

CONSTITUTIONAL STEPS TO RECOGNIZE INDIAN PEOPLES

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Within two years we will celebrate the 500th centenary of the "encounter of two worlds", as some like to call the Conquest of America by Spain.

The countries of the American continent have begun to make changes in their policies with respect to the indigenous races. These races still conserve part of their idiosyncrasy, and their integration into the rest of *mestizo* society confronts obstacles that range from discrimination to loss of their lands and ways of living.

In Guatemala, the Seventh Iberian-American Conference of the National Commissions for the 500th Anniversary was held towards the end of July this year. At this conference, all the national delegations accepted a document called "The Presence and Significance of the Indigenous Peoples in America." The ten recommendations of this document were unanimously adopted:

1. To further the renewal of legal and constitutional precepts that guarantee the recognition and application of indigenous rights with the participation of the interested parties.

2. To respect the indigenous groups and their natural habitat since they guarantee ecological equilibrium in the face of destruction of natural resources.

3. To form educational policies that permit the development of indigenous languages, recognizing historical processes, traditions, values and knowledge of the Indian races as the basis of bilingual, bicultural education.

4. To incorporate in the programs of the National Commissions, projects that value and underline the significance of the Indian peoples in the past and in the present. This should be done so that the contribution of Indian peoples to the formation and development of the pluri-ethnic and multicultural reality of the world, may be recuperated.

5. To invite the participation of representatives of Indian peoples in the National Commissions.

6. To support the creation of a Corpus Americano of languages, traditions, histories, myths, constructions and scientific and technical knowledge of the indigenous peoples.

7. To promote the importance of public indigenous organizations and the effective participation of representatives of the indigenous peoples in these groups.

8. To increase the actions and connections among different agencies of cooperation (inter-governmental, governmental and non-



Women play an important part in the struggle for Indian rights. Photo by Angeles Torrejón/Imagenlatina

governmental) to favor the use and channeling of resources towards priority programs and needs of the indigenous peoples.

9. That the problems and needs of indigenous border peoples and those located in other national territories as refugees, be attended to in the light of the doctrine of human rights.

10. That this document be complemented by annexes elaborated by each National Commission which will present reports about the progress of these previous recommendations in future Conferences.

In Mexico, the government of Carlos Salinas has shown interest in this aspect since last year. On April 7, 1989, he formed the National Commission of Justice for the Indian Peoples of Mexico within the National Indigenous Institute (*Instituto Nacional Indigenista* - INI). This Commission worked three months on a preliminary project for public discussion.

This reform "pretends to broaden the spaces for the participation of indigenous peoples through constitutional recognition of their cultural and historical rights".

The document continues with the recognition that our country is "pluri-ethnic and multicultural...", by stating that the presence of 56 ethnic groups of different sizes and with different languages "enriches our country culturally and signifies an important contribution to the sovereign solution of national problems".

One of the elements based on the proposal for constitutional reform is related to the idea that the laws of each state must be made more flexible in regard to the "legal practices and customs of the indigenous peoples".

The following reform would be added to Article 4 of the Constitution:

"The Mexican nation has a plural ethnic composition sustained basically by the presence of its indigenous peoples. The constitutions of the states and the laws and regulations of the federation and of the states and municipalities will establish the norms, measures and procedures that protect, preserve and

promote the development of languages, cultures, uses, customs and specific forms of social organization of the indigenous communities."

The law will establish procedures that assure effective access to the State's jurisdiction for indigenous people. In federal and local trials "where an indigenous person is present, his or her lawful practices and customs will be taken into consideration during the trial and in the final resolution of the matter".

From September 30 to October 2 last year, 96 indigenous organizations, academic institutions and non-governmental human rights organizations took part in the First International Forum on Human Rights of the Indigenous Peoples, in Matías Romero in the state of Oaxaca.

During the debate in the forum, it was decided that the content of the proposed reform to Article 4 was to be rejected since it did not resolve the needs of the Indian peoples, "and only tried to cover the problems with nice words". The debates covered various points in relating to amendments to the Constitution: recognition of indigenous languages and discussion of the theme of titles to land holdings, one of the principal problems that the indigenous communities confront. In reference to this last point, Manuel Fuentes from the National Federation of Democratic Lawyers stated that "collective property ownership should have priority over individual property ownership, and the protection for large landholders (*latifundistas*) should be eliminated. There should also be a redefinition of the *ejido* in its most integral sense, giving a legal personality to ejidos and communities. Excessive government intervention in indigenous communities and *ejidos* should be avoided". Jorge Fernández from the Law Department of the Autonomous Metropolitan University warned that "in many cases it is better not to legislate in order to safeguard the right of customs, and not have an official recognition of the State that would imply its intervention in the indigenous communities". ■