de Justicia de la Nación*) in indicative case law 1a. CCXXXV/2013 (10a.), titled INDIGENOUS PEOPLES AND COMMUNITIES. ANY MEMBER CAN PURSUE THE ACTION OF APPEAL IN DEFENSE OF FUNDAMENTAL COLLECTIVE RIGHTS, has stated that:

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<sup>3</sup> In support of this point, binding case law 27/2011. INDIGENOUS COMMUNITIES. ANALYSIS OF LEGAL STANDING IN THE ACTION FOR THE PROTECTION OF THE POLITICAL AND ELECTORAL RIGHTS OF THE CITIZEN MUST BE FLEXIBLE.

<sup>4</sup> This reasoning was expressed in the Tanetze case (SUP-JDC-11/2007), where it was found that the complainants “having represented as the ‘Citizen Committee for the Reinstatement of Municipal Powers,’ does not mean that they do not appear under their own individual rights to exercise the right of action, claiming that a political or electoral right had been violated”.

full access to State justice, **in the case of a lawsuit for fundamental rights** (such as the action of appeal) **any member of an indigenous community or people must be permitted to urge the corresponding court to defend collective human rights**, regardless of whether they are representatives of the community, as this cannot be a barrier to the full enjoyment of this right. (emphasis added)

In this regard, as long as the collective rights of the indigenous peoples are respected and guaranteed, these native cultures be able to survive. Therefore, the objective of the advocacy and defense is not only to safeguard the rights of a person (individual or collective), but also, with the resolution of their case, to generate broader social implications.





**Right to**  
self-determination



According to article 2 of the Constitution, the right to self-determination is the basis for the exercise of a series of specific privileges related to aspects of political, economic, social and legal decision-making of the indigenous communities.

The IACHR has stated that the State must adopt all necessary measures to guarantee the participation of indigenous peoples and communities, under equal conditions, in the decision-making on public matters and public policy that affect or could affect their rights and development.

The right to self-determination leads to a series of specific powers or attributes necessary for the effective realization of this right:

- a) To decide their own forms of political or social organization (FCUMS, article 2; Convention 169, articles 7 and 8; United Nations Declaration on the Rights of Indigenous Peoples, articles 5 and 20 [UNDRIP]).
- b) To apply their own legal systems in the regulation of their social relations (FCUMS, article 2; Convention 169, article 8; UNDRIP, article 5).
- c) To elect their own authorities (FCUMS, article 2; Convention 169, articles 5 and 8; UNDRIP, articles 4, 5, 20 and 33) according to their traditional processes and practices.
- d) To have sufficient resources to finance their functions (FCUMS, article 2; international conventions on Civil and Political Rights, and on Economic, Social and Cultural Rights, preambles and first articles; San Salvador Protocol, preamble; Convention 169, article 6; UNDRIP, articles 3, 4 and 20, and the American Declaration on the Rights of Indigenous Peoples [ADRIP], article XXIX).
- e) To determine their own priorities and development strategies (FCUMS, article 2; Convention 169, preamble and articles 6 and 7; UNDRIP, articles 23 and 43, and ADRIP, articles III, VI, XX, XXIII and XXIX).
- f) To be consulted before decisions are adopted that could affect them and to obtain their consent before carrying out projects or investment plans that could have a major impact on their communities (FCUMS, article 2; Convention 169, article 6; UNDRIP, article 7, 18 and 19; ADRIP, article XXIII; IACHR, cases of *Saramaka v. Suriname* and *Sarayaku v. Ecuador*).

- g) To participate fully and effectively in public life (American Convention on Human Rights [ACHR], article 23, related to article 25 of the International Covenant on Civil and Political Rights [ICCPR]; General Comment No. 25 of the United Nations Human Rights Committee; Convention 169, article 7 and ADRIP, article XXIII).

The TEPJF has stated that the realization of the right to self-determination requires the protection of other rights, particularly the right to economic, social and cultural development, which is why the communities must have the right to the direct administration of the public resources that correspond to them. Otherwise, “their essential content would be restricted, and they would become illusory rights lacking any effectiveness in social practice”, since “these communities will only be able to enjoy effective political participation with the authorities of the Mexican State through fair and equitable access to the public resources that correspond to them” (SUP-JDC-1865/2015, case of San Francisco Pichataro; a similar criterion was upheld in the ruling SUP-JDC-1966/2016, case of San Marcos Zacatepec).

The Convention 169 of the International Labor Organization and the United Nations Declaration on the Rights of Indigenous Peoples state that the indigenous peoples are entitled to the full exercise and enjoyment of all human rights and fundamental freedoms recognized in international law, without any barriers or discrimination, in particular, especially based on their ethnic origin. These rights are held by both men and women.

Therefore, the states should adopt special measures to combat prejudices and eliminate discrimination against indigenous peoples, as well as to guarantee the same standard of living and opportunities to the members of these communities as it does to other members of society. **These measures must reflect the desire of the indigenous peoples to protect, preserve and develop their cultures, identities, customs, traditions and institutions.**

## Right to self-governance

One specific aspect of the right to autonomy is the right to self-governance. According to the TEPJF (Binding case law 19/2014. INDIGENOUS COMMUNITIES. ELEMENTS OF THE RIGHT TO SELF-GOVERNANCE), this is the manifestation of the right of autonomy and includes the following elements:

1. The recognition, preservation and defense of the autonomy of the indigenous peoples to choose their authorities or representatives according to their customs and traditions, respecting the human rights of their members.
2. The exercise of their own forms of internal government, following their traditional practices, procedures and norms, to preserve and strengthen their political and social institutions.
3. The full participation in the political life of the State.
4. The effective participation in all decisions that affect them and that are made by the State institutions, such as prior consultations with the indigenous peoples regarding any measure that could affect their interests.

It should be noted that the right to self-determination and autonomy of the indigenous peoples is not absolute, as it cannot be upheld when it would infringe upon another human right enshrined in the Constitution or in an international treaty incorporated into the national body of law, or when it would lead to a violation of human dignity (SUP-REC-6/2016 and joined claim SUP-REC-15/2016). Examples of this could be cases involving the violation of the principle of universal suffrage or the right of women to participate.<sup>5</sup>

Furthermore, the TEPJF has found that the principle of the maximization of the autonomy of the indigenous peoples and communities also implies the minimization of restrictions on the exercise of this right, which is why:

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<sup>5</sup> The following opinions support this: indicative case law X/2001. ELECTIONS. CONSTITUTIONAL AND LEGAL PRINCIPLES THAT MUST BE OBSERVED FOR ANY TYPE OF ELECTION TO BE CONSIDERED VALID, and binding case law 37/2014. INDIGENOUS LEGAL SYSTEMS. ELECTIONS HELD UNDER THIS SYSTEM CAN BE INVALID IF THEY VIOLATE THE PRINCIPLE OF UNIVERSAL SUFFRAGE.

any restriction must be strictly necessary and reasonable to guarantee the proper recognition and respect for the fundamental rights and freedoms of the members of these communities and, also, to satisfy the needs of a democratic and plural society, considering the specific context of each community, so as to not impose restrictions that would disproportionately affect the right to self-determination of the indigenous peoples and communities and the full development of their culture (indicative case law VIII/2015. INDIGENOUS COMMUNITIES. ANY RESTRICTIONS ON THEIR AUTONOMY MUST BE STRICTLY NECESSARY AND REASONABLE).

### **Right to prior consultation**

The right to prior consultation is a guarantee of the participation of the indigenous peoples and communities in decisions that affect or could affect them. The full respect for this right is crucial in order to achieve the effective protection of their rights (FCUMS, article 2, section B, subsection IX; Convention 169, articles 6 and 7; UNDRIP, article 19, and ADRIP, articles XX, XXIII, XVIII and XXIX). The prior consultation seeks to ensure that the communities benefit from all administrative or legislative measures that the State may implement, following an assessment of their environmental, social and cultural impact conducted by independent and technically capable entities, under the supervision of the State (IACHR, 2007, par. 159 and 160).

According to international standards, prior consultation is essential in the case of:

- The adoption or application of laws or administrative measures that could directly affect the communities (Convention 169, article 6).
- The approval of any project that affects their lands or territories and other resources, particularly in relation to the development, utilization or exploitation of minerals, water or other resources (UNDRIP, article 32).
- The authorization or realization of any prospection or exploitation plan of the natural resources found on their lands (Convention 169, article 15.2).
- The use of indigenous lands or territories for military activities (UNDRIP, article 30).

The Mexican Supreme Court has stated that the right to prior consultation applies when the authorities have an administrative or legislative decision before them, the effects of which will directly affect the particular way of life of the indigenous

peoples (indicative case law 1a. CCXXXVI/2013. INDIGENOUS PEOPLES AND COMMUNITIES. ALL AUTHORITIES, IN THE SPHERE OF THEIR RESPECTIVE JURISDICTIONS, ARE REQUIRED TO CONSULT BEFORE ADOPTING ANY ACTION OR MEASURE THAT COULD AFFECT THE RIGHTS AND INTERESTS OF INDIGENOUS PEOPLES AND COMMUNITIES). It has also stated that the:

obligation of the State is to ensure that all projects involving indigenous affairs, or that affect their territory or culture, are processed and decided on with the participation and in consultation with the peoples concerned in order to obtain their consent and future participation in the benefits (Appeal under Review 631/2012).

The following table summarizes some of characteristics that the consultation should meet in order to be considered effective.<sup>6</sup>

|          |   |
|----------|---|
| Prior    | <ul style="list-style-type: none"> <li>• The consultation must be held before the project, plan, law or measure is approved.</li> <li>• The communities that may be affected must be involved in the process as early as possible, allowing an adequate amount of time for them to truly influence the decision-making process.</li> </ul>  |
| Prior    | <ul style="list-style-type: none"> <li>• The State must refrain from influencing the positions of the indigenous peoples.</li> <li>• The consultation must be held without violence, pressure or conditions.</li> </ul>   |
| Informed | <ul style="list-style-type: none"> <li>• Information must be provided about the nature, conditions for implementation and consequences of the project, plan, law or measure.</li> <li>• There should be constant communication between the parties.</li> <li>• The State must accept and provide information (objective and complete), taking into account the language diversity of the indigenous peoples.</li> <li>• The State has the obligation to supervise that environmental and social impact assessments are prepared by independent entities.</li> </ul> |

<sup>6</sup> Prepared by the TEPJF based on Convention 169, the UNDRIP, the ADRIP and binding case law 2a. XXIX/2016. INDIGENOUS PEOPLES AND COMMUNITIES. THE RIGHT TO BE CONSULTED. ESSENTIAL REQUIREMENTS FOR ITS FULFILMENT; indicative case law CCXXXVI/2013. INDIGENOUS PEOPLES AND COMMUNITIES. ALL AUTHORITIES, IN THE SPHERE OF THEIR RESPECTIVE JURISDICTIONS, ARE REQUIRED TO CONSULT BEFORE ADOPTING ANY ACTION OR MEASURE THAT COULD AFFECT THE RIGHTS AND INTERESTS OF INDIGENOUS PEOPLES AND COMMUNITIES.

*Continuous.*

|                                |   |
|--------------------------------|---|
| Must be considered a process   | <ul style="list-style-type: none"> <li>• The consultation is not a single moment, but an ongoing intercultural dialog to find solutions together (agreements or consensus).</li> <li>• The consultation is not a unilateral supply of information.</li> <li>• The consultation must be a systematic and transparent process.</li> </ul>   |
| Culturally appropriate process | <ul style="list-style-type: none"> <li>• The consultation will be held according to the traditions of the indigenous peoples and through their representative institutions.</li> <li>• The community will inform the State of the parties that will participate in the consultation.</li> <li>• The geographical and temporal conditions for each indigenous community will be considered.</li> <li>• Measures will be taken so that the indigenous peoples can understand and be understood.</li> <li>• The consultation will be held during reasonable time periods.</li> </ul> |
| Good faith                     | <ul style="list-style-type: none"> <li>• The consultation will build trust and respect between the parties.</li> <li>• No single party will commandeer the consultation, rather this is a space for different interests to come together.</li> <li>• The State cannot delegate the consultation to private third parties.</li> </ul>  |
| To obtain consent              | <ul style="list-style-type: none"> <li>• It must be possible for the opinions of the indigenous peoples to influence the final decision adopted, as well as the procedure and strategies for the implementation of the decision.</li> </ul>   |

In the electoral context, the TEPJF has stated that the prior consultation must be held:

whenever [the administrative electoral authorities] intend to issue any measure that could directly affect indigenous communities, so as to guarantee their indigenous rights and the comprehensive development of their peoples and communities (Binding case law 37/2015. PRIOR CONSULTATION WITH INDIGENOUS COMMUNITIES. ADMINISTRATIVE ELECTORAL AUTHORITIES OF ANY ORDER OF GOVERNMENT MUST HOLD A PRIOR CONSULTATION BEFORE ISSUING ACTS THAT COULD AFFECT THE RIGHTS OF INDIGENOUS COMMUNITIES).

Additionally, the following criteria have been defined for the consultations in order to ensure the effective exercise of this right:

1. The consultation must be held prior to the adoption of the measure that could affect the rights of the indigenous peoples, which implies involving the members of the community concerned in the decision process as early as possible.
2. Information must be provided so that the indigenous communities can participate genuinely and objectively in the decision-making process.

3. There must be a record of the public consultation showing that the community was sufficiently informed.
4. The consultation must be free, without external influence, coercion, intimidation or manipulation.
5. The consultation must be held in good faith, using a process that builds trust among the members of the community, based on the principles of mutual trust and respect, with the goal of reaching a consensus.
6. The consultation must be adequate and involve indigenous representative institutions, and be systematic and transparent, in order to minimize its impact on their customs and traditions. The result of the consultation is not binding (Indicative case law LXXXVII/2015. PRIOR CONSULTATION OF INDIGENOUS COMMUNITIES. REQUIREMENTS FOR THE CONSULTATION HELD BY THE ADMINISTRATIVE ELECTORAL AUTHORITY WHEN IMPLEMENTING MEASURES THAT COULD AFFECT THE COMMUNITY'S RIGHTS).



# Internal legal systems



Just as different societies have rules that regulate their behavior, referred to as legal systems, the indigenous peoples have also built, over generations, a set of traditional oral legal standards that they recognize as valid and that they use to regulate their public acts and to resolve conflicts.

The TEPJF has noted that the indigenous peoples and communities “have the authority to self-determine their legal system, which means that they can issue their own legal norms to regulate their internal organization” (Indicative case law XXVII/2015. INDIGENOUS LEGAL SYSTEMS. IMPLICATIONS OF THE RIGHT TO SELF-DETERMINE THEIR LEGAL SYSTEM). In this regard, in the case of conflicts or the absence of customary applicable rules, it is the indigenous peoples and communities themselves who determine the rules that will be applied to resolve the conflict or to fill the legal gaps, through the highest recognized traditional authorities according to their system. This demonstrates respect for internal norms and their equivalency to the statutory law formally enacted by the State. As stated by the High Chamber of the TEPJF:

indigenous law must not be considered mere customs and traditions, given that, according to the system of sources of law, indigenous law constitutes a subsidiary and subordinate source. Really, these are two different bodies of law that have a relationship of coordination. The Mexican legal system subscribes to legal pluralism, where the national body of law is made up of both the laws formally enacted by the State and indigenous law, generated by the indigenous peoples and their communities (Indicative case law LII/2016. MEXICAN LEGAL SYSTEM. IT IS COMPRISED OF INDIGENOUS LAW AND FORMAL STATUTORY LAW).

This respect for the rules, institutions and procedures for the appointment of the indigenous authorities is necessary for the right to self-determination and to autonomy to be effective, as well as to preserve their individual cultural identity and their own forms of political and social organization (Convention 169, article 8; UNDRIP, articles 4, 5 and 20, and ADRIP, articles III and VI).

It should be noted that the effective exercise of the right to self-determination requires not only respecting the rules for the appointment of the authorities, but also that this authority is exercised based on their own legal standards and without requiring that these conform to the ordinary electoral systems of the State.

Indigenous peoples and communities have the right to self-determination, that is, to decide their own forms of government and to pursue, without external influence, their own economic, social and cultural development.

The recognition of the right of indigenous peoples to elect their representatives in a different manner from that commonly used by the population has led to a specific treatment by the electoral authorities, in order to strengthen the political representation and participation of the indigenous peoples.

In practice, the exercise of the political and electoral rights of the indigenous peoples occurs at two levels:

- External. Federal elections (for the president of the Republic, federal representatives and senators), where they vote and are elected through the party system. The same applies for local elections (governors, mayors, local deputies and, in some cases, municipal authorities).
- Internal. This is the case of most municipal elections, which can be held under internal legal systems or through the party system, with participation through an internal mechanism of the community.

The complexity of the situation of the indigenous communities in the country is, in part, due to the absence of special legislation at the state level recognizing their political rights. As a result, the presence of mixed systems is common, where, on having to participate in municipal elections through the party system, the communities internally elect the person that will be the candidate for the party that will represent them in the constitutional elections.

It should be noted that the TEPJF has determined that the absence of legislation that recognizes the right of indigenous communities to elect their authorities according to their internal legal systems cannot be a barrier to the right to self-determination. In the Cherán case, the members of a Purepecha indigenous community in Michoacán asked to hold their elections according to their own customs and traditions. The local authorities denied the petition, since they considered that the absence of a specific regulation (recognition in the local laws to elect municipal authorities through their practices and rules) meant, for all intents and purposes, that this right did not exist. Nevertheless, the TEPJF concluded that the absence of a secondary law does not

constitute just cause to prevent the exercise of human rights. Therefore, the Tribunal found that:

the effective implementation of the internationally recognized rights of indigenous peoples requires the recognition and acceptance of their customs, customary law and legal systems, particularly with regards to determining their forms of organization and the appointment of their authorities (SUP-JDC-9167/2011).

Thus, the TEPJF considered that, in the absence of legal regulation on the right to self-determination, the State authorities are obligated, in accordance with their constitutional mandate, to remove the existing obstacles and to create the necessary conditions to guarantee the exercise of this right in practice (Indicative case law XXXVII/2011. INDIGENOUS COMMUNITIES. IN THE ABSENCE OF LEGAL REGULATION ON THEIR RIGHTS, THE PROVISIONS OF THE CONSTITUTION AND INTERNATIONAL TREATIES APPLY).

In a similar case, related to a request made by the community of Ayutla de los Libres, in the state of Guerrero, the High Chamber determined that the community consultation must be held at the community assemblies, in accordance with their internal legal system (SUP-REC-193/2016; a similar opinion was sustained in the case of San Luis Acatlán, Guerrero, SUP-JDC-1740/2012).

In the states whose legislation recognizes internal legal systems, the indigenous communities do not face impediments to exercising their right to self-governance, as they can determine how their authorities should be elected. It is important to bear in mind that the forms, customs and rules for the election of indigenous authorities, as well as their structure, vary greatly between communities, sometimes even within the same ethnic group. Also, they often reflect a symbiosis between civil and religious offices, usually based on the obligation to perform community service (*tequio*) and recognizing the community assembly as the highest body.

Some of the most common elements of the internal legal systems are discussed below.

## The community assembly

One of the fundamental aspects of the collective indigenous life is the assembly, since it is through this body that they appoint their authorities and make important decisions on the municipal organization and the use of land and other natural resources. Assemblies may be held periodically on set dates or they may be convened for a specific purpose, with different levels of formality (regarding the call, attendance verification or recording of agreements). Participation in these assemblies is generally obligatory for families, who should send a representative (it is important to keep in mind that for most indigenous communities the right to participation is collective, by family, not individual).

The TEPJF has underscored that the general assembly is the highest authority in the indigenous communities. It has explained that:

in the indigenous legal systems, the community general assembly is the highest decision-making body, responsible for making decisions that affect the whole community. Its members are adult citizens exercising their community rights (SUP-REC-861/2014).

It is important to bear in mind that the role of the assembly goes beyond the appointment of authorities or the decision-making on the different aspects of community life. The assembly also has legislative functions, being the body that determines the rules for election or the decision-making itself. The TEPJF has recognized this function of the assembly in that:

the legal system of the indigenous communities is comprised of customary rules and others that are established by their highest legislative body which, as a rule, is their assembly, given that the decisions issued by this body, according to the respective procedure, reflect the will of the majority (Binding case law 20/2014. INDIGENOUS COMMUNITIES. NORMS THAT COMPRISE THEIR LEGAL SYSTEM).

Thus, as the community assembly is a strategic institution for indigenous peoples, it is important to promote respect for its decisions as a fundamental space for the self-organization and self-governance of these collectives. In other words, the will of the community assembly must be respected at all times as it is the highest authority and decision-making body of the indigenous communities.

## Traditional leadership

The traditional leadership system is a ladder of participation in which members of the community participate throughout their life and, usually, these appointments are made by the community assembly. Holding an office is considered a service to the community and is mandatory from ages 18 to 60. Offices are held on behalf of the family (not the individual), therefore, different members of the family may be involved in the discharge of these offices. Also, it is a ladder system in which the members of the community “move up” to hold offices with increasing responsibility (TEPJE, 2014, 22-3).

Of course, the traditional leadership system may vary widely from one community to another, but fundamentally it is based on two principles: ladder of participation and *tequio* (service). It is often a complex system of administrative and religious offices.

The ritual organization of each community is represented by its traditional leadership, which [...] has important consequences in the political organization of the group. In this system, the members of the collective hold rotating hierarchical positions associated with caring for different Catholic saints, by which they acquire social prestige and authority before the rest of the collective in order to perform public functions. Traditional leadership promotes the social integration of the indigenous community in various ways: participation in this system defines the lines of belonging to the community, as only its members can be involved; participating implies and expresses shared values, and, at least from the outside, the system appears to contribute to preventing the concentration of wealth in the hands of a few members of the community, as the most important offices represent an increased expense for those who hold them (Obregón 2003, 18-19).

Thus, the communal political power is expressed “through traditional leadership that includes authorities, commissions and committees, both civil and religious” (TEPJE, 2014, 22-3).

## Tequio

*Tequio* (also known as *faena* or service) is the collective work of the members of indigenous communities to contribute to the common good. It is an expression of solidarity and unity within the community and, at the same time, an obligation that is essential for the participation in decision-making. *Tequio* is performed by families (given the priority of the collective rights), although the specific rules in terms of the

workload, its frequency or the possibility of a financial contribution in lieu of this service may vary between the different communities.

The regulation of *tequio* as a prerequisite to exercise political rights is relevant to protecting the individual rights of the members of the indigenous communities. In this regard, the TEPJF has established that *tequio*:

must comply with the elements of proportionality, equality and reasonability when it is performed. Also, it must not impose excessive burdens or restrictions beyond those that are essential for the operation of this community practice (Indicative case law XIII/2013. CUSTOMS AND TRADITIONS. TEQUIO MUST RESPECT THE FUNDAMENTAL RIGHTS OF THE MEMBERS OF THE COMMUNITY (OAXACA STATE LEGISLATION)).





# Judging

with an intercultural  
**perspective**



In cases that involve indigenous electoral rights, all bodies and authorities are required to conduct their study from an intercultural perspective, stressing both legal pluralism and the principles, institutions and characteristics of the indigenous peoples (Indicative case law XLVIII/2016. TO JUDGE WITH AN INTERCULTURAL PERSPECTIVE. ELEMENTS FOR THE APPLICATION OF THIS PRINCIPLE ON ELECTORAL MATTERS).

In this sense, to judge with an intercultural perspective means to be part of a respectful dialog between cultures, assuming the equivalency of the perspectives and world views they represent. In practice, it implies the recognition of indigenous identity based on the self-identification of the person, equal treatment and the identification of the need to adopt special measures that are necessary to reduce or eliminate conditions that lead to discrimination. It also means favoring autonomy and non-interference in the decisions that the indigenous peoples are entitled to make themselves, provided that these practices respect the equality among persons and the federal pact. According to the opinion of the High Chamber of the TEPJE, judging with an intercultural perspective:

means recognizing the existence of indigenous legal institutions, understanding their essence and the context in which they operate. Therefore, it is important not to impose institutions that are not part of the legal system in place in the indigenous community in question, on the basis of written law or other indigenous legal systems (SUP-REC-193/2016).

Hence, the advocates must encourage the authorities to go beyond their formalist viewpoints and respond to the lack of access to justice by indigenous peoples from a language of rights. Among other things, the advocates should demand that these authorities provide the conditions necessary to ensure that the person or persons involved understand and are understood during the trial, and that their particular conditions, contexts and needs are considered.

To judge with an intercultural perspective means ensuring respect and equal treatment for different legal systems, as well as privileging the autonomy of the indigenous peoples and communities.

## General principles

The *Protocol of performance for those who impart justice in cases involving the rights of indigenous persons, communities and peoples*, published by the SCJN in 2014, establishes the following six elements as the principles to be followed in cases that involve the protection of the rights of indigenous persons:

1. **Equality and non-discrimination.** All persons, in their dealings with any authority, must not be discriminated against based on their ethnic identity, language, gender, appearance, physical, mental, or social condition. Also, the courts must treat indigenous cultures, practices and customs as equal to the culture, practices, customs and institutions of the dominant society.
2. **Self-identification.** The State does not have the authority to define who belongs to an indigenous community, rather this is the result of the individual's right to self-identification and self-determination. As a result, belonging to an indigenous community is not subject to proof.
3. **Maximization of autonomy.** The right to autonomy of the indigenous peoples and communities implies the right to broadly define their own social and cultural development, as well as to control their own institutions. Consequently, the courts must limit their intervention in indigenous affairs to the essential, attempting to respect their autonomy at all times.
4. **Access to justice considering cultural particularities.** The indigenous peoples and communities have the right to maintain their own conflict resolution practices and structures. Their right to access the justice of the State must also be respected, both as individuals and collectively.

The courts must respect these internal mechanisms and, whenever possible, forfeit their authority in favor of the community authorities. In other cases, they must validate the resolutions and elections conducted by the communities, as long as these respect human rights.

5. **Special protection for their lands and natural resources.** In order for the indigenous peoples and communities to be able to preserve and develop their cultures, special protection is needed for their lands and resources. The courts must recognize the special relationship the communities have with the land and

natural resources and respect the collective dimension of these rights and their ownership.

6. **Participation, consultation and consent regarding any action that affects them.** The right to self-determination of the indigenous peoples and communities requires the respect for their right to participate in the decision-making process on all matters that affect them. Therefore, the courts must corroborate that the legislative or administrative decisions analyzed have been made guaranteeing the right to participation, consultation and free, prior and informed consent.

These guiding principles apply in all cases where courts study cases that involve the protection of the rights of the indigenous populations, including electoral issues.

### Special measures

Besides the principle of judging with an intercultural perspective, the criteria of the national authorities, as well as the international standards, offer a series of good practices that should be implemented to achieve the broadest possible protection of the rights of indigenous peoples and communities. The most important practices are described below.

#### Respect for world views

As stated above, the courts must respect and give equal treatment to the cultures, customs and practices of the indigenous communities. For this to be possible, those who impart justice and the people involved in protecting the rights of the communities must have the knowledge necessary to understand their world view, customs and traditions, and the rules of behavior and political participation of the indigenous communities.

The duty to gather the necessary information and knowledge can be fulfilled by commissioning anthropological and sociological studies, reports and hearings with the community authorities, bibliographic sources, on-site visits, and by inviting organizations and institutions to present briefs to the court.

For example, in case SUP-REC-33/2017, the High Chamber commissioned an anthropological study in the municipality of Santiago Matatlán in order to determine the indigenous legal system under which the communal authorities were elected and to describe the relationship between the municipal capital and other communities, and also the obligations and rights associated with the community *tequio* (service). The study helped the High Chamber to identify the linguistic differences and the traditional leadership in the different communities of the municipality.

In this ruling, the High Chamber highlighted that “the State courts have to recognize the existence of the indigenous legal systems and validate the resolutions and elections conducted under these systems, provided that they respect human rights”. The court also stated that judging with an intercultural perspective requires the authorities to gather sufficient and reliable information to understand the cultural characteristics of the indigenous electoral right in question. A similar opinion was sustained in cases SUP-REC-38/2017 and SUP-REC-39/2017.

If deemed relevant, the advocates may suggest or request that an anthropological study is conducted to provide the courts with the information necessary to reach decision from an integral perspective.

### The broadest protection

According to the standards of human rights protection established by the Constitution and by international treaties, the authorities and bodies must always interpret the norms in such a way as to favor the broadest protection of the person. It is important to underscore that the 2011 constitutional reform, which strengthened the protection of human rights in Mexico, requires a change in paradigm and the recognition that, in the case of indigenous people, the *pro homine* principle can also have a clear collective dimension.

The application of the constitutional principles, especially the *pro homine* principle, implies that the procedural rules must be interpreted in a broad and progressive manner in order to broaden and strengthen access to justice by the indigenous peoples and communities and their members. In the electoral context, the TEPJF has stated that “the norms that impose procedural burdens must be interpreted in the most favorable way possible for the indigenous communities”

(Binding case law 28/2011. INDIGENOUS COMMUNITIES. PROCEDURAL NORMS MUST BE INTERPRETED IN THE MANNER THAT FAVORS THEM THE MOST).

*Pro homine* is a principle of interpretation that requires “applying norms in their broadest sense, or in the most extensive interpretation, when the matter involves recognizing protected rights and, inversely, the most restrictive application or interpretation in the case of permanent restrictions on the exercise of rights or their temporary suspension. This principle coincides with the fundamental trait of human rights law, that is, to always favor the person” (Pinto, 1997, 163).

It is important to recognize the existence of systemic or structural discrimination against various groups, which is omnipresent and strongly rooted in the behavior and organization of society and frequently implies acts of indirect or unquestioned discrimination. An example of this type of discrimination is found in the “legal rules, policies, practices or predominant cultural attitudes in either the public or private sector which create relative disadvantages for some groups and privileges for others” (CESCR, 2009). In other words, this is the case of norms, policies, practices or attitudes that, although they do not establish a distinction between elements or characteristics usually considered suspect (race, ethnicity, gender, etcetera), produce negative effects on a certain group of people.<sup>7</sup>

To eliminate this discrimination, we need to ensure that the legal protections are not limited to considering the indigenous cultural characteristics. Rather, we need to achieve material equality in the legal process. Thus:

in the case of indigenous communities and their members, certain characteristics, technical barriers, and geographic, social and cultural conditions must be taken into consideration, since these have traditionally led to situations of legal discrimination against the indigenous population (Binding case law 7/2014. INDIGENOUS COMMUNITIES.

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<sup>7</sup> Erwin Chemerinsky offers the following example to illustrate this phenomenon: a law that requires that all police officers be at least 155 centimeters tall and weigh 68 kilos appears to only be a rule regarding a height and weight classification, intended to ensure certain physical conditions and strength of the officers. However, statistics show that 40% of men will meet this requirement, but only 2% of women. The result is that the law has a discriminatory impact on women who wish to join the police force (Chemerinsky, 2015, 698).

TIMELY FILING OF THE MOTION FOR RECONSIDERATION ACCORDING TO THE PRINCIPLE OF PROGRESSIVENESS).

An example of this is that, when analyzing the timeliness in the filing of a complaint, consideration should be given to the distance and means of communication of the population where the complainant lives, in relation to the location where the authority hearing the matter sits. These types of actions are also reflected in the amendment of deficiencies in complaints, which will be analyzed later (see “Access to external justice”).

### *Amicus curiae*

*Amicus curiae*, or friends of the court, is the concept that describes those who intervene as third parties to a case because they have an interest in the issue being debated before the court. Normally their objective is not to expand or modify the arguments of the parties, but rather to offer the court technical or specialized information relevant to its decision, and to present arguments regarding the facts contained in the complaint or legal considerations regarding the process, in order to ensure that the court has the elements it needs to carry out a comprehensive analysis of the context. *Amicus curiae* may be invoked by persons who have an interest in how the litigation will be resolved, as a result of their participation. The opinions offered under this concept can be presented by individuals, groups of individuals, civil associations, and even by government bodies.

The High Chamber of the TEPJF has found that, in the case of complaints on electoral matters where the litigation involves elections by internal legal systems, the intervention of a third party is permitted through the submission of briefs in order to provide additional elements for a comprehensive study of the context (Binding case law 17/2014. *AMICUS CURIAE*. PARTICIPATION IS PERMITTED DURING THE ARGUING OF COMPLAINTS INVOLVING ELECTIONS HELD ACCORDING TO INDIGENOUS LEGAL SYSTEMS; Indicative case law XXXVII/2016. *AMICUS CURIAE*. THIS CONCEPT DOES NOT CHANGE IN THE HIGHER COURTS FOR THOSE WHO INVOKE IT).

## Interpreters and translators

An important element of the identity of indigenous people is the use of language. Indigenous people are even entitled to speak their native tongue in their communications with the authorities, including when appearing before a court.

In recognition of the importance of language, article 2 of the Constitution states that “to preserve and enrich their languages” is one of the rights of the indigenous peoples and communities. This constitutional recognition, and the particular situation of the communities, requires that there are effective means to ensure that the indigenous people understand and are understood in all trials in which they participate. Furthermore, the Linguistic Rights Law (*Ley General de Derechos Lingüísticos*, art. 9) states that all Mexicans have the right to communicate in their own language without restriction in both the public and private spheres, verbally or in writing, in all their social, economic, political, cultural, religious or any other activities.

Thus, in the electoral context, in order to guarantee that the indigenous communities have full access to justice, the court must assess the need to designate an interpreter and to translate the proceedings during the trial, taking into consideration the language spoken by the community. This has been the opinion of the TEPJF in various rulings and in binding case law 32/2014, titled INDIGENOUS COMMUNITIES. IN COMPLAINTS, THE COURT MUST ASSESS THE NECESSITY TO DESIGNATE AN INTERPRETER AND TO PREPARE THE RESPECTIVE TRANSLATION.

Advocates must help guaranteeing that the rights of full access to justice, to due process and to effective legal protection are respected by contributing to the translation or by requesting the support of bilingual interpreters, translators and professionals. Also, it is appropriate to seek collaboration with institutions specialized in indigenous languages.<sup>8</sup>

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<sup>8</sup> For example, the TEPJF has signed an agreement with the National Institute of Indigenous Languages (INALI, *Instituto Nacional de Lenguas Indígenas*) in order to access and use the National Register of Indigenous Language Interpreters and Translators (PANITLI, *Padrón Nacional de Intérpretes y Traductores de Lenguas Indígenas*), and a joint collaboration on the translation and interpretation of the national indigenous languages (the agreement was signed in May 2014).

In addition to guaranteeing translation or interpretation during a trial, it is also good practice to prepare translations of rulings or official summaries of these in order to facilitate knowledge of the decisions of the courts within the indigenous peoples and communities.







**Electoral justice**  
and the protection  
**of the political rights**  
of the indigenous peoples  
and communities

Full respect for the right to self-determination of the indigenous peoples and communities includes respect for the indigenous jurisdiction. Disputes regarding the election of authorities can be resolved in two spheres: within the community, according to internal legal systems, and externally, before the courts of the State.

The indigenous communities have the right to resolve disputes according to their own legal systems or they may decide to turn to the jurisdiction of the State.

### Justice within the community

As noted, the indigenous peoples and communities have the right to establish their own conflict resolution mechanisms. Consequently, it is essential that the courts fully recognize the indigenous authorities and the decisions they make when resolving disputes. On reviewing the decisions of an indigenous authority, the courts must “take into account both the right of the indigenous peoples to apply their own legal systems to resolve internal disputes and the principle *non bis in idem*”<sup>9</sup> (SCJN, 2014, 17). Thus, the federal courts analyze three main elements:

1. A possible conflict of jurisdiction between the State authorities and those of the community.
2. Effective application of the norms of customary law.
3. That the system applied meets the minimum standards of respect for individual rights and constitutional principles (SCJN, 2014, 17).

In the event of conflicts between the norms of indigenous law and the individual rights, the courts must carefully weigh this discrepancy against the Constitution and indigenous culture and practices.

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<sup>9</sup> The *non bis in idem* principle prevents an accused from being tried twice for the same crime, also known as double jeopardy

The customary law must respect the right to life and physical integrity, the right to freedom, to due process, and the right to political participation and to non-discrimination, among others.

### **Access to external justice**

The indigenous peoples and communities have the right to full and effective access to the justice of the State. However, they frequently face significant barriers in exercising this right. Socioeconomic, language and other conditions can impede access to the courts according to the formal requirements established by law, or participation in the legal process in conditions that guarantee respect for due process. Therefore, the courts must always consider the conditions of the communities and their members, taking the necessary measures to guarantee the effective enforcement of their rights.

One example of an action that the authorities can take to remove the barriers that hinder access to justice for indigenous peoples is the amendment of deficient complaints. This means that the court, on hearing the case, will correct possible deficiencies in the complaint or that imply a failure to satisfy certain formal requirements. According to the criteria of the TEPJE, in order to overcome the procedural disadvantages that the indigenous communities and their members face, the amendment of deficient complaints must be total, which means that:

the electoral court must not only compensate for deficiencies in the reasoning of the grievance, but even for the total absence of such reasoning and identify the act affecting the parties, without further restrictions than those associated with the principles of congruency and contradiction inherent to all legal processes (Binding case law 13/2008. INDIGENOUS COMMUNITIES. AMENDMENT OF DEFICIENT COMPLAINTS IN ELECTORAL CASES PRESENTED BY MEMBERS OF INDIGENOUS COMMUNITIES).

Also, the court must guarantee effective notification, considering the conditions of the communities and their cultural characteristics (Binding case law 15/2010. INDIGENOUS COMMUNITIES. THE COURT SHALL WEIGH THE PARTICULAR CONDITIONS TO CONSIDER THE NOTIFICATION OF ACTS OR RESOLUTIONS OF AN ELECTORAL AUTHORITY BY OFFICIAL GAZETTE EFFECTIVELY EXECUTED).

## Alternative dispute resolution

Alternative dispute resolution mechanisms are all those methods that allow the parties in conflict to reach an agreement without entering into a legal process. Article 17, paragraph four, of the Federal Constitution of the United Mexican States establishes as a fundamental right the application of alternative dispute resolution.

The *United Nations Guidance for Effective Mediation* considers this figure as a process in which a third party assists two or more parties, with their consent, to prevent, manage or resolve a dispute in order to reach agreements that are mutually acceptable. Mediation is based on the premise that, in the right environment, the parties in conflict can improve their relationships and move towards cooperation, achieving a better solution to the conflict. It should be noted that the logic and principles behind mediation, related to the search for cooperation and harmony between the parties, are an element that is present in the customs and traditions of many indigenous communities.

In this manner, a better outcome to disputes or complaints involving election processes or the norms and composition of the authorities under internal legal systems, and where the human rights of this sector are violated, can be guaranteed when alternative solutions to a legal process are explored, allowing the legal institutions of the community to exercise the right to autonomy.

The TEPJF has preferred specific means and alternative dispute resolution mechanisms within the communities, as well as to:

foster the participation of the members of the community and the authorities in the resolution of the dispute in an alternative manner to the traditional concept of jurisdiction, provided that these alternative forms do not contravene any constitutional or conventional precepts or principles (Binding case law 14/2011. INDIGENOUS LEGAL SYSTEMS. ALTERNATIVE MEANS TO RESOLVE ELECTORAL DISPUTES [OAXACA LEGISLATION]).

The state of Oaxaca provides an example of these practices, where mediation is recognized as an alternative method for resolving electoral disputes, based on the values of democracy, social pacifism, tolerance, dialog, respect and consensus. The recognition of this process in the local legislation (Oaxaca State Code of Political Institutions and Electoral Procedures, articles 264 to 266) has facilitated the action

of the Oaxaca State Electoral and Citizen Participation Institute, which, through the Department of Internal Legal Systems, acts as the principal mediator (*Guidelines and methodology for the mediation process in disputes involving election processes or norms in municipalities governed by internal legal systems* produced by the Oaxaca State Electoral and Citizen Participation Institute).





# The role of advocates



The situation of the indigenous peoples and communities and their socioeconomic and linguistic characteristics make them a vulnerable group in terms of political participation and representation, and of access to the effective justice of the State. Therefore, the role of advocates is relevant in supporting the communities and their members to defend their rights, eliminating the barriers associated with their situation, lack of technical and legal knowledge, and discrimination.

It should be stressed that the role of advocates goes beyond the elections held under internal legal systems. Given that the exercise of the political and electoral rights of the communities and their members also occurs in other spaces, such as elections of authorities through the party system or the internal life of the political parties, the scope of action of the people involved in their defense must also include these spheres. This means that the advocates must support the communities and their members in all types of situations that violate any political or electoral right, exercised individually or collectively, within the sphere of internal legal systems or elections through the party system, including the following:

- Right to prior consultation
- Right to an identity
- Right to vote and to be elected
- Freedom of association
- Intraparty justice
- Abandoning the party system in order to adopt an internal legal system
- Redefining constituency boundaries
- Universal suffrage
- Political violence
- Gender-based political violence

It is important to note that the actions of the advocates have an important restriction, as they cannot get involved in matters related to the appointment of religious authorities within the indigenous communities, being limited solely to matters related to the election of civil authorities.

The scope of action of advocates covers all the spheres of the political participation of the indigenous communities and peoples, including both the elections held under internal legal systems and those held under the party system.

Thus, in accordance with the principles of the universality and indivisibility of human rights, the scope of action of the advocates must be the protection of the political and electoral rights and the related human rights in order to guarantee their full and effective exercise.

### Counsel and defense

Taking into consideration the catalog of rights to be protected, and the two scopes of action (internal legal systems and the party system), advocates offer two types of services, namely counsel and defense:

- Counsel is the orientation, guidance or technical instruction on the nature, content and scope of the political and electoral, constitutional, conventional and legal rights of the indigenous peoples and communities and of their members.
- Defense is the procurement, representation or mandate to defend the political and electoral rights of the indigenous peoples and communities and of their members.

The decision as to the type of services that should be offered in each case will depend on the scope of action of the advocate and the legal framework under which they work. For example, in the case of the Office of the Electoral Ombudsman for Indigenous Peoples and Communities of the TEPJF, defense services are provided only for complaints brought before any of the chambers of the Tribunal. When a matter must first be presented before a local authority, the interested parties are provided with counsel to advise them regarding the corresponding court or authority and the procedure to follow for the complaint.

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## Principles of action

The advocates play a sensitive role in a legal process, as the effective protection of the rights of the community and their members is dependent on their performance. Therefore, their actions must adhere to a series of established principles to guarantee the best possible service of counsel or defense for the people they represent. These principles are:<sup>10</sup>

1. **Good faith.** Advocates shall always act with integrity, honesty and fairness in terms of the truth, certainty or exactness of a known fact, act or condition.
2. **Quality.** It is essential to act with the utmost diligence and care in order to safeguard the political and electoral rights of the indigenous peoples and communities.
3. **Commitment.** Advocates shall act in a committed and honest way, based on the cultural customs and conditions and the identity of the indigenous peoples and communities.
4. **Confidentiality.** Advocates shall respect the confidentiality of the information and personal data they receive, even after the defense or counsel provided has ended.
5. **Effectiveness.** Advocates shall act always in a swift and timely manner, without unjustified delay and unnecessary requirements, in order to achieve the best possible outcome.
6. **Efficiency.** The means and resources available shall be optimized to achieve the objectives for which they are intended, without justifying that the lack of such resources result in a deficient electoral defense or counsel.
7. **Excellence.** Advocates shall strive to continually improve the services provided.
8. **Free of charge.** The services are provided free of charge. Therefore, no compensation of any kind will be requested, received or accepted.

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<sup>10</sup> The catalog of principles is based on the General Agreement that establishes the bases for the organization and operation of the Office of the Electoral Ombudsman for Indigenous Peoples and Communities of the TEPJF.

9. **Professionalism.** Services shall be provided by qualified, ethical and respectful civil servants, ensuring electoral defense or counsel of high quality.
10. **Responsibility.** Advocates shall be diligent, accepting the commitment, effort and responsibility necessary to contribute to the effectiveness and efficiency of the electoral defense or counsel.





# **Gender-based** political violence

Although in recent decades we have witnessed a transformation in terms of increased gender equality in elected office, both internationally and in Mexico, we are still seeing cases of violence against women in the exercise of their political and electoral rights. This is of concern since these actions represent serious threats to democracy, the participation of women and society in general.

The political participation of indigenous women has also faced cumulative obstacles and disadvantages due to their condition of ethnic identity, social marginalization and general poverty (Bonfil *et al.*, 2008). Indigenous women have had to face the traditional structures that have excluded them from public participation and from fundamental rights, such as access to education, freedom of movement, freedom to choose their husbands or life partners, and important decisions such as how many children to have, among others<sup>11</sup> (Valladares, 2014). In this context, indigenous women struggle for their rights on two fronts: before the State, pushing for the recognition and effective exercise of the collective rights of their people, and within the community, seeking respect for their rights as women.

It has been widely documented how the denial of access to land, the difficulties in holding office and exercising forms of authority, and the exclusive responsibility for looking after the home and the family violate the rights of indigenous women, and how the patriarchal controls can be exercised indistinctly by both men and women.

The concluding observations of the Committee on the Elimination of Discrimination against Women, delivered on the seventh and eighth periodic reports of Mexico,<sup>12</sup> raised the question of “the low number of indigenous women participating in the political life of the State”. It also found that “the high levels of poverty, illiteracy and multiple forms of discrimination against indigenous rural women, in particular in Chiapas, Guerrero and Oaxaca” was a cause for concern, as well as the “harmful cultural practices within the indigenous legal systems that are based on gender-stereotyped roles for men and women” (CEDAW/C/MEX/CO/7-8).

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<sup>11</sup> It is important to recognize that the cultural structures and patterns that limit the participation of women within the indigenous communities do not stem from their ancestral practices, but from a cultural imposition of the western colonizers associated with the forced conversion to Catholicism during the colonial times (Ströbele-Gregor, 2013, 82 and Cumes, 2012, 12).

<sup>12</sup> At meetings held on June 17, 2012.

Given the scope and severity of the phenomenon of gender-based political violence, on the one hand, and the absence of regulation, on the other, at the initiative of the Electoral Tribunal of the Federal Judiciary (TEPJF), different institutions of the Mexican State: the National Electoral Institute (INE, *Instituto Nacional Electoral*), the Office of the Attorney General for Electoral Offenses (FEPADE, *Fiscalía Especializada para la Atención de Delitos Electorales*), the Human Rights Department of the Ministry of the Interior, the Executive Commission for Victim Care (CEAV, *Comisión Ejecutiva de Atención a Víctimas*), the National Institute for Women (INMUJERES, *Instituto Nacional de las Mujeres*), and the Office of the Attorney General for Violent Crimes against Women and Human Trafficking (FEVIMTRA, *Fiscalía Especial para los Delitos de Violencia contra las Mujeres y Trata de Personas*) collaborated to draft the Protocol to Respond to the Political Violence Against Women (PAVPCM, *Protocolo para Atender la Violencia Política Contra las Mujeres*).

This document, approved at the beginning of 2016, establishes the approach and the measures that should be taken in a legal proceeding concerning political violence against women, related to the electoral, criminal or administrative sphere. The definition, the distinctive features and the principles of action for cases of gender-based political violence are described below.

Cases of gender violence require the authorities and advocates to act with sensitivity, applying an intercultural and gender approach in order to avoid re-victimization and to seek to compensate the damages caused.

## Definition

The *Protocol to Respond to the Political Violence Against Women* defines gender-based political violence as:

all actions and omissions—including tolerance—that, being gender-based and occurring in the exercise of the political and electoral rights, aim to undermine or nullify the recognition, enjoyment and/or exercise of the political rights or the prerogatives inherent to a public office.



These actions or omissions can be seen in explicit acts of violence and harassment, such as:

- a) Imposing tasks not related to the position.
- b) Denying information needed to fulfill their duties.
- c) Preventing the person from attending sessions or activities that involve decision-making.
- d) Restricting the person's right to express their ideas.
- e) Illegally withholding part or all of the person's salary.
- f) Denying the resources that the person needs to be an effective representative.
- g) Revealing personal information to pressure the person to resign.
- h) Forcing the person to sign documents or make decisions against their will, among others.

In the case of indigenous women, it has been documented that they are much more scrutinized than men when holding public office. They are required to undergo greater training to hold office or, when in office, their performance is evaluated, questioned, challenged and hindered to such an extent that in many indigenous municipalities and communities women are prevented from taking office or from completing their term (Valladares, 2014).

### **Elements that constitute gender-based political violence**

According to the Protocol mentioned, we can identify political violence against women by answering the following questions:

- a) Was the act or omission aimed at a woman for being a woman?
- b) Is the goal of the act or omission to undermine or nullify the recognition, enjoyment or exercise of the political and electoral rights of women?
- c) Does the act or omission involve the exercise of political and electoral rights or of a public office?
- d) Does the act or omission have a symbolic, verbal, property, economic, physical, sexual or psychological reference?
- e) Is it perpetrated by the State or its agents, hierarchical superiors, work colleagues, political parties or their representatives, the media, a person and/or a group?

The situations that meet the conditions mentioned above are highly likely to constitute cases of gender-based political violence. Therefore, advocates should handle such situations with special care and sensitivity in order to offer maximum protection to potential victims and to achieve the best possible defense of their rights.

### **Principles of action in cases of gender-based political violence**

*The Protocol to Respond to the Political Violence Against Women* and the *Protocol to Judge with Gender Perspective* produced by the Mexican Federal Supreme Court of Justice set out the principles on which civil servants, and advocates in particular, should base their actions in cases involving gender-based political violence. These principles are:

1. Analyze the facts and events that led to the indigenous woman seeking the counsel or defense, from a gender perspective and an intercultural approach.
2. Base the defense or counsel on the principles of equality and non-discrimination, and on the recognition of the rights of women set out by the Constitution and international treaties, particularly in reference to political participation.
3. Consult the legislation applicable to the specific case.
4. Bear in mind that the rights of indigenous peoples and communities to autonomy and self-determination to establish their own internal legal systems and their own form of governance cannot be considered independent of the right of women to hold public office and to participate in the decision-making process of the community under equal conditions, as well as to live in an environment free of violence.
5. Request that the courts fully recognize the exercise and enjoyment of the rights of women, and be fully aware of any act of discrimination against them.
6. Advocate, to the extent possible, for compensation, including corrective actions to prevent future recurrences of violations of the human rights of women.





# Action guidelines

In view of the above in terms of the principles applicable to the protection of the rights of the indigenous communities and their members, and in order to maximize and facilitate the defense of these rights, some concrete suggestions for the action of the advocates are offered below:

1. Identify and respect the multicultural nature of the country.
2. Be sensitive to the serious conditions of discrimination and racism that members of this sector continue to face.
3. Respect self-identification as the primary criterion for determining whether someone is indigenous.
4. Take the actions necessary to guarantee and support the full enjoyment of their political, economic, social and cultural rights.
5. In the context of the exercise of political rights, foster the responsible use of the media, in order to eliminate the dissemination of stereotypical and racist content that discriminates, demeans, undermines or negates the history and image of indigenous populations.
6. Push for the public authorities to guarantee that these populations can live according to their world view, customs and traditions, safeguarding and promoting their identity, way of life and forms of social organization, in addition to all the elements that contribute to strengthening and developing their culture, within the framework of human rights.
7. Contribute, through the provision of legal defense and counsel, to these populations having effective access to the legal protection of the State.
8. Favor conflict resolution through dialog.
9. Provide the authorities with sufficient elements to give them a holistic vision of the cultural differences present in each case (different world views) and to modify their actions to respond to the case at hand.
10. Aid with the interpretation or translation of the proceedings or ask the court to provide these services.
11. Advocate the right to be consulted in advance when decisions are being made that could affect indigenous peoples or communities. In the case of consultations, the advocates will encourage the authorities to:

- a) Take all actions deemed necessary and sufficient in order to inform these communities of the details and consequences of the proposed decision.
- b) Create conditions that allow the communities to have a real opportunity for their voice to be heard by the corresponding State agencies, in order to obtain the consent of the community or to reach an agreement before a decision is adopted that could directly affect their rights.





# Relevant rulings of the TEPJF



A summary of relevant rulings issued by the TEPJF regarding the protection of the political and electoral rights of the indigenous communities and their members is offered below. The date given in each case cited corresponds to the date on which the binding or indicative case law was approved or the ruling was issued.<sup>13</sup>

### **Binding case law<sup>14</sup>**

**Binding case law 27/2016. August 17, 2016.**

**INDIGENOUS COMMUNITIES. THE FORMAL REQUIREMENTS FOR THE ADMISSION AND ASSESSMENT OF EVIDENCE SHOULD BE RELAXED.**

The states must guarantee the rights of the indigenous communities and their members to full access to justice and due process, respecting their customs and cultural, economic and social characteristics. In this regard, in cases involving the rights of indigenous persons, the formal requirements must be studied with flexibility in order to compensate the conditions of inequality and procedural disadvantage that the indigenous communities face.

**Binding case law 22/2016. June 22, 2016.**

**INDIGENOUS LEGAL SYSTEMS. THE SUBSTANTIVE LEGAL EQUALITY OF WOMEN AND MEN MUST BE GUARANTEED IN THEIR ELECTIONS (OAXACA STATE LEGISLATION).**

The right of the indigenous communities to hold elections for the members of their municipal bodies according to their customs and traditions is neither unrestricted nor absolute, since the fundamental rights recognized in the Constitution and by international treaties must be respected. Therefore, the communities must promote and respect the right of women both to vote and to be elected.

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<sup>13</sup> Translator's note: In Mexican law, the courts can approve two different types of case law. When the TEPJF holds a similar opinion in at least three rulings, it may approve jurisprudence or binding case law, which is mandatory for all other institutions and political actors. When an especially relevant opinion is held on a single ruling, the TEPJF may pronounce a 'tesis' or what is referred to in this document as indicative case law.

<sup>14</sup> The approved text of all binding and indicative case law of the TEPJF can be retrieved at <https://www.te.gob.mx/IUSEapp/>.

**Binding case law 37/2015. October 28, 2015.**

**PRIOR CONSULTATION WITH INDIGENOUS COMMUNITIES. ADMINISTRATIVE ELECTORAL AUTHORITIES OF ANY ORDER OF GOVERNMENT MUST HOLD A PRIOR CONSULTATION BEFORE ISSUING ACTS THAT COULD AFFECT THE RIGHTS OF INDIGENOUS COMMUNITIES.**

The administrative electoral authorities of any order of government must consult the interested community, through effective mechanisms that ensure that the community is informed and that go through the community's representative institutions, whenever they intend to issue any measure that could directly affect indigenous communities, so as to guarantee their indigenous rights and the comprehensive development of their peoples and communities. The resulting opinion is not binding for the administrative authority.

**Binding case law 18/2015. July 29, 2015.**

**INDIGENOUS COMMUNITIES. THE AMENDMENT OF DEFICIENT COMPLAINTS DOES NOT WAIVE THE BURDEN OF PROOF, PROVIDED IT IS REASONABLE AND PROPORTIONATE.**

The electoral court has a duty to amend the deficiencies of the grievances invoked through the appeals presented by members of indigenous communities, without waiving the burden of proof that falls on them within the legal process.

**Binding case law 48/2014. October 29, 2014.**

**INDIGENOUS LEGAL SYSTEMS. THE ADMINISTRATIVE ELECTORAL AUTHORITY MUST TAKE STEPS TO SAFEGUARD THE SUBSTANTIVE EQUALITY BETWEEN MEN AND WOMEN (OAXACA STATE LEGISLATION).**

The local administrative electoral authority must take the steps necessary to guarantee the constitutional principles of certainty, legality, independence, impartiality, objectivity and, especially, equality in the participation of men and women in the electoral processes conducted in the corresponding state.

**Binding case law 46/2014. October 29, 2014.**

**INDIGENOUS COMMUNITIES. THE TRANSLATION AND DISSEMINATION ARE APPROPRIATE TO ENSURE AWARENESS OF THE COURT'S RULINGS.**

An official summary of final rulings on complaints brought by members of indigenous communities should be drafted and translated into the corresponding languages.

These summaries should be disseminated through the appropriate mechanisms for the community, ensuring the widest possible dissemination and publication of the court's rulings.

**Binding case law 37/2014. September 29, 2014.**

**INDIGENOUS LEGAL SYSTEMS. ELECTIONS HELD UNDER THIS SYSTEM CAN BE INVALID IF THEY VIOLATE THE PRINCIPLE OF UNIVERSAL SUFFRAGE.**

If the members of an indigenous community who do not reside in the municipal capital are not permitted to vote, this restriction would constitute a denial or annulment of their fundamental right to vote, which would mean a transgression of the principle of equality and universal suffrage. In this context, the election would not be democratic and could be invalidated.

**Binding case law 28/2014. September 24, 2014.**

**INDIGENOUS LEGAL SYSTEMS. THE REPRESENTATION OF CITIZENS WHO ARE MEMBERS OF INDIGENOUS COMMUNITIES OR PEOPLES IS VALID.**

When Mexican citizens who are members of indigenous communities or peoples are parties to litigations or disputes involving the defense of their political and electoral rights, such persons may appear in court themselves or, if they deem it convenient or necessary, through a legal representative.

**Binding case law 20/2014. September 24, 2014.**

**INDIGENOUS COMMUNITIES. NORMS THAT COMPRISE THEIR LEGAL SYSTEM.**

Customs and traditions constitute the legal and political framework by which a community exercises its self-governance and regulates its social relationships, thus fostering the respect for and preservation of their culture. Therefore, the legal system of the indigenous communities is comprised of customary rules and others that are established by their highest legislative body which, as a rule, is their assembly, given that the decisions issued by this body according to the respective procedure reflect the will of the majority.

**Binding case law 19/2014. September 24, 2014.**

**INDIGENOUS COMMUNITIES. ELEMENTS OF THE RIGHT TO SELF-GOVERNANCE.**

The right to self-governance, as a manifestation of the right to autonomy of the indigenous communities, includes: 1) the recognition, preservation and defense of the autonomy of indigenous peoples to elect their authorities or representatives according to their customs and traditions, respecting the human rights of their members; 2) the exercise of their own forms of internal government based on their traditional practices, procedures and norms, in order to preserve and strengthen their political and social institutions; 3) the full participation in the political life of the State, and 4) the effective participation in all decisions made by the state institutions that could affect them, such as the prior consultation with the indigenous peoples on any measure that could affect their interests.

**Binding case law 10/2014. May 28, 2014.**

**INDIGENOUS COMMUNITIES. SPECIFIC DUTIES OF THE COURTS IN THE CONTEXT OF COMMUNITY DISPUTES (OAXACA STATE LEGISLATION).**

The federal or local courts that hear disputes involving the determination of the norms and procedures for the election of authorities through internal legal systems must adopt sufficient and necessary measures to guarantee the effectiveness of these rights. They should take into account the specific conditions of each dispute, consider the body of evidence and, where applicable, carry out the notifications, requirements, hearings, surveys, request for reports and other relevant and appropriate actions based on the context of the community dispute in question.

**Binding case law 9/2014. May 28, 2014.**

**INDIGENOUS COMMUNITIES. THE AUTHORITIES MUST RESOLVE INTRA-COMMUNITY DISPUTES BASED ON A COMPREHENSIVE STUDY OF THEIR CONTEXT (OAXACA STATE LEGISLATION).**

The contextual analysis of community disputes best guarantees the internal aspect of the right to political participation of the members of indigenous communities and peoples as an expression of their self-determination, and avoids imposing decisions from outside the community or which would fail to consider the traditional authorities or relevant members of the community in the decision-making and which could constitute an aggravating factor or a trigger for other conflicts within the same com-

munity. This favors the restoration of the relationships that comprise the community social structure from an intercultural perspective that takes into account the context of the dispute and the effect of the court rulings within the communities, in order to contribute to an effective solution to internal conflicts.

**Binding case law 7/2014. April 15, 2014.**

**INDIGENOUS COMMUNITIES. TIMELY FILING OF THE MOTION FOR RECONSIDERATION ACCORDING TO THE PRINCIPLE OF PROGRESSIVENESS.**

The constitutional right of the indigenous communities and their members to have full access to state justice is not limited to the obligation to consider the particular customs and cultural characteristics of the community and to provide the assistance of interpreters and advocates familiar with their language and culture. Rather, this right must be interpreted in light of the *pro homine* principle, which leads to the creation of special legal protections in their favor. Therefore, on determining the timeliness of the filing of a motion for reconsideration, certain characteristics, technical barriers and geographic, social and cultural conditions must be taken into consideration, since these have traditionally led to situations of legal discrimination against the indigenous population, such as the distance and means of communication of the population where the complainant lives in relation to the place where the authority before which the motion is presented sits.

**Binding case law 7/2013. June 26, 2013.**

**INDIGENOUS PEOPLES. THEIR MEMBERS MUST BE GUARANTEED EFFECTIVE ACCESS TO THE ELECTORAL JURISDICTION.**

“Effective access to state justice” must be understood as the right of citizens who are members of indigenous communities to the following: a) receive a ruling from the state courts; b) the real solution to the dispute at hand; c) the reasoning and legal grounds for the court’s ruling, and d) the execution of the court’s ruling.

**Binding case law 19/2012. June 20, 2012.**

**MOTION FOR RECONSIDERATION. THIS MOTION IS ADMITTED AGAINST RULINGS OF THE REGIONAL CHAMBERS WHEN CUSTOMARY ELECTORAL RULES ARE DEEMED INAPPLICABLE.**

Rulings issued by the Regional Chambers of the Electoral Tribunal of the Federal Judiciary that find that the customary rules established by the indigenous commu-

nities and peoples for the election of their authorities or local representatives are inapplicable may be challenged through the motion for reconsideration.

**Binding case law 4/2012. February 1, 2012.**

**INDIGENOUS COMMUNITIES. THE CONSCIOUSNESS OF IDENTITY IS SUFFICIENT FOR THE ADMISSIBILITY OF THE ACTION FOR THE PROTECTION OF THE POLITICAL AND ELECTORAL RIGHTS.**

Consciousness of identity as a member of an indigenous community is sufficient to accredit the legal standing to present the action for the protection of the political and electoral rights of the citizen, in order to protect their rights according to the respective constitutional and customary rules. Therefore, the citizen's statement that they belong to an indigenous community is sufficient for them to be recognized as such.

**Binding case law 15/2010. June 23, 2010.**

**INDIGENOUS COMMUNITIES. THE COURT SHALL WEIGH THE PARTICULAR CONDITIONS TO CONSIDER THE NOTIFICATION OF ACTS OR RESOLUTIONS OF AN ELECTORAL AUTHORITY BY OFFICIAL GAZETTE EFFECTIVELY EXECUTED.**

The decisions of the electoral authorities must be communicated to the members of the indigenous communities and peoples effectively and according to the particular conditions of each place, so that the indigenous communities and peoples are able to prepare an adequate legal defense on acts that could cause them prejudice, in which case the court must consider the particular conditions to determine the fulfillment of the formal requirement for the timely filing of the complaint.

**Binding case law 15/2008. October 23, 2008.**

**INDIGENOUS COMMUNITIES. THE ELECTORAL AUTHORITY MUST MAKE THE NECESSARY PROVISIONS FOR ELECTIONS TO BE HELD ACCORDING TO CUSTOMS AND TRADITIONS (OAXACA STATE LEGISLATION).**

The electoral authorities are required to provide what is necessary and reasonable for the indigenous communities to elect their local authorities according to their system of customs and traditions, promoting reconciliation. The electoral authority, in the exercise of its functions, must ensure conditions that allow elections to be held.

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**Binding case law 13/2008. October 1, 2008.**

**INDIGENOUS COMMUNITIES. AMENDMENT OF DEFICIENT COMPLAINTS IN ELECTORAL CASES PRESENTED BY MEMBERS OF INDIGENOUS COMMUNITIES.**

When an action for the protection of the political and electoral rights of the citizen is presented by members of indigenous communities or peoples claiming the transgression of their political autonomy or of the rights of their members to elect their representatives or authorities according to their own norms, procedures and traditional practices, the electoral court must not only compensate for the deficiencies in the reasoning of the grievance, but even for the total absence of such reasoning and to identify the act affecting the parties, without further restrictions than those associated with the principles of congruency and contradiction inherent to all legal processes.

**Indicative case law<sup>15</sup>**

**Indicative case law LXXX/2016. September 28, 2016.**

**INDIGENOUS LEGAL SYSTEMS. THE LEGAL ELEGIBILITY REQUIREMENT OF LEAVING OFFICE PRIOR TO THE ELECTION DOES NOT APPLY FOR MEMBERS OF A MUNICIPAL GOVERNMENT GOVERNED BY THIS PRINCIPLE (OAXACA STATE LEGISLATION).**

The indigenous legal systems are governed by the general principles, oral or written norms, institutions and procedures that the municipalities and indigenous communities recognize as valid and enforceable. These legal systems are applied in the development of the community's self-governance and, in particular, in the definition of their offices and services and the election and appointment of the community authorities of the municipal government, since these are recognized as an expression of the community's right to self-determination and autonomy. Therefore, compliance with the eligibility requirement established in the local legislation —consistent in candidates being required to resign from office in advance of an election— is not always enforceable, as this would mean imposing a requirement that the indigenous community did not establish.

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<sup>15</sup> The approved text of all binding and indicative case law of the TEPJF can be retrieved at <https://www.te.gob.mx/IUSEapp/>.

**Indicative case law LXV/2016. June 22, 2016.**

**INDIGENOUS PEOPLES AND COMMUNITIES. THE RIGHT TO SELF-GOVERNANCE INCLUDES THE TRANSFER OF RESPONSIBILITIES REGARDING THE EXERCISE OF THE RIGHTS TO SELF-DETERMINATION, AUTONOMY AND SELF-GOVERNANCE, ASSOCIATED WITH THEIR RIGHT TO EFFECTIVE POLITICAL PARTICIPATION AND THE DIRECT ADMINISTRATION OF THE RESOURCES THAT THEY ARE ENTITLED TO.**

The constitutionally recognized right of the indigenous peoples and communities to self-governance —consisting in determining their political condition and freely pursuing their development— includes among other aspects the transfer of responsibilities, through their traditional or recognized authorities, in relation to the exercise of their rights to self-determination, autonomy and self-governance, associated with the right to effective political participation and the direct administration of the resources that they are entitled to. These human rights can only be effective when a minimum of rights —necessary to guarantee the existence, dignity and well-being of their members, as well as their development and cultural identity— are enforced. In this regard, the municipal authorities must equitably determine, in the context of the applicable state legislation, the resources that each indigenous community is entitled to relative to the rest of the municipality.

**Indicative case law LXIV/2016. June 22, 2016.**

**INDIGENOUS PEOPLES AND COMMUNITIES. THE RIGHT TO PRIOR AND INFORMED CONSULTATION IN GOOD FAITH IS NECESSARY TO DEFINE THE (QUANTITATIVE AND QUALITATIVE) ELEMENTS NECESSARY FOR THE TRANSFER OF RESPONSIBILITIES ASSOCIATED WITH THE RIGHT TO SELF-GOVERNANCE.**

To guarantee the full exercise of the rights to self-determination, autonomy and self-governance of the indigenous communities and peoples, as well as their right to effective political participation and consultation, the federal, state and municipal authorities must hold a prior and informed consultation in good faith through the traditional authorities of these communities regarding the (quantitative and qualitative) elements necessary for the transfer of responsibilities associated with their constitutional rights, including, where applicable, the right to directly manage economic resources.



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**Indicative case law LII/2016. June 15, 2016.**

**MEXICAN LEGAL SYSTEM. IT IS COMPRISED OF INDIGENOUS LAW AND FORMAL STATUTORY LAW.**

Indigenous law, comprised of the different legal systems of each indigenous people and community, is held at the same level as formal statutory law. Therefore, indigenous law must not be considered mere customs and traditions given that, according to the system of sources of law, indigenous law constitutes a subsidiary and subordinate source. Really, these are two different bodies of law that have a relationship of coordination.

**Indicative case law XLVI/2016. June 15, 2016.**

**CONSULTATION TO CHANGE THE MUNICIPAL AUTHORITY SYSTEM. THE CONSULTATION IS NOT HELD WHEN IT COULD AFFECT THE INTERNAL LEGAL SYSTEM OR THE RIGHTS OF THE MEMBERS OF THE INDIGENOUS COMMUNITIES.**

The consultation is an institution that protects the exercise of the substantive right of the indigenous peoples to self-determination, and a means to guarantee its compliance. Therefore, the consultation is not held when there is an imminent possibility that the internal legal system to elect municipal authorities previously adopted by the community could be changed to a party system, even when the petitioners significantly outnumber the residents of the indigenous community. To do so would lead to a regression in the previously defined customary system and a disregard for the principle of progression in the interpretation of human rights, as well as a violation of the indigenous communities' rights of self-determination and autonomy.

**Indicative case law XIX/2016. March 30, 2016.**

**ETHNIC COUNCILOR. THE SORTITION PROCESS IS NOT VALID WHEN THERE IS CONTROVERSY REGARDING THE TRADITIONAL AUTHORITY ENTITLED TO MAKE THE PROPOSAL (SONORA STATE LEGISLATION).**

The sortition process established by the local legislator is invalid when two or more proposals are presented by the same community and there is controversy as to the legitimacy of the authorities of the indigenous people or community entitled to make the proposals. The sortition process is not structured as a method to appoint ethnic councilors when there is controversy as to who holds the traditional authority in a

certain community, as this would imply disregarding the protection of the community's right to self-determination.

**Indicative case law XIII/2016. March 30, 2016.**

**COMMUNITY GENERAL ASSEMBLY. ITS DECISION REGARDING THE RATIFICATION OF COUNCILORS OR SWEARING IN OF THEIR ALTERNATES MUST BE RESPECTED WHEN IT IS THE RESULT OF THE LEGITIMATE CONSENSUS OF ITS MEMBERS.**

The community assembly is the highest authority in the municipality and determines who will serve as representatives of the community. Therefore, when it decides whether or not to ratify the councilors, or to swear in their alternates, the determination adopted by the community must be respected when it is the result of the legitimate consensus of its members, in order to maximize the principle of self-determination.

**Indicative case law VIII/2016. March 10, 2016.**

**INDIGENOUS COMMUNITIES. ALLEGATIONS OF THEIR MEMBERS WHO INTERVENE AS THIRD PARTIES MUST BE STUDIED INTERDEPENDENTLY WITH THEIR FUNDAMENTAL RIGHTS.**

The authorities must adopt measures to study the allegations made in the proceedings by the third party interdependently with the fundamental rights of access to justice, equality, non-discrimination and effective legal protection, in order to apply them in benefit of the indigenous peoples.

**Indicative case law LXXXVII/2015. October 28, 2015.**

**PRIOR CONSULTATION OF INDIGENOUS COMMUNITIES. REQUIREMENTS FOR THE CONSULTATION HELD BY THE ADMINISTRATIVE ELECTORAL AUTHORITY WHEN IMPLEMENTING MEASURES THAT COULD AFFECT THE COMMUNITY'S RIGHTS.**

The consultation held by the administrative authority of any order of government with the community concerned, through their representative institutions, when planning administrative measures that could directly affect the community must satisfy the following requirements: 1. The consultation must be held prior to the adoption of the measure that could affect the rights of the indigenous community, which implies involving the members of the community concerned in the decision process as early as possible; 2. Information must be provided so that they can participate genuinely

and objectively in the decision-making process; 3. There must be a record of the public consultation showing that the community was sufficiently informed; 4. The consultation must be free, without external influence, coercion, intimidation or manipulation; 5. The consultation must be held in good faith, using a process that builds trust among the members of the community based on the principles of credence and mutual respect, in order to reach consensus, and 6. The consultation must be adequate and involve the indigenous representative institutions, that is, the procedure used must be appropriate for all parties involved, taking into account the traditional decision-making methods of the community. The consultation must also be systematic and transparent, which means deciding the criteria to be used to establish the representation, form of participation and methodology, in order to have the least possible impact on their customs and traditions. The result of the consultation is not binding.

**Indicative case law LXXVII/2015. October 7, 2015.**

**PRO HOMINE PRINCIPLE. POLITICAL PARTIES ARE REQUIRED TO OBSERVE THIS PRINCIPLE IN FAVOR OF THEIR MEMBERS WHO BELONG TO INDIGENOUS COMMUNITIES.**

In their internal selection processes for candidates to the different elected offices, the political parties must take into consideration the particular conditions of inequality of their members who belong to indigenous communities, to avoid leaving them in a vulnerable state by requiring them to fulfill irrational or disproportionate requirements.

**Indicative case law XLI/2015. July 29, 2015.**

**PARTICIPATORY INDIGENOUS DEMOCRACY. THE STATE AND THE POLITICAL PARTIES ARE REQUIRED TO PROMOTE PARTICIPATION.**

As entities responsible for enabling the access of citizens to public office, the political parties are required to promote the participation of the members of indigenous communities in compliance with the constitutional and conventional provisions that protect them.

**Indicative case law XXXI/2015. May 30, 2015.**

**INDIGENOUS LEGAL SYSTEMS. REDUCING THE PARTICIPATION OF WOMEN TO THE VALIDATION OF PREVIOUSLY MADE DECISIONS CONSTITUTES A DISCRIMINATORY PRACTICE (OAXACA STATE LEGISLATION).**

The full exercise of the rights of women in the public life of their community necessar-

ily implies that they have must be able to actively participate in the decision-making process, allowing them to be part of the authorities as well as to discuss, present proposals, propose candidates, among other questions. Therefore, reducing their role to simply accepting or validating the decisions previously adopted by a group constitutes a discriminatory practice prohibited by the new constitutional framework on human rights.

**Indicative case law XXX/2015. May 30, 2015.**

**INDIGENOUS LEGAL SYSTEMS. THE COMMUNITIES ARE ENTITLED TO FREELY ENDORSE THE VOTE CONDUCTED BY A DIFFERENT COMMUNITY BELONGING TO THE SAME MUNICIPALITY AS A MEANS OF ELECTING THEIR REPRESENTATIVES.**

The right to self-determination of the indigenous peoples implies preserving their political institutions as a way of participating in the political life of the State. In this regard, the communities are entitled to freely endorse the vote conducted by a different community belonging to the same municipality as a means of electing their representatives. This does not imply a transfer or waiver of the right to name councilors, since it constitutes one of the ways in which they exercise their right to self-determination.

**Indicative case law VIII/2015. March 25, 2015.**

**INDIGENOUS COMMUNITIES. ANY RESTRICTION OF THEIR AUTONOMY MUST BE STRICTLY NECESSARY AND REASONABLE.**

Any restriction of the right to autonomy or self-governance must be strictly necessary and reasonable in order to guarantee the recognition and full respect of the fundamental rights and freedoms of the members of these communities. Therefore, restrictions shall not be imposed that would disproportionately affect the right to self-determination and the full development of their culture.

**Indicative case law XXXIV/2014. October 29, 2014.**

**INDIGENOUS COMMUNITIES. THE MOTION FOR RECONSIDERATION CAN BE PRESENTED BEFORE THE CORRESPONDING LOCAL ELECTORAL TRIBUNAL.**

The most favorable interpretation of the fundamental right to access legal protection requires the removal of technical or economic barriers, as well as those associated with

temporal, geographic, social and cultural conditions that generate difficulties for the indigenous population, in order to find a solution to their disputes before the courts under equal conditions. In this context, if the motion for reconsideration should be presented before the Regional Chamber that issued the contested ruling, members of indigenous communities can also present the motion before the corresponding local electoral tribunal, in order to protect this fundamental right.

**Indicative case law VII/2014. March 26, 2014.**

**INDIGENOUS LEGAL SYSTEMS. NORMS THAT RESTRICT FUNDAMENTAL RIGHTS VIOLATE THE BODY OF CONSTITUTIONAL LAW.**

The right of the indigenous peoples to preserve their customs and institutions is limited by the respect they must uphold for the human rights recognized in the national and international legal systems. Therefore, the indigenous communities cannot establish discriminatory practices in their internal law, since that would violate the body of constitutional law, comprised of the Constitution and the international treaties ratified by the Mexican State. Consequently, an indigenous legal system that violates any fundamental right is unconstitutional and unconventional.

**Indicative case law XII/2013. May 19, 2013.**

**CUSTOMS AND TRADITIONS. REQUIREMENTS FOR THE VALIDITY OF CONSULTATIONS WITH INDIGENOUS COMMUNITIES AND PEOPLES IN ORDER TO HOLD ELECTIONS.**

In addition to observing the principles established in the Declaration on the Rights of Indigenous Peoples, the consultation must meet the following requirements: 1. The consultation must be held prior to the adoption of the measure that could affect the rights of the indigenous community, which implies involving the community concerned in the decision process as early as possible; 2. Information must be provided so that they can participate genuinely and objectively in the decision-making process; 3. The consultation must be free, without external influence, coercion, intimidation or manipulation; 4. The consultation must be held in good faith, using a process that builds trust among the members of the community based on the principles of credence and mutual respect, in order to reach consensus, and 5. The consultation must be adequate and involve the indigenous representative institutions, that is, the process must be appropriate for all the parties involved, taking into account the traditional decision-making methods of the community. The consultation must also be

systematic and transparent, which means deciding the criteria to be used to establish the representation, form of participation and methodology.

**Indicative case law XXXI/2012. October 31, 2012.**

**INDIGENOUS COMMUNITIES. THE FREEDOM OF ASSOCIATION MUST BE RESPECTED IN THE REGISTRATION PROCESS FOR POLITICAL PARTIES.**

When the members of indigenous communities seek to register a political party, the electoral authorities must interpret and apply the relevant provisions for the registration and formation process in the most favorable manner possible. They should adopt the appropriate compensatory measures to protect the freedom of association and right to political participation in order to achieve the objectives of maximum inclusion and access to the democratic system.

**Indicative case law XLIII/2011. December 14, 2011.**

**INDIGENOUS CUSTOMS AND TRADITIONS. MINIMUM AGE TO HOLD AN ELECTED MUNICIPAL OFFICE (OAXACA STATE LEGISLATION).**

In the absence of any legislated restriction, the indigenous communities can establish their own eligibility requirement regarding the minimum age for holding a municipal office, exercising their fundamental right to self-determination, self-governance and autonomy to elect their authorities according to their traditional norms and practices. This requirement, in addition to being appropriate, reasonable and proportionate, must be established by the collective through the corresponding procedure and body.

**Indicative case law XLII/2011. December 14, 2011.**

**CUSTOMS AND TRADITIONS. THE ADMINISTRATIVE ELECTORAL AUTHORITY WILL CONSULT WITH THE COMMUNITY WHETHER ELECTIONS ARE TO BE HELD UNDER THIS SYSTEM AND SUBMIT THE RESULT TO THE STATE CONGRESS.**

When there is no legislation regarding the elections held according to internal legal systems, the administrative electoral authority must hold the respective consultations with the community to determine whether the majority of its members opt to hold elections according to the system of customs and traditions. The result of this consultation will be submitted to the State Congress, which will issue the corresponding decree. These consultations must: a) arise from the indigenous collective and the free consent of their members; b) respect human rights and apply the majority rule;

c) be democratic and equal, so that the greatest possible number of members of the community participate; d) respond to the needs identified by the communities; e) be peaceful; f) exchange all necessary data and information between the community and the authority in order for the organization, content and results of the consultation to respect the traditional practices, and g) the measures adopted must be managed by the interested parties.

**Indicative case law XXXVIII/2011. November 30, 2011.**

**INDIGENOUS COMMUNITIES. EVIDENTIARY RULES APPLICABLE IN ELECTORAL CASES (OAXACA STATE LEGISLATION).**

The authorities must be flexible when determining compliance with the formalities ordinarily required for the admission of evidence in order to remove the procedural disadvantages that members of indigenous communities may face due to their cultural, economic or social conditions. In this regard, it is sufficient that the plaintiff mentions or announces the evidence in the complaint in order for the court to admit the evidence it considers pertinent to the case at hand. The court will make this determination based on its knowledge of the facts and the complaint, in addition to which the court must take the necessary actions if the evidence presented requires perfecting as well as order the collection of the evidence necessary to solve the matter at hand.

**Indicative case law XXXVII/2011. November 30, 2011.**

**INDIGENOUS COMMUNITIES. IN THE ABSENCE OF LEGAL REGULATION ON THEIR RIGHTS, THE PROVISIONS OF THE CONSTITUTION AND INTERNATIONAL TREATIES APPLY.**

In the absence of legal regulation on the right to self-determination, the authorities are required to turn to the guiding criteria for the interpretation and application of human rights, as well as to the principles and values recognized in the Constitution and the international treaties on human rights, to remove the existing barriers and establish ways to guarantee the exercise of these rights in practice.

**Indicative case law XL/2011. March 9, 2011.**

**INDIGENOUS COMMUNITIES. COMPOSITION OF THE COMMUNITY GENERAL ASSEMBLY (OAXACA STATE LEGISLATION).**

The term community general assembly refers to the expression of the will of the majority, which can be obtained in an assembly or by adding up the results of the

assemblies held in each town, as both cases imply collective decision making. Therefore, the municipal authority can validly be appointed by the community general assembly with the participation of its members, or based on consultations held in each town within the municipality.

**Indicative case law CLII/2002. September 24, 2002.**

**CUSTOMS AND TRADITIONS. ELECTIONS HELD BY THIS SYSTEM DO NOT AUTOMATICALLY IMPLY A VIOLATION OF THE PRINCIPLE OF EQUALITY.**

In the constitutional legal sense, discrimination is understood as unfair differentiation, that is, a failure to take into account objective, reasonable and proportional criteria to differentiate. It goes against the notion of human dignity and its purpose or consequence is to restrict or deny the rights and freedoms of the individual.

**Indicative case law CXLIV/2002. September 2, 2002.**

**INDIGENOUS CUSTOMS AND TRADITIONS. THE EFFECTS OF THE RULINGS ISSUED BY THE ELECTORAL TRIBUNAL OF THE FEDERAL JUDICIARY IN THE CASE OF ADMINISTRATIVE ELECTORAL ACTS ISSUED BY A LOCAL CONGRESS.**

When a complaint is filed by only one or a few members of a community against an act of authority that affects the entire community, the complaint must be considered to be intended to permit the constitutional control of acts and resolutions that violate the political and electoral rights of the citizen. In other words, it is incorrect to consider that the acts of a local congress cannot be amended as a result of a judgment issued regarding a action for the protection of the political and electoral rights of the citizen. Thus, the possible effects of the ruling apply to the entire community in order to benefit or to put an end to prejudices against its members.

**Indicative case law CXLIII/2002. September 2, 2002.**

**INDIGENOUS CUSTOMS AND TRADITIONS. RESPONSIBILITIES OF THE GENERAL COUNCIL OF THE OAXACA STATE ELECTORAL INSTITUTE REGARDING ELECTIONS.**

When municipal elections are declared invalid, the State Electoral Institute will subject the extraordinary elections held to the terms of the local electoral law. Additionally,



the State Electoral Institute will hear disputes involving the renewal of municipal authorities under the norms of customary law. Before delivering a decision, the State Electoral Institute will seek reconciliation between the parties, or conduct a consultation with the community, holding a significant and reasonable number of reconciliation talks between the members of the indigenous community or people in question or of the municipality governed by said legal system. If the points of contention cannot be resolved, the State Electoral Institute will hold a community consultation for the community to decide the outcome.

**Indicative case law CXLVI/2002. September 2, 2002.**

**INDIGENOUS CUSTOMS AND TRADITIONS RELATED TO THE CUSTOMARY ELECTORAL PROCESS. CITIZENS AND AUTHORITIES ARE REQUIRED TO RESPECT THEM (OAXACA STATE LEGISLATION).**

The citizens and the community, municipal, state, Mexico City and federal authorities are required to respect the customary norms or internal rules.

**Indicative case law LXXIX/2002. May 30, 2002.**

**ELECTORAL GEOGRAPHY. CONCEPT AND PURPOSES.**

The boundaries of the electoral districts must preserve, as far as possible, the pre-established geographic division of neighborhoods, districts, municipalities and the integrity of rural and indigenous communities.

## Relevant rulings<sup>16</sup>

### Right to appeal

**SUP-JDC-37/1999**

Complainant: Herminio Quiñónez Osorio and Ángel García Ricárdez.

Responsible authorities: Oaxaca State Congress and General Council of the Oaxaca State Electoral Institute.

Background: The complainants, members of the indigenous community of the municipality of Asuncion Tlacolulita, Oaxaca, challenged the decree of the State

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<sup>16</sup> The approved text for all rulings of the TEPJF can be retrieved at [www.te.gob.mx](http://www.te.gob.mx).

Congress that invalidated the election of councilors held in the municipality. They also challenged the failure of the Oaxaca State Electoral Institute to organize the extraordinary elections ordered by the same decree.

Opinion: Every indigenous citizen holds legal standing to present a complaint regarding the regularity of elections held under the system of customs and traditions.

#### **SUP-JDC-2542/2007**

Complainants: Moisés Ramírez Santiago and others.

Responsible authorities: Oaxaca State Electoral Institute and Oaxaca State Congress.

Background: The complainants, members of the indigenous community of the municipality of San Juan Bautista Guelache, Etlá, Oaxaca, challenged the decree of the Oaxaca State Congress that declared the election of councilors constitutional and valid according to the norms of customary law, even though only citizens of the municipal capital participated in the assembly. They also claimed that the State Electoral Institute failed to seek reconciliation between the towns and centers of this municipality.

Opinion: The legal standing of the parties in the process must be studied through a free, open and comprehensive analysis of the particular characteristics of the indigenous peoples or communities, without incurring in excessive formalities or rigor.

Self-determination, autonomy,  
and self-governance

#### **SUP-REC-2/2011**

Complainant: Emilio Mayoral Chávez.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainant challenged the restriction of the right to be elected to the office of councilor, established by the indigenous community of the municipality of San Jerónimo Sosola, Oaxaca, requiring the minimum age of 25.

Opinion: There is no constitutional limitation in terms of the minimum age to hold a municipal office, therefore, the indigenous communities or peoples can determine this eligibility requirement, exercising their right to self-determination and autonomy.

**SUP-REC-36/2011 and joined claims**

Complainants: Evic Julián Estrada and Salvador Enríquez Ramírez.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainants, members of the indigenous community of the municipality of San Juan Lalana, Oaxaca, challenged the validity of the election of their authorities, arguing that the process disregarded the customary norms of the community and that they were denied the right to elect their authorities according to their traditional norms and processes.

Opinion: The community assembly implies the materialization of the will of the community, while the polling stations only play a functional role in the objectives established in the legislation and in the customary law. These objectives, such as the consensus, representation and reliability that are essential for the validation of the election, are only satisfied through the assembly.

**SUP-JDC-9167/2011**

Complainant: Rosalva Durán Campos and others.

Responsible authority: General Council of the Michoacán Electoral Institute.

Background: The complainants, members of an indigenous community in Cherán, Michoacán, challenged the refusal of the Michoacán Electoral Institute of the petition to hold elections according to customs and traditions.

Opinion: In the absence of legal regulation on the right to self-determination, the state authorities are obligated, in accordance with their constitutional mandate, to remove the existing obstacles and to create the necessary conditions to guarantee the exercise of this right in practice.

**SUP-JDC-1740/2012**

Complainant: Bruno Plácido Valerio.

Responsible authority: General Council of the Guerrero State Electoral Institute.

Background: Various citizens filed a petition with the Guerrero State Electoral Institute to elect their municipal authorities through the model of customs and traditions, attaching 130 assembly records to the petition. The Institute found that the request failed to satisfy the applicable requirements.

Opinion: The administrative authority should verify and determine the historic existence of an indigenous community's own legal system.

### **SUP-JDC-3119/2012**

Complainants: Oralia Rojas Bautista and others.

Responsible authority: Oaxaca State Electoral Tribunal.

Background: The state tribunal ordered the local institute to hold the election of the community's municipal agent.

Opinion: Unjustified delays in holding an election in a community violate the right to vote.

### **SUP-JDC-3205/2012**

Complainants: Mayren Mendoza Solano.

Responsible authority: Oaxaca State Congress.

Background: The Oaxaca State Congress appointed a municipal administrator until extraordinary elections could be held to elect the municipal council.

Opinion: In a community governed by an internal legal structure, the Oaxaca State Congress has the authority to appoint a municipal council or a head of the municipal administration until a council can be installed.

### **SUP-REC-6/2016 and joined claims**

Complainants: Marino Santiago Calderón and others.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainants, members of the indigenous community of Tlaxiactac de Cabrera, Oaxaca, challenged the validity of the community assembly which removed the councilors of this municipality and elected their substitutes. The complainants argued that the assembly had not been called or held according to the community's traditional rules and procedures and that the proper procedure for removal had not been respected.

Opinion: In cases that involve removing municipal authorities from office in indigenous communities the procedure cannot be subject to rigid formalities since the rules established in the local internal legal system must be respected.

### **SUP-REC-1177/2017**

Complainant: Ponciano López García and others.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainants appealed that the rule that establishes the authority of the governor to appoint the head of the municipal administration when any municipal election is declared null or invalid was declared unconstitutional. The complainants argued that, contrary to the findings of the Regional Chamber, the appointment of the municipal administrator is a reasonable measure intended to guarantee the correct and proper functioning of the municipality.

Opinion: In this case, the High Chamber opted to revoke the declaration of unconstitutionality of the rule in question and to interpret it in keeping with the Constitution. In this manner, the contents of the constitutional body of rights were harmonized with the provisions of the local Constitution regarding the figure of the head of the municipal administration. This harmonization is fully achieved if the body is collegiate and not unipersonal.

### Judging with an intercultural perspective

#### **SUP-JDC-884/2013**

Complainants: Constantino Antonio Méndez and Cirilo Irineo Cruz García.

Responsible authority: Oaxaca State Electoral Tribunal.

Background: The local tribunal dismissed a complaint that claimed that a municipal trustee and a police commissioner had not received their allowances or yearend bonuses, arguing that the complainants had failed to provide the relevant evidence.

Opinion: In cases involving indigenous communities, the tribunal must gather the relevant evidence in order to be able to issue a legal ruling.

#### **SUP-JDC-1011/2013 and joined**

Complainants: Roberto Garay Osorio, Constantina Baldes Covarrubias and others.

Responsible authority: Oaxaca State Electoral Tribunal.

Background: The complainants, members of the indigenous community of the neighborhood of Costa Rica in the municipality of San Mateo del Mar, Tehuantepec, Oaxaca, appealed the ruling of the local tribunal which declared the assembly at which their authorities were elected invalid. This election was held in replacement of a previously held assembly that was considered invalid by the community.

Opinion: In cases involving the rights of the indigenous peoples, it is necessary to assess the conditions that caused the legal dispute brought before the electoral authorities in order to clearly define its limits and to resolve the case using an intercultural

perspective, observing both the constitutional and conventional principles or values and the values and principles of the community.

### Characteristics of the community assembly

#### **SUP-REC-861/2014**

Complainant: Constantino Hernández Pinacho and others.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainants challenged the validity of the community general assembly in Santo Tomas Tamazulapan, Miahuatlan, Oaxaca, called to elect the community authorities of this municipality, because the assembly was suspended before the vote was held.

Opinion: The community assembly is the highest decision-making body, responsible for making decisions that affect the whole community. Its members are adult citizens exercising their community rights.

### Representation before the municipality (ethnic councilors)

#### **SUP-REC-716/2015 and joined claims**

Complainants: Juan Matuz Flores and Pedro Pablo Valenzuela Hernández.

Responsible authorities: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the First Constituency, based in Guadalajara, Jalisco, and Sonora State Electoral Tribunal.

Background: The complainants, members of the traditional authorities of the Yaqui people of Cocorit, Loma de Guamuchil, in the municipality of Cajeme, Sonora, appealed the decision of the Guadalajara Regional Chamber and the local court, which changed the original assignment of certificates of ethnic governors and their alternates.

Opinion: The ethnic governors (as representatives of the community to the municipality) must be elected according to the procedures established by the community, in accordance with its internal legal system.

## Gender-based political violence

### SUP-JDC-1654/2016

Complainant: Rosa Pérez Pérez.

Responsible authority: Chiapas State Congress.

Background: The complainant, Mayor of Chenalho, Chiapas, challenged the validity of her resignation, since she had made it in a context of political violence. She was forced to step down after a group kidnapped the president of the state congress and the coordinator of the Mexican Green Party (PVEM, *Partido Verde Ecologista de México*) representatives and conditioned their release on the resignation of the Mayor, who had been legitimately elected.

Opinion: In cases of gender-based political violence or the violation of human rights, efforts must be made to establish remedies that approximate as much as possible the restitution of the status quo. This includes reinstating unjustly affected rights, reducing the harmful or dangerous consequences, compensating the effects that cannot be otherwise cancelled or restored and preventing recurrences.

## Access to justice

### SUP-JDC-11/2007

Complainant: Joel Cruz Chávez and others.

Responsible authority: Oaxaca State Congress and others.

Background: The complainants, members of the indigenous community of Tanetze de Zaragoza, Oaxaca, appealed the denial of the local authorities (local electoral institute and local congress) to reestablish the municipal powers and to hold elections for these offices, since they considered that the proper conditions to hold the municipal elections did not exist.

Opinion: In the case of indigenous communities and their members, the authority must not only compensate for the deficiencies in the reasoning of the grievance, but even for the total absence of such reasoning and to identify the act affecting the parties, without further restrictions than those associated with the principles of congruency and contradiction inherent to all legal processes.

## Universal suffrage

### **SUP-JDC-1148/2013**

Complainant: Andrés Silva Arreola and others.

Responsible authority: General Council of the Oaxaca State Electoral Institute.

Background: Andrés Silva Arreola and other citizens, public officials of Santiago Choapam and San Juan Teotacingo, Oaxaca, appealed the resolution of the General Council of the Oaxaca State Electoral Institute, which approved the terms of the call for council elections for the Municipality of Santiago Choapam, Oaxaca, claiming that their ancestral right to vote and to be elected had been violated.

Opinion: The right to self-determination and the freedom to determine the rules and practices that regulate political participation under internal legal systems have limits in terms of respecting the human rights protected by the Constitution and international treaties, such as the right to participate of women, the elderly and residents of the towns.<sup>17</sup>

### **SUP-REC-16/2014**

Complainant: Abigail Vasconcelos Castellanos.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainant appealed the declaration of validity of the election of councilors in the Municipality of San Bartolo Coyotepec, Centro, conducted under the internal legal system, since women were not allowed to participate as candidates.

Opinion: The right to self-determination and the freedom to determine the rules and practices that regulate political participation under internal legal systems are limited in respecting the human rights protected by the Constitution and international treaties, such as the right to participate of women, the elderly and residents of the towns.

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<sup>17</sup> Translator's note: In some Mexican states, such as Oaxaca, each municipality usually covers a large area and contains more than one city or town. In such cases one city or town is selected as a *cabecera municipal* (seat of the municipal government or municipal capital), while the rest are called *agencias* (towns)?



**SUP-REC-1207/2017**

Complainant: Lamberto Antonio Montaña Santos and others.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainants appealed the ruling of the Xalapa Regional Chamber, which implicitly deemed inapplicable the general norms that established that the community assembly must be held at the city hall and that any change of venue for the assembly must be agreed on by the community assembly or fully justified. The complainants claimed that the right of citizens to political participation had been violated, mainly in the communities of the municipal capital and the police officers of Texcoco, which resulted in that only a little over half of the voters participated in the election.

Opinion: The High Chamber overturned the contested ruling, finding that moving the voting venue without this decision being validated or authorized by the community general assembly, and without there being a just cause for the election being held outside the municipal capital and in the presence of the electoral authority, violated the right to political participation and the norms of the internal system.

**SUP-REC-1151/2017 and joined claims**

Complainant: Isidoro Baloes Galaviz and others.

Responsible authority: Regional Chamber of the Electoral Tribunal of the Federal Judiciary, of the Third Constituency, based in Xalapa, Veracruz.

Background: The complainants appealed the ruling of the Xalapa Regional Chamber, which confirmed the annulment of the 2016 general assembly for the election of councilors in the municipality of San Mateo del Mar, Oaxaca. The court considered that the 2016 election was not held according to the rules established for the 2104 extraordinary election, which were the product of a consensus and allowed all citizens of the municipality to vote to elect all public offices that make up the municipal government.

Opinion: The High Chamber confirmed the contested ruling, arguing that until a community amends the rules or procedures adopted by consensus of all its members, these rules and procedures remain in effect since these are in line with the constitutional and conventional principles of respect for human rights.



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