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## **Human Rights, Gender, and Ethnicity: Legal Claims and Anthropological Challenges in Mexico<sup>2</sup>**

“Indigenous rights” has become a touchstone of the transition to democracy in Mexico. Since the Zapatista rebellion in 1994, the question of indigenous peoples has moved from its marginal position, understood as a problem of regional underdevelopment, to the center of the Mexican debate on the nature of the nation-state. The recognition of cultural diversity and autonomy for indigenous peoples has opened up an important discussion regarding how to imagine a multicultural society based on equity, tolerance and respect. This is one of the key points that a new identity policy has to confront in countries such as Mexico, where indigenous people have been cast as the center of the Mexican history but have been excluded from the contemporary national project, and are now the marginalized of the marginalized. What is new in this conjuncture is the active presence of indigenous organizations at a national, regional and local level participating in the political arena as principal actors demanding a new relation within the state and the legal recognition of their rights as indigenous peoples. The fight for regulation, for not being outside the law, symbolizes what Santos (1996) refers to as a key contradiction in modern societies between the paradigm of emancipation and the paradigm of regulation, in a moment where discourses of rights (ethnic, human, gender) open new ways to fight at the national and international level and can in a way support progressive emancipatory policies. This scenario signifies a great challenge to anthropologist, and social scientist in general, because of the urgent need to formulate alternative legal proposals recognizing cultural diversity. It is in this context that this article has to be understood.

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How can we recover anthropological discourses of heterogeneity, power, and gender in the construction of ethnic claims and of collective human rights? How can we contribute to the recognition of rights which do not reproduce homogeneous views about indigenous normative systems, and which contemplate the specific demands of indigenous women? How can we collaborate in the dialogic construction of a critical and constructive identity policy? Here lies one of the political and ethical dilemmas to which we are confronted as social scientists today; especially when we find ourselves involved in the formulation of alternative policies of ethnicity confronting hegemonic visions of the state. I am interested in developing these issues, taking into account an experience of the collaborative construction of a proposal for a constitutional reform regarding indigenous rights in Puebla, Mexico, with human rights and indigenous organizations. This particular experience integrates results of a research project, which I am developing in the Nahua region of the Sierra Norte de Puebla; and above all, some reflections on human rights, traditional normative systems, and the issue of indigenous women.

1. *The building of a legal proposal in Puebla: opening spaces for ethnic diversity.*

Indigenous and mestizo human rights organizations of different regions of the state of Puebla have discussed a proposal of constitutional reform for the recognition of indigenous rights, as has happened in different parts of Mexico, during recent years<sup>3</sup>. The state of Puebla has the fourth largest population of indigenous people in the country, but its laws do not yet recognize any specific right for them<sup>4</sup>. However, the great interest on the part of the government of Puebla at the end of last year was surprising. There, a constitutional reform on indigenous law, to meet the requirements, was very quickly introduced. This has been the case of many other governments, as well. According to some analysts, the interest of these governments was to approve minimal rights, creating obstacles for the possibility of a new amendment in case there was a constitutional reform

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Hernández, Shannon Speed, and the editors of the Special number of POLAR, Susan Gooding and Eve Darian Smith.

<sup>3</sup> See for example the Indigenous Law of Oaxaca (1994) and Quintana Roo (1997).

<sup>4</sup> The recognition of cultural diversity at the national Constitution is a recent process in Mexico. The constitutional amendment of article 4<sup>o</sup>, in 1992, establishes for the first time that Mexico has a pluricultural composition founded on its original peoples. This reference nevertheless is not enough to recognized rights to indigenous peoples

at a national level, as has been announced. The presidential change in Mexico in July 2000, after the failure of the 70 years life of the most powerful political party in the country (the PRI), has created a lot of expectations regarding the recognition of Indigenous rights at the national Constitution and the possibility of reaching a Peace Accord with the Zapatista rebels in Chiapas. Finally, the tremendous effort of the Zapatistas, the Indian movement, and the civil society, to promote the “Ley de Derechos y Cultura Indígena” (Law on Indian Rights and Culture), that culminated with their presence in Congress last March, was confronted by conservative forces dominant at the parliament, who rejected the legal Initiative<sup>5</sup>. As I write this text, the possibility of constitutional reform that is acceptable to the Zapatistas and the Indian movement is very remote. Nevertheless, the debate continues and indigenous organizations tend to see this moment as one of impasse, while they discuss ways to organize themselves to resist. The discussion about an Indigenous Law in Puebla took place before this new context, between July and November 2000. The questions elaborated there continue to be key aspects for the recognition of indigenous rights.

The political situation in Puebla, mentioned above, has motivated indigenous and mestizo human rights organizations both to make an alternative proposal and to demand that the government fulfill its obligation to consult indigenous peoples before approving any law that would affect them. This is in fact a legal compromise stated at the Covenant 169 of the International Labor Organization (ILO), signed by Mexico in 1990. I have had the opportunity to participate with the organizations in this process discussing ways to recognize crucial themes regarding ethnicity, human and gender rights, aspects that have been in the center of my research.

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<sup>5</sup> Since the announcement of the new government to open spaces for a dialogue with the Zapatistas, the Zapatistas defined three conditions for beginning this dialogue in order to establish a Peace Accord with the government. One of this condition was the approval of the Law on Indian Rights and Culture, a Law elaborated by the COCOPA (a Commission integrated by members of the political parties at the Congress) (see note 12, *infra*), recognized by the Zapatista, and for the same President of Mexico, Vicente Fox. The Zapatistas decided to traverse the country in order to promote this Law, what they did in February and March 2001.

For some years, I have been working on a research project, “Law, Interculturality, and Gender: A Comparative Perspective,”<sup>6</sup> in the Nahua region of the Sierra Norte de Puebla, as part of a collective project in different Indian regions of Mexico. The aim of the project is to study cultural conflict and uses of the law in context of legal pluralism and interethnic relations, and the way new discourses of rights (human, gender, ethnic) are being incorporated in the practice of justice. This experience has led us to get in touch with different indigenous and mestizo human rights organizations, as well as indigenous women’s groups that exist in the region. We have been participating in different acts, events, workshops, and discussions about their practices of human rights defense and the ways to confront new political challenges, such as the formulation of an Indigenous Law in Puebla. Of course, this situation offers new challenges to our research work and has obliged us to discuss with the organizations the academic concepts regarding justice, customary law, human and Indian rights, autonomy, ethnicity, and gender, which have become of central importance to their own practice of defense and to understand the national debate on cultural diversity and ethnicity.

The increasing importance of indigenous rights in the different countries of Latin America has generated a renewed interest in the field of legal anthropology and in the development of studies on the role of law in the construction of identities, and in the strengthening of ethnicity<sup>7</sup>. A key aspect of these subject matters is the recognition of an indigenous legal system, also named customary law (*derecho consuetudinario*), as a prevailing normative system and as a central reference of identity. This has led to the revival of old debates on the subject. What is new in this process is that the indigenous organizations themselves are the ones who are interested in knowing and studying their normative systems as a way of legitimizing their own demands.

It calls our attention to the way in which anthropological discourse on traditional normative systems, legal customs or indigenous law, as well as the different subjects regarding autonomy and human rights, are appropriated by the organizations as central

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6 The research project involves different indigenous regions of the country, besides the Nahua region of the Sierra Norte de Puebla. The final end is to develop a comparative perspective of legal process in these areas.

elements of their own claims and as referents to set their particular demands. Such a process tends to lead to a selective appropriation of traditions and to the idealized construction of past customs, as referents to think about their present practices. Thus, anthropological research, which documents the accelerated transformations of the normative systems and their readjustment to present realities, is confronted with essentialist indigenous discourses. These are elaborated by indigenous or mestizo intellectuals and they tend to reproduce views of “authentic” traditions and harmonious communities to strengthen identity processes and to build their own imagined communities, which confront the hegemonic vision of the state. (Sierra 1997)

Nevertheless, the advocacy practices of most organizations force them to incorporate new languages, such as the language of human rights or the language of gender, that many times contradict those discourses.

## ***2. Legal recognition of ethnic rights.***

The recent political context, which offers the possibility of recognition of indigenous rights in the legislation of Puebla, as well as in the country in general, has opened up an important space for discussion to take to the political scenario the critical works on ethnic rights. However, it is not the same to discuss in workshops or seminars questions of rights and diversity, and to translate these discourses into legal language.<sup>8</sup> For the past years, different indigenous organizations of the north and south of Puebla, have built networks to discuss issues regarding human rights and advocacy, as in others parts of the country. It is precisely this critical work that has allowed them to get together to elaborate a proposal of a constitutional reform on indigenous rights for Puebla. Although there are many important subjects in this field that bring autonomy and cultural difference into play, I will refer to two themes in particular because they are of fundamental importance to understand the complexity involved in the legal recognition of cultural

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<sup>7</sup> To have more information about the development of legal anthropology in Latin America see: Castro, Milka (2000); Castro, Milka y María Teresa Sierra (1998).

<sup>8</sup> We are dealing in fact with a larger problematic, one that involves different scientific knowledges and traditions, marked also by games of power. Legal language, in this context, is the referent to which the anthropological discourse of cultural difference must adapt itself, what for the Positive Law (Derecho Positivo) means to construct codified closed languages, abstracted from the social dynamics. To abound in this proposal see Ortiz (2000).

diversity: the question of human rights and traditional normative systems, and the rights of indigenous women.

### ***3. Traditional normative systems and human rights.***

It is a current opinion among members of Indian organizations and specialists that the recognition of traditional norms is a central referent to think about autonomy and Indian jurisdiction<sup>9</sup>. Indigenous normative systems, or customary law, do not represent the survival of past customs and norms, nor do they imply an idea of community harmony without conflict. They are contemporary systems reflecting relations of domination from colonial and postcolonial policies that have imposed their marks on them, as anthropological work in other latitudes has shown (Moore 1987, Fitzpatrick 1990, Starr & Collier 1989).

In the case of the Sierra Norte de Puebla, the state has an important influence on communal institutions exerting a strong control on political and legal practices. Different from other indigenous regions, such as Guerrero or Chiapas, where the hegemony of the state has been undermined, in the Sierra Norte de Puebla, indigenous jurisdiction is under the control of the state<sup>10</sup>. The principal indigenous authorities, the “presidente auxiliar” (auxiliary or assistant mayor) and the “juez de paz” (peace judge), have a very limited sphere of action: the space of communities<sup>11</sup>. The municipal administrative centers in the majority of the rural areas of the country are centers of mestizo population, controlled by *caciques* (political strongmen) linked to the governments of the state. That is the case in Cuetzalan, a municipality of the Sierra Norte, whose largest population is Nahuatl, and in a smaller proportion mestizo or even Creole peoples of European descent. Indigenous authorities of the communities – the auxiliary mayors -- represent only an auxiliary power for the state, because the law does not recognize their autonomous jurisdiction, explicit in their name. This means that their decisions can be both questioned and revoked by the

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<sup>9</sup> See different documents in Instituto Oaxaqueño de las Culturas (1996)

<sup>10</sup> Indigenous jurisdictions in different regions of Mexico function and are structured in diverse ways. Their scope is also very different depending on the vitality they have as ethnic collectivities and their historical relation with the State.

<sup>11</sup> Each state defines the name of the official authorities at the municipal and community level. Normally, these official positions coexist with non-official or traditional posts like *topiles*, *regidores* or *gobernadores*, depending on each particular indigenous group.

authorities of Cuetzalan. This fact shows the structural subordination of Indian communities and the hegemony of the state.

That is the reason why one of the central demands of the organizations in Puebla, as in the rest of the country, is that the State recognize an autonomous jurisdiction for the indigenous authorities in the different governmental levels: the community, the municipality and the region. This formulation implies the recognition of collective rights for communities, with ample capacity to make decisions according to custom and to their normative systems in everyday life. That is, in fact, one of the statements of the San Andrés Accords as a way to promote the recognition of their collective rights as indigenous peoples<sup>12</sup>. The aim of this proposal is to support autonomy and to prevent the government from revoking decisions made by indigenous authorities, as currently happens.

This was the case recently (1999) in San Miguel Tzinacapan, a Nahuatl community of Cuetzalan, Puebla, when the people wanted to remove their authority, because of his poor job performance. The auxiliary president (*presidente auxiliar*) of the community – who, although elected, came to power with the support of the *caciques* of Cuetzalan – wanted to impose an authoritarian style in his relationship with the neighbors, without respecting local traditions. He was strongly criticized for his lack of commitment to the local customs, for his way of speaking “very loud”, and for his negative behavior generally. His assistants, the *regidores* and *topiles*, left him alone and he was rejected by the community, who finally wanted him dismissed. The municipal authorities of Cuetzalan prevented the community from electing another ruler, however, and did not recognize the decision, so he is still in office until the next election later this year. Many other examples show the subordination of the indigenous authorities to the municipal power and the fact that they are continually watched over, especially if they do not collaborate or are not trustworthy in the eyes of the *cacique* of the moment.<sup>13</sup>

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<sup>12</sup> In February 1996, the federal government and the *comandantes* Zapatistas signed the San Andrés Agreements in San Cristóbal de las Casas Chiapas, referred to the recognition of Indigenous Rights and Culture, and to the compromise of translating this Agreement into a Legal Initiative.

<sup>13</sup> Thus, communities as Huehuetla, a Totonacan municipality near Cuetzalan, where an independent indigenous organization (OIT) has been ruling for nine years the municipal government, until 1999, is continually harassed by the state and the *caciques*.

The ambiguous role that the discourse of human rights has played in recent years in indigenous regions, as in the Sierra Norte de Puebla, is surprising<sup>14</sup>. On one hand, it has been a recourse used by human rights NGOs to prevent abuses of authority and to demand the fulfillment of the individual rights before state authorities, which in these areas, where impunity reigns, is an achievement in itself. On the other hand, this has also been a political resource used by the State to control and to put pressure on indigenous authorities. Even if sometimes the inhabitants of the communities themselves accuse their authorities before the state, most of the time these accusations have to do with the failure, on the part of those complaining, to observe collective obligations such as *faenas* (communal unpaid work), cooperation, religious charges, *mayordomías*, etc. The threat of denouncements based on human rights have worked to limit traditional authority, which has lost a lot of its force due to its inability to sanction people by imposing fines or arresting them.

Human rights end up being an effective weapon used in a discretionary way by state authorities with the political purpose of exerting control. This is reinforced with training workshops organized by the judicial power of the state, directed to “peace judges” and mayors of the communities and of the municipalities, with the purpose of explaining to them their jurisdiction and functions as authorities. These meetings end up being a kind of performance in which the public officials teach the authorities how they should apply the law, that is to say, what is written in the Constitution. Those were the words of a representative of the Human Rights Commission of the State of Puebla, a young man dressed in an elegant suit, who arrogantly pretended to give a lesson to the indigenous authorities, many of whom were men of advanced age, who viewed their self-styled “teacher” with suspicion.

Indigenous communities are not spaces of harmony and consensus, nor are they isolated from the national dynamics. Factionalism and power relations, which benefit some to the detriment of others, predominate and sometimes unjustified abuses are committed.

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<sup>14</sup> As happens in many parts of Mexico, in Puebla there exist human rights NGOs – some of them indigenous – as well as an official human rights organization, the State Human Rights Commission of Puebla. This Commission is the counterpart of the National Human Rights Commission, created in Mexico since 1992.



However, collective dynamics and firmly rooted cultural traditions prevail. They guide the exercise of authority, generating vigilance and the commitment of the community of reproducing certain links and collective rituals. Such is the case of the *mayordomías*, the assembly decisions, trials (*conciliaciones*), *faenas*, etc., which I am not going to develop here (cf. Sierra 1995). Hence, when the authorities do not fulfill the expectations of the inhabitants, they are severely criticized. Authorities play a central role in local dynamics because they have the responsibility to represent the community and to promote projects of collective interest, which are generally discussed with the inhabitants.

Human rights NGOs in the communities, as the mostly indigenous *Takachihualis* Commission of San Miguel Tzinacapan in Cuetzalan, besides doing advocacy have promoted the study of traditional law, with the end of vindicating certain traditions and strengthening their Indian normative systems.<sup>15</sup> Ten years of existence of *Takachihualis* has had an important effect in the lives of the Nahuas of Cuetzalan regarding the defense of their rights to face the state but also to face indigenous authorities. That is in fact what we could see by observing how people of communities look for their help when they are involved in legal trials at the municipality of Cuetzalan, or just as advisers in different conflicts. Their well-organized archives, where they write down all the cases that they are following, reveal the compromise with their work. *Takachihualis* is comprised of 11 members—two of them are women and the majority is Nahuas of San Miguel Tzinacapan—who decided to do something to face impunity and human rights violation towards Indians. Almost all of them have a story to tell about a negative experience with state officials and the law that led them to participate. As an organization defending human rights, they defend the idea of individual guarantees and legal authorities, indigenous or mestizo, even when these conflict with cultural practices. For example, in one case a “peace judge” was accused of “misuse of authority” for putting someone in jail without a legal reason. In fact, in accordance with his customary practice, he had jailed the individual “to calm angry hearts.” This situation has led *Takachihualis* to reflect about their own practices and understandings of traditional justice. For this reason, they decided to investigate what they call “their traditional law,” and in order to do that they implemented a

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<sup>15</sup> Commission Takachihualis (1998)

co-participative research project in which they involved past authorities of the communities, the “*pasados*”. This study generated the integration of a “*Consejo de ancianos*” (Counsel of Elders), as a way to establish what they called “ancient” traditions. This *Consejo*, formed by the *pasados*, was supposed to give advice to present authorities. It functioned for a year. However, the new mayor of the community did not recognize them, so the *Consejo* was dissolved, at least for the time being.

Even if in their research *Takachihualis* reproduced an idealized vision of the past and its traditions regarding the practice of justice and their normative system, their interest in rescuing custom and at the same time their practice of advocacy, has led them to critically consider certain old practices, such as physical punishment, traditions that are now seen as violating human rights (cf. *Takachihualis op cit.*).

In this way, *Takachihualis* also turns to human rights discourse to qualify traditional customs and to discuss other less oppressive ways to exercise authority. Such use of human rights language by the indigenous organizations does not appear without conflict. There are cases of community authorities who feel watched over by “human rights”. This same situation worries the members of the Takachihualis Commission who confront the necessity of adapting human rights to their own cultural realities. The experience of Takachihualis reveals a central problem in the present debate regarding the practice of human rights in ethnic contexts because different cultural and juridical logics come into play, and they cannot be evaluated only from an occidental point of view. Finally, what are at stake are different conceptions of justice that have to be evaluated considering cultural values and power relations.

What has happened until now is that the state ends up imposing the padlock of human rights, generally seen as individual guarantees, without considering the cultural and collective aspects involved in their practice. Similarly, the State insists on referring to human rights as a necessary condition to recognize indigenous rights –as is the case in the

San Andrés Accords in Chiapas and their legislative version stated in the COCOPA Legal Proposal<sup>16</sup>.

Shannon Speed and Jane Collier (2001) have documented with great clarity in a recent article the paradox which confronts the discourse of human rights, especially when it is used by the state with political ends in indigenous regions. They demonstrate how the state effectively reproduces a colonialist discourse with the purpose of debilitating autonomy processes in Chiapas. This is precisely what indigenous organizations fear when they engage in discussions about the constitutional recognition of indigenous law and human rights. It is also true that the practices of these indigenous organizations, many of which are closely related to human rights, make them open to discuss the subject.

Nevertheless, when we have discussed alternatives for indigenous jurisdiction, as happened during our meetings with the organizations in Puebla when discussing the proposal of an Indigenous Law, what prevailed was a position that leaves human rights aside as a western discourse alien to indigenous autonomy. The principal defense of this position was a criticism of the political use of the discourse of human rights to disqualify indigenous normative systems. As an indigenous intellectual said: “if we introduce human rights (in the legal proposal) that means accepting a negative point of view towards traditions and that minimizes the recognition of indigenous jurisdiction”.<sup>17</sup> This concern winds up legitimizing an essentialist view of normative systems based on the idea of authentic communitarian traditions and harmony. This discourse of harmony is finally used as a way to confront the hegemonic legal order to build a discourse of local autonomy, as Nader (1989) argues in another context. But there are also other voices in the community that insist on discussing human rights within the communities as a way to confront some oppressive practices. Problems arise when dissent exists or when power is used to the detriment of those who question tradition. What has become very controversial has been the question of women, who demand that the vindication of gender be incorporated not only

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<sup>16</sup> The COCOPA legal Proposal (La Ley COCOPA) is the legislative version of the San Andrés Agreements, elaborated by the *Comisión de Concordia y Pacificación* (Pacification and Concordance Commission), conformed since 1995, by members of the National Congress representatives of the different political parties. The Commission has played a fundamental role in the negotiation among the Government and the Zapatistas, as it is still the case in the present moment.

into indigenous rights but also in the discussion of Indian law, a subject linked with the problematic of human rights.

#### ***4. The critique of custom and the rights of indigenous women.***

This is one of the most complicated and controversial themes that reveals the different positions and interests at stake, when discussing a proposal of legal reform as happened in the case of Puebla. Even if among organizations there is a public agreement on the recognition of rights for women, gender discourse encounters negative reactions when it is translated to the sphere of customary law. This presents a dilemma: even if women's demands are considered as important, they are secondary in respect to priority themes such as, indigenous jurisdictions and autonomy. This means that the recognition of such rights must be postponed.

During the Dialogues of San Andrés Larrainzar in Chiapas in 1995, between the federal government and the EZLN, the session of women was one of the most important for the riches of the proposals and demands indigenous and mestizo women presented<sup>18</sup>. However, the demands of women were not reflected in all their complexity in the San Andrés Accords. This situation has reproduced itself in different national and international forums, and because of this reason organized indigenous women have promoted meetings and seminars to discuss alternative formulations of constitutional reform that include their point of view<sup>19</sup>.

As a result of one of these forums celebrated in Mexico City in 1996, where indigenous women from different parts of Mexico participated, a document was formulated, "*Proposals of the indigenous women to the Indigenous National Congress*"<sup>20</sup>. This document was elaborated with the objective of enriching the legal proposal being

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<sup>17</sup> Words expressed by an indigenous lawyer during a meeting in Cuetzalan.

<sup>18</sup> Fr. Bonfil, Paloma y Lourdes Sánchez (1996), "La mujeres indígenas y la política de lo cotidiano".

<sup>19</sup> See for example the meetings organized by ANIPA (National Indigenous Assembly for Autonomy) where the question of women has been discussed (Gutiérrez y Palomo 1999), and the sessions of the CNI (National Indigenous Congress) in 1998.

<sup>20</sup> *Propuestas de las mujeres indígenas al Congreso Nacional Indígena* (1996).

discussed by members of the National Indigenous Congress<sup>21</sup> regarding the recognition of Indigenous Rights. It presents demands of gender and autonomy, problematizing them. It questions an androcentric view of customary law, and insists on the recognition of traditions that do not violate the rights of women. This has been one of the motives for building the National Indigenous Women's Coordination (*Coordinadora Nacional de Mujeres Indígenas*), whose first meeting took place in Oaxaca en 1998. The aim of the *Coordinadora* has been to promote the rights of indigenous women and to develop a gender perspective in defense of their rights. The *Coordinadora* exists as a net of regional organizations of different parts of the country, and it is still too young to measure its effects on women's rights.

The voices of women, being expressed in different settings, demand with insistence that women participate in public decisions of their communities, and their organizations; they question practices that excludes them from the land, or that minimizes their access to inheritance; they are against arranged marriage and especially against customs that justify violence towards them; they propose the building of new relations with their men, and for this they appeal to the discourse of complementation among sexes. They are in fact giving a new subversive meaning to the ideal of complement, expressed in the demand of equity of rights, and not on the mythical idea used to refer to harmonious relations between men and women. But they also fight for the recognition of autonomy an indigenous rights and culture. Those were in fact the words expressed in Nurío, Michoacán, by indigenous women last March during the meeting of the National Indigenous Congress:

*“...We as indigenous peoples need to guarantee the respect to the integrity and dignity of women. Knowing that the principle of duality and complementation that characterizes our culture it is totally just and necessary that women participate in all community decisions, at the local or regional level. We demand a total participation of women, it is the only way to grow in conditions of justice and equity...for this we support the implementation of the 169 Covenant of the International Labor Organization (OIT). Based on this, indigenous women are analyzing some community traditions principally those referred to women segregation related to participation at the public sphere, in and outside communities. Because the Legal Initiative of COCOPA emphasizes the respect on the dignity and integrity of indigenous women, we give total support to this legal Initiative. Finally the*

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<sup>21</sup> The Indigenous National Congress (CNI) constitutes a national network of indigenous

*recognition we are looking for has to have impact not only inside the communities but also outside them where human rights violation has been practiced... ”.*<sup>22</sup>

As these words confirm, indigenous women are elaborating a new language to express their demands and realities. Nevertheless, in this process they have had to face hegemonic discourses that put into play tradition and law.

Women's demands is used to question indigenous normative systems, particularly by the state and by intellectuals who see with real fear the recognition of indigenous autonomies because it will imply to go back regarding liberal rights and democracy<sup>23</sup>. From a liberal perspective, what is mentioned as oppressive tradition regarding women, is referred to disqualify the recognition of cultural diversity and of collective rights that tend to be defined as authoritarian practices that suppressed individual rights. This has become in fact one of the key aspects to criticized the recognition of cultural diversity<sup>24</sup>. Suddenly, well-known lawyers or recognized intellectuals were worried about the negative impact on women's rights of a constitutional reform regarding indigenous law and culture. In fact, the political scenario reveals how the question of women questioning tradition helps those who want to disqualify tradition as oppressive. Paradoxically, from a different position, it also serves those that consider women's demands as a threat against authentic traditions, as it is the case of indigenous male voices. That is in fact what has happened in different scenarios when indigenous legal proposal has been discussed, as it has been in the case of Puebla.

We are precisely at the turning point of women's demands. The words of Rufina, a Nahua woman of Cuetzalan, during the meetings to discuss the proposal about an Indigenous Law in Puebla, clearly expressed women demands and worries:

*“How can we do it in order that the demands we have been working on for so long are recognized by the Law? We want our political participation to be acknowledged, that our customs are not outraged against, we want the right to participate in politics in the community and in the region; the access to*

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organizations in Mexico, formed in 1997, after the Dialogues of San Andrés in Chiapas.

<sup>22</sup> Discourse read by a Zapotec woman, member of the National Women Organization, and of the National Indigenous Congress.

<sup>23</sup> See Bartra (1997); Viqueira (2001).

<sup>24</sup> For a critical view of this perspective see Hernández 2001.

*the land to be respected, but we also want the authorities and the state to respect our identity as women and as indigenous women*<sup>25</sup>.

This claim, in fact, recovers a rich experience of participation where indigenous women of Cuetzalan have developed a critical reflection on their rights as women. Such experience has given them clarity to define their demands. Nowadays, they are a fundamental reference in the ethnic local and regional dynamics. Women are in charge of successful productive projects, and this has contributed to remove stagnant representations over the traditional role of women in the communities.

Organizations like *Maseaulsiuamej Mosenyolchikahuanij* (United Women Working Together) a Nahua women's organization in the Sierra of Cuetzalan, plays a very important role regarding the diffusion and practice of women's rights. This is comprised of 200 indigenous women artisans, from different communities of Cuetzalan, and it stands out by the strength and lucidity with which they have built their organization, having to confront their own husbands, families and authorities. Women who decide to participate in organizations are usually criticized as "gossipy women", or they are criticized by their family for not doing what a women is expected to, particularly at the domestic level. They become "transgressive women," confronting established customs. The different workshops and meeting the *masehauhsiuamej* have organized to discuss problems about domestic violence, health, or human rights, are very rich spaces where women dare to express in their language, in small groups, their feelings, their problems and desires. Each of their life histories expresses the obstacles they have faced, but also the decision to continue. Again Rufina's testimony illustrate this process:

*"...I begin to participate, but I begin to have problems because, sometimes workshops lasted two or three days.. Then he (the husband) got angry and said: "What are you doing, what are you discussing, you go and then you go again the other day, you are neglecting homework. No, I want that when I come (home), my meal is served and everything"...I sometimes I felt bad, I began to cry, because. I liked to participate...besides I felt I was learning new things; from the beginning we began to have reflections on women's rights, about health, problems in the community. I was very interested on all this." "...When my husband became angry, I told him: "I am also contributing*

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<sup>25</sup> Rufina's words during a meeting in Cuetzalan. Similar arguments have been expressed in other forums by indigenous women; Ojarasca (1994); Rojas, Rosas (1995).

*money to our home. I took my sewing, my daughter, I did not care, in order no to have to listen his complains...”so you went to lose your time”.*<sup>26</sup>

Masehualsihuamej Monseyochicahuanij has become one of the more important indigenous women’s organizations at the regional level<sup>27</sup>. They also participate in different networks with human rights and indigenous organizations at national and even international events. Rufina, the representative of the organization, has become a very important reference in the Sierra Norte de Puebla, which is why her participation at public meetings is not a surprise. Rufina was in fact one of the key speakers at the meetings the Zapatistas had in Puebla during their trip to Mexico City, last February. For all these reason when Rufina and other indigenous and mestizo women emphasize the question of women’s rights when discussing customs and autonomy, they recuperate a deep experience of fighting for changing women’s position in communities. Men hear their voices, but they usually are very controversial and not always accepted. Indigenous women are in fact central references for the construction of a critical discourse to essentialist views on customary law.

Their point of view has already influenced the different indigenous and non-governmental organization existing in Cuetzalan, and in other parts of Puebla, who take into account women’s problematic and recognize the importance of a gender perspective, at least in workshops and seminars. Nevertheless, they have problems to accept this point of view when discussing a legal reform regarding Indian rights and autonomy. That was in fact what happened during the debates in Puebla. The question of women was discussed but put aside in favor of defending autonomy and the legitimacy of traditional normative systems. The idea of incorporating the demands of women is not yet assumed by indigenous organizations that ultimately see them as a threat to the recognition of indigenous jurisdiction.

The Nahua women of the Sierra norte are not satisfy with this decision so they insist to fight for gender equity as a principle to be recognized by the state law, and by indigenous law. I am interested in pointing out the contradictions that arise among dominant

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<sup>26</sup> Translation of Rufina’s words during an interview (MTS)

<sup>27</sup> See Alberti (1994), Mejia (2000).



homogenous discourses, when they are confronted by counter-hegemonic discourses, so much at the level of the state as in ethnic communities. Because of this indigenous and mestizo women are trying to formulate new legal alternatives.

One of these proposals has been to recognize the option of jurisdiction, with the possibility of access to the mestizo authorities, in case women do not find a way out of their problems in the community. This proposal, however, undermines the demands for autonomy; in as much as it is optional to appeal to the indigenous authority. For this reason new formulations introduce the recourse of contesting local decisions, as a way to recognize the indigenous authority as first and second instance of government, but opening the possibility of appealing to the state jurisdiction in case of disagreement. This demand expresses the lack of confidence that women have in some indigenous authorities, because they are relatives or “*compadres*” of the accused husband or aggressor. Our research has shown that women in Cuetzalan are used to accessing mestizo authorities when they do not obtain justice in their communities, nevertheless this does not guarantee a satisfactory solution for them because the context of corruption and discrimination that prevails in the administration of justice in indigenous regions.<sup>28</sup> Of course this proposal generates a lot of contradictions not only because it calls into question indigenous autonomy, but it also expresses the concern of indigenous and mestizo women about the critical recognition of indigenous customs and normative systems. These formulations do not account in their complexity for the problems women face within their normative systems, but at least they present certain legal options that the communities and especially the women should evaluate.

In sum, the demands of women, when they confront homogenous and essentialist views of indigenous costumes, reveal also the risks of recognizing normative systems in general, and oblige us to look for alternatives so that the legal acknowledgment of indigenous autonomies does not mean the legitimization of inequalities such as those of gender. It forces as well the construction of inclusive proposals which link indigenous peoples with the national society, touching upon the hegemonic model of democracy and nation that prevails in the country. It is also clear that legality is an important space but it is

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<sup>28</sup> Vallejo (2000); Sierra (2000).

not enough to guarantee the rights of both indigenous men and women and the defense of their dignity; these must be appropriated by the organizations, promoting thus cultural redefinition that can enrich indigenous and mestizo societies.

The participation of the Zapatista “Comandanta Esther”, a Tojolobal woman, at the National Congress last march, symbolizes the challenge posed by indigenous women to the state and liberal intellectuals, but also to indigenous men. Her discourse synthesized what other indigenous women have elaborated, legitimizing a demand for the recognition of autonomy and indigenous rights, without losing critical perspective of women who face oppressive traditions:

*“...Nosotras sabemos cuáles son buenos y cuáles malos los usos y costumbres. Malas son pegar y golpear a la mujer, de venta y compra, de casar a la fuerza sin que ella quiere, de que no puede participar en asamblea, de que no puede salir en su casa...Por eso queremos que se apruebe la Ley de Derechos y Cultura Indígena, es muy importante para nosotros las mujeres indígenas de todo México. Va a servir para que seamos reconocidas y respetadas como mujer e indígenas que somos.....Eso quiere decir que queremos que sea reconocida nuestra forma de vestir, de hablar, de gobernar, de organizar, de rezar, de curar, nuestra forma de trabajar en colectivos, de respetar la tierra y entender la vida, que es la naturaleza que somos parte de ella... En esta ley están incluidos nuestros derechos como mujer que ya nadie puede impedir nuestra participación, nuestra dignidad e integridad de cualquier trabajo, igual que los hombres..”*<sup>29</sup>.

The words of the *Comandanta Esther* before the National Congress of Mexico - a small masked woman dressed with her traditional “*enredo de lana*”-, were powerful arguments that undermine hegemonic prejudices against Indian peoples, and especially indigenous women. It represented the voices of the oppressed giving a lesson of civility and dignity to the whole country. In a clear and simple way, Esther synthesizes the demands of

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<sup>29</sup> “..We know which are good and which are bad the uses and customs. Bad are to beat the women, to sell and buy (women), a forced marriage without women’s consent, that she can not participate in assembly, she can not go out home... Because of that, we want that the Law on Indigenous Rights and Culture to be approved, this is very important for us indigenous women of Mexico. It will serve for us to be recognized and respected as women and as indigenous people that we are... That means that we want to be recognized our way of dressing, of talking, of governing, of organizing, of prying, of healing, our way to work in collectivity, of respecting the earth and to understand life, that is because we are part of nature... In this Law are included our Rights as women, nobody could prevent our participation, our dignity and integrity in any work, the same as men” (Words said by the *Comandante Zapatista Esther* at the National Congress of Mexico, on March 28<sup>th</sup> 2001).

women facing their men and questioning oppressive gender relations, but she also defended the right to redefine and practice their own culture without the intervention of the state. In fact, Esther was expressing other indigenous women's voices, while positing a practical theory of multiculturalism and gender rights.

In conclusion, during the past years the question of Indigenous rights has become a central issue in Mexican society. The proliferation of debates, but principally the emergence of new indigenous organizations fighting and defending their identity as indigenous peoples and participating in a national movement, has transformed the cultural discourse of society towards Indians and cultural difference, even though racism and exclusion still dominate the political scenario. All over the country indigenous organizations have been discussing indigenous laws and in some places, as it happens in Puebla, they have been elaborating legal proposals to recognize their rights. The question of human and gender rights related to the demands of autonomy reveals key and controversial issues that traverse identity policy and oblige us to propose new formulations that challenge established horizons. Similar debates taking place in other places could serve to open new ways for thinking about the recognition of gender and ethnic rights in multicultural societies; particularly those that question essentialist visions social relations and insist to consider the way culture is shaping them differentially<sup>30</sup>

The personal experience of participating as an actor discussing the alternatives for the recognition of indigenous rights with indigenous and human rights organizations has been enriching in personal, political, and academic terms; and this makes me think how an anthropological discourse can inform political process. The Mexican experience regarding the recognition of Indigenous rights has been an excellent occasion to observe the different political forces at stake, and the way anthropological knowledge is used to justify positions sometimes very opposite to its critical intention. That is what happens with the uses of human rights and gender language by the state to disqualify indigenous jurisdictions. So, it becomes a challenge to deconstruct this positions informing about its political objective. It

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<sup>30</sup> (see Mir-Hosseini 1999, Moller Okin 1999, Mohanty 1991, Hernández op cit. )

is also true that sometimes it is politically necessary to support general proposals to recognize autonomy and Indian customary law, even if they have a homogenizing quality, and may not have the level of reflexiveness that we as academics would want to promote. Nevertheless, it is especially important to support subordinated voices, like those of indigenous women, to look for legal alternatives, which contemplate the specificity of their demands from their own cultural horizons.

The Zapatistas indigenous of Chiapas have given a lesson of tolerance and open mindedness with respect to the building of an inclusive and plural national project where cultural diversity and autonomy are not in contradiction with the language of gender and human rights. Fortunately, this has become the most important and legitimate discourse for indigenous organizations at a national level. It has also enriched anthropological perspective on multiculturalism and ethnicity.

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