



THE LEGAL CONSTRUCTION OF RACIAL DISCRIMINATION IN MEXICO: CELEBRATING 200 YEARS OF INDEPENDENCE?

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ABSTRACT. *In this note, I examine the legal construction of racial discrimination in Mexico, the approaches to legal theory which help us understand it, and the role of the UN Committee on the Elimination of Racial Discrimination. Until the end of the 20th century, the situation in Mexico was characterized by a denial or a trivialization of racial discrimination in legal institutions and society. In recent years, the Mexican government has taken actions to deconstruct the principles upon which racial discrimination was legally based. The case of Mexico directly assists in understanding post colonial racial discrimination in Latin America.*

KEY WORDS: *Racial discrimination, United Nations, Mexican government, legal principles.*

RESUMEN. *El presente ensayo examina el marco legal de la discriminación en México; también aborda las teorías jurídicas necesarias para su entendimiento, así como el papel de la ONU y su Comité para la Eliminación de la Discriminación Racial. Hasta finales del siglo XX la situación en México se caracterizaba por la negación o la trivialización de la discriminación, tanto por las instituciones como por la sociedad. Más recientemente, el gobierno de México ha implementado acciones para eliminar el marco legal que sustentaba la discriminación. El caso de México nos ayuda a entender mejor el legado del racismo pos-colonial en América Latina.*

PALABRAS CLAVE: *Discriminación racial, ONU, gobierno de México, marco legal.*

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I. INTRODUCTION

In 1994, the representative of Mexico to the UN Committee on the Elimination of Racial Discrimination [hereinafter the Committee] declared that “the phenomenon of racial discrimination did not exist in Mexico”.¹ The representative of Mexico argued that although the most vulnerable groups in Mexican society, such as women, the disabled, migrant workers and indigenous people, did suffer some forms of discrimination, this was caused by socio-economic factors, and that these factors had nothing to do with racism or racial discrimination.² He also stated that the reasons which had led members of indigenous communities to rebel in southern Mexico in 1994³ stemmed from economic and social marginalization, and that the Zapatista National Liberation Army (EZLN)⁴ itself had not reported any problems of racial discrimination within the scope of the International Convention on the Elimination of All Forms of Racial Discrimination.⁵

¹ Report of the Committee on the Elimination of Racial Discrimination, General Assembly Official Records, Fiftieth Session Supplement No. 18 (A/50/18), paragraph 354.

² General Assembly Official, *Report of the Committee on the Elimination of Racial Discrimination*, Fiftieth Session Supplement No. 18 (A/50/18), paragraph 354.

³ The indigenous inhabitants of Chiapas broke into the national and international scene on January 2, 1994, just one day after the North American Free Trade Agreement with the United States and Canada became operational. Later, they declared it was their way to say “We are still here in the middle of globalization.”

⁴ The Ejército Zapatista de Liberación Nacional (EZLN) is an armed revolutionary group based in Chiapas, one of the poorest states of Mexico. The EZLN claims to represent the rights of the indigenous population, but also sees itself and is seen as part of a wider anti-capitalist movement.

⁵ The International Convention on the Elimination of All Forms of Racial Discrimination was adopted and opened for signature and ratification by the United Nations General Assembly in its Resolution 2106 A (XX) of 21 December 1965. It was signed in New York, United States of America, on March 7, 1966. In accordance with its Article 19, the Convention entered into force on January 4, 1969. Mexico signed the Convention on November 1, 1966, and ratified it on February 20, 1975. On January 17, 2002, the decree

In its analysis of the Report on Mexico, the Committee expressed its difference of opinion with the Mexican government. “The discriminatory nature of policies or practices that perpetuated the marginalization and impoverishment of certain ethnic groups of Mexico was indeed a form of racial discrimination within the meaning of the Convention.”⁶ The Committee pointed out that the kind of discrimination suffered by many indigenous people in Mexico did in fact fall within the scope of Articles 2 and 5 of the Convention.⁷

Ten years after these statements, the Mexican government acknowledged that racism and racial discrimination existed at all levels of Mexican society, and reported a series of legal reforms and actions undertaken to make a neutral assessment of the situation of racial discrimination in Mexico.⁸ Since then, important means have been implemented to eliminate the various forms of racial discrimination and to promote the integration of the many Mexican ethnical groups into a multicultural society.

In this essay, I examine the legal construction of racial discrimination in Mexico. The case of Mexico illustrates the initial “official” denial or negation of the phenomena of racial discrimination and late “official” awareness of the problem. The Mexican government’s recent awareness has been, to a certain extent, the result of its active participation in the Reports requested and considered by the Committee.⁹

This case is of particular interest for two main reasons. First, the situation in Mexico can be of great assistance in understanding racial discrimination in post-colonial Latin America. Second, there is an historical need to establish where Mexico finds itself in terms of legal racial discrimination after 200 years of its independence from Spain.

approving Mexico’s declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination established pursuant to the International Convention on the Elimination of All Forms of Racial Discrimination was published in the *Diario Oficial de la Federación* [Federal Official Gazette]. On March 15, 2002, Mexico made a declaration recognizing the competence of the Committee on the Elimination of Racial Discrimination, in accordance with Article 14 of the Convention, to receive and consider communications from individuals or groups of individuals within its jurisdiction claiming to be victims of a violation of any of the rights set forth in the Convention.

⁶ General Assembly Official, *Report of the Committee on the Elimination of Racial Discrimination*, Fiftieth Session Supplement No. 18 (A/50/18), paragraph 358.

⁷ See Articles 2 and 5 of the International Convention on the Elimination of All Forms of Racial Discrimination.

⁸ See below Section IV: New Awareness and Actions.

⁹ In accordance with Article 9 of the Convention, State parties undertake to submit to the Secretary-General of the United Nations, for consideration by the Committee, a report on the legislative, judicial, administrative or other measures which they have adopted and which give effect to the provisions of the Convention, every two years and whenever the Committee so requests.

II. THE HISTORY OF THE LEGAL CONSTRUCTION OF RACIAL DISCRIMINATION IN MEXICO

Race is a social construct produced by the dominant group in society and its power to define.¹⁰ The concept of race, as understood by European Renaissance science and philosophy, was associated with the belief in white supremacy. By the 17th century, scholars had divided all the peoples of the known-world into four or five classifications.¹¹ This categorization of different races can be understood as a construct that in itself ordered reality. The massive exploitation of the recently discovered lands and the enslavement of its inhabitants were justified by what at that time was regarded as Europe's economic necessities.

In practice, living in racial categories, or castes, as was the case in Latin America, took a diversity of forms. It included the conceptual violence of regarding certain groups as inferior, which in turn resulted in physical violence. Today, many of these practices would be considered ethnic cleansing and genocide. It also legitimated a racist worldview through legislation and other types of "legal" and "religious" acknowledgement. The subjugation of the native peoples of the New World was legally sanctioned by "laws" of "discovery," "conquest" and "*terra nullius*" which made up the "doctrines of dispossession."¹²

Doctrines of oppression disrupted indigenous people's way of life and their relationship with the land. In the 15th century, two papal bulls set the stage for European domination of the Americas.¹³ The first one, *Romanus Pontifex*, issued by Pope Nicholas V to King Alfonso V of Portugal in 1452, declared war against all non-Christians throughout the world, and specifically sanctioned and promoted the conquest, colonization and exploitation of non-Christian nations and their territories. The second one, *Inter Caetera*, issued by Pope Alexander VI in 1493 to the King and Queen of Spain after Christopher Columbus's voyage to the island he called Hispaniola, officially established Christian dominion over the New World. It called for the subjugation of the native inhabitants and their territories, and divided all newly discovered or yet-to-be discovered lands in two - giving Spain rights of conquest and dominion over one side of the globe and Portugal over the other.¹⁴

¹⁰ See RONALD TAKAKI, *A DIFFERENT MIRROR: A HISTORY OF MULTICULTURAL AMERICA* (Little Brown & Company, 1993).

¹¹ MARGARET DAVIES, *ASKING THE LAW QUESTION: THE DISSOLUTION OF LEGAL THEORY* 62 (London, Law Book Co., 2nd ed., 2002).

¹² *Id.* at 265.

¹³ *COLONIALISM PAST AND PRESENT: READING AND WRITING ABOUT COLONIAL LATIN AMERICA TODAY* (Álvaro Félix Bolaños & Gustavo Verdesio eds., University of New York Press, 2002).

¹⁴ ANTONIO RUMEU DE ARMAS, *EL TRATADO DE TORDESILLAS* 87 (Mapfre, 1992).

These “doctrines of discovery” provided the basis for both the “law of nations” and subsequent international law during Colonialism. They allowed Christian nations to claim “unoccupied lands” (*terra nullius*) or lands belonging to “heathens” or “pagans.”¹⁵ These concepts later gave rise to the situation of many native peoples in Latin America during the “*Colonia Española*.” The colonialist regimes were therefore based on the presumption that race determines characteristics such as intelligence, work ethics and moral fiber. The idea of race was used by the Vatican, Spaniards and Portuguese as a way of rationalizing murderous violence and legally systematizing the domination of the colonies in the New World.

The Mexican War of Independence started because of *criollo*¹⁶ resentment, which had greatly weakened relations between New Spain and Spain, its mother country, in the early 19th century. Two main factors contributed to this situation. The first was economic: the *criollos* in charge of the administration felt harassed by the Crown’s tax impositions on commerce in the colonies. The second factor in spurring the independence movement was ideological: the influence of the European Enlightenment.¹⁷ After reading the works of the Enlightenment writers, many *criollos* in the New World began to question the benefits and reasons for their colonial relationship with Spain.

The Enlightenment was a broad movement in the Western world which featured a new concept of humanism, the idea of secularism and liberalism, among other views.¹⁸ This school of thought also defended the reinvention of democracy. Enlightenment in sciences included a rational philosophy and a worldview that would influence many intellectuals in the Spanish colonies. Following this movement, on September 16, 1810, Miguel Hidalgo, a priest who had become familiar with the ideas of the Enlightenment, began an insurrection in hopes of freeing Mexico from Spanish colonial government.

But as a school of thought, the Enlightenment was built upon solid European cultural bases. Its European origin promoted itself as universal, although Enlightenment values were particularly intolerant of pluralism.¹⁹ Every legal institution created under this doctrine was based on a “so-called” universal truth. This resulted in a rejection of all other different realities. The first legal constitution of the independent Mexico was shaped by this principle. Mexico’s first Constitution, which was called “The Feelings of the Nation” [or “*Sentimientos de la Nación*”], was enacted in 1813.²⁰ This Consti-

¹⁵ Davies, *supra* note 11, at 265.

¹⁶ *Criollos* were people born in Mexico but directly descended from Spaniards.

¹⁷ JAY KINSBRUNER, INDEPENDENCE IN SPANISH AMERICA: CIVIL WARS, REVOLUTIONS, AND UNDERDEVELOPMENT 143 (University of New Mexico Press, 2000).

¹⁸ Davies, *supra* note 11, at 261.

¹⁹ *Id.* at 261.

²⁰ Los Sentimientos de la Nación, available at: <http://usuarios.lycos.es/Aime/senacion.html>.

tution showed for example its loyalty to the Roman Catholic religion declaring it the only religion “without tolerance for any other.”

This document contained the central characteristic of the prevailing “liberal ideology” among the revolutionary bourgeois classes that guided the fight for national independence.²¹ Improvements in social justice and the abolition of slavery were welcome developments for the creation of a free and independent nation. However, the new laws were incapable of assimilating the multicultural origins of Mexican society. From their birth, Mexican legal institutions were based on a doctrine that was largely intolerant of pluralism. Modern thought in 1810 was based on the Enlightenment idea of a single rational “Truth.” This legal perception was particularly unsuccessful in recognizing the existence of the ethnic differences among Mexicans. While its drafters based the document on a Western theory of law, they failed to consider non-Western concepts of law. The Western concept of law admits only one law.²²

From the Mexican Independence to the last decade of the 20th century, a systematic and institutional form of racial dominance existed in Mexico. It was systematic because the concept of race was embedded in the worldview of Mexican society.²³ During the “Porfiriato” (the period of dictatorship from 1880-1910 under Porfirio Díaz), the racial social structure inherited from colonization was left untouched and Mexican government pledged to overcome its problems by “whitening” itself.²⁴ It was institutionalized because this systematic racism molded the legal system and shaped the institutions governing society. During that time, the policy was formally “race neutral” and prohibited individual racial discrimination, although it simultaneously was based on a certain model for people and a model of law that reflected the values of white Mexicans.

The policy promoted “color-blindness,” that is, it advised all citizens, regardless of race or cultural origin, to ignore external appearances and think of each person as essentially human. As a consequence, the basic rights of indigenous communities in Mexico, including the ancestral right to land and to cultural identity, the use of language, education and administration of justice, were systematically violated in the name of “color-blindness” for almost two centuries. At the same time, racism and discrimination entrenched in society made indigenous people more vulnerable to human rights violations.

The error of this “color-blind” equality is obvious. In its insistence that people are essentially the same, it does not give sufficient recognition to the

²¹ JAIME RODRÍGUEZ, *THE INDEPENDENCE OF MEXICO AND THE CREATION OF THE NEW NATION* 90 (Los Angeles: UCLA Latin American Studies, 1989).

²² Davies, *supra* note 11, at 268.

²³ *Id.* at 269.

²⁴ Rodríguez, *supra* note 21, at 97.

actual differences that exist. The aberration of seeing all people as ideally equal masks the fact that people are not equal in their material conditions. It was not until 1992 that Mexico legally recognized itself as a multi-ethnic and multicultural nation.²⁵ Until then, the indigenous populations had been regarded, at best, as peoples to be civilized and to be culturally assimilated.

III. TRACES OF RACISM IN MEXICAN SOCIETY

The original *criollo* structure still holds a hegemonic position in Mexico. It is true that Mexican racism has never been expressly written in the law as it was, for example, in the U.S. South. It is also true that racial mixing, or *mestizaje*, has occurred on a far greater scale in Mexico than in the United States. However, Mexican racism can be more pervasive today than in its northern counterpart. Mexico has lived in a “white fantasy” for many years. Racial domination exists in the relationships of power embedded in Mexico’s language and cultural symbolism. For many years, it was enough to turn on any Mexican television program or examine the advertisements in any magazine to find the ingrained racism of its society. One would hardly know one was in Mexico. Almost all the people in the advertisements were white, of pure European extraction. Only occasionally did one encounter a *mestizo*. Still today, one may never see on television a *Tzeltal* or *Tarahumara* or *Purépecha* or *Yaqui* or any of the living indigenous inhabitants.

These facts illustrate that a certain colonialist mentality in the Mexican society still exists in many communities. The elite in power, the white, can only see a single form of truth.²⁶ In Mexico today, many symbols of its colonizing power are everywhere. The colonial world of Mexico was a world of “statues” that are kept alive in the modern racism of its society.²⁷ In the Colony, there was a “statue” of the general who succeeded in the conquest and a “statue” of the official who administrated the land.²⁸ Even when co-

²⁵ See below Section IV: Awareness and Actions towards a Change of Policy.

²⁶ Davies, *supra* note 11, at 271.

²⁷ Through the process of conquest and colonization, new actors emerged in the history of Spain; the conquest of Mexico was regarded as a triumph of the Spanish monarchy over a pagan civilization, hence, the winners, *e.g.* Charles V (King of Spain), Hernan Cortés (the Conqueror of Tenochtitlan), etc., were often regarded as heroes whose heroic acts were remembered through multiple forms of monuments. Such monuments embraced the ideology that led to the conquest of the defeated Aztecs, and that was preserved in the political and social relations between the Spanish descendants and the native Americans of Mexico.

²⁸ See for example the funeral statues of Spanish army or government members who served the Spanish crown in New Spain during the colonial period. Many of these statues were located within churches and were built thanks to these persons’ financial support. These statues reflected the submission to the values of the unique Catholic God who made the military and religious colonization possible, see Manuel Toussaint, *La escultura funeraria*

lonialism ends in legal terms, the social effects of colonialism are enduring for both the colonized and the colonizers.²⁹ In modern Mexico, these traces take the form of names of streets, cities, buildings, universities, and so on.

Socially speaking, Mexico lives in a stage of post-colonialism after two centuries of its independence from Spain. Because independence or decolonization did not result in a return to a pre-Colonial state, the prefix "post-" does not mean after Colonialism, but rather denotes the continuation of colonialism in a different form.³⁰ Colonial thought remains in the consciousness of the formerly colonized Mexicans and their colonizers, as well as in the institutions imposed during the process of colonization. For instance, the issue of skin color in Mexican society is very intriguing. In Mexico, even in indigenous families, the member with the lightest skin will be called "*güero*" (blond or fair). Light-colored eyes are highly prized. In Mexican families, this emphasis on lighter skin remains. Racism enters every *criollo* and *mestizo* family, defining the value and the place of the children according to their coloring. The darkest one may become the outsider, while the fair-skinned one holds an esteemed place in the family.

This issue is a reminder of the Mexican colonial system of "*castas*" [castes]. The system identified dozens of racial stratas, with white on top and black at the bottom, with every conceivable combination categorized in between. It is well-documented that when registering their children at the church, which required registering race as well (*i.e.*, *criollo*, *zambo*, *indio*, etc.), mothers would try to elevate the status of her child by registering "up" if the child were light-skinned.³¹ The issue of skin color represents the effects of colonialism which have become an inextricable part of Mexican culture and of its legal, educational and political institutions. The power of whiteness is evident in the everyday symbolism of Mexico's language, religious beliefs, literature and representations.³²

The colonial regime produced the "hybrid" identity of modern Mexico. Hybrid identities are not single or stable, but rather fluctuating, caught between the opposing forces of the colonizing and colonized cultures.³³ This hybridity is not only the fate of the colonized Mexican, but also of the colonizers, who recognized themselves as Mexicans but at the same time defined themselves as different from "the other" Mexicans, leaving a trace of the denied "other" in their own identity. This peculiar identity can be seen in

en la Nueva España, Vol. III No. 11, ANALES DEL INSTITUTO DE INVESTIGACIONES ESTÉTICAS 41-58 (UNAM, 1944); Eugenio Noriega Robles, *La estatua orante de don Manuel González de León en la Iglesia parroquial de Huichapan, Hgo.*, Vol. IX No. 35, ANALES DEL INSTITUTO DE INVESTIGACIONES ESTÉTICAS 33-35 (UNAM, 1966).

²⁹ *Id.* at 271.

³⁰ *Id.* at 280.

³¹ Bolaños & Verdesio, *supra* note 13, at 80.

³² Davies, *supra* note 11, at 280.

³³ *Id.* at 280.

different manifestations of Mexican culture. For instance, the ideology of the Revolution of 1910 glorified the country's Aztec heritage. Statues and schoolbooks commemorate Cuauhtémoc's (the last Aztec emperor) heroic effort to defend himself against the Spanish conquerors. The Museum of Anthropology has been turned into a showcase of national pride. From the Aztec Stadium, the Aztec Television station to the Aztec soccer team, Aztec has become a synonym of Mexican.³⁴ Yet for all the glorification of long-dead Aztecs, none of that veneration extends to their living descendants, or to any other native Mexican.

In a nation devoted to celebrating its indigenous heritage, the terrible irony is that Indians are despised. "Don't behave like an Indian," is commonly heard among people. Indians are despised for their physical appearance, their poverty and their language.³⁵ Oddly, these expressions are also used by non-white persons. This is because oppressed people often experience a double consciousness—they simultaneously imitate their colonizers and identify with their own cultural setting or racial group.³⁶ Thus, for example, as one begins to recognize that the Indian is a symbol of imperfection, one catches oneself hating the Indian. But then one realizes that he is an Indian himself.

Recognition and explosion of this hybridity can lead to subversion: the creation and celebration of new identities and new ways of being, which are resolutely anti-essentialist and cross-natural.³⁷ Octavio Paz, Mexican Nobel Prize winner and devoted scholar of Mexican identity, had already noted this phenomenon. In his *The Labyrinth of Solitude*, he uses the metaphor of adolescence to explain Mexicans' persistent need to reinvent their culture to pass it on to their progeny.³⁸ His work is a discourse on Mexico's quest for identity that gives us an unparalleled look at the country hidden behind the masks.

In Mexico, colonialism, cultural imperialism and globalization have resulted in the global hegemony of white liberal values. These values are taken for granted, regarded as normal rather than providing only one alternative from among several. This is not to suggest that there is nothing positive about liberal values. However, the persisting problem is that liberalism is often regarded as the only perspective. After 500 years of the colonization of the Americas, and 200 years of independence in Mexico, the descen-

³⁴ ROGELIO DÍAZ-GUERRERO, *PSYCHOLOGY OF THE MEXICAN: CULTURE AND PERSONALITY* 544 (University of Texas Press, 1975).

³⁵ See First National Survey on Discrimination: Survey Results by Category "Indigenous Peoples", available at: http://www.conapred.org.mx/biblioteca/biblioteca_arturo.php?var=biblioc89.html.

³⁶ Davies, *supra* note 11, at 280.

³⁷ *Id.*

³⁸ OCTAVIO PAZ, *THE LABYRINTH OF SOLITUDE: LIFE AND THOUGHT IN MEXICO* 43 (Lane, 1967).

dants of the Mesoamerican indigenous people are still among the most marginalized and poorest communities, discriminated against and often exposed to serious abuses of their fundamental rights.³⁹

IV. NEW AWARENESS AND ACTIONS

In 1992, the Mexican government recognized that it was a mistake to strive to build a homogeneous country at any cost and to deny the deep-seated roots of the Mexican nation. To that effect, Article 4 of the Constitution was amended to eradicate all discriminatory practices, particularly in the fields of access to natural resources, administration of justice, the administrative organization of communities and education.

That year, Mexico officially recognized the multicultural nature of the State and guaranteed indigenous rights in its Constitution. However, the theory still contrasted with the reality faced by the vast majority of indigenous people who were often treated as second-class citizens. As a result, the UN Committee on the Elimination of Racial Discrimination offered some recommendations that would later be implemented by the Mexican government. The Committee observed that without statutes and concrete policy measures to implement Article 4, the constitutional reform would have little practical effect since the oppression of the indigenous communities was due less to the absence of legal rules than to the fact that economic interest groups and local politicians pursued with impunity their abusive practices to the detriment of indigenous groups.⁴⁰

Twelve years later, in 2004, the Mexican government submitted a new document with four Reports covering the previous decade.⁴¹ In these Reports, the Mexican government announced the new legal reforms and actions that proved to be effective in assessing racial discrimination in Mexico, but that were still not enough for the total integration of the many Mexican ethnic groups of the recently recognized multicultural society.

First, the Mexican government responded to the Committee's concern about having accurate information about discriminated communities since discrimination can take the form of omission or minimizing information on the groups subjected to discrimination on grounds of race or ethnicity. As mentioned before, the need for accurate information lies in the fact that

³⁹ See First National Survey on Discrimination: Survey Results by Category "Indigenous Peoples", available at: [⁴⁰ General Assembly, *Report of the Committee on the Elimination of Racial Discrimination*, Fiftieth Session Supplement No. 18 \(A/50/18\), paragraph 359.](http://www.conapred.org.mx/biblioteca/biblioteca_arturo.php?var=bilioc89.html.</p></div><div data-bbox=)

⁴¹ CERD/C/473/Add.1, of May 19, 2005, REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 9 OF THE CONVENTION, Fifteenth periodic reports of States parties due in 2004 Addendum, MEXICO, December 20, 2004.

stigmatized minorities often internalize their rejection by society to such an extent that they deny their ethnicity, nationality or membership in a sector rejected by the majority population.⁴²

In order to deal with this issue, a congressional committee produced the first systematic study on discriminatory and social exclusion practices in Mexico.⁴³ In addition, the National Commission for the Development of Indigenous Peoples applied a new methodology in the Indigenous People Census, which improved its reliability. In the past, the basic criterion for determining the number of people belonging to a given indigenous group was language. There were as many indigenous people as there were registered speakers of indigenous languages, plus their children under 5 years of age. This approach excluded indigenous people who, through loss of their indigenous language—but not of other objective and subjective characteristics—had ceased to appear in the census counts. This methodology was replaced by a formula in which linguistic (objective) data was combined with a social (subjective) variable.⁴⁴

In August 2001, a series of constitutional reforms conferring constitutional status to the prohibition of discrimination were enacted, establishing measures to combat discrimination against indigenous peoples. Specifically, a new Article 2 was added to the Constitution. Its wording goes considerably further than the text of former Article 4, paragraph 1, of the Constitution. The new Article 2 sets forth a clear definition of indigenous peoples and communities and recognizes them as an integral part of Mexico's ethnic composition.⁴⁵ This amendment was based on the conviction that indigenous peoples should be able to exercise, under equal conditions, all the rights exercised by other Mexican nationals. The Mexican state thereby accepted the fact that non-discrimination involves recognizing that safeguards protecting all Mexicans should be applied with due consideration, respect and regard for cultural differences.

In the second part of Article 2, the Constitution provides for a range of public policies and programmatic measures aimed at “promoting equal opportunities for indigenous people and eliminating all forms of discrimination” and seeks to ensure that the Federation, states and municipalities are endowed with institutions capable of extending and ensuring the applicability of all these rights to members of indigenous groups.⁴⁶ Accordingly, the legislative branch assumed the obligation of revising all domestic legislation

⁴² See above Section III: Traces of Racism in Mexican Society.

⁴³ See *LA DISCRIMINACIÓN EN MÉXICO: POR UNA NUEVA CULTURA DE LA IGUALDAD* (Gilberto Rincón Gallardo ed., 2001).

⁴⁴ CERD/C/473/Add.1, of May 19, 2005, paragraphs 95-100.

⁴⁵ See Political Constitution of the United Mexican States, Article 2, as amended by Decree published in the *Diario Oficial* [Federal Official Gazette] on August 14, 2001.

⁴⁶ Political Constitution of the United Mexican States, Article 2, as amended by Decree published in the *Diario Oficial* [Federal Official Gazette] on August 14, 2001.

to identify norms that ran contrary to the provision prohibiting discrimination and bring them in line with the new general principle of equality. The weak point of these reforms is that individual states have the discretionary power to draft state laws in which the scope of the new constitutional provisions can be limited. This represents one of the main challenges facing the National Council for the Prevention of Discrimination, as it has to coordinate the drafting local laws to fight discrimination with state legislatures.

Article 2 also states that members of indigenous groups should participate in the design and functioning of these institutions. Article 2, section VII, recognizes and guarantees the right of indigenous peoples and communities to self-determination and, consequently, gives them the autonomy to elect representatives to town councils in municipalities with indigenous populations.⁴⁷ On this issue, the Committee regretted that the right of the indigenous peoples to elect their political representatives was limited to the municipal level, and recommended that it should guarantee the right of indigenous peoples to participate in government and in the management of public affairs at every level.⁴⁸

The Mexican Government partially implemented this recommendation. The General Council of the Federal Electoral Institute approved the redistribution of electoral districts for the 2006 and 2009 elections on February 11, 2004. This “redistricting” was established on the basis that of the 300 uninominal districts, 28 have an indigenous population of 40% or more.⁴⁹ It sought to have 28 indigenous persons elected to the Deputies Chamber, giving effect to the constitutional mandate that requires taking the location of indigenous peoples into account in the territorial demarcation of uninominal districts “to promote their political participation.”

This “redistricting” has been criticized on three grounds. First, the proposal and the “redistricting” was mainly undertaken by political parties (in which the representation of indigenous peoples is almost non-existent) and without consulting any of the indigenous peoples of Mexico —in violation of the constitutional rule.⁵⁰ Second, in “redistricting,” the Federal Electoral Institute took into account the towns and municipalities with a majority indigenous population, in addition to geographical continuity, communications and public services. The use of these criteria determined the creation of 28 new districts, but it also meant that 53% of the national indigenous

⁴⁷ Political Constitution of the United Mexican States, Article 2, as amended by Decree published in the *Diario Oficial* [Federal Official Gazette] on August 14, 2001.

⁴⁸ CERD/C/MEX/CO/15, 4 April 2006, Committee on the Elimination of Racial Discrimination Sixty-eighth session, February 20-March 10, 2006, paragraph 14.

⁴⁹ Agreement CG104/2004 IFE General Council on July 15, 2004, published in the *Diario Oficial* [Federal Official Gazette] on August 17, 2004.

⁵⁰ See Jorge Alberto González Galván, *La redistribución electoral y la participación política de los pueblos indígenas en México. Balance y perspectivas (2006-2009)*, 121 BOLETÍN MEXICANO DE DERECHO COMPARADO 176 (2008).

population was not taken into account in this reform because almost half of the indigenous people live dispersed in poorly communicated areas and do not have electricity and water.⁵¹ Third, from the list of candidates enrolled for the 2006 deputy elections in the new 28 uninominal indigenous districts, only 2 percent were indigenous people. As to the elected deputies, only 7 out of 28 were indigenous people, 19 were not and two did not know their ethnic origin.⁵²

Besides these constitutional reforms, other statutes improved and updated Mexican legislation against discrimination, particularly discrimination on grounds of racial or ethnic origin. The Federal Act to Prevent and Eliminate Discrimination was published in the *Diario Oficial* [Federal Official Gazette] on June 11, 2003.⁵³ Its purpose is to prevent and eliminate all forms of discrimination against any person, in accordance with Article 1, paragraph 1, of the Mexican Constitution, and to promote equal opportunities and equal treatment.⁵⁴

This Act also contains a special section on indigenous peoples and establishes the National Council for the Prevention of Discrimination to conduct and coordinate anti-discrimination policies in Mexico.⁵⁵ Since 2004, the Council has been empowered by federal mandate to handle proceedings involving complaints of acts against discrimination.⁵⁶

On May 19, 2003, an Act was promulgated to establish the National Commission for the Development of Indigenous Peoples,⁵⁷ aimed at implementing a cross-cutting policy to promote indigenous development, and providing a solid institutional framework for the elimination of discriminatory practices against indigenous peoples on the grounds of race or ethnicity.⁵⁸ According to the First National Survey on Discrimination, indigenous peoples who claim to be victims of discrimination tend to be more vulnerable in the area of access to, and the administration of, justice.⁵⁹ As a re-

⁵¹ *Id.* at 176.

⁵² *Id.* at 200.

⁵³ For a review document on the Federal Act to Prevent and Eliminate Discrimination See Miguel Carbonell, *Consideraciones sobre la Ley Federal para Prevenir y Eliminar la Discriminación*, in DERECHO A LA NO DISCRIMINACIÓN 205-209 (Carlos de la Torre Martínez ed., UNAM, 2006).

⁵⁴ See Article 1 of Federal Act to Prevent and Eliminate Discrimination.

⁵⁵ See Article 17 the Federal Act to Prevent and Eliminate Discrimination and the National Council to Prevent Discrimination website at www.conapred.org.mx/english.

⁵⁶ See Article 43 the Federal Act to Prevent and Eliminate Discrimination.

⁵⁷ Published in the *Diario Oficial* [Federal Official Gazette] on May 21, 2003.

⁵⁸ See Article 2 of the Law of the National Commission for the Development of Indigenous Peoples published in the *Diario Oficial* [Federal Official Gazette] on May 21, 2003.

⁵⁹ See Survey Results by Category, “Indigenous Peoples”, Survey question: “¿Cuáles son los derechos más importantes que se deben respetar de los indígenas?” at <http://www.conapred.org.mx/index.php>.

sponse to this problem, in 2002, several articles in the Federal Code of Civil Procedure and the Federal Code of Criminal Procedure were amended.⁶⁰ Furthermore, on March 13, 2003, the *Diario Oficial* published a decree promulgating the General Act on the Linguistic Rights of Indigenous Peoples.

Following these amendments, courts are now required to take into account indigenous traditions and customs and to respect self-identification of indigenous people involved in trials or proceedings. The first good signs have already appeared. In 2006, for the first time in history, a suit for *amparo*⁶¹ was admitted in an indigenous language.⁶²

Regrettably, and despite the legal recognition of indigenous traditions and customs, the non-recognition of “indigenous tribunals”⁶³ persists in a number of states. Courts continue to impose sentences disproportionate to the alleged offenses, as in the case of environmental offenses or those against public health.⁶⁴

⁶⁰ See CERD/C/473/Add.1, of May 19, 2005, paragraphs 95-100 and paragraphs 136-137.

⁶¹ An *amparo* is a very powerful provision unique to Mexican law that is an order for constitutional protection against acts by authorities. There is no adequate translation for this term into English. An *amparo* provides for a constitutional review by a Federal Court at any stage of a case, including investigation.

⁶² *Amparo* Trial commented in Jorge Alberto González Galván, *El primer juicio de amparo en lengua indígena: los idiomas del derecho en el México pluricultural del siglo XXI*, in LA CIENCIA DEL DERECHO PROCESAL CONSTITUCIONAL. ESTUDIOS EN HOMENAJE A HÉCTOR FIX-ZAMUDIO EN SUS CINCUENTA AÑOS COMO INVESTIGADOR DEL DERECHO, Vol. XII, Chapter XLIV (Eduardo Ferrer Mac-Gregor & Arturo Zaldívar Lelo de Larrea eds., IJ-UNAM, 2009).

⁶³ The expression “indigenous tribunals” should be understood as the civil or criminal state court proceedings in which the judge acknowledges the applicability of indigenous traditions and customs to a specific case, based on the participation of subjectively defined indigenous parties in proceedings. See the Supreme Court decision on the subjective definition of indigenous person under the Article 2, A, VIII of the Constitution.

See Supreme Court, Novena Época, Primera Sala, *Semanario Judicial de la Federación y su Gaceta XXX*, December 2009, p. 293, Thesis 1a. CCVIII/2009.

⁶⁴ For example, in a recent case (*amparo directo en revisión* 1624/2008) a person was arrested having illegal possession of turtle eggs. He alleged that in the indigenous community to which he belonged, eating turtle eggs has been a custom and tradition during many years, and asked to be judged having due consideration of the indigenous usages and traditions of his community. A state court denied the rights granted by article 2, A, II of the Constitution based on the fact that the accused spoke Spanish besides his indigenous language. In overturning that state court’s decision, the Supreme Court established that the mere fact that indigenous persons speak Spanish or any other language does not deprive them from being considered as indigenous people. Instead, the self-recognition as indigenous may be a more relevant factor in determining the applicability indigenous traditions and customs.

See Supreme Court, Novena Época, Primera Sala, *Semanario Judicial de la Federación y su Gaceta XXX*, December 2009, p. 293, Thesis 1a. CCVIII/2009.

V. CONCLUSION

In recent years, Mexico has taken important and decisive steps to overcome its former negation of the existence of racism and to eliminate discrimination. Mexico now acknowledges that racism, racial discrimination, xenophobia and related intolerance exist at all levels of Mexican society.⁶⁵ Visible, but still insufficient, efforts of the Mexican government have sought to create an appropriate legal framework and competent bodies to prevent and punish the acts of discrimination that persist in Mexico.

In its Final Consideration of the Reports submitted by Mexico, the UN Committee has welcomed the adoption of the constitutional amendments and the enactment of the acts on the prevention of and protection against racial discrimination.⁶⁶ Nevertheless, the Committee has also identified areas in which racial discrimination still occurs and where combat against it needs to be reinforced. For example, the Committee is still concerned about the racial discrimination that exists against indigenous peoples in the media, including the projection of stereotyped and demeaning representations of indigenous peoples. On this issue, the Committee has recommended taking appropriate steps to fight racial prejudice that leads to racial discrimination in the media, whether public or private, by adopting a code of media/journalism ethics in this field.⁶⁷

Although the Mexican government has taken important measures to legally deconstruct principles upon which racial discrimination was based, there is still much to do in the area of educating society and government agents in order to put the new principles of equality before the law and non-discrimination into practice.

Social education is very important since racism is also a problem of individual ignorance or prejudice that leads to social damage for specific racial groups.⁶⁸ Racial attitudes are hindering Mexico from making the necessary progress away from racism. These attitudes generate unequal dualities, making it nearly impossible to create a truly national project. Racism creates internal insecurity, as the denial of basic human rights, intolerance and discrimination often lead to confrontation among social groups that endangers democracy, peace and the economic and social security of the whole community.⁶⁹ In all, the racism present in Mexico is dividing and weakening the country.

⁶⁵ CERD/C/473/Add.1, of May 19, 2005, paragraph 215.

⁶⁶ See CERD/C/MEX/CO/15, April 4, 2006, Committee on the Elimination of Racial Discrimination Sixty-eighth Session, February 20-March 10, 2006, paragraphs 3-10.

⁶⁷ *Id.* paragraph 18.

⁶⁸ ROBERT MILES, *RACISM* 65 (2nd ed., 2003).

⁶⁹ See UN High Commissioner for Human Rights, Commission on Human Rights resolution 2003/41, "The incompatibility between democracy and racism", *58th meeting*, 23

It is not possible to ensure equal and impartial treatment before the law for all people until society understands that Mexican indigenous peoples have a different perception of law and life, and that the racism of an “only white” law or way of life perpetuates the economic, social and political marginalization of indigenous peoples. The question Davies poses on this issue illustrates the problem of white perception. “Equality may be good for one under this law, but what if another does not accept this law? ‘Others’ law is not equal to mine because it is not recognized as law, so how can equality be achieved?”⁷⁰

April 2003 [Adopted without a vote. See chap. XI. - E/CN.4/2003/L.11/Add.4]: (3) Re-affirms that racism, racial discrimination, xenophobia and related intolerance condoned by governmental policies violate human rights and may endanger friendly relations among peoples, cooperation among nations, international peace and security and the harmony of persons living side by side within one and the same State.

⁷⁰ Davies, *supra* note 11, at 287.