

INTERCULTURALITY IN LAW AND ITS EFFECT ON THE CONSTRUCTION OF CITIZENSHIP IN CHIAPAS

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— *Abstract*—

The present document aims to justify that law's intercultural approach promotes the coexistence in the diversity based on the dialogue, respect, interaction and inclusion of the cultural differences which contributes to the construction of citizenship. For its better understanding it has been divided in four sections: A) the introductory part, which describes the problem and the objectives that are pursued, all aimed mainly at the construction of a participatory citizenship. B) Interculturality and law, to underline the importance of this approach in the legal aspect, its development and perspective taking as a reference the context of the indigenous peoples of Chiapas. C) Construction of intercultural citizenship in Chiapas, where some of the elements that are considered to be relevant in the formation of citizenship in the Chiapas context are defined and the components that the intercultural approach of the law can contribute to the subject are specified. D) Finally, the conclusions and proposals are presented.

Keywords

Interculturality; citizenship; Indigenous Peoples; political rights.

Today the construction of citizenship demands that the members of society be informed and be committed to play an active role in politics. Even though the technological development of the 21st century has provided the human being with sophisticated technological tools, access to databases and social networks, which are a source of information in real time and that, may well contribute to the formation of the citizen, this does not seem to happen. Citizenship has been relegated to a simple sterile political relationship with the State, which is summarized in the right to vote. The sense of belonging to the people, community, municipality, state, and nation tends to disappear under scenarios of individual economic well-being. The citizenship is locked in the Federal and local Constitutions, in the mere description of the requirements to acquire it.

This document aims to justify the importance of coexistence in diversity based on dialogue, respect; interaction and inclusion of cultural differences, as components of the intercultural approach of law that contribute to the construction of a new citizenship. It is divided into four topics, the introductory part that briefly describes the importance of building a participatory citizenship and the challenge of cultural diversity in Chiapas; interculturality and law, in which the objective of this legal approach is exposed, its development and implementation in contexts such as the one in Chiapas, characterized by the presence of different groups that claim and defend their citizenship rights; the construction of intercultural citizenship in Chiapas, in which it is sought to identify some components that can pay for the formation of citizenship, specifying those that can be achieved from the intercultural approach of law and finally the conclusions and proposals are presented.

In scenarios such as that of the State of Chiapas, there is an element that in the construction of citizenship is transcendent and must be considered if it is to consolidate participatory democracy, *cultural diversity*. The local Constitution of this Federal Entity shows us this social phenomenon by referring in one of its articles to the existence of twelve original peoples, which in some way contributes to make them visible. In addition to the above, the geographic location of Chiapas makes it a gateway for mainly Central American migrants who, in search of the American dream, sometimes stay to live in these lands, which generates new cultural identities that complicate the construction of citizenship.

Given these problems, law's intercultural approach is presented as an alternative to build new citizenship in Chiapas, as a philosophy based on coexistence in cultural diversity, through the promotion of dialogue, respect, interaction and inclusion among the different, the learning of diverse knowledge and the

worldview of peoples and communities, can contribute to the formation of citizens committed to their native peoples and origin communities, promoting the teaching of their political rights and obligations.

The interculturality in the Law combats the monist vision of the legal system, that is, the position that defends the existence of a single normative system, which therefore does not take into consideration the different cultures, groups, communities and peoples that interact in society. The Intercultural approach is a new form of legal knowledge construction, which starts from the recipients of the norm, from the bowels of the communities, from day to day, from the recognition of the existence of a plural society and respect for differences.

However, this new way of building the law also generates an effect on the construction of citizenship, because if the vision of the legal should be inclusive and promote dialogue and respect for differences, citizens will have more alternatives for participation, which can translate into regaining confidence in the electoral authorities. From an intercultural perspective, the contents of the political rights of citizens must be rethought if they intend to live in a participatory democracy.

INTERCULTURALITY AND LAW

Interculturality allows a comprehensive legal design that includes the identity of the original peoples and communities; promotes respect, interaction and dialogue in diversity. In intercultural discourse, democracy, citizenship and coexistence in diversity are fostered; knowing and understanding the intercultural vision in law is beneficial, because it brings elements from different cultures such as the mastery of a different language, diverse knowledge and the worldview of others.

Ethnic identities, migratory dynamics and cultural diversity are themes that give content to the human rights that protect the Federal Constitution and those of the States. Interculturality highlights the necessary interaction for the survival of cultures, that is, analyzes the type of relationships and not who is part of each of the groups, aims to encourage a relational analysis with the help of society, institutions and education. The intercultural discourse pretends that the dialogue and the communication between the cultures allow recognizing the rights of the cultural diversities (Romero Diaz, 2011).

Interculturality in Mexican law emerges linked to cultural diversity, whose interpretation is complex but can be argued alongside the universality of human rights, since they are the shared nucleus of diverse theoretical and

political concerns in the modern world, as well as the philosophical reflections that accompany them (Beuchot, 2005).

The Mexican Legal Culture, being strongly influenced by the western legal culture, adheres to the awareness of the existence of a single normative order, so it only refers to the normative systems of other cultures through custom, ethics and social and historical situation. However, a culture does not evolve if it is not through contacts: the intercultural is constitutive of the cultural (Todorov, 1991).

The Mexican legal system is of monistic tradition and all its institutions are argued from that perspective, it was designed following the steps of Spanish domination: first, the conviction of superiority before the Other, to know and adapt to it, in order to transform it and assimilate it to its culture. Second, the knowledge and almost ethnographic interpretation of the Other, considering that good information is the best way to impose power. And third, the superiority in the technological aspect, especially in communication: this allowed the colonizer to inflict a defeat (Todorov, 2007).

This has hampered the dialogue on cultural diversity that promotes interculturality and not only in relation to indigenous peoples but also with other groups such as migrants or the LGBTTTI community (lesbian, gay, bisexual, transvestite, transsexual, transgender and intersex). The inclusion of interculturality is recent and is identified with the protection that is currently being provided to the human rights of people belonging to the so-called vulnerable groups.

Respect for diversity, inclusion, equal rights, good life, diverse knowledge, worldview, linguistic rights, are expressions of this new approach to law that generates a new construction model in which the dialogue between the different is the common denominator. For law to be intercultural, it must recognize the existence of different systems of norms, which coexist within the state organization and think of dialogue as the main alternative solution to the social conflicts that this diversity can generate.

In the constitutional law of Chiapas there is recognition, protection and promotion of the rights of indigenous peoples, that is to say, cultural diversity is addressed at least in general, however in the issue of citizenship it is necessary to identify and harmonize cultural and the political rights of all the groups, communities and peoples that inhabit the State. In the latter, with an intercultural focus on the legal aspect, there is the possibility of providing future citizens with tools that will make them politically more participative.

CONSTRUCTION OF INTERCULTURAL CITIZENSHIP IN CHIAPAS

To speak of the construction of citizenship in Chiapas is to refer to a process of formation in civic, ethical, cultural, legal, and political values, among other elements; that must be followed by the people who will become citizens, necessarily by the State but which, of course, involves other institutions such as the family and school.

The political system is the one that must generate the basic competences that are required to perform as an exemplary citizen, such as cultivating values like solidarity, the common good, justice, peace, freedom, democracy, respect for differences, non-discrimination, inclusion, equality, but also know the rights and duties that the Federal Constitution, the American Convention on Human Rights and the Constitution of the State of Chiapas, recognize, promote and protect the citizenship.

To encourage reflection on the content of those considered to be political, the forms of citizen participation, the characteristics of representative democracy, the structure of political parties, electoral crimes, the division of public power, the authorities in electoral matters, mechanisms of defense of fundamental rights, cultural rights recognized to indigenous peoples, including their normative and conflict resolution systems.

It is for the foregoing that when considering the intercultural approach of law an architect of coexistence in diversity that through respect for differences and knowledge of diverse knowledge and worldview of native peoples builds differently to the Western orientation, legal science and of course can also influence the construction of intercultural citizenship.

Cultural identity is the starting point for the design of citizenship in Chiapas at the beginning of the 21st century, however the existence of several instances, institutions and areas where indigenous and non-indigenous coexist (mestizos and ladinos), where they coincide fighting together, as in the political parties, in the religions, in the mercantile or credit associations, together of urban colonies as happens in the city of San Cristóbal de las Casas and in non-governmental organizations, it contributes to that identity is not strengthened and therefore diminish the possibility of organizing these minorities and claim their rights (Chacón Rojas, 2005).

In the Chiapas' State Constitutional Law, the respect and promotion of human rights is an obligation of the three levels of government in accordance with the provisions of the Federal Constitution and the

American Convention of Human Rights and its theoretical and practical teaching is included in the plans for basic and upper secondary education, which must also consider the intercultural approach.

Consequently, the construction of citizenship should be considered immersed in these strategies and have a first approach with the intercultural approach in law, assembling the knowledge of civic and ethical values with political and cultural rights, through the promotion of intercultural dialogue and respect to the differences that favor and consolidate representative democracy with the participation of all, complying with the fundamental lines of modern federalism, the coexistence of self-government and shared government.

If we consider that the criteria of classification of fundamental rights are exclusively of didactic order, that is to say, they are designed for their teaching, but in reality they all appear linked to each other. (Barcelo Rojas, 2016), it is appropriate that the political rights and cultural rights recognized to the indigenous peoples in the Constitutional State Law of Chiapas form a single block of study.

The State recognizes the existence of twelve original peoples¹ and this is committed to protect and promote the development of culture, languages, customs, traditions, normative systems and forms of social, political and economic organization of all indigenous communities. Likewise, it recognizes the right to choose their traditional authorities according to their uses, customs and traditions, encouraging the participation and empowerment of women.

In regards to the political rights of the citizens of Chiapas, that is, in general for all those who acquire a citizenship in Chiapas², the fundamental law establishes rights and duties that are acquired with it and the causes of its loss, and separately devotes a title to the democratic exercise of that right. In this sense, it is worth mentioning that the intercultural approach of the law has developed remarkably in electoral matters, largely due to the resolutions that the Electoral Court of the Federal Judicial Power has issued under this

1 Article 7.- The State of Chiapas has a pluricultural population originally sustained in its indigenous peoples. This Constitution recognizes and protects the following: Tseltal, Tsotsil, Chol, Zoque, Tojolabal, Mame, Kakchiquel, Lacandón, Mocho, Jacalteco, Chuj and Kanjobal.

2 Article 20.- Chiapas citizenship is recognized for those born in Chiapas, as well as Mexican women and men who have resided in the state for a period of more than five consecutive years.

perspective, so much so that it has generated an action guide for Judges in matters of Indigenous Electoral Law, whose recommendations and criteria are put to the consideration of the authorities of the three levels of government and of the traditional ones of the towns and communities (TEPJF, 2014).

In the constitutional concept of citizenship in Chiapas are noted intercultural elements such as the recognition of uses, traditions and customs, normative systems, use of language, rights of use, enjoyment and sustainable use of natural resources, wild flora and fauna, special procedures in criminal matters and the recognition of traditional authorities, which justify the use of the intercultural legal approach in its construction.

Interculturality promotes dialogue as a process of interlocution and reciprocal learning that favors the conditions for the integration of knowledge derived from diverse cultures, which enrich one another (Casillas Muñoz & Santini Villar, 2009); consequently, through intercultural dialogue, the values of the different peoples and communities of Chiapas can be known, thus strengthening respect for differences as an element of citizenship.

To accept and defend that within the State of Chiapas different cultures coexist, each with its own language, tradition, religion, worldview and normative system; as well as the right that each town or community has to have their own values scheme that must be preserved, it is necessary that citizens first recognize their cultural identity and then understand the cultural identity of others, that is, practice respect for the differences, element that only through intercultural philosophy can be understood its real dimension (CGEIB & Fonet Betancour, 2007).

Citizenship should not be understood only as a political relationship with the State, but as a social commitment that implies, among other things, the defense of the cultural heritage of the indigenous peoples, their practical, experimental and reflective knowledge that is passed down through generations and its worldview.

Understand that besides the different procedures that constitute Chiapas' legal system, there are other normative systems of their native peoples that use other techniques to solve conflicts. Similarly, and in exercise of the right to self-government, each community may have mechanisms to designate its authorities.

CONCLUSIONS

Interculturality, as a philosophical discourse that promotes dialogue, interaction, inclusion and respect for different cultures, in the 21st century is presented in legal science as an approach that breaks with the traditional western construction of law, by accepting the existence of legal pluralism and therefore the possibility of designing fundamental legal norms taking into account the cultural and political context of all communities, peoples, groups, sectors, nations that may exist within a State, Federation or Confederation.

The construction of citizenship in Chiapas implies the sum of different ethical, cultural, legal, civic and knowledge of fundamental rights in general and in particular of the so-called political and cultural, as well as those related to its democratic exercise. In this process of formation of the future citizen, institutions like the family, the school and the state participate.

Given the multiethnic composition of Chiapas, its constitutional state law studies citizenship from a special perspective in relation to indigenous peoples recognized by the legal order and from a general vision for all those born or residents of five years in the State.

Cultural rights and special political rights of indigenous peoples citizens are grouped in a title of the constitution of Chiapas, perhaps with the intention of making them visible as a vulnerable group.

Derived from the notion of citizenship provided by the state constitutional law of Chiapas are noticed the following: intercultural elements such as the recognition of uses, traditions and customs, normative systems, use of the language, rights of use, enjoyment and sustainable use of natural resources, flora and wildlife, special procedures in criminal matters and the recognition of traditional authorities, which justify the presence of this legal approach in citizen education.

Intercultural citizenship should be understood as a social commitment that implies, among other things, the defense of the cultural heritage of indigenous peoples, their practical, experimental and reflective knowledge that is transmitted for generations and their worldview. As well as developing the capacity for dialogue, interaction, respect and inclusion among cultures, in order to define their own identity and then understand others.

REFERENCES

- Barcelo Rojas, D.** (2016). *Teoría del Federalismo y del Derecho Constitucional Estatal Mexicano* (Primera ed.). México, México, México: Universidad Nacional Autónoma de México Instituto de Investigaciones Jurídicas.
- Beuchot, M.** (2005). *Interculturalidad y derechos humanos*. México: Siglo XXI.
- Casillas Muñoz, M. d., & Santini Villar, L.** (2009). *Las Universidades Interculturales Modelo Educativo* (Segunda ed.). Ciudad de México, Mexico, Mexico: CGEIB.
- Casillas Muñoz, M. d., & Santini Villar, L.** (2009). *Universidad Intercultural Modelo Educativo* (Segunda ed.). México: CGEIB.
- CGEIB.** (2007). *Reflexiones de Raúl Fornet Betancourt sobre el concepto de interculturalidad*. México: CGEIB.
- Chacón Rojas, O.** (2005). *Teoría de los Derechos de los Pueblos Indígenas*. México: IJ UNAM.
- Romero Diaz, E.** (2011). *Educación Intercultural en México, un análisis de los discursos nacionales e internacionales en su impacto en los modelos educativos mexicanos* (1a ed.). Mexico, Ciudad de México, México: Coordinación de educación intercultural y bilingüe.
- TEPJF.** (2014). *Guía de actuación para juzgadores en materia de Derecho Electoral Indígena*. México: Tribunal Electoral del Poder Judicial de la Federación.
- Todorov, T.** (1991). *Nosotros y los otros*. (M. M. Ubasart, Trad.) México: siglo XXI.
- Todorov, T.** (2007). *La conquista de América. El problema del otro*. México: Siglo XXI.