The Mexican State's interpretation of indigenous self-determination in the age of democracy (1992-2022)

Bruno **Anaya Ortiz**[1]
https://orcid.org/0009-0006-8884-4647

Center for the Study of Law and Society

Email address: bruno.anaya@berkeley.edu

Received: September 6th, 2023
Accepted: February 1st, 2024

DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

Abstract: This article charts how Mexican authorities have interpreted and implemented indigenous peoples' constitutional right to self-determination since it was first adopted in a 1992 constitutional reform. "Self determination" can mean many things, and the constitution gives stakeholders ample discretion to define and negotiate the content of this right. Most state legislatures initially passed "indigenous culture laws" starting in the late 1990s. The state of Oaxaca also amended its electoral procedure code to allow municipalities with a majority of indigenous residents to elect the members of their local governments through community assemblies (instead of the "political party system"). In the last five years, courts have further expanded electoral protections for indigenous communities by mandating that federal and state electoral Institutes implement quotas reserved for indigenous candidates in legislative elections. The application of indigenous self-determination has thus gone from being handled by state legislatures to being the province of federal electoral courts. The prevailing interpretation of self-determination has shifted from self-determination as self-government to it being understood as special legislative representation.
Keywords: self-determination, indigenous, autonomy, interpretation, elections.

Resumen: Este artículo estudia cómo las autoridades mexicanas han interpretado e implementado el derecho constitucional de la libre determinación de pueblos indígenas desde su reconocimiento constitucional en 1992. "Libre determinación" puede significar muchas cosas, y la constitución otorga a las partes interesadas amplio poder de decisión para definir y negociar el contenido concreto de este derecho. Inicialmente, la mayoría de los congresos estatales adoptaron "leyes de cultura indígena" a

[1] His most recent project studies the imbrication of nationalistic discourses within and through modern Mexican Law.

partir de finales de los años 1990. El estado de Oaxaca también modificó su código de procedimiento electoral para permitir que los municipios con una mayoría de residentes indígenas elijan a sus gobiernos municipales a través de asambleas comunitarias (en lugar del "sistema de partidos políticos"). En los últimos cinco años, los tribunales han ampliado aún más las protecciones electorales para comunidades indígenas al instruir a institutos electorales federales y estatales la implementación de cuotas legislativas reservadas para candidatos indígenas. La aplicación de la autodeterminación indígena ha cambiado de ser competencia de las legislaturas estatales a ser materializada por los tribunales electorales federales. La interpretación preponderante de la libre determinación ha pasado de la autodeterminación como autogobierno a entenderla más recientemente como representación legislativa especial.
Palabras clave: libre determinación, indígena, autonomía, interpretación, electoral.

I. Introduction

This article offers an overview of the legislative and jurisprudential development of the indigenous self-determination in Mexican law. In 1990, Mexico ratified the International Labour Organization's (ILO) *Indigenous and Tribal Peoples Convention*, which took effect in 1992.[2] As a part of its commitments under the convention, Mexican Congress amended the Constitution to state that "The Mexican nation has a pluricultural composition sustained originally on its indigenous peoples."[3] In 2001, Mexico further modified the Constitution to recognize indigenous peoples and communities' right to "self-determination and autonomy."[4]

This study charts how the Mexican government has interpreted, codified, and applied indigenous self-determination laws. In other words, this article tracks the path that the right to indigenous self-determination has undergone

[2] International Labour Organization, Indigenous and Tribal Peoples Convention 169, June 27, 1989, 1650 U.N.T.S. 28383, available at: *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169*

[3] Constitución Política de los Estados Unidos Mexicanos [CPEUM], Art. 4, Diario Oficial de la Federación [DOF] Feb. 5th, 1917, as amended 01-28-1992, (Mex.), available at: *https://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_122_28ene92_ima.pdf* [This portion of the constitution was later moved to Article 2.]

[4] *Id.* at Art. 2, Tit. A.

from an abstract constitutional guarantee to concrete legislative instruments, administrative policies, and judicial rulings.

"Self-determination" is a polysemic term. Its meaning was not totally defined when legislators first wrote it into the Constitution. The term "self-determination" first appeared in international law in the early twentieth century. Vladimir Lenin and Woodrow Wilson both used the term to mean something akin to sovereignty in the sense of colonial emancipation from foreign rule.[5] Over time, the term has taken on additional meanings in international law. Self-determination has been associated with democracy, cultural expression, freedom, and more.[6] When self-determination applies to domestic groups, it explicitly does not mean sovereignty and independence. However, it might mean administrative autonomy akin to that enjoyed by states or provinces under a federal system such as Mexico's or the US's. Because self-determination is a relatively flexible and open-ended term, Mexican authorities have had significant discretion to translate this constitutional principle to laws and policies.

Mexican government agencies have implemented indigenous self-determination through several legal instruments. First, most state legislatures have approved "indigenous culture" laws. Secondly, electoral authorities have recently implemented legislative quotas for members of indigenous communities. A handful of laws have also established "indigenous tribunals" meant to allow members of indigenous communities to act as judges in conflicts arising in their communities.

Indigenous culture laws guarantee indigenous communities the right to practice their culture, preserve their language, exercise their religion, and freely associate. State legislatures adopted these laws in the late 1990s and through the 2000s. The first such instruments go back to 1998.[7] Indigenous culture laws "grant" to indigenous peoples rights that the federal Constitution guarantees to all citizens.[8] That is, all citizens have a right to practice culture, exercise their

---

[5] Vladimir Lenin, The Right of Nations to Self-Determination: Selected Writings (2004); Joseph Massad, *Against Self-Determination*, 9 *Humanity Int. J. Hum. Rights. Dev. 161* (2018), available at: https://muse.jhu.edu/article/703633 (last visited Jan 18, 2023).

[6] Adom Getachew, Worldmaking after Empire: The Rise and Fall of Self-Determination (2019); Jörg Fisch & Anita Mage, The Right of Self-Determination of Peoples: The Domestication of an Illusion (2015).

[7] Ley de Derechos de los Pueblos y Comunidades Indígenas y Afromexicano del Estado de Oaxaca [Law for the Rights of Indigenous and Afro-Descendent Peoples and Communities of the State of Oaxaca], as amended, Periódico Oficial de Oaxaca, July 19 1998, (Mex.), available at: *https://www.congresooaxaca.gob.mx/docs65.congresooaxaca.gob.mx/legislacion_estatal/Ley_de_Derechos_de_los_Pueblos_y_Comunidades_Indigenas_y_Afromexicano_del_Estado_de_Oaxaca_(Dto_ref_778_aprob_LXV_Legis_18_ene_2023_PO_4_2a_secc_28_ene_2023).pdf*; Ley de Derechos, Cultura y Organización Indígena del Estado de Quintana Roo, [Law of the Rights, Culture and Indigenous organization of the State of Quintana Roo], as amended, Periódico Oficial Quintana Roo, July 29 1998, (Mex.), available at: *http://documentos.congresoqroo.gob.mx/leyes/L76-XVI-20220824-L16202208242 46-ley-derechos.pdf*.

[8] Constitución Política de los Estados Unidos Mexicanos [CPEUM], Art. 6, Diario Oficial de la Federación [DOF] Feb. 5th, 1917 (Mex.), *available at: https://www.diputados.gob.mx/*

religion, and associate freely. Indigenous culture laws therefore do not substantively expand indigenous peoples' rights. They also do not create institutional mechanisms for indigenous peoples to exercise the rights these laws enunciate. Nevertheless, they are on the books in 27 out of 32 Mexican states. It seems that states adopted indigenous culture laws in the 2000s to perfunctorily fulfill the federal Constitution's provision stating that "[t]he recognition of indigenous peoples and communities shall take place in states' constitutions and laws."[9]

More recently, courts have directed electoral institutes to adopt legislative quotas for members of indigenous communities. These policies first originated in the state of Oaxaca. Starting in 1995, Oaxaca's congress progressively modified its Electoral Procedure Code to enable indigenous communities to autonomously elect their local governments. The more recent expansion of indigenous legislative quotas across the country has, however, been propelled mainly by court rulings rather than legislative acts. Over the last decade, indigenous communities have brought a series of suits to the federal electoral courts seeking the expansion of the rights associated with self-determination. Electoral courts have largely sided with the communities, resulting in the adoption of these so-called "affirmative action" policies.

In sum, there have been two themes in Mexico's interpretation of indigenous self-determination: (1) the prominence of culture, and (2) the association of self-determination with electoral processes. Courts systematically justify their rulings in the language of "cultural plurality." They couch electoral affirmative action policies as a way to protect indigenous communities' cultures and "worldviews."

These interpretative choices are neither obvious nor necessary. Authorities could have interpreted the newly created legal category of "indigenous peoples and communities" in racial or linguistic terms rather than as a question of subjective consciousness, culture, or worldviews. Indigenous self-determination could also have been developed in a different area of law, rather than electoral law. Indigenous self-determination could have been taken up in administrative, tax, or criminal subject matters, for example. Nonetheless, for the time being indigenous self-determination remains circumscribed to electoral law and procedure.

I draw three conclusions from this survey of Mexican law's codification of indigenous self-determination. First, despite the language of autonomy and legal pluralism that often accompanies court rulings and administrative decrees, the new legal framework has mostly affected the Mexican state's positive law. Currently, the majority of the laws and policies associated with indigenous self-determination have been directed at ensuring that federal and state legislative bodies have at least some indigenous legislators. Laudable as these policies may be, they are more about ensuring a *diverse* composition of government (spe-

LeyesBiblio/pdf/CPEUM.pdf.

[9] *Id.* at Art. 2, Par. 4.

cifically Congress) than about securing the legal infrastructure for indigenous self-government. There are some exceptions (notably Oaxaca's autonomous indigenous local governments and a few concrete cases in Michoacán, Guerrero, and Hidalgo).[10] Still, most national policies related to indigenous self-determination do not quite attain the creation of independent, autonomous jurisdictions that "decide their own forms of internal coexistence and social, economic, political and cultural organization," as the Constitution sets forth.[11]

Mexican courts and legislators have silently moved from interpreting "self-determination" as *autonomy* to rendering it as diverse legislative *representation*. While autonomy (as self-government) and representation may *sometimes* go hand in hand, this connection is only contingent.

The clearest connection of autonomy and representation may be seen in the institution of the Senate, where the (partially) self-governing states each send three senators as representatives.[12] In this case, senators are representatives of the states and thereby an expression of their membership in the federation as independent political entities. Nevertheless, legislators elected under indigenous quota rules must only fulfil the requirement of being indigenous without necessarily having been independently elected by their community. In fact, indigenous legislators are chosen from the election at large, with all persons — indigenous or not— voting in the elections of which they are candidates. For example, some electoral rules require that all parties nominate indigenous candidates in certain electoral districts. This guarantees that the winning candidate is indigenous. While these electoral districts are all majority indigenous, they are not exclusively so, and many different ethnicities and communities often reside therein. This means that while the candidate will indeed be indigenous, they will formally be a representative of their district, not any given indigenous community.

As the second half of this article will show, electoral quotas are less about autonomy than the representation of the "cultural plurality of Mexican society," as a decree from the National Electoral Institute recently put it.[13]

---

[10] See: Janine M. Otálora Malassis, Casos Relevantes de La Defensoría Pública Electoral Para Pueblos y Comunidades Indígenas 53-68 (2020).

[11] *Id.* at Art. 2, Frac. A, Inc. I.

[12] The Mexican Senate is composed of three senators from each state as well as 32 senators elected through proportional representation. This means that in practice a given state could have more than three senators. Still, it is true that each state will be represented by at least three senators.

[13] Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE APRUEBAN LOS CRITERIOS APLICABLES PARA EL REGISTRO DE CANDIDATURAS A DIPUTACIONES POR AMBOS PRINCIPIOS QUE PRESENTEN LOS PARTIDOS POLÍTICOS NACIONALES Y, EN SU CASO, LAS COALICIONES ANTE LOS CONSEJOS DEL INSTITUTO, PARA EL PROCESO ELECTORAL FEDERAL 2020-2021, [Agreement of the General Council of the National Electoral Institute through which the council approves the criteria for the nomination before the councils of this institute of candidatures for federal deputies

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

II. State Legislation Codifying Indigenous Self-Determination

At the state level, three main legal instruments regulate indigenous rights. States have enacted (1) "indigenous culture" laws, (2) "indigenous justice" laws, or (3) indigenous quotas in their electoral procedure codes. Modifications to electoral codes are of two kinds. Some recently modified codes outline procedures for designating one reserved indigenous spot in the municipal council. Others set out ways for indigenous groups to elect all members of their local governments through community assemblies (rather than ordinary urns and ballots). Before 2018, Oaxaca was the only state to have any such modified electoral procedures.

The table in the Appendix shows the laws each state enacted by April 2021, when I concluded the legislative review for this article. As this is a rapidly changing field, state legislatures may have made modifications since. Three of Mexico's thirty-two states have enacted no legislation regulating indigenous rights. Sixteen states plus Mexico City have enacted "indigenous culture" laws but have not modified the electoral code and have passed no bill regulating "indigenous justice." Seven states have passed both "indigenous culture" bills and modified the electoral code to enable some form of indigenous representation. Two states have "indigenous justice" and "indigenous culture" laws but no modifications to the electoral code. One state has only an "indigenous justice" act. Only the state of Oaxaca has enacted all three forms of legislation. Among the nine states that have modified their electoral codes to enable some form of indigenous representation, six use a quota system to reserve a spot on the municipal council to a member of an indigenous community.[14] Political parties nominate the reserved indigenous representative on the municipal council. Only three states' electoral codes spell out mechanisms to perform elections outside the political party system.

The laws in each of these classes significantly resemble one another. All "indigenous culture" and "indigenous justice" laws have remarkably similar language to the point of being nearly identical in substance content and form. The exception is Mexico City, whose recently passed indigenous culture law has a markedly different paradigm from all other states. It broadens the notion of "indigenous community" to include "barrios" (neighborhoods).[15] Mexico

---

THROUGH BOTH PRINCIPLES PRESENTED BY NATIONAL POLITICAL PARTIES AND THEIR COALITIONS, FOR THE 2020-2021 FEDERAL ELECTIONS], INE/CG572/2020, 76., (Mex.), available at: *https://repositoriodocumental.ine.mx/xmlui/bitstream/handle/123456789/115204/CGex202011-18-ap-7.pdf*.

[14] The entity governing over a municipality is called *ayuntamiento*. It is composed of six or more *regidores*, a *síndico/a* and one *municipal president*. I shall render *ayuntamiento* as municipal council. Cf. Constitución Política de los Estados Unidos Mexicanos [Const.], as amended, Article 115, Diario Oficial de la Federación [D.O.], February 5th 1917 (Mex).

[15] LEY DE DERECHOS DE LOS PUEBLOS Y BARRIOS ORIGINARIOS Y COMUNIDADES INDÍGENAS RESIDENTES EN LA CIUDAD DE MÉXICO, [LAW OF RIGHTS OF INDIGENOUS PEOPLES AND BARRIOS AND INDIGENOUS COMMUNITIES RESIDING IN MEXICO CITY], GACETA OFICIAL DE LA CIUDAD DE MÉXI-

City's law also walks away from even the nominal pretense of "autonomy." It grants certain rights to the class of persons it designates as "indigenous." Still, it doesn't seem to be setting forth institutional systems for indigenous communities to exercise self-government. Among the "indigenous justice" laws, the exception is Zacatecas. Its "Community Justice" law is almost identical to other "indigenous justice" laws. However, Zacatecas's law does not once specify *indigenous* communities and makes the institution of "community judges" for low-stakes disputes available to the entire population.[16] Barring these two exceptions and setting aside electoral codes, the remaining sixteen "indigenous culture" laws and all four "indigenous justice" laws are sufficiently similar to discuss each as a single *type*.[17]

III. Indigenous Culture Laws

States' "indigenous culture" laws make broad declarations about indigenous "self-determination" but limit the legally sanctioned scope of what that "self-determination" entails to the point of making it trivial. They enunciate a series of cultural rights as if they were concessions to indigenous communities but direct no authorities or private actors in such a way as to make these broadly available.

"Indigenous culture" laws have language to the effect that the state "recognizes" indigenous peoples' autonomy and self-determination. They also explicitly state that indigenous autonomy must not infringe on existing legislation. For example, Tlaxcala's law guarantees indigenous peoples':

> The autonomy and self-determination to establish forms of internal government, the development of their culture and social norms, *all in a framework that respects the federal and state constitutions, as well as all laws that may emanate from them*.[18]

---

co, December 20 2019, (Mex), available at: *https://data.consejeria.cdmx.gob.mx/images/leyes/leyes/LEY_DERECHOS_DE_PUEBLOS_Y_BARRIOS_ORIGINARIOS_Y_COMUNIDADES_INDIGENAS_RESIDENTES_EN_LA_CDMX_2.4.pdf*.

[16] Ley de Justicia Comunitaria del Estado de Zacatecas, [Zacatecas Indigenous Community Justice Law], as amended, Periódico Oficial del Gobierno del Estado de Zacatecas, July 10 2002, (Mex), available at: *https://www.congresozac.gob.mx/64/ley&cual=70&tipo=pdf*.

[17] A 2018 report from the Chamber of Deputies (lower house of Congress) offers a succinct overview of indigenous Culture laws. It is now a little outdated for several states, and blends together indigenous culture and indigenous justice laws, but it is a helpful first approximation. See Claudia Gamboa Montejano & Sandra Valdés Robledo, Los Usos Y Costumbres De Pueblos Indigenas Derecho Comparado A Nivel Estatal (2018).

[18] Ley de Protección, Fomento y Desarrollo a la Cultura Indígena Para el Estado de Tlaxcala, [Law for the Protection, Fostering and Development of Indigenous Culture in the State of Tlaxcala], as amended, Art. 8 frac VI, Periódico Oficial de Tlaxcala, April 7 2006, (Mex), available at: *https://sfp.tlaxcala.gob.mx/pdf/normateca/ley%20de%20proteccion%20fo-*

Indigenous communities are "autonomous" but must respect all existing legislation. However, current legislation distributes most powers associated with public government to state and federal courts, municipalities, the state executive power, the state legislature, police forces, etc. The only way an indigenous community could legally "establish forms of internal self-government" would be if some law vested certain legal powers in it. Indigenous communities across Mexico have long exercised a degree of *de facto* autonomy in administrating their local affairs. One could think that the constitutional "recognition" of indigenous autonomy might involve some form of legal ratification of this *de facto* power. Despite their nominal recognition, indigenous culture laws do not give indigenous local governments the power that comes with being a state-sanctioned authority.

"Indigenous Culture" laws also "confer" upon indigenous peoples several rights already available to the population as a whole. For instance, Nayarit's law states: "indigenous peoples and communities may constitute associations for the legal purposes that they deem convenient."[19] This is written as if it was a right specific to indigenous peoples, but it is not. The federal Constitution guarantees a right of free association to all persons.[20] The Civil Code outlines procedures for any persons to establish nonprofit associations.[21] Federal mercantile and agrarian laws also set forth procedures for the creation of business and agrarian corporations. Indigenous peoples may constitute legal associations through these and other channels, like any persons. Nevertheless, there is no dedicated mechanism for indigenous communities to establish legal associations *as indigenous communities* in Nayarit or any other state. The declaration that indigenous peoples have the right to establish legal associations is thus either superfluous (if it means that they may establish legal persons through ordinary channels) or hollow (if it was meant to authorize a new dedicated form of indigenous collective legal personhood).

Indigenous Culture laws emphasize indigenous peoples' right to exercise their culture and language. However, it is unclear that these statements alone have a practical application, given that everyone has those rights. For instance, Chihuahua's law writes that "within the framework of their autonomy," indigenous communities have the right to "develop, preserve, use and enrich their

---

mento%20y%20desarrollo%20a%20la%20cultura%20indigena%20para%20el%20estado%20de%20tlaxcala.pdf.

[19] Ley de Derechos y Cultura Indígena del Estado de Nayarit, [Nayarit Indigenous Culture and Rights Law], as amended, Art. 19, Periódico Oficial Nayarit, December 18 2004, (Mex), available at: *https://congresonayarit.gob.mx/wp-content/uploads/QUE_HACEMOS/LEGISLACION_ESTATAL/leyes/derechos_y_cultura_indigena_del_estado_de_nayarit_ley_de.pdf.*

[20] Constitución Política de los Estados Unidos Mexicanos [CPEUM], as amended, Article 9, Diario Oficial de la Federación [DOF], February 5th 1917, (Mex).

[21] Código Civil Para el Estado de Nayarit [Nayarit Civil Code], as amended, Arts. 2041 - 2108, Periódico Oficial Nayarit, August 22 1981, (Mex), available at: *https://www.nayarit.gob.mx/transparenciafiscal/marcoregulatorio/ordenamientos/código%20civil%20para%20el%20estado%20de%20nayarit.htm.*

language, ritual systems, and in general, their tangible and intangible cultural legacy."[22] Once again, it is unclear that this declaration alone has any legal effects, given that all citizens, indigenous or not, already have a right to freely exercise their language and culture.

IV. Indigenous Justice

The National Penal Procedure Code as well as legislation in four states —Michoacán, Quintana Roo, San Luis Potosí, and Yucatán— set out mechanisms for indigenous communities to act as judges in their internal conflicts. The state-level laws create "indigenous community judges." The Penal Procedure Code outlines cases in which the District Attorney may withhold the exercise of its jurisdiction in favor of indigenous justice.

Indigenous justice is a promising project, but it remains somewhat limited. Indigenous judges have jurisdiction only when both parties opt into it. It is the state judiciary that appoints and removes indigenous judges.[23] Moreover, most serious crimes and larger civil suits are explicitly excluded from indigenous tribunals' jurisdiction. Therefore, indigenous justice works more like a pre-judicial alternative dispute resolution mechanism than as compulsory state tribunals.

As to criminal jurisdiction, Mexico's 2014 National Penal Procedure Code sanctions indigenous tribunals but also determines their limits. Article 420 provides for indigenous communities to bypass ordinary criminal courts in certain circumstances.[24] When a crime affects the rights of an indigenous community or one of its members and the perpetrator is a member of that same community, the community may elect to address the crime according to its own norms. If the District Attorney has already filed criminal charges, any member of the community may file a motion requesting that the District Attorney "extinguish criminal action." However, both the victim and the accused must "accept the way in which the community proposes to resolve the conflict." Essentially, if both the victim of the crime and the accused agree on an extrajudicial resolution to the conflict, a judge can instruct the District Attorney to dismiss charges. The Penal Procedure code excludes all "serious" crimes from indigenous justice. While the Penal Procedure Code does not state it explicitly, it is usually

---

[22] Ley de Derechos de los Pueblos Indígenas del Estado de Chihuahua [Law of the Rights of Indigenous Peoples of the State of Chihuahua], as amended, Art. 9, Periódico Oficial de Chihuahua, June 29 2013, (Mex), available at: *https://www.congresochihuahua2.gob.mx/biblioteca/leyes/archivosLeyes/1003.pdf*.

[23] Ley de Justicia Indígena del Estado de Quintana Roo [Quintana Roo Indigenous Justice Law], as amended, Periódico Oficial Quintana Roo, December 31 2012, (Mex), available at: *http://documentos.congresoqroo.gob.mx/leyes/L1320121231234.pdf.*

[24] Código Nacional de Procedimientos Penales [CNPP] [National Criminal Procedure Code], as amended, Art. 420, Diario Oficial de la Federación [DOF], March 5 2014, (Mex), available at: *https://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP.pdf.*

Mexican Law Review, New Series, vol. XVII, num. 1, July - December 2024, pp. 3-38
ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

understood that "serious" crimes are those that call for obligatory pre-trial detention and that were committed using violence. These crimes include homicide, rape, kidnapping, human trafficking, corruption, house theft, all crimes committed using a guns or explosives, and many more.

The Penal Procedure Code's indigenous justice provisions resemble sections on alternative dispute resolution mechanisms. Articles 186 through 190 of the code stipulate the procedure for a "reparation agreement." When the victim of a crime and the person accused of committing it reach a reparation agreement, they can file a motion for the District Attorney to dismiss charges. As with indigenous justice, only nonserious crimes are eligible for this form of resolution, and both parties must voluntarily opt into it.

In addition to the National Penal Procedure Code, four states have laws regulating "indigenous tribunals." All four are very similar, but Quintana Roo's law is the most expansive. I shall take Quintana Roo as the exemplary case.

Quintana Roo's indigenous justice law stipulates the jurisdiction of indigenous tribunals. It echoes the National Penal Procedure Code in stipulating three different times that the parties to a procedure must voluntarily opt into it.[25] In criminal cases, indigenous judges may not impose prison sentences of any duration as penalties, and the maximum fine they may impose is roughly 150 US dollars.[26] They have criminal jurisdiction only for theft, stealing up to two cattle heads, fraud, breach of trust, and (somewhat arbitrarily) crimes associated with beekeeping.[27] Quintana Roo's law also states that "crimes that the law qualifies as severe are expressly excluded from the competence of indigenous judges."[28] At all times, the state supreme court retains the right to take over jurisdiction of the case if it deems it "socially important." For civil suits, indigenous judges can offer themselves as arbiters, but they cannot force the parties to accept arbitration.

V. Modifications to Oaxaca's Electoral Procedure Law

Through a series of reforms going back to 1995, the state of Oaxaca instituted policies allowing indigenous communities to elect local governments through procedures the communities themselves determine. In this respect, Oaxaca is the exception among states. As of 2018, 417 out of Oaxaca's 570 total municipalities elect their mayors and municipal assemblies through modified electoral

[25] Ley de Justicia Indígena del Estado de Quintana Roo [Quintana Roo Indigenous Justice Law], as amended, Arts. 4, 11, 13, Periódico Oficial Quintana Roo, December 31 2012, (Mex).

[26] *Id.* at Art. 21.

[27] *Id.* at Art. 17.

[28] *Id.*

procedures determined by the communities.[29] Oaxacan law outlaws national political parties from participating in indigenous local elections, meaning that these policies presume a strict separation of indigenous local politics and national politics.

Oaxacan electoral law recognizes two electoral "regimes" in municipal elections, the "party system" and the "indigenous normative system." Municipalities' residents may change their electoral regime from the "party system" to the "indigenous normative system" through a community assembly in which two-thirds of the eligible residents vote in favor of the change.[30] Residents then submit records of the general assembly to the State Electoral Institute. In turn, the Electoral Institute holds a vote in the municipality, which again must be ratified by two-thirds of the residents.[31] If the electoral Institute's result confirms the original petition, it approves the change and issues a decree delegating the powers to host and organize elections to the community assembly.[32]

Once a municipality has switched to the indigenous normative system, its community assembly (or several of them) becomes the authority competent to organize the elections. Community assemblies have the discretion to determine the exact procedures to elect the municipal president and municipal council members [*regidores*].[33] Community assemblies can also determine the elected officers' term length and impose eligibility requirements above and beyond those set forth by the federal and local constitutions.[34] Basic eligibility requirements for office are the same across all municipalities (indigenous or not), as are the powers associated with them.[35]

Throughout the process, the State Electoral Institute retains several rights. The Electoral Institute must receive a written report of the "community statutes" or a "report of the institutions, norms, practices, and procedures of their

---

[29] Instituto Estatal Electoral y de Participación Ciudadana de Oaxaca [IEEPCO], ACUERDO POR EL QUE SE APRUEBA EL CATÁLOGO DE MUNICIPIOS SUJETOS AL RÉGIMEN DE SISTEMAS NORMATIVOS INDÍGENAS DEL ESTADO DE OAXACA Y SE ORDENA EL REGISTRO Y PUBLICACIÓN DE LOS DICTÁMENES POR LOS QUE IDENTIFICAN LOS MÉTODOS DE ELECCIÓN DE SUS AUTORIDADES MUNICIPALES [Agreement through which the catalogue of municipalities subject to the indigenous normative system regime of the State of Oaxaca is approved and the registration and publication of the expert opinions identifying the election methods for their municipal authorities is proclaimed], IEEPCO-CG-SNI-33/2018, (2019), (Mex), available at: *https://www.ieepco.org.mx/archivos/acuerdos/2018/IEEPCOCGSNI332018.pdf*.

[30] Ley de Instituciones y Procedimientos Electorales del Estado de Oaxaca [Law for Electoral Procedures and Institutions of the State of Oaxaca], as amended, Art. 274, Frac. II, Periódico Oficial de Oaxaca, June 3 2017, (Mex), available at: *https://www.ieepco.org.mx/archivos/documentos/2020/MarcoJuridico/LIPEEO.pdf.*

[31] *Id.* at Art. 275, Frac. IV.

[32] *Id.* at Art. 275, Frac. V.

[33] *Id.* at Art. 278, Frac. II.

[34] *Id.* at Art. 278, Fracs. I & IV.

[35] *Id.* at Art. 277.

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

indigenous normative systems."[36] The Electoral Institute ultimately certifies the election and can step in as arbitrator in case of disputes.[37]

The so-called "community assembly" is a central Institution in Oaxaca's codification of indigenous autonomy. Community general assemblies have at least one origin in agrarian law. Throughout the twentieth century, the Mexican state undertook a land distribution program for rural communities, including many indigenous communities. Distributed lands are known as *ejidos* and are owned collectively by the community. These lands have been used both for agricultural exploitation and urban development, with a large majority of indigenous towns located on *ejido* lands. Over the twentieth century, the federal government adopted several different agrarian laws and codes, which outlined in increasingly more specific terms the internal governance of ejido communities. As the agrarian law stipulates, "The ejido's supreme organ is the assembly, in which all ejido members participate."[38] A general assembly must approve most important acts in an ejido. Over time, ejido assemblies took on more *de facto* attributes than those initially vested in them by agrarian law. Community assemblies became an institutional vehicle through which most issues relevant to the community were discussed and adjudicated regardless of whether they were related to agrarian matters.[39]

In recognition of the community assembly's broad role, Oaxaca's Constitution and several laws, including the Electoral Procedure Law, recognize the community assembly as the primary indigenous authority.[40] Electoral Courts have ratified Oaxaca's recognition, issuing a jurisprudential precedent stating that "general community assemblies express the majority will" of indigenous communities.[41] However, despite all the talk of "legal pluralism," one of the community assembly's origins goes back to positive state agrarian law. Indeed, the fact that community assemblies are sufficiently generalized that Oaxacan law can take them as the indigenous authority *par excellence* across all 417 in-

---

[36] *Id.* at Art. 278, Frac. I.

[37] *Id.* at Arts. 282 & 284.

[38] Ley Agraria [LAG] [Agrarian Law], as amended, Art. 22, Diario Oficial de la Federación [DOF], February 26 1992, (Mex), available at: *https://www.diputados.gob.mx/LeyesBiblio/pdf/LAgra.pdf*.

[39] Araceli Burguete Cal y Mayor, *Municipalización del gobierno indígena e indianización del Gobierno Municipal en América Latina*, 6 *Rev. Pueblos Front. Digit. 38* (2011), available at: *http://www.scielo.org.mx/scielo.php?script=sci_abstract&pid=S1870-41152011000100038&lng=es&nrm=iso&tlng=es* (last visited Jan 17, 2022).

[40] Constitución Política del Estado Libre y Soberano de Oaxaca [Oaxaca Const.], as amended, Art. 22, Periódico Oficial de Oaxaca, April 4 1922, (Mex), available at: *https://www.oaxaca.gob.mx/cocitei/wp-content/uploads/sites/48/2019/07/CONSTITUCION-POLITICA-DEL-ESTADO-LIBRE-Y-SOBERANO-DE-OAXACA.pdf.*

[41] COMUNIDADES INDÍGENAS. INTEGRACIÓN DE LA ASAMBLEA GENERAL COMUNITARIA (LEGISLACIÓN DE OAXACA), Pleno de la Sala Superior del Tribunal Electoral [SUP-TEPJF] [Electoral Tribunal], Gaceta de Jurisprudencia y Tesis en materia electoral, Tribunal Electoral del Poder Judicial de la Federación, Año 4, Número 9, 2011, Tesis XL/2011, páginas 51 y 52, (Mex).

digenous municipalities is a product of the state's twentieth-century agrarian policies.

Nevertheless, Oaxacan legislators intended elections held under indigenous normative systems to be a vehicle for communities to exercise direct control over local government independently from national politics. This intended independence is apparent in Oaxaca's prohibition of political parties, political organizations, civil associations, or external agents from participating in indigenous municipal elections.[42] This prohibition is unique to Oaxaca and reflects the original commitment to a much more robust notion of "autonomy and self-determination" than the one that would eventually be generalized at the national level. Oaxacan legislators appear to have regarded indigenous communities as relatively independent political societies whose internal politics and governance ought to be distinct from the back and forth of national politics. The prohibition of all "external agents" from participating or "meddling" in indigenous elections is comparable to similar provisions prohibiting "foreign agents" from participating in national electoral processes. Consider, for example, all the discussion surrounding the possibility of "Russian interference" in the 2016 US election. Mexico's "Law of Political Parties" similarly prohibits candidates and parties from any form of economic aid from foreign agents.[43]

When Mexico's federal electoral courts expanded provisions that were vaguely inspired by Oaxaca's model to the national level in 2017, the courts moved from autonomy *stricto sensu* to *representation*. Because of some intricacies of the Mexican legislative election system, it was practically impossible *not* to use political parties in the institution of indigenous legislative quotas. When federal electoral courts mandated the implementation of indigenous affirmative action policies, they also abandoned Oaxacan law's strict differentiation between indigenous and non-indigenous electoral processes (tellingly named the "political party system").

In the last four years, a handful of other states have modified their electoral procedure laws to adopt policies similar to Oaxaca's. These changes were promoted by indigenous communities who filed strategic lawsuits in federal courts. Often ruling in favor of the communities, courts ordered state congresses to modify their electoral codes. In its resolution to a case brought by a representative of Guerrero's indigenous communities, for instance, the Superior Chamber of the Electoral Tribunal instructed Guerrero State's Congress to

> Harmonize its local Constitution and internal legislation with the [federal] Constitution and international treaties on indigenous rights, as regards

[42] Ley de Instituciones y Procedimientos Electorales del Estado de Oaxaca [Law for Electoral Procedures and Institutions of the State of Oaxaca], as amended, Art. 281, Num. 1, Frac. II, Periódico Oficial de Oaxaca, June 3 2017, (Mex).

[43] Ley General de Partidos Políticos [Law of Political Parties], as amended, Art 25 section i), Diario Oficial de la Federación [DOF], May 23 2014, available at: *https://www.diputados.gob.mx/LeyesBiblio/pdf/LGPP.pdf*.

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

guaranteeing their access in equal conditions to popular election offices in the state, being required to implement affirmative actions in their favor, which actions must contribute to the materialization of indigenous persons' effective participation in elected offices.[44]

The Guerrero State Congress complied with the court order by modifying its electoral code in 2018. The modified provisions of the Electoral code essentially mimicked those initially contained in Oaxaca's statutes, making Guerrero one of three states to allow indigenous municipalities to autonomously elect their local government. Guerrero also wrote into law some provisions for "indigenous quotas" in municipal councils. These provisions emulated affirmative action policies previously undertaken by federal and state electoral institutes in compliance with court mandates. I will discuss these sorts of court-mandated affirmative action policies below.

Through most of the late 1990s and 2000s, Oaxaca was unique in legislating indigenous elections. Guerrero and Hidalgo have since adopted similar policies following court mandates.

VI. Court-Mandated Legislative Quotas in Favor of indigenous Communities

In the last decade, especially in the last five years, electoral authorities have been relatively proactive in adopting pro-indigenous policies. Most notably, Mexico's National Electoral Institute (the federal agency responsible for organizing elections) has adopted a policy requiring political parties to nominate a minimum number of indigenous candidates for legislative elections. State electoral institutes have adopted similar policies.

This section traces some of the most significant recent developments in so-called "indigenous affirmative action" policies. I will focus mainly on developments at the federal level because tracing the intricate back-and-forth between electoral institutes' administrative decrees and courts rulings on those decrees in all 32 states would be more cumbersome than informative. Nevertheless, electoral courts in several states have implemented similar policies, as exemplified by the Guerrero ruling cited above. I will, however, discuss one case arising at the local level that is widely regarded as the watershed moment in indigenous electoral jurisprudence.

Oaxaca's early experience with modified electoral procedures stands in the background as the first government entity to have coupled the right of

[44] Hipólito Arriaga Pote v. Tribunal Electoral Del Estado de Guerrero, Sala Regional Ciudad de México–Tribunal Electoral [SCM TEPJF] [Mexico City Regional Chamber, Electoral Tribunal], SCM-JDC-402/2018, p. 52, (Mex), available at: *https://www.te.gob.mx/salasreg/ejecutoria/sentencias/df/SCM-JDC-0402-2018.pdf*.

self-determination and electoral law. As noted in the introduction, there is no necessary connection between an abstract right of self-determination and electoral law. Indeed, countries like the US, which recognize indigenous peoples as partially "sovereign" nations, have not associated indigenous sovereignty with electoral law and practice. Oaxaca's rather creative application of self-determination to electoral procedures served as the precedent that made it natural for federal electoral to later adopt pro-indigenous policies. By the time in the early 2010s that federal electoral courts began presiding over lawsuits seeking to expand indigenous rights other states, the courts had been resolving Oaxacan indigenous electoral disputes for over a decade.

A 2011 constitutional reform changed how Mexican courts adjudicate human rights cases.[45] Throughout most of the twentieth century, judicial review powers were minimal. *Stare decisis* did not generally hold. Judicial rulings benefited only the party who brought the suit. A series of reforms since the 1990s had slowly set up mechanisms to establish binding judicial precedents in some circumstances. The rules for when precedents are binding are complex. In electoral matters, there usually have to be three consecutive rulings in the same sense before a precedent is considered binding. Moreover, judicial precedents are usually only obligatory for courts, not other government agencies.

Furthermore, before 2011, it was unclear whether the Federal Electoral Tribunal, the court of last resort in electoral subject matters, could adjudicate violations of constitutional human rights. This uncertainty led to a 2008 case before the Inter-American Court of Human Rights, in which the Mexican State was found guilty of not having appropriate mechanisms for citizens to allege violations of constitutional rights in electoral affairs. [46] This violated the right to a fair trial under article 8 of the Inter-American Convention of Human Rights. Following that ruling, electoral courts adopted a new trial in which citizens could allege human rights violations. Additionally, the 2011 constitutional reform settled this ambiguity by stipulating that "all authorities, in their areas of competence, are obligated to promote, respect, protect and guarantee Human Rights."[47] It gave the Electoral Tribunal unambiguous jurisdiction over alleged violations of constitutionally protected human rights.

---

45 Constitución Política de los Estados Unidos Mexicanos [CPEUM], as amended August 14 2001, Article 1, Diario Oficial de la Federación [DOF], February 5th 1917 (Mex).

46 See: Mónica Rodriguez, *Castañeda Gutman v. Mexico*, 36 *Loy LA Int'l Comp Rev*, 1949.

47 Constitución Política de los Estados Unidos Mexicanos [CPEUM], as amended August 14 2001, Article 1, Diario Oficial de la Federación [DOF], February 5th 1917 (Mex).

VII. Indigenous Elections in States Whose Laws do not Foresee the Mechanism: SUP-JDC-9167/2011

In 2011, a Purépecha Community from Cherán (Michoacán State) successfully sued the state electoral institute, demanding that it implement alternative electoral mechanisms similar to those of Oaxaca. The Cherán community petitioned the Electoral Institute to adopt such policies, which the Institute denied, arguing that it had no legal basis to do so since Michoacán's electoral procedure law contained no provision to that effect. The community appealed the Institute's decision before the Federal Electoral Tribunal, arguing that their Constitutional right of self-determination guaranteed them the possibility of electing their own authorities, like communities in Oaxaca. On the second appeal, the Superior Chamber of the Federal Electoral Tribunal relied heavily on the new human rights constitutional provisions to side with the Cherán community, arguing that Michoacán Congress's "legislative omission" could not trump the community's constitutional human right to self-determination.

Even though the court did not employ the language of distribution of powers, it is useful to understand the Cherán decision in terms of a struggle between different authorities' powers. As other scholars have argued, one of indigenous communities' greatest fights in the era of self-determination has been for the recognition and strengthening of a "fourth order of government."[48] Since its 1917 inception, the Federal Constitution sets out "three orders of government," the federal, state, and municipal. The Mexican Constitution's articles 115-122 outline a distribution of powers between the federal government, the sovereign states, and the autonomous municipalities. According to these provisions, local government is the provenance of municipalities. Rural and indigenous communities have long exercised *de facto* forms of sub-municipal local government within their communities.[49] Many conflicts that ultimately make their way to the federal courts involve tensions between indigenous communities and their municipal seats, which non-indigenous persons often control. Because outside of Oaxaca (and sometimes even within Oaxaca) municipalities include both non-indigenous settlements and (usually smaller) indigenous towns, many of indigenous communities' struggles have in practice consisted in seeking a transfer of municipalities' powers directly to the communities. For instance, in one ultimately unsuccessful bid, Michoacán communities petitioned the state congress to modify the state's territorial distribution to create more municipalities so that the municipal territory would coincide with each indigenous community in the state.[50]

---

[48] Orlando Aragón Andrade, *La Emergencia Del Cuarto Nivel de Gobierno y La Lucha Por El Autogobierno Indígena En Michoacán, México*, 94 *Cah. Am. Lat. 57* (2020).

[49] Helga Baitenmann, Matters of Justice: Pueblos, the Judiciary, and Agrarian Reform in Revolutionary Mexico (2020).

[50] Aragón Andrade, *supra* note 45 at 63; María del Carmen Ventura Patiño, Volver a La Comunidad: Derechos Indígenas y Procesos Autonómicos En Michoacán (2010).

In short, 2011 Cherán lawsuit was a bid for the community to exercise more direct control over its municipality. A series of more recent cases, also before the Electoral Tribunal, have gone further, with another Michoacán community seeking to control a portion of the municipal budget.[51] That community won its suit, but implementation has been slow and imperfect, partly because in adjudicating a dispute over local government, the Electoral Tribunal was quite transparently overstepping its jurisdiction, which is limited to electoral disputes. Determining the allocation of a municipal budget would, in principle, be the competence of the "autonomous" municipalities' governing bodies. Any disputes surrounding this allocation would be under the jurisdiction of administrative tribunals.[52]

Since the Cherán decision, other communities have filed similar suits. By and large, electoral courts have sided with communities, directing electoral institutes to set up alternative electoral mechanisms for indigenous peoples through administrative fiat even when extant electoral law does not mandate it.

VIII. Mexico City Constituent Assembly: SUP-RAP-71/2016

In 2017, Mexico City adopted a new constitution. The new constitution was drafted and eventually approved by a Constituent Assembly composed of 100 legislative representatives. 60 representatives were elected through proportional voting. The other 40 representatives were appointed by the two chambers of Congress, the President of the Republic, and the Mayor of the Federal District (since renamed Mexico City). The National Electoral Institute (INE) organized the election of the 60 elected representatives through a series of administrative decrees published in 2016.[53] Forty-two separate lawsuits filed by political

---

[51] Janine M. Otálora Malassis, Casos Relevantes de La Defensoría Pública Electoral Para Pueblos y Comunidades Indígenas 53-68 (2020).

[52] *Id.*

[53] Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL, POR EL QUE SE EMITE CONVOCATORIA PARA LA ELECCIÓN DE SESENTA DIPUTADOS, PARA INTEGRAR LA ASAMBLEA CONSTITUYENTE DE LA CIUDAD DE MÉXICO, [Agreement of the General Council of the National Electoral Institute, which issues a call for the election of sixty deputies to integrate the constituent assembly of Mexico City], INE/CG52/2016, 52, (Mex), available at: *https://portalanterior.ine.mx/archivos3/portal/historico/contenido/Estados/rsc/docs/CGext20160204_ac_P1.pdf;* ; Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE APRUEBA EL PLAN Y CALENDARIO INTEGRAL DEL PROCESO ELECTORAL RELATIVO A LA ELECCIÓN DE SESENTA DIPUTADOS POR EL PRINCIPIO DE REPRESENTACIÓN PROPORCIONAL PARA INTEGRAR LA ASAMBLEA CONSTITUYENTE DE LA CIUDAD DE MÉXICO, SE DETERMINAN ACCIONES CONDUCENTES PARA ATENDERLOS, Y SE EMITEN LOS LINEAMIENTOS CORRESPONDIENTES, [Agreement of the General Council of the National Electoral Institute approving the comprehensive plan of the elections relating to the election of sixty deputies by the principle of proportional

parties, private companies, nonprofit associations, and private individuals challenged INE's decrees.

In a single ruling addressing ten of the 42 challenges to INE's original proposal for the election, the Federal Electoral Tribunal ordered INE to implement a series of affirmative action policies to ensure that "the youth" and indigenous communities would be represented in Mexico City's Constituent Assembly. Moreover, INE had originally implemented a series of gender parity quotas to ensure that a roughly equal number of men and women would be elected as representatives to the Constituent Assembly.

Elections for Mexico City's Constituent Assembly were carried out through proportional representation. Under proportional representation, political parties submit an ordered list of candidates as nominees. The electorate votes for a political party, not individual candidates. Once the results of the election are in, parties are awarded a number of legislative seats proportional to the percentage of votes they received in the election. These seats are occupied by the first candidates in each party's ordered list. For example, suppose there are 50 legislative seats up for grabs, and only three political parties A, B and C. Party A earns 20% of the vote. Party B gets 70%. And party C gets 10%. Each party then gets a proportional number of seats. Party A gets 10 seats; B gets 35; and C gets 5. These seats are then assigned to the first candidates in each party's ordered list. The first 10, 35 and 5 individuals in each party's list become representatives.

INE's affirmative action policies in favor of indigenous communities and the youth were formally identical. They obligated political parties to nominate at least one indigenous person and one person between the ages of 21 and 29 as candidates for the Constituent Assembly. Moreover, the youth and indigenous candidates had to be among the first ten nominees of each party.

In its argument for indigenous legislative quotas, the Electoral Tribunal went on a lengthy excursus justifying why it tied indigenous representation to political

---

representation to make up the Constituent Assembly of Mexico City, affirmative action policies to define them], INE/CG53/2016 (Mex), available at: *https://repositoriodocumental.ine.mx/xmlui/handle/123456789/87500*; Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE APRUEBA Y ORDENA LA PUBLICACIÓN DEL CATÁLOGO DE EMISORAS PARA EL PROCESO ELECTORAL PARA LA ELECCIÓN DE SESENTA DIPUTADOS CONSTITUYENTES QUE INTEGRARÁN LA ASAMBLEA CONSTITUYENTE DE LA CIUDAD DE MÉXICO; SE APRUEBA UN CRITERIO GENERAL PARA LA DISTRIBUCIÓN DEL TIEMPO EN RADIO Y TELEVISIÓN QUE SE DESTINARÁ A LOS PARTIDOS POLÍTICOS Y AUTORIDADES ELECTORALES DURANTE EL PROCESO ELECTORAL, ASÍ COMO PARA LA ENTREGA Y RECEPCIÓN DE MATERIALES Y ÓRDENES DE TRANSMISIÓN; Y SE MODIFICAN LOS ACUERDOS INE/JGE160/2015 E INE/ACRT/51/2015 PARA EFECTO DE APROBAR LAS PAUTAS CORRESPONDIENTES, [Agreement of the General Council of the National Electoral Institute to approve and order the publication of the catalog of stations for the election of sixty constituent deputies that will make up the Constituent Assembly of Mexico City], INE/CG54/2016, (Mex), available at: *https://portalanterior.ine.mx/archivos3/portal/historico/contenido/Estados/rsc/docs/CGext20160204_Ac_P3.pdf.*

parties. Legislative quotas depend on political parties since the political parties, not the indigenous communities, nominate the candidates. INE's indigenous quota policies establish an *obligation for political parties* to nominate a certain number of indigenous candidates. These policies do not establish a *right for any given indigenous community* to be represented. Political parties are free to choose who they nominate as an indigenous candidate as long as they satisfy the electoral authorities that the person has ties to *some* indigenous community.

Nevertheless, the court likely had Oaxaca's prohibition of political parties participating in indigenous elections in mind when it devoted eight pages to justifying its choice of tying indigenous quotas to political parties, even though it did not explicitly mention it.[54]

The court argued that forcing political parties to nominate indigenous candidates was the only practical way of ensuring indigenous candidates would actually be elected, given the existing avenues for legislative representation. As the court noted, the only available alternative would be to institute indigenous candidates through non-party candidatures. Before 2012, all legislative and executive candidatures in Mexico had to be nominated by a political party (excepting Oaxacan indigenous municipal elections). But in 2012, Congress modified the law to enable so-called "independent candidatures." However, critics have argued that the party-controlled Congress wrote the rules for independent candidates to make it difficult for anyone to register as an independent candidate. Notably, a person seeking to register him or herself as an independent candidate must first gather the signatures of 1% of registered voters. As the court wrote, "fulfilling such a requirement would be a very difficult burden for indigenous persons."[55] The experience of the last ten years has shown that it is an extremely difficult requirement for just about anyone, let alone for communities that have historically experienced economic and social marginalization. Even if a person successfully gains registration as an independent candidate, winning the election is an uphill battle, as independent candidates do not have access to the same publicly-funded campaign budgets as political parties. In short, the court argued that given the existing strictures of electoral procedures, the only plausible way to ensure the election of indigenous candidates was to obligate political parties to nominate them.

In its support of indigenous legislative quotas, the Electoral Tribunal used logic similar to that used in the Cherán case, filling in for what it considered the INE's "omission." Summarizing one of the original complaints, the court noted the INE "General Council's omission to adopt special measures to guarantee material equality and ensure the rights of indigenous persons, peoples,

---

[54] Radiodifusoras Capital S.A. y Otros v. Consejo General Del Instituto Nacional Electoral, Sala Superior–Tribunal Electoral [SUP TEPJF] [Mexico City Regional Chamber, Electoral Tribunal], SUP-RAP-71/2016, pp. 245-252, (Mex), available at*: https://www.te.gob.mx/sentenciasHTML/convertir/expediente/SUP-RAP-00071-2016.*

[55] *Id.* at 247.

and communities."[56] Just as the court in 2011 stepped-in to supplement Michoacán's "legislative omission," here it stepped in to fill the INE's administrative omission. But the court did more than simply declare the omission unconstitutional. The court instructed the INE to adopt very specific policies, namely electoral quotas. Even though some of the court's decisions are a welcome expansion of indigenous rights, it is worth noting that this expansion has occurred through not just "court-made law" but also "court-made administrative decisions."

Using identical arguments supporting youth quotas and indigenous quotas, the Electoral Tribunal evinced a specific understanding of democracy as involving more than just majority rule. The court ruling stated:

> The objective, therefore, is to include all representative groups in a foundational deliberative moment, especially the persons who have not only been excluded from the ordinary process of politics, but, above all, the people who have suffered a historical situation of vulnerability, which will enrich the Political Constitution of Mexico City. The more effective the participation, the more legitimacy the constitutive process will have.[57]

The Electoral Tribunal argued that Mexico City's Constituent Assembly needed to be "representative" of all groups because this was a "foundational moment" in the city, which was becoming an "autonomous federal entity" for the first time. As I shall show below, the Electoral Tribunal and INE later expanded these legislative quotas to ordinary federal elections as well, indicating that its view of representation expanded beyond constituent assemblies.

Most crucially, the court has slowly *moved away* from indigenous autonomy *stricto sensu* (i.e. as involving self-government) and opted instead to render it as special *representation* for indigenous communities. Per the court's argumentation, the emphasis is on having an adequately diverse legislative body. In this precedent-setting decision, indigenous self-government is simply not a theme. While there is a manifest concern with ensuring that the legislative body "reflects" the ethnic diversity of the population, there is relatively little discussion of the mechanisms or intricacies of representation. Indigenous representatives remain nominees of their parties, who formally represent the population as a whole. They are indigenous representatives in that they fulfill the individual requirement of being indigenous. They are not, however, formally agents of any given indigenous collective.

Indigenous quotas are thus closer to diversity, equity and inclusion policies than to self-government institutions. This is no coincidence. Electoral authorities had been generally successful in implementing gender parity principles in congress and other government bodies by the time they implemented indige-

[56] *Id.* at 221.

[57] *Id.* at 237.

nous quotas. Thanks to these policies, Mexico's congress is currently 50% male and 50% female. Indigenous quota policies were explicitly modeled after gender parity rules, and almost certainly after US affirmative action policies, as evident by the choice to name them "affirmative actions". Nevertheless, diversity, affirmative action, and gender parity policies historically have had no connection with self-determination or self-government. We don't think of female legislators as representatives of a female political entity in the way that we think of senators from a given state as representatives of that state. Female legislators are representatives of their entire state or district who happen to be female.

The unique circumstances through which Mexican indigenous quotas first came to exist thus set forth a slow but unmistakable shift of emphasis in the interpretation of the indigenous peoples' right to self-determination. While in Oaxaca's original marriage of electoral law and local government there was a clear view towards allowing indigenous groups, some amount of self-government, federal electoral authorities' affirmative action policies shifted towards ensuring diversity in *national* political bodies.

IX. Indigenous Quotas in 2018 and 2021 Federal Legislative Elections: SUP-RAP-726/2017 and SUP/RAP/121/2021

In 2017, Mexico's National Electoral Institute further adopted a policy that required political parties to register indigenous candidates in at least 12 of the 28 "indigenous electoral districts" for the 2018 first pass the post federal legislative elections.[58] The INE had previously defined "indigenous electoral districts" as those with at least 40% indigenous language speakers, per the national census bureau. While the INE had already experimented with indigenous electoral quotas when it organized Mexico City's constituent assembly in 2017, this was the first time a federal election would employ indigenous legislative quotas.

After a series of lawsuits challenging INE's original decree, the Electoral Tribunal partly modified the indigenous quota system.[59] The Electoral Tribunal

[58] Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE INDICAN LOS CRITERIOS APLICABLES PARA EL REGISTRO DE CANDIDATURAS A LOS DISTINTOS CARGOS DE ELECCIÓN POPULAR QUE PRESENTEN LOS PARTIDOS POLÍTICOS Y, EN SU CASO, LAS COALICIONES ANTE LOS CONSEJOS DEL INSTITUTO, PARA EL PROCESO ELECTORAL FEDERAL 2017-2018, [Agreement of the General Council of the National Electoral Institute through which the Council approves the criteria for the nomination of popular election candidates presented by national political parties and their coalitions, for the 2017-2018 federal elections], INE/CG508/2017, 508, (Mex), available at: *https://igualdad.ine.mx/wp-content/uploads/2018/09/Acuerdo-INE-CG508-2017.pdf*.

[59] Partido Verde Ecologista de México y Otros v. Consejo General Del Instituto Nacional Electoral, Sala Superior–Tribunal Electoral [SUP TEPJF] [Mexico City Regional Chamber, Electoral Tribunal], SUP-RAP-726/2017, (Mex), available at: *https://www.te.gob.mx/sentenciasHTML/convertir/expediente/SUP-RAP-726-2017*.

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

increased the number of electoral districts in which parties had to nominate indigenous candidates from 12 to 13. It also modified the definition of an indigenous electoral district to those with at least 60% indigenous language speakers. The Electoral Tribunal's aim with this ruling was to guarantee that indigenous candidates would actually be elected. Under the original INE policy, political parties could choose in which of the 28 indigenous electoral districts they would nominate indigenous candidates. Political parties could nominate indigenous candidates in districts where they expected to lose. The party that expected to win a district could nominate a non-indigenous candidate so that no indigenous candidates (or very few of them) would be elected. Under the Electoral Tribunal's modified formula, all political parties would have to propose indigenous candidates in the same 13 districts, guaranteeing that indigenous representatives would occupy at least 13 legislative seats.

After the relative success of indigenous quotas in the 2018 election, INE and the Electoral Tribunal broadened this form of affirmative action for the 2021 midterm election. This time they increased the number of reserved legislative seats, requiring parties to register indigenous candidates in both first pass the post and proportional representation nominations. Mexico's federal Chamber of Deputies (the lower house of Congress) comprises 500 deputies. Three hundred are elected through first pass the post based on their electoral districts, and 200 are elected through the principle of proportional representation, as outlined above. For the 2021 election, INE increased the number of districts in which political parties would have to nominate indigenous candidates from 13 to 21. Furthermore, INE required political parties to nominate at least 9 indigenous candidates in their party list for proportional representation elections. The 2021 election therefore combined the innovations of the Mexico City Constituent assembly (in which INE imposed quotas on proportional representation candidates) and the 2018 federal election (in which INE only required indigenous candidates for first pass the post representation).

The ultimate policy was only settled after a lawsuit-mediated intervention by the Electoral Tribunal. INE originally published a decree requiring that political parties nominate indigenous candidates in at least 21 of the 28 "indigenous electoral districts" identified based on data from the Mexican Census Bureau (INEGI).[60] On appeal, the Electoral Tribunal directed INE to specify in *which*

[60] Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE APRUEBAN LOS CRITERIOS APLICABLES PARA EL REGISTRO DE CANDIDATURAS A DIPUTACIONES POR AMBOS PRINCIPIOS QUE PRESENTEN LOS PARTIDOS POLÍTICOS NACIONALES Y, EN SU CASO, LAS COALICIONES ANTE LOS CONSEJOS DEL INSTITUTO, PARA EL PROCESO ELECTORAL FEDERAL 2020-2021, [Agreement of the General Council of the National Electoral Institute though the council approves the criteria for the nomination before the councils of this institute of candidatures for federal deputies through both principles presented by national political parties and their coalitions, for the 2020-2021 federal elections], INE/CG572/2020, (Mex), available at: *https://repositoriodocumental.ine.mx/xmlui/bitstream/handle/123456789/115204/CGex202011-18-ap-7.pdf*.

out of the 28 indigenous electoral districts political parties were required to nominate indigenous representatives. The Electoral Tribunal cited its own 2017 precedent and the concern that absent this measure, it would be possible to have indigenous candidates but few or none of them winning the election. The INE complied with the electoral Tribunal, issuing a new decree.[61]

It is worth emphasizing how much INE expanded indigenous quotas from 2018 to 2021. It increased the number of first pass the post indigenous candidates from 13 to 21 and forced parties to include indigenous candidates in the coveted first spots on the proportional representation lists. Especially for large political parties, persons in the first spots of the proportional representation candidates are almost guaranteed to win the election. The three largest political parties have usually won between 20% and 35% of the vote in legislative elections. Each can expect to win at least 40 of the 200 proportional representation seats. For these larger parties, persons included in the first ten spots of the proportional representation list are all but guaranteed to be elected federal deputies. From its outset, the 2021 indigenous electoral quota policy was conceived not just to have indigenous candidates but to ensure that there would be indigenous deputies in Congress.

X. Conclusion

This article has surveyed two main classes of state policies giving practical application to the Mexican Constitution's right of indigenous self-determination: indigenous culture laws and legislative quotas. The two are related. Although indigenous Culture laws have essentially been surpassed by the much more substantive modifications in electoral law and procedures, courts' justifications for their rulings continue to deploy a particular idea of indigeneity as deeply tied

[61] Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE EN ACATAMIENTO A LA SENTENCIA DICTADA POR LA SALA SUPERIOR DEL TRIBUNAL ELECTORAL DEL PODER JUDICIAL DE LA FEDERACIÓN EN EL EXPEDIENTE SUP-RAP-121/2020 Y ACUMULADOS, SE MODIFICAN LOS CRITERIOS APLICABLES PARA EL REGISTRO DE CANDIDATURAS A DIPUTACIONES POR AMBOS PRINCIPIOS QUE PRESENTEN LOS PARTIDOS POLÍTICOS NACIONALES Y, EN SU CASO, LAS COALICIONES ANTE LOS CONSEJOS DEL INSTITUTO, PARA EL PROCESO ELECTORAL FEDERAL 2020-2021, APROBADOS MEDIANTE ACUERDO INE/CG572/2020, [Agreement of the General Council of the National Electoral Institute whereby, in compliance with the ruling handed down by the Superior Chamber of the Electoral Tribunal of the Federal Judiciary in file sup-rap-121/2020 and accumulated, the applicable criteria for the registration of candidacies for deputies by both principles presented by the national political parties and, where appropriate, the coalitions before the councils of the institute, for the federal electoral process 2020-2021, approved by agreement ine/cg572/2020], INE/CG18/2021, 18, (Mex), available at: *https://repositoriodocumental.ine.mx/xmlui/bitstream/handle/123456789/116389/CGex202101-15-ap-12.pdf*.

to "culture." Authorities render "culture" in slightly different senses throughout their different instruments, but it remains the common thread.

In the most recent policies mandating that political parties nominate indigenous candidates for legislative elections, authorities reveal a particular view of the nation and the cultures that make it up. State agencies such as the National Electoral Institute construe Mexican society as composed of several different cultures. They accordingly seek to implement policies that ensure that legislatures reflect or resemble that cultural plurality. For instance, in the decree mandating indigenous quotas for the 2021 election, INE's General Council wrote that its affirmative action policies: "seek to revert the political underrepresentation of indigenous persons in the composition of the Chamber of Deputies as a constitutional organ that reflects the pluricultural composition of Mexican society."[62] In this rendering, there is a single national society composed of multiple cultures to which different *individuals* belong. Unlike the language used in earlier instruments such as Oaxaca's electoral procedure law, the various indigenous culture laws, or the Constitution itself, this decree speaks of indigenous *persons*, not *peoples and communities*. From this perspective, whose political ideal is accomplishing substantive and diverse *representation*, Mexican authorities fulfill their constitutional obligation to recognize indigenous self-determination by ensuring that the Chamber of Deputies is some type of a *reflection* of the nation's cultural diversity.

INE's notion of culture and plurality also has a unique form. The category of "indigenous cultures" is a pan-ethnic state category that itself incorporates an enormous diversity of groups. According to the National Institute for Indigenous Languages, 68 different languages belonging to 11 different language families are spoken in Mexico.[63] If one takes into account local variations, there are significantly more.[64] Indigenous scholars have argued that many people use the category of "indigenous" when interacting with the state but that indigenous persons and communities understand themselves in terms of their own identity in much more specific terms, as Q'anjob'al, Rarámuri, Rixhquei, etc. As linguist Yásnaya Aguilar Gil writes in a semi-autobiographical publication,

> For me, the world was divided into two, and it was all very clear: if you do not speak *Ayuujk*, you could only be *akäts* (non-Mije); whether you were Japanese, Swiss, Tarahumara, Guaraní, or Zapotec, I could only name you thus: *akäts*. It is no coincidence that the majority of indigenous languages do not have a word for *indigenous*.[65]

---

[62] Instituto Nacional Electoral [INE], INE/CG572/2020, at 76., (Mex).

[63] Instituto Nacional de Lenguas Indígenas, Catálogo de Las Lenguas Indígenas Nacionales: Variantes Lingüísticas de México Con Sus Autodenominaciones y Referencias Geoestadísticas, (2008).

[64] Yásnaya Elena Aguilar Gil & Ana Aguilar-Guevara, Aa: Manifiestos Sobre La Diversidad Lingüística (Primera edición, 2020).

[65] *Id.* at 39.

Here as elsewhere, Aguilar Gil argues that, strictly speaking, "indigenous" is not a category of self-understanding. Rather, it is a state category that amalgamates an enormous diversity of cultures, experiences, languages, and perspectives. For her, "indigenous" is not a cultural category in the sense that a single, cohesive indigenous culture does not exist. At most "indigenous" is a political category that can serve to mobilize a diversity of actors in a structurally similar situation of oppression.[66] But up to now, Mexican electoral authorities appear satisfied with this inevitably abstract sense of "culture" as the unit upon which to base plural representation.

Perhaps ironically, Mexican courts have issued criteria stating that indigenous identity is a subjective matter that cannot simply be reduced to objective criteria like language, education, race, etc. Courts have ruled that indigenous status is first and foremost a matter of "self-identification," which may sometimes be verified by certifying a person's "community bonds."

The notion of culture implicit in Oaxaca's electoral statutes is slightly different. Oaxaca's electoral laws treat indigenous communities as political collectivities that act through assemblies. Moreover, because Oaxacan law tries to separate local indigenous processes from national society and politics, it implies that "cultures" are like distinct *societies* or *nations*. Scholars and commentators (including the Electoral Tribunal) have sometimes described Oaxaca as the site of "legal pluralism."[67] On their view, different "cultures" autonomously create different legal orders that reflect their varying worldviews. This rendering of "culture" echoes modern ideas surrounding the nation-state, in which the *nation* appears as a culturally cohesive unit that gives unique form to the sovereign state. The diversity of national laws in the international theater would correspond to the diversity of national cultures. In the same way, different indigenous *peoples* in Oaxaca autonomously determine their own laws and local government policies.

It is not a coincidence that Mexican electoral courts used the term "affirmative actions" to describe their special legislative quotas. They were explicitly emulating the US's (now essentially defunct) policy of adopting special policies to guarantee African Americans and other minority groups equal access to opportunities in education and other spheres of life. The model of culture implied

---

66 This situation resembles US ethnoracial categories like "Hispanic" and "Asian." Most first-generation immigrants are surprised to discover that in the US, they become "Asians" and "Hispanics," categories that are so broad that they hardly refer to a single common culture or "ethnicity." At home, they might have understood themselves in terms of their national cultures as Cuban, Japanese, Chinese, Guatemalan, etc.

67 SISTEMA JURÍDICO MEXICANO. SE INTEGRA POR EL DERECHO INDÍGENA Y EL DERECHO FORMALMENTE LEGISLADO, Pleno de la Sala Superior del Tribunal Electoral [SUP-TEPJF] [Electoral Tribunal], Gaceta de Jurisprudencia y Tesis en materia electoral, Tribunal Electoral del Poder Judicial de la Federación, Año 9, Número 18, 2016, Tesis LII/2016, páginas 134 y 135, (Mex).

by Mexican electoral courts' quota system shares some formal characteristics with the US notion of race.

In contrast, Oaxaca's model of autonomous indigenous municipalities shares some formal characteristics with the US's relationship with indigenous nations, which enjoy a different status from other "minorities." US indigenous nations have powers similar to those of states, even though they exist in a situation of de facto subordination.[68]

These models are both mediated through the idea of culture. These two uses of "culture" are not mutually exclusive or necessarily contradictory. For instance, in Oaxaca, members of an indigenous community may simultaneously participate in their municipality's relatively autonomous political life and be eligible to run for national office as an indigenous representative. However, the various readings of culture favor different classes of policies, with the subjective-individual sense leaning more towards *representation* and the collective-political sense leaning more towards autonomy as self-government.

XI. Appendix: Overview of State-level secondary legislation on indigenous Rights

Federal Entity	"Indigenous Culture" Act?	Explicit mechanisms in Electoral code/ law?	If electoral code yes; municipal, regidor/a, or both	"Indigenous justice" act?
Aguascalientes	*Ley de Justicia Indígena del Estado de Aguascalientes (2015)* [69]	No		No
Baja California	*Ley de Derechos y Cultura Indígena del Estado de Baja California (2007)*	No		No
Baja California Sur	No	No		No
Campeche	*Ley de Derechos, Cultura y Organización de los Pueblos y Comunidades Indígenas del Estado de Campeche (2019)*	No		No

[68] Matthew L. M. Fletcher, Principles of Federal Indian Law (2017).

[69] The name would suggest that this is an "indigenous justice" act like those of Michoacán, Quintana Roo, San Luis Potosí and Yucatán. However, its content is that of an indigenous culture act. Aguascalientes is also unique in the fact that it essentially does not have any indigenous population, and yet it does have an indigenous Culture law.

Chiapas	*Ley de Derechos y Cultura Indígenas del Estado de Chiapas (1999)*	No		No
Chihuahua	*Ley de Derechos de los Pueblos Indígenas del Estado de Chihuahua (2013)*	No		No
Ciudad de México	*Ley de Derechos de Pueblos y Barrios Originarios y Comunidades Indígenas Residentes en la Ciudad de México (2019)*	No		No
Coahuila de Zaragoza	No	Yes	Regidor/a[70]	No
Colima	*Ley sobre los Derechos de los Pueblos y Comunidades Indígenas del Estado de Colima (2014)*	No		No
Durango	*Ley General de los Pueblos y Comunidades Indígenas del Estado de Durango (2007)*	No		No
Guanajuato	*Ley para la Protección de los Pueblos y Comunidades Indígenas en el Estado de Guanajuato (2011)*	Yes	Regidor/a[71]	No
Guerrero	*Ley de Reconocimiento, Derechos y Cultura de los Pueblos y Comunidades Indígenas del Estado de Guerrero (2011)*	Yes	Both[72]	No
Hidalgo	*Ley de Derechos y Cultura Indígena para el Estado de Hidalgo (2010)*	Yes	Both[73]	No

[70] Código Electoral Para el Estado de Coahuila de Zaragoza [Coahuila Electoral Code], as amended, Arts. 17 bis-17 quater, Periódico Oficial de Coahuila, August 1st 2016, (Mex), available at: *https://www.congresocoahuila.gob.mx/transparencia/03/Leyes_Coahuila/coa163.pdf*

[71] Ley de Instituciones y Procedimientos Electorales Para el Estado de Guanajuato [Guanajuato Electoral Institutions and Procedure Law], as amended, Art. 184 Bis., Periódico Oficial del Estado de Guanajuato, June 27 2014, (Mex), available at: *https://igualdadydemocracia.ieeg.mx/wp-content/uploads/2020/08/LIPEEG.pdf*

[72] Ley de Instituciones y Procedimientos Electorales del Estado de Guerrero [Guerrero State Electoral Institutions and Procedure Law], as amended, Arts. 13 bis, 272 bis and 455-468, Periódico Oficial del Estado de Guerrero, June 20 2014, (Mex), available at: *https://congresogro.gob.mx/legislacion/ordinarias/ARCHI/ley-de-instituciones-y-procedimientos-electorales-del-estado-de-guerrero-483-2023-06-28.pdf*

[73] Código Electoral del Estado de Hidalgo [Hidalgo Electoral Code], as amended, Arts. 295 a-295 z., Periódico Oficial del Estado de Hidalgo, December 22 2014, (Mex), available at: *http://www.congreso-hidalgo.gob.mx/biblioteca_legislativa/leyes_cintillo/Codigo%20Electoral%20del%20Estado%20de%20Hidalgo.pdf*

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

Jalisco	*Ley sobre los Derechos y el Desarrollo de los Pueblos y las Comunidades Indígenas del Estado de Jalisco (2007)*	Yes	Regidor/a[74]	No
México	*Ley de Derechos y Cultura Indígena del Estado de México (2002)*	No		No
Michoacán de Ocampo	No	No		*Ley de Justicia Comunal del Estado de Michoacán de Ocampo (2007)*
Morelos	*Ley de Fomento y Desarrollo de los Derechos y Cultura de las Comunidades y Pueblos Indígenas del Estado de Morelos (2012)*	No		No
Nayarit	*Ley de Derechos y Cultura Indígena del Estado de Nayarit (2004)*	No		No
Nuevo León	*Ley de los Derechos de las Personas Indígenas y Afromexicanas en el Estado de Nuevo León (2012)*	No		No
Oaxaca	*Ley de Derechos de los Pueblos y Comunidades Indígenas del Estado de Oaxaca (1998)*	Yes	Municipal[75]	No
Puebla	*Ley de Derechos, Cultura y Desarrollo de los Pueblos y Comunidades Indígenas del Estado de Puebla (2011)*	No		No
Querétaro	*Ley de Derechos y Cultura de los Pueblos y Comunidades Indígenas del Estado de Querétaro (2020)*	Yes	Regidor/a[76]	No

[74] Código Electoral del Estado de Jalisco [Jalisco State Electoral Code], as amended, Art. 24 Frac 3, Periódico Oficial del Estado de Jalisco, August 6 2008, (Mex), available at: *https://transparencia.info.jalisco.gob.mx/sites/default/files/Código%20Electoral%20y%20de%20Participación%20Ciudadana%20del%20Estado%20de%20Jalisco_0.pdf*

[75] Ley de Instituciones y Procedimientos Electorales del Estado de Oaxaca [Oaxaca Electoral Institutions and Procedures Code], as amended, Arts. 273-276, Periódico Oficial de Oaxaca, June 3 2017, (Mex).

[76] Ley Electoral del Estado de Querétaro [Querétaro Electoral Law], as amended, Arts. 162, 168 B, and 172, Periódico Oficial del Estado de Querétaro, May 22 2020, (Mex), available at: *http://legislaturaqueretaro.gob.mx/app/uploads/2016/01/LEY057_59_18.pdf*

Quintana Roo	*Ley de Derechos, Cultura y Organización Indígena del Estado de Quintana Roo (1998)*	No		*Ley de Justicia Indígena del Estado de Quintana Roo (2012)*
San Luis Potosí	*Ley Reglamentaria del Artículo 9º de la Constitución Política del Estado, sobre los Derechos y la Cultura Indígenas (2003)*	Yes	Regidor/a[77]	*Ley de Justicia Indígena y Comunitaria para el Estado de San Luis Potosí (2014)*
Sinaloa	*Ley de los Derechos de los Pueblos y Comunidades Indígenas para el Estado de Sinaloa (2018)*	No		No
Sonora	*Ley de Derechos de los Pueblos y Comunidades Indígenas de Sonora (2010)*	Yes	Regidor/a[78]	No
Tabasco	*Ley de Derechos y Cultura Indígena del Estado de Tabasco (2019)*	No		No
Tamaulipas	No	No		No
Tlaxcala	*Ley de Protección, Fomento y Desarrollo a la Cultura Indígena para el Estado de Tlaxcala (2006)*	No		No
Veracruz de Ignacio de la Llave	*Ley de Derechos y Culturas Indígenas para el Estado de Veracruz de Ignacio de la Llave (2010)*	No		No

[77] Ley Electoral del Estado de San Luis Potosí [San Luis Potosí Electoral Law], as amended, Art. *297, Periódico Oficial de San Luis Potosí, June 30 2014, (Mex), available at: http://www.ceepacslp.org.mx/ceepac/uploads2/files/Ley_Electoral_del_Estado_28_Sept_2022_1_compressed.pdf*

[78] Ley de Instituciones y Procedimientos Electorales para el Estado de Sonora [Sonora State Electoral Procedures and Institutions Law], as amended, Arts. 172-173, Boletín Oficial del Estado de Sonora, June 30 2014, (Mex), available at*: https://www.ieesonora.org.mx/documentos/legislacion/estatales/lipees.pdf*

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

Yucatán	*Ley para la Protección de los Derechos de la Comunidad Maya del Estado de Yucatán (2011)*	No		*Ley del Sistema de Justicia Maya del Estado de Yucatán (2014)*
Zacatecas	No	No		*Ley de Justicia Comunitaria del Estado de Zacatecas (2002)*

XII. References

Adom Getachew, Worldmaking after Empire: The Rise and Fall of Self-Determination (2019).

Araceli Burguete Cal y Mayor, *Municipalización del gobierno indígena e indianización del Gobierno Municipal en América Latina*, 6 *Rev. Pueblos Front. Digit. 38* (2011), available at: *http://www.scielo.org.mx/scielo.php?script=sci_abstract&pid=S1870-41152011000100038&lng=es&nrm=iso&tlng=es* (last visited Jan 17, 2022).

Claudia Gamboa Montejano & Sandra Valdés Robledo, Los Usos Y Costumbres De Pueblos Indigenas Derecho Comparado A Nivel Estatal (2018).

Código Civil Para el Estado de Nayarit [Nayarit Civil Code], as amended, Arts. 2041 - 2108, Periódico Oficial Nayarit, August 22 1981, (Mex), available at: *https://www.nayarit.gob.mx/transparenciafiscal/marcoregulatorio/ordenamientos/código%20civil%20para%20el%20estado%20de%20nayarit.htm*

Código Electoral del Estado de Hidalgo [Hidalgo Electoral Code], as amended, Arts. 295 a-295 z., Periódico Oficial del Estado de Hidalgo, December 22 2014, (Mex), available at: *http://www.congreso-hidalgo.gob.mx/biblioteca_legislativa/leyes_cintillo/Codigo%20Electoral%20del%20Estado%20de%20Hidalgo.pdf*

Código Electoral del Estado de Jalisco [Jalisco State Electoral Code], as amended, Art. 24 Frac 3, Periódico Oficial del Estado de Jalisco, August 6 2008, (Mex), available at: *https://transparencia.info.jalisco.gob.mx/sites/default/files/Código%20Electoral%20y%20de%20Participación%20Ciudadana%20del%20Estado%20de%20Jalisco_0.pdf*

Código Electoral Para el Estado de Coahuila de Zaragoza [Coahuila Electoral Code], as amended, Arts. 17 bis-17 quater, Periódico Oficial

de Coahuila, August 1st 2016, (Mex), available at: *https://www.congresocoahuila.gob.mx/transparencia/03/Leyes_Coahuila/coa163.pdf*

Código Nacional de Procedimientos Penales [CNPP] [National Criminal Procedure Code], as amended, Art. 420, Diario Oficial de la Federación [DOF], March 5 2014, (Mex), available at: *https://www.diputados.gob.mx/LeyesBiblio/pdf/CNPP.pdf*

COMUNIDADES INDÍGENAS. INTEGRACIÓN DE LA ASAMBLEA GENERAL COMUNITARIA (LEGISLACIÓN DE OAXACA), Pleno de la Sala Superior del Tribunal Electoral [SUP-TEPJF] [Electoral Tribunal], Gaceta de Jurisprudencia y Tesis en materia electoral, Tribunal Electoral del Poder Judicial de la Federación, Año 4, Número 9, 2011, Tesis XL/2011, páginas 51 y 52, (Mex).

Constitución Política del Estado Libre y Soberano de Oaxaca [Oaxaca Const.], as amended, Art. 22, Periódico Oficial de Oaxaca, April 4 1922, (Mex), available at: *https://www.oaxaca.gob.mx/cocitei/wp-content/uploads/sites/48/2019/07/CONSTITUCION-POLITICA-DEL-ESTADO-LIBRE-Y-SOBERANO-DE-OAXACA.pdf*

Constitución Política de los Estados Unidos Mexicanos [CPEUM], Diario Oficial de la Federación [DOF] Feb. 5th, 1917 (Mex.), available at: *https://www.diputados.gob.mx/LeyesBiblio/ref/dof/CPEUM_ref_122_28ene92_ima.pdf*

Helga Baitenmann, Matters of Justice: Pueblos, the Judiciary, and Agrarian Reform in Revolutionary Mexico (2020).

Hipólito Arriaga Pote v. Tribunal Electoral Del Estado de Guerrero, Sala Regional Ciudad de México–Tribunal Electoral [SCM TEPJF] [Mexico City Regional Chamber, Electoral Tribunal], SCM-JDC-402/2018, p. 52, (Mex), available at: *https://www.te.gob.mx/salasreg/ejecutoria/sentencias/df/SCM-JDC-0402-2018.pdf*

Instituto Estatal Electoral y de Participación Ciudadana de Oaxaca [IEEPCO], ACUERDO POR EL QUE SE APRUEBA EL CATÁLOGO DE MUNICIPIOS SUJETOS AL RÉGIMEN DE SISTEMAS NORMATIVOS INDÍGENAS DEL ESTADO DE OAXACA Y SE ORDENA EL REGISTRO Y PUBLICACIÓN DE LOS DICTÁMENES POR LOS QUE IDENTIFICAN LOS MÉTODOS DE ELECCIÓN DE SUS AUTORIDADES MUNICIPALES [Agreement through which the catalogue of municipalities subject to the indigenous normative system regime of the State of Oaxaca is approved and the registration and publication of the expert opinions identifying the election methods for their municipal authorities is proclaimed], IEEPCO-CG-SNI-33/2018, (2019), (Mex), available at: *https://www.ieepco.org.mx/archivos/acuerdos/2018/IEEPCOCGSNI332018.pdf*

Instituto Nacional de Lenguas Indígenas, Catálogo de Las Lenguas Indígenas Nacionales: Variantes Lingüísticas de México Con Sus Autodenominaciones y Referencias Geoestadísticas, (2008).

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE EN ACATAMIENTO A LA SENTENCIA DICTADA POR LA SALA SUPERIOR DEL TRIBUNAL ELECTORAL DEL PODER JUDICIAL DE LA FEDERACIÓN EN EL EXPEDIENTE SUP-RAP-121/2020 Y ACUMULADOS, SE MODIFICAN LOS CRITERIOS APLICABLES PARA EL REGISTRO DE CANDIDATURAS A DIPUTACIONES POR AMBOS PRINCIPIOS QUE PRESENTEN LOS PARTIDOS POLÍTICOS NACIONALES Y, EN SU CASO, LAS COALICIONES ANTE LOS CONSEJOS DEL INSTITUTO, PARA EL PROCESO ELECTORAL FEDERAL 2020-2021, APROBADOS MEDIANTE ACUERDO INE/CG572/2020, [Agreement of the General Council of the National Electoral Institute whereby, in compliance with the ruling handed down by the Superior Chamber of the Electoral Tribunal of the Federal Judiciary in file sup-rap-121/2020 and accumulated, the applicable criteria for the registration of candidacies for deputies by both principles presented by the national political parties and, where appropriate, the coalitions before the councils of the institute, for the federal electoral process 2020-2021, approved by agreement ine/cg572/2020], INE/CG18/2021, 18, (Mex), available at: *https://repositoriodocumental.ine.mx/xmlui/bitstream/handle/123456789/116389/CGex202101-15-ap-12.pdf*

Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE APRUEBA EL PLAN Y CALENDARIO INTEGRAL DEL PROCESO ELECTORAL RELATIVO A LA ELECCIÓN DE SESENTA DIPUTADOS POR EL PRINCIPIO DE REPRESENTACIÓN PROPORCIONAL PARA INTEGRAR LA ASAMBLEA CONSTITUYENTE DE LA CIUDAD DE MÉXICO, SE DETERMINAN ACCIONES CONDUCENTES PARA ATENDERLOS, Y SE EMITEN LOS LINEAMIENTOS CORRESPONDIENTES, [Agreement of the General Council of the National Electoral Institute approving the comprehensive plan of the elections relating to the election of sixty deputies by the principle of proportional representation to make up the Constituent Assembly of Mexico City, affirmative action policies to define them], INE/CG53/2016 (Mex), available at: *https://repositoriodocumental.ine.mx/xmlui/handle/123456789/87500*

Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE APRUEBAN LOS CRITERIOS APLICABLES PARA EL REGISTRO DE CANDIDATURAS A DIPUTACIONES POR AMBOS PRINCIPIOS QUE PRESENTEN LOS PARTIDOS POLÍTICOS NACIONALES Y, EN SU CASO, LAS COALICIONES ANTE LOS CONSEJOS DEL INSTITUTO, PARA EL PROCESO ELECTORAL

FEDERAL 2020-2021, [Agreement of the General Council of the National Electoral Institute through which the council approves the criteria for the nomination before the councils of this institute of candidatures for federal deputies through both principles presented by national political parties and their coalitions, for the 2020-2021 federal elections], INE/CG572/2020, (Mex.), available at: *https://repositoriodocumental.ine.mx/xmlui/bitstream/handle/123456789/115204/CGex202011-18-ap-7.pdf*

Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE APRUEBA Y ORDENA LA PUBLICACIÓN DEL CATÁLOGO DE EMISORAS PARA EL PROCESO ELECTORAL PARA LA ELECCIÓN DE SESENTA DIPUTADOS CONSTITUYENTES QUE INTEGRARÁN LA ASAMBLEA CONSTITUYENTE DE LA CIUDAD DE MÉXICO; SE APRUEBA UN CRITERIO GENERAL PARA LA DISTRIBUCIÓN DEL TIEMPO EN RADIO Y TELEVISIÓN QUE SE DESTINARÁ A LOS PARTIDOS POLÍTICOS Y AUTORIDADES ELECTORALES DURANTE EL PROCESO ELECTORAL, ASÍ COMO PARA LA ENTREGA Y RECEPCIÓN DE MATERIALES Y ÓRDENES DE TRANSMISIÓN; Y SE MODIFICAN LOS ACUERDOS INE/JGE160/2015 E INE/ACRT/51/2015 PARA EFECTO DE APROBAR LAS PAUTAS CORRESPONDIENTES, [Agreement of the General Council of the National Electoral Institute to approve and order the publication of the catalog of stations for the election of sixty constituent deputies that will make up the Constituent Assembly of Mexico City], INE/CG54/2016, (Mex), available at: *https://portalanterior.ine.mx/archivos3/portal/historico/contenido/Estados/rsc/docs/CGext20160204_Ac_P3.pdf*

Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL, POR EL QUE SE EMITE CONVOCATORIA PARA LA ELECCIÓN DE SESENTA DIPUTADOS, PARA INTEGRAR LA ASAMBLEA CONSTITUYENTE DE LA CIUDAD DE MÉXICO, [Agreement of the General Council of the National Electoral Institute, which issues a call for the election of sixty deputies to integrate the constituent assembly of Mexico City], INE/CG52/2016, 52, (Mex), available at: *https://portalanterior.ine.mx/archivos3/portal/historico/contenido/Estados/rsc/docs/CGext20160204_ac_P1.pdf*

Instituto Nacional Electoral [INE], ACUERDO DEL CONSEJO GENERAL DEL INSTITUTO NACIONAL ELECTORAL POR EL QUE SE INDICAN LOS CRITERIOS APLICABLES PARA EL REGISTRO DE CANDIDATURAS A LOS DISTINTOS CARGOS DE ELECCIÓN POPULAR QUE PRESENTEN LOS PARTIDOS POLÍTICOS Y, EN SU CASO, LAS COALICIONES ANTE LOS CONSEJOS DEL

ISSN (versión electrónica): 1870-0578
DOI: https://doi.org/10.22201/iij.24485306e.2024.1.19159

INSTITUTO, PARA EL PROCESO ELECTORAL FEDERAL 2017-2018, [Agreement of the General Council of the National Electoral Institute through which the Council approves the criteria for the nomination of popular election candidates presented by national political parties and their coalitions, for the 2017-2018 federal elections], INE/CG508/2017, 508, (Mex), available at: *https://igualdad.ine.mx/wp-content/uploads/2018/09/Acuerdo-INE-CG508-2017.pdf*

Instituto Nacional Electoral [INE], INE/CG572/2020, at 76., (Mex).

International Labour Organization, Indigenous and Tribal Peoples Convention 169, June 27, 1989, 1650 U.N.T.S. 28383, available at: *https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C169*

Janine M. Otálora Malassis, Casos Relevantes de La Defensoría Pública Electoral Para Pueblos y Comunidades Indígenas 53-68 (2020).

Jörg Fisch & Anita Mage, The Right of Self-Determination of Peoples: The Domestication of an Illusion (2015).

Joseph Massad, *Against Self-Determination*, 9 *Humanity Int. J. Hum. Rights. Dev. 161* (2018), available at: https://muse.jhu.edu/article/703633 (last visited Jan 18, 2023).

Ley Agraria [LAG] [Agrarian Law], as amended, Art. 22, Diario Oficial de la Federación [DOF], February 26 1992, (Mex), available at: *https://www.diputados.gob.mx/LeyesBiblio/pdf/LAgra.pdf*

Ley Electoral del Estado de Querétaro [Querétaro Electoral Law], as amended, Arts. 162, 168 B, and 172, Periódico Oficial del Estado de Querétaro, May 22 2020, (Mex), available at: *http://legislaturaqueretaro.gob.mx/app/uploads/2016/01/LEY057_59_18.pdf*

Ley Electoral del Estado de San Luis Potosí [San Luis Potosí Electoral Law], as amended, Art. 297, Periódico Oficial de San Luis Potosí, June 30 2014, (Mex), available at: *http://www.ceepacslp.org.mx/ceepac/uploads2/files/Ley_Electoral_del_Estado_28_Sept_2022_1_compressed.pdf*

Ley de Derechos, Cultura y Organización Indígena del Estado de Quintana Roo, [Law of the Rights, Culture and Indigenous organization of the State of Quintana Roo], as amended, Periódico Oficial Quintana Roo, July 29 1998, (Mex.), available at: *http://documentos.congresoqroo.gob.mx/leyes/L76-XVI-20220824-L1620220824246-ley-derechos.pdf*

Ley de Derechos de los Pueblos Indígenas del Estado de Chihuahua [Law of the Rights of Indigenous Peoples of the State of Chihuahua], as amended, Art. 9, Periódico Oficial de Chihuahua, June 29 2013, (Mex), available at: *https://www.congresochihuahua2.gob.mx/biblioteca/leyes/archivosLeyes/1003.pdf*

Ley de Derechos de los Pueblos y Barrios Originarios y Comunidades Indígenas Residentes en la Ciudad de México, [Law of Rights of Indigenous Peoples and Barrios and Indigenous Communities Residing in Mexico City], Gaceta Oficial de la Ciudad de México, December 20

2019, (Mex), available at: *https://data.consejeria.cdmx.gob.mx/images/leyes/leyes/LEY_DERECHOS_DE_PUEBLOS_Y_BARRIOS_ORIGINARIOS_Y_COMUNIDADES_INDIGENAS_RESIDENTES_EN_LA_CDMX_2.4.pdf*

Ley de Derechos de los Pueblos y Comunidades Indígenas y Afromexicano del Estado de Oaxaca [Law for the Rights of Indigenous and Afro-Descendent Peoples and Communities of the State of Oaxaca], as amended, Periódico Oficial de Oaxaca, July 19 1998, (Mex.), available at: *https://www.congresooaxaca.gob.mx/docs65.congresooaxaca.gob.mx/legislacion_estatal/Ley_de_Derechos_de_los_Pueblos_y_Comunidades_Indigenas_y_Afromexicano_del_Estado_de_Oaxaca_(Dto_ref_778_aprob_LXV_Legis_18_ene_2023_PO_4_2a_secc_28_ene_2023).pdf*

Ley de Derechos y Cultura Indígena del Estado de Nayarit, [Nayarit Indigenous Culture and Rights Law], as amended, Art. 19, Periódico Oficial Nayarit, December 18 2004, (Mex), available at: *https://congresonayarit.gob.mx/wp-content/uploads/QUE_HACEMOS/LEGISLACION_ESTATAL/leyes/derechos_y_cultura_indigena_del_estado_de_nayarit_ley_de.pdf*

Ley de Instituciones y Procedimientos Electorales Para el Estado de Guanajuato [Guanajuato Electoral Institutions and Procedure Law], as amended, Art. 184 Bis., Periódico Oficial del Estado de Guanajuato, June 27 2014, (Mex), available at: *https://igualdadydemocracia.ieeg.mx/wp-content/uploads/2020/08/LIPEEG.pdf*

Ley de Instituciones y Procedimientos Electorales del Estado de Guerrero [Guerrero State Electoral Institutions and Procedure Law], as amended, Arts. 13 bis, 272 bis and 455-468, Periódico Oficial del Estado de Guerrero, June 20 2014, (Mex), available at: *https://congresogro.gob.mx/legislacion/ordinarias/ARCHI/ley-de-instituciones-y-procedimientos-electorales-del-estado-de-guerrero-483-2023-06-28.pdf*

Ley de Instituciones y Procedimientos Electorales del Estado de Oaxaca [Law for Electoral Procedures and Institutions of the State of Oaxaca], as amended, Periódico Oficial de Oaxaca, June 3 2017, (Mex), available at: *https://www.ieepco.org.mx/archivos/documentos/2020/MarcoJuridico/LIPEEO.pdf*

Ley de Instituciones y Procedimientos Electorales para el Estado de Sonora [Sonora State Electoral Procedures and Institutions Law], as amended, Arts. 172-173, Boletín Oficial del Estado de Sonora, June 30 2014, (Mex), available at: *https://www.ieesonora.org.mx/documentos/legislacion/estatales/lipees.pdf*

Ley de Justicia Comunitaria del Estado de Zacatecas, [Zacatecas Indigenous Community Justice Law], as amended, Periódico Oficial del Gobierno del Estado de Zacatecas, July 10 2002, (Mex), available at: *https://www.congresozac.gob.mx/64/ley&cual=70&tipo=pdf*

Ley de Justicia Indígena del Estado de Quintana Roo [Quintana Roo Indigenous Justice Law], as amended, Periódico Oficial Quintana Roo,

December 31 2012, (Mex), available at: *http://documentos.congresoqroo.gob.mx/leyes/L1320121231234.pdf*

Ley de Protección, Fomento y Desarrollo a la Cultura Indígena Para el Estado de Tlaxcala, [Law for the Protection, Fostering and Development of Indigenous Culture in the State of Tlaxcala], as amended, Art. 8 frac VI, Periódico Oficial de Tlaxcala, April 7 2006, (Mex), available at: *https://sfp.tlaxcala.gob.mx/pdf/normateca/ley%20de%20proteccion%20fomento%20y%20desarrollo%20a%20la%20cultura%20indigena%20para%20el%20estado%20de%20tlaxcala.pdf*

Ley General de Partidos Políticos [Law of Political Parties], as amended, Art 25 section i), Diario Oficial de la Federación [DOF], May 23 2014, available at: *https://www.diputados.gob.mx/LeyesBiblio/pdf/LGPP.pdf*

María del Carmen Ventura Patiño, Volver a La Comunidad: Derechos Indígenas y Procesos Autonómicos En Michoacán (2010).

Matthew L. M. Fletcher, Principles of Federal Indian Law (2017).

Mónica Rodriguez, *Castañeda Gutman v. Mexico*, 36 *Loy LA Int'l Comp Rev*, 1949.

Orlando Aragón Andrade, *La Emergencia Del Cuarto Nivel de Gobierno y La Lucha Por El Autogobierno Indígena En Michoacán, México*, 94 *Cah. Am. Lat. 57* (2020).

Partido Verde Ecologista de México y Otros v. Consejo General Del Instituto Nacional Electoral, Sala Superior–Tribunal Electoral [SUP TEPJF] [Mexico City Regional Chamber, Electoral Tribunal], SUP-RAP-726/2017, (Mex), available at: *https://www.te.gob.mx/sentenciasHTML/convertir/expediente/SUP-RAP-726-2017*

Radiodifusoras Capital S.A. y Otros v. Consejo General Del Instituto Nacional Electoral, Sala Superior–Tribunal Electoral [SUP TEPJF] [Mexico City Regional Chamber, Electoral Tribunal], SUP-RAP-71/2016, pp. 245-252, (Mex), available at*: https://www.te.gob.mx/sentenciasHTML/convertir/expediente/SUP-RAP-00071-2016*

SISTEMA JURÍDICO MEXICANO. SE INTEGRA POR EL DERECHO INDÍGENA Y EL DERECHO FORMALMENTE LEGISLADO, Pleno de la Sala Superior del Tribunal Electoral [SUP-TEPJF] [Electoral Tribunal], Gaceta de Jurisprudencia y Tesis en materia electoral, Tribunal Electoral del Poder Judicial de la Federación, Año 9, Número 18, 2016, Tesis LII/2016, páginas 134 y 135, (Mex).

Vladimir Lenin, The Right of Nations to Self-Determination: Selected Writings (2004).

Yásnaya Elena Aguilar Gil & Ana Aguilar-Guevara, AA: Manifiestos Sobre La Diversidad Lingüística (Primera edición, 2020).