

HUMAN RIGHTS OF INDIGENOUS PEOPLES

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In 1988 two anniversaries that are of special importance for Mexico's indigenous population are being commemorated. On the one hand, Mexico is celebrating the 40th anniversary of the foundation of the National Indigenous Institute (INI), a federal organization aimed at providing attention to the country's indigenous population. On the other hand, the 40th anniversary of the Universal Declaration of Human Rights, ratified in 1948 by the United Nations General Assembly, is being celebrated all over the world. The coincidence of these two events requires a serious reassessment of the situation of human rights of indigenous peoples, not only in Mexico, but also in the rest of native America, poorly called "Latin" America.

In addition, in a few years the Hispanic world will celebrate the fifth centennial of what some people call the "Discovery of America," which others refer to as the "Meeting of Two Worlds." Indigenous populations, in contrast, lament this event as the sesquicentennial of their submission and the birth of their resistance.

Five hundred years since the European invasion, native peoples of the continent continue to be victims of the worst violations of human rights, from discrimination to geno-

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cide. They continue to be denied the right to which all people are entitled according to United Nations General Assembly resolutions: the right to self determination. They continue to be deprived in general of the most precious possession of all peoples, namely their identity.

The human rights of indigenous populations, which for many years were ignored and scorned, today have become a source of international concern. This is due largely to the organizational efforts of native peoples themselves, who have alerted the public to their situation through their struggle and perseverance.

The violation of native human rights began at the very moment the Spaniards arrived, a transgression that has not ceased since that time. Some would say that it is audacious to speak of "human rights" in the 16th century since this concept did not form part of the legal and political discourse of the time. It is said that the Spaniards

were motivated by superior morals in their dealings with the "natives," by a just, divine, religious mission that must be understood in its own terms and not judged in light of contemporary legal, political and moral ideas. Of course there is some truth to this position, but in general terms it is not acceptable. No matter how "just" the conquerors, large estate owners and evangelists believed themselves to be, in reality they were doing what they would not have tolerated if the same had been done to them.

The European "bearer of civilization" operated with a double standard. What was "good" and necessary for the Indian did not follow for the Spaniard. The idea of the civilizing, universalizing mission of Christianity and of the West was from that time on—and it has continued to be so until the Cold War and the "development projects" for today's Third World countries—a simple mask to cover the expansionistic zeal of the world capitalist system. An ideology that masked or concealed—undoubtedly rooted in the fanaticisms of the period, it was nevertheless an infringement upon the same values which constituted the foundation of Western civilization.

On the other hand, among the Spaniards there were those who questioned and disagreed with the conquerors' ideology, which violated natives' rights. It is for this reason that it is indeed valid to judge the conquest and evangelization of

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America without denying other merits that it might have had, to state directly that the conquerors perpetrated grave violations of the human rights of autochthonous peoples of the continent and that these deep-rooted wrongs still have not been righted.

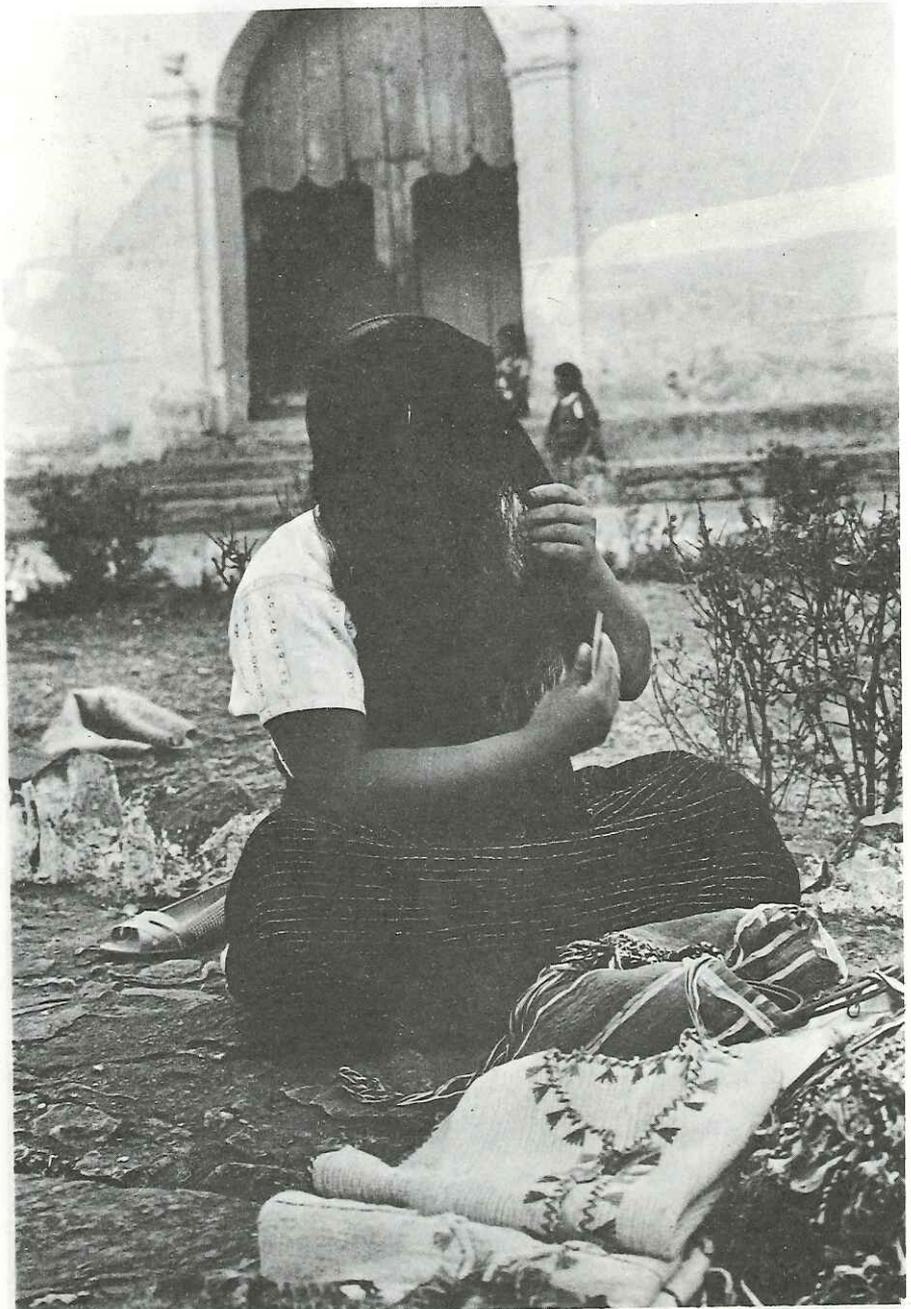
Colonization and Human Rights

It is not enough to remember that all conquests have their conquerors and all colonial systems have their colonizers. In fact, the situation of the Indians of America only became defined during the course of three centuries of colonial rule when legal and institutional mechanisms that standardized relations between native and non-native peoples were established. The position of indigenous peoples within the framework of global society was shaped throughout this process of colonial rule.

The point of departure of the system of relations between natives and Europeans was the moment of the first contact. The essence of the matter resided in the way that Europeans viewed and knew the indigenous peoples, that is to say, the form in which they were cognitively integrated into their semiotic and ideological universe. In other words, how Europeans shaped their relation with the Other.

The relation with the Other was the basis for the new system of domination that the Spaniards established in America. The negation of the Other, that is to say of the Indian, of his culture and of his humanity, was characteristic of the colonizers. This denial of the Other constituted the basis for Spanish control, oppression and exploitation of the natives. The denial of the Other is the first and most fundamental violation of human rights. Later, other colonizers would do the same, although with even more brutality, in Africa and Asia.

The demographic catastrophe produced as a result of conquest and colonization has been widely documented. To be added to this list



Chamula woman. (Photo by Angeles Torrejón)

are ecological imbalances, destruction of the territorial base of indigenous communities and the system of exploitation of native labor. Although throughout the colonial period, protective and tutelary legislation for the natives was developed, by the end of the colonial era in the Americas, the sovereign autochthonous peoples of yore had been reduced to an undifferentiated mass of exploited and exploitable Indians, forming the lowest castes and social classes of colonial society. The only rights they possessed were those granted to them by the Crown.

In spite of the legal equality of all citizens established by republican constitutions, the human rights situation of indigenous peoples probably worsened during the period of Independence. With the expansion of agricultural and cattle raising farms and the development of capitalist relations of production, native populations were the object of massive dispossession, sometimes of massacre and mass extermination. In addition, the exploitation of native labor on the part of large estate owners, farm owners and other landowners worsened.



Chamula women. (Photo by Angeles Torrejón)

New Society, Old Structure

The situation of Indians under new republican societies was largely defined by their position in the economic structure. Their situation was also affected by the conception of the ruling elites and native intellectuals, which was in turn shaped by national and state ideology. During the first half of the 19th century, Latin American societies were still not organized into discrete governments of states. They formed a series of vaguely interrelated regional units based on partially self-

sufficient semi-feudal agrarian economies. In that context, many of the existing conflicts between different factions of the ruling class expressed the tensions generated by the need for a strong, centralized state—preferred by the urban middle classes and the emerging bourgeoisie—in opposition to regional, often separatist interests that were fundamentally agrarian. A profound, much more persistent division existed between the small dominant groups, owners of lands and mines, and the subordinate, indigenous rural population. The divi-

sion of classes was also a cultural one.

The concept of a centralized state and a national culture was controlled by the upper classes, the white descendants of European colonists. At the same time, the modern model of the nation that went hand in hand with the development of a capitalist economy was that of the liberal democracies of the West. In this scheme, indigenous populations, although constituting the majorities in many countries during the 19th century, were considered obstacles for national integration, and thus, a threat for the legitimate place that government elites believed they occupied among the civilized nations of the world. The principal intellectual leaders of the century openly looked down upon native cultures and considered them inferior to the dominant culture of the period. The dominant ideology, based on liberalism and positivism, held that the indigenous element did not have any place in the new national cultures that were being formulated.

This ideology continues to predominate in the 20th century. In modern Latin America, the concept of national culture has been maintained in the idea that Indian cultures do not exist, or if they are acknowledged to exist, have nothing or very little to do with national culture. The greatness of native cultures, if by chance recognized, pertains only to the historical past. If such cultures still exist, they are no more than vestiges of past splendors and their natural tendency is to disappear, reason for which the best thing that a progressive, modernistic government can do is to hasten their demise. In this way, not only are national unity and culture benefitted, but also the Indian peoples themselves are seen as beneficiaries of modernization and progress.

In political and cultural terms,

In spite of legal equality, the human rights situation of the Indians worsened during the Independence period



An elderly Chamula woman. (Photo by Angeles Tarrejon)

the idea of a nation in contemporary Latin America is based on the denial of indigenous cultures. This has led in turn to the formulation of a continental indigenous policy, created at the First Inter-American Indigenous Congress of 1940, whose

objective was the "assimilation," "incorporation" or "integration" of indigenous populations into the molds of the dominant nation state.

Violations of native human rights have been of two types. On the one hand, there is ample

documentation of violations of native civil and political rights including those human rights defined in the United Nations Universal Declaration of Human Rights, the International Pact of Civil and Political Rights, the Inter-American



Convention of Human Rights or the San José Pact, and in the national constitutions of American countries. The rights violated include the right to life, the right to freedom, the right to political participation, the freedom of expression, and the freedom of movement. Violations of these rights, which the Indians share with all other human beings, have been reported before national and international bodies such as the Inter-American Commission of Human Rights, the United Nations Commission of Human Rights and the Russell Tribunal. In addition, because native populations form the weakest element of national society due to their position in the political and economic structure, they have also been and continue to be the most vulnerable sector with regard to human rights violations.

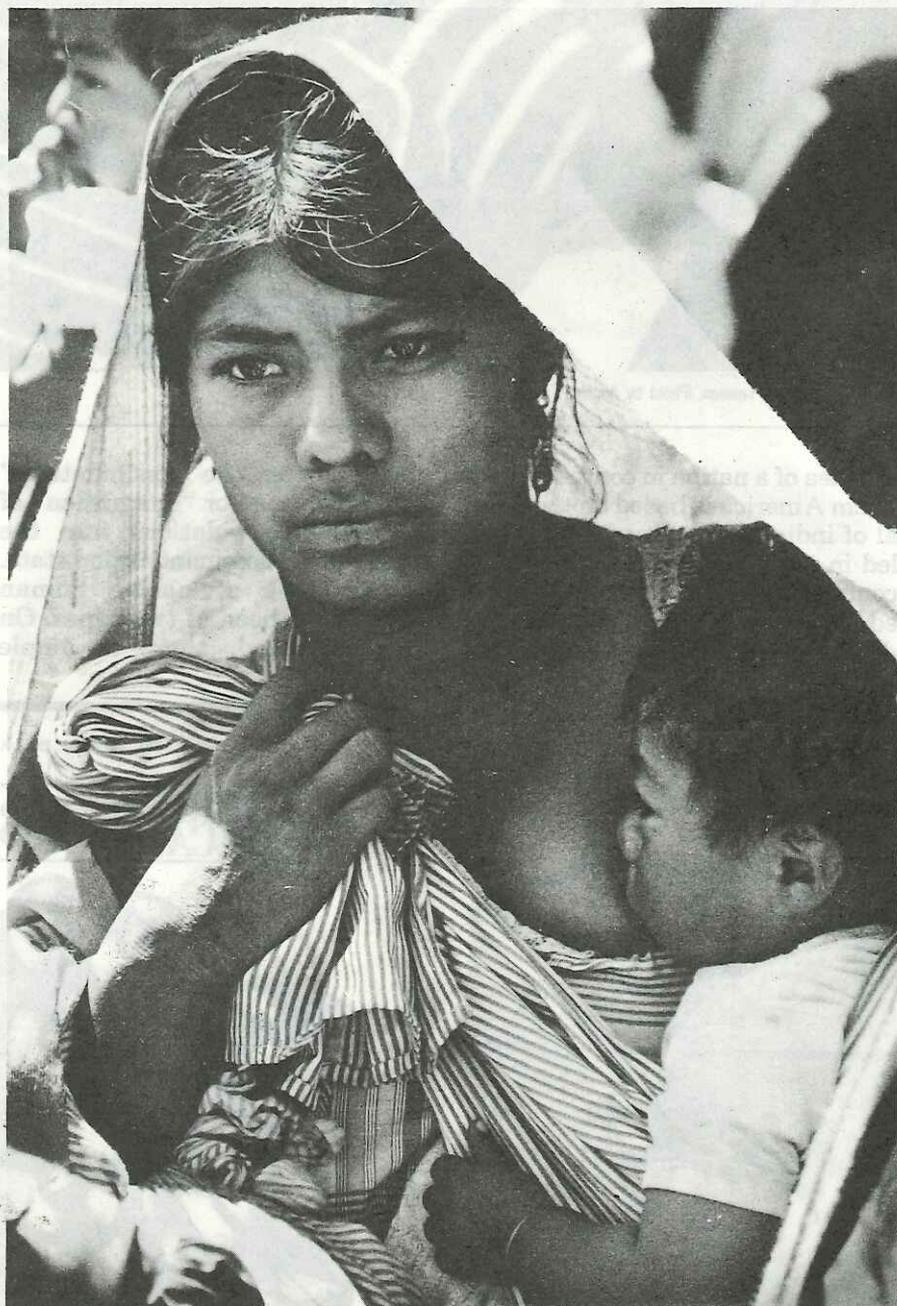
The second aspect refers to the violation of collective rights of native peoples, that is to say, violations of their economic, social and cultural rights as ethnic groups. These violations, as has been seen, are incorporated into the legal and ideological structure of Latin American countries, which, in general, deny the very existence of Indians as cultural entities distinct from the dominant group. The human right to ethnic identity, to culture, to language, to religion, and so forth, are also established in different international instruments, such as the conventions against racial discrimination, Article 27 of the International Pact of Civil and Political Rights and other resolutions of specialized organizations of the United Nations.

Finally, by subjecting indigenous groups to the imperatives of federal governments, as defined by the dominant classes in Latin America, a basic principal of international law is violated—the right to self determination of peoples. The right of self determination appears as the

first article in the two international pacts of human rights of the United Nations, that of Civil and Political rights and that of Economic, Social and Cultural rights. There are those who deny that native peoples have the right to self determination. The United Nations has been categorical in establishing that this right does not apply to ethnic minorities nor to ethnic groups within independent nations that respect human rights in general. The right to self determination of peoples is only applied, according to the United Nations' judgment, to

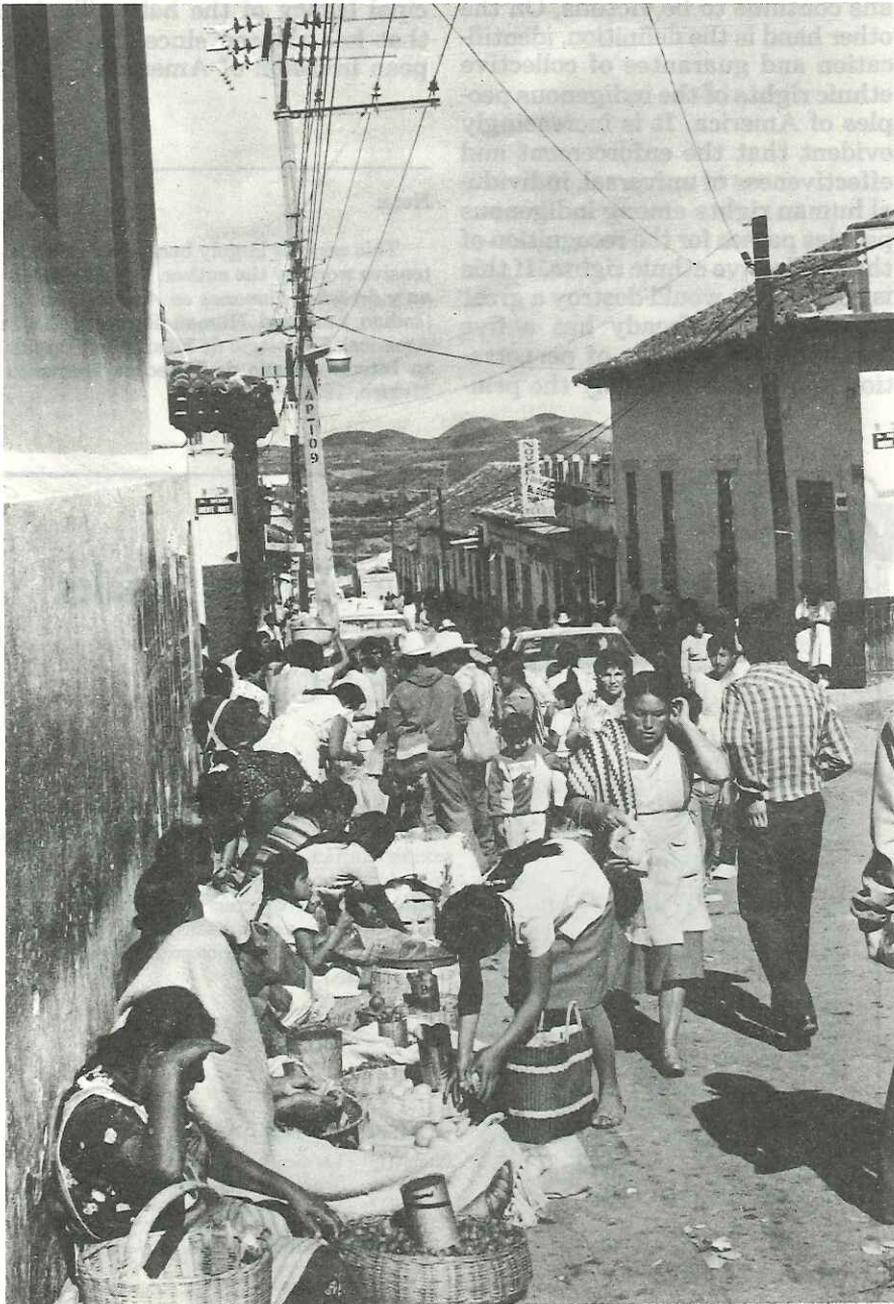
territories under colonial occupation.

Nevertheless, indigenous people of the continent have not accepted this interpretation. For several decades, native populations have politically organized themselves to defend their rights and have set forth the right to self determination as one of their fundamental goals. Today the struggle for this right, and its denial on the part of governments and dominant groups, constitutes one of the principal debates on human rights with respect to America's native populations.



Chamula woman and child. (Photo by Angeles Torrejón)

In the 19th century, indigenous populations, although constituting a majority of the population in many countries, were considered obstacles for national integration



Right to a better life. (Photo by Angeles Torrejón)

The Role of Laws

As a result of the political awakening of indigenous peoples, national legislation has been modified in some countries. For example, in recent years, the constitutions of Panama, Guatemala and Nicaragua have recognized certain rights of their indigenous communities. Argentina has passed an indigenous law. Peru and Ecuador recognize native languages. In Brazil, the constitutional treatment that will have to be given to the Indians has been discussed. In Mexico, there are no legal statutes for indigenous popu-

lations. Although this absence is justified in the name of formal legal equality of all Mexicans, in reality it can be said that it has made the collective and individual human rights of indigenous ethnic groups vulnerable.

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Although changes are slow, little by little, as the fifth centennial approaches, Latin American governments are responding to the demands of native peoples. They are beginning to recognize, although reluctantly, certain collective rights that we could call ethnic or indigenous rights, which complement private human rights already possessed—at least on paper—by all persons, including Indians.

The international community has also made progress in matters of native rights although the road that lies ahead is still a long and difficult one. In the United Nations, a work group on indigenous populations has been formed and has met since 1982 in order to elaborate a declaration of indigenous rights that would be submitted to the General Assembly. Numerous native organizations have expressed their view-points in this group. Convention 107 on Indigenous and Tribal Populations, which has been passed since 1957, is being revised and updated, since many native groups considered it assimilating and paternalistic.

In the American hemisphere, things move more slowly. As already mentioned, the Inter-American Commission on Human Rights has been concerned with violation of human rights of Indian groups in Paraguay, Guatemala, Colombia and Nicaragua, but it has not taken a public stance on what we might call native rights as such. The Inter-American Indigenous Institute, an intergovernmental organization attached to the Organization of American States (O.A.S.) has in recent years gathered statements from native organizations and it has reoriented its initial positions to take into account new collective demands with regard to indigenous rights. But the organization as well as its periodic indigenous congresses are not resolution-making organs of the O.A.S. Their resolutions have no legal force. On the other hand, the possibility of an additional protocol to the American Convention on Human Rights is being discussed in the O.A.S. It would cover economic, social and cultural rights that are presently not included in this inter-American document. It would be desirable from all points of view if this protocol in-

cluded at least some reference to the collective rights of indigenous population of the continent. This is a task proposed by native organizations in the 1980s.

In conclusion, indigenous people still have a long road ahead in matters of human rights now in force. There are two principal areas that require attention. On the one hand is the fight for the effectiveness of universal human rights guaranteed to all human beings and the systematic violation of which the Indi-

ans continue to be victims. On the other hand is the definition, identification and guarantee of collective ethnic rights of the indigenous peoples of America. It is increasingly evident that the enforcement and effectiveness of universal, individual human rights among indigenous peoples passes for the recognition of their collective ethnic rights. If this is achieved, it would destroy a great injustice that already has a five hundred year history of perpetration and that is probably the prin-

cipal legacy of the half millenium that has elapsed since the European invasion of America. □

Note:

This essay is largely based on a more extensive work by the author. *Derecho indígena y derechos humanos en América Latina*, (Indian Law and Human Rights in Latin America), El Colegio de México and Instituto Interamericano de Derechos Humanos, Mexico, 1988.
