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**MARÍA TERESA  
SIERRA**

**THE CHALLENGE TO  
DIVERSITY IN  
MEXICO: HUMAN  
RIGHTS, GENDER AND  
ETHNICITY**

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Max Planck Institute for Social Anthropology, P.O. Box 110351,  
06017 Halle / Saale, Phone: +49 (0)345 2927-0, Fax: +49 (0)345 2927-402,  
<http://www.eth.mpg.de>, e-mail: [workingpaper@eth.mpg.de](mailto:workingpaper@eth.mpg.de)

## **The Challenge to Diversity in Mexico: human rights, gender and ethnicity<sup>1</sup>**

*María Teresa Sierra<sup>2</sup>*

In Mexico and elsewhere in Latin America a new debate has risen in the past 20 years over the recognition of constitutional rights for indigenous peoples. This has opened a discussion on how to build a multicultural society where difference should be a fundamental aspect of national politics to fight against exclusion and subordination. This article deals with two central issues of relevance to this debate: the question of human rights and cultural diversity and the challenge of indigenous women's demands. Both questions reveal structural similarities regarding the confrontation of homogeneous and hegemonic cultural models and the necessity to develop a critical perspective on social phenomena, especially with regard to such concepts as heterogeneity, power and social change. Based upon an experience of collaborative formulation of legal reforms with indigenous and human rights organizations in Puebla, Mexico, I show the tensions between a critical anthropological discourse and essentialist positions prevalent among some indigenous representatives and intellectuals. The aim of the text is to discuss the scope and limits of the Mexican debate on identity politics for building an "other world where all worlds can be included", as the Zapatista Indians promote.

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<sup>2</sup> Research Professor, CIESAS-México. E-mail: [mtsierrac@hotmail.com](mailto:mtsierrac@hotmail.com); Phone: 52-55-5739066; Address: CIESAS (Centro de Investigaciones y Estudios Superiores en Antropología Social) Juárez 87, Tlalpan 14000, México DF, MEXICO. I appreciate the support of CIESAS and of CONACYT (Consejo Nacional de Ciencia y Tecnología) in the presentation and elaboration of this work (Research Project "*Interculturalidad, derecho y género en regiones indígenas*" 26237-S).

## Introduction

“Indigenous rights” have become a central issue in the transition to democracy in Mexico. Since the Zapatista rebellion in 1994, the question of indigenous peoples has moved from a marginal position, understood as a problem of regional underdevelopment, to the centre of the Mexican debate on the nature of the nation-state. The recognition of cultural diversity and autonomy for indigenous peoples has opened an important discussion concerning 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 centre of Mexican history but have been excluded from the contemporary national project and are now the marginalized of the marginalized.

What is new in this political conjuncture is the active presence of indigenous organizations at national, regional and local levels, participating in the political arena as principal actors, demanding a new relation with the state and the legal recognition of their rights as indigenous peoples. The fight for legal recognition, 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.<sup>3</sup> This scenario creates a great challenge for anthropologists, and for social scientists 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.

How can we recuperate 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 in a way that does not reproduce homogeneous views about indigenous normative systems, and which can take into account the specific demands of indigenous women? How can we collaborate in the dialogic construction of a critical and constructive identity policy?

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<sup>3</sup> Boaventura de Souza Santos, in a very suggestive article about human rights, multiculturalism and modernity, reminds us of the different meanings involved historically in the discourse of human rights and the central place it has today in the language of progressive politics. This, in fact, contrasts with the contradictory uses of this discourse, not long ago, in complacency towards both friendly dictators and development, when the script of emancipatory politics was tied to revolution and socialism. It is in this context that Santos refers to a central tension between social regulation and social emancipation at the core of western modernity (Santos 1996: 2).

Here lies one of the political and ethical dilemmas<sup>4</sup> that confronts us as social scientists today; especially when we find ourselves involved in the formulation of alternative policies of ethnicity that conflict with the hegemonic vision of the state. I am interested in discussing these issues, in light of my experience of collaboration with human rights and indigenous organizations in constructing a proposal for a constitutional reform of indigenous rights in Puebla, Mexico. It also relates to my participation at national and regional forums discussing indigenous and gender rights.

This article develops this issue with reference to two fundamental themes that are at the centre of the debate: the contradiction between human and indigenous rights and the tensions that arise due to demands of indigenous women facing their customs. These two themes refer to structurally similar dilemmas regarding their implication for discussing identity politics, as will be shown later on. The text integrates the results of a research project, which I have conducted in the Nahua region of the Sierra Norte de Puebla with some reflections on human rights, traditional normative systems and the issue of indigenous women.

### **The Building of a Legal Proposal in Puebla: opening spaces for ethnic diversity**

Indigenous and mestizo human rights organizations in different regions of the state of Puebla have been discussing a proposal to reform the state constitution to recognize indigenous rights. Although the debate on indigenous rights and their legal recognition has followed the San Andrés Agreements in Chiapas<sup>5</sup>, as it has in other states of the country, the particular context of Puebla and specifically the strength of the indigenous organizations have marked the scope and limits of the demands. The case of Puebla reflects the recent building of networks between indigenous and human rights organizations at the state level and the process of formulating an alternative legal

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<sup>4</sup> By dilemma I mean the situation we as social scientists are confronted with when our social data reveals tensions and contradictions that contrast with ideological and harmonical constructions of social life. In the case of analysis, indigenous leaders tend to produce this type of ideological construction in order to gain legitimacy for their demands.

<sup>5</sup> The San Andrés Agreements are the result of negotiations between the Zapatistas rebels and the Federal Government. They were signed in February 1996, after long sessions where representatives of indigenous organizations, civil society and intellectuals have also participated. This document refers to the political cultural rights for indigenous peoples, and the promise of transforming this Agreement into a Legal Initiative. This was finally done by the *COCOPA* (*Comisión de Concordia y Participación*), a Commission composed of members of various political parties at the National Congress who elaborated the Law on Indian Rights and Culture in November 1996. The law is known as the *Ley COCOPA*.

proposal faced with strong conservative forces from within the state.<sup>6</sup> In contrast to Chiapas or Oaxaca, where the existence of regional indigenous organizations demanding the recognition of indigenous rights has a long history, the process in Puebla is more recent. Indigenous organizations have not yet the strength they have in the other states of Mexico, and have not faced a war as in Chiapas.

Although the state of Puebla has the fourth largest indigenous population in the country, no law recognizes or protects their rights. Since a mayor constitutional reform on the federal level was foreseeable after the San Andrés Agreements in 1996, several state governments took initiatives to establish minimal rights in their own state constitutions as an obstacle to mayor amendments following a federal reform. Thus, according to some critiques, conservative forces responded to president Zedillo's policy to weaken the San Andrés Agreements on all levels. The Puebla government launched a proposal in 1999 which was discussed and rejected by most indigenous organizations as being too shortsighted in scope. The presidential elections in Mexico in July 2000, marking the failure of the most powerful political party in the country (the PRI) after 70 years, has created a lot of expectations regarding the constitutional recognition of indigenous rights 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 civil society<sup>7</sup>, to promote the "*Ley de Derechos y Cultura Indígena*" (Law on Indian Rights and Culture), was confronted by conservative forces dominant in parliament, who rejected the legal initiative based on the San Andrés Accords.<sup>8</sup> As I write this text, the possibility of a 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

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<sup>6</sup> These networks have been increasing during the past years, as a way to confront large development projects which will have a terrible impact on indigenous and non-indigenous territories and natural resources; such is the case of the so called "Plan Puebla-Panamá", a transnational project connecting Central America with North America, expression of the NAFTA Trade Agreement and neoliberal policies in Mexico.

<sup>7</sup> By civil society I mean not only the media and intellectuals but also the population at large. Since the earthquake in Mexico City in 1985, no other movement has got as much popular support as the Zapatistas. This was particularly true in March 2001 when the Zapatistas promoted a large mobilization from Chiapas to Mexico City, traversing 11 states of the country to gain support for the "*Ley de Derechos y Cultura Indígenas*"; the event involved the active participation of the society at large. Women and men from different social classes did not only participate with food and water, but also with human chains and networks to protect the Zapatistas from any aggression during public meetings.

<sup>8</sup> When the new government of President Vicente Fox announced its intention to open spaces for a dialogue with the Zapatistas, they established three conditions in order to participate in the dialogue for arriving at a Peace Accord with the government. One of the conditions was support for the Law on Indian Rights and Culture, proposed by the *COCOPA*, and recognized both by the Zapatistas and by the President of Mexico, Vicente Fox.

discuss ways to organize themselves to resist.<sup>9</sup> The discussion about an Indigenous Law in Puebla took place between March and November 2000, before this new context, nevertheless the questions elaborated there continue to be key aspects for the recognition of indigenous rights.

The political situation in Puebla, mentioned above, has motivated both indigenous and mestizo human rights organizations to suggest alternatives to the indigenous law proposed by state officials, and to demand that the state government fulfil its obligation to consult indigenous peoples before approving any law that would affect them.<sup>10</sup> This latter is, in fact, a legal obligation stated in the (International Labour Organization) ILO Convention 169, which was signed by Mexico in 1990.<sup>11</sup> I had the opportunity to participate in discussions held by indigenous and mestizo human rights organizations seeking ways to recognize crucial themes regarding ethnicity, human and women rights.

For some years, I have been working on a research project, “*Law, Interculturality, and Gender: A Comparative Perspective*,”<sup>12</sup> in the Nahua region of the Sierra Norte de Puebla, as part of a collective project to study interlegality and gender issues in different Indian regions of Mexico. The aim of the project is to study cultural conflict and uses of law in the context of legal pluralism and interethnic relations, and to explore how the new discourses of rights (human,

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<sup>9</sup> More than a year has passed since I wrote this text. The rejection of the Law defended by the Zapatistas and the indigenous organizations, and the approval of another one (August 14<sup>th</sup> 2001) provoked strong reactions in different social groups. Especially important has been the presentation of 330 Constitutional Controversies by indigenous municipal authorities from different regions of Mexico against the procedure used to reform the constitution. The new reform in fact recognizes neither the right to autonomy nor the implication that indigenous peoples should be actors of their own development. In effect the laws reproduce traditional indigenist policies based on essentialisation and subordination of indigenous people.

<sup>10</sup> Mexico is a Federal Republic constituting 31 states and a Federal District. The federal structure involves three levels of government, each with their own autonomy: the federal level, the state level and the municipal level. The national constitution defines the fundamental laws and rights, and the general framework to which state constitutions have to adapt. The *municipio* (county) is the smallest political unit recognized by the state. Some positions in indigenous movements promote the idea of establishing a fourth level of government, the “autonomous and pluriethnic regions” to be located between the state level and the municipal level. Other positions also speak of a fourth level, the recognition of the indigenous communities as a formal level of government. These two positions are defined as “regionalist” and “communalist” respectively (see Diaz-Polanco 1997, Mattiace 1996).

<sup>11</sup> The first Constitutional Controversy against the reform was presented by authorities of the municipality of Molcaxac, in the state of Puebla, to the state legislature, the National Congress and the President of the Republic. This Controversy is based on the argument that the new Law on Indians Rights and Culture (which differs radically in substantial aspects from the Legal Initiative elaborated by the *COCOPA*, and recognized by the Zapatistas), recently promulgated by the National Congress violates the 169 ILO Convention. The principal violation refers to the fact that Puebla’s legislature has approved the Legal Initiative without consulting indigenous peoples of that state. The Constitutional Controversy was admitted for review by the Supreme Court of Justice of the Republic, on July 2001. Later, 329 controversies from different states were also presented.

<sup>12</sup> I have been coordinating this research project which involves studies in different indigenous regions of the country: the Totonaca region of Coyutla, mixed communities of Oaxaca, the Mizteco region of the Montaña de Guerrero, the Nahua region of the Sierra Norte de Puebla and migrant indigenous organizations of Mexico City. The final goal is to develop a comparative perspective on interlegality and justice in these areas.

gender, ethnic) are being incorporated into the practice of justice. This experience put us in touch with different indigenous and mestizo human rights organizations as well as indigenous women's groups that exist in the region. The organizations invited us to discuss and present our research work. This changed our position of being mere observers to becoming active participants. We had the opportunity to participate in different events, workshops and discussions about the practices of human rights defence in the region and how to confront new political challenges, such as the formulation of the Indigenous Law in Puebla. Of course, this participation offers new challenges to the research work and has obliged us to discuss with the organizations concepts such as justice, customary law, human and Indian rights, autonomy, ethnicity and gender. Such concepts have gained central importance in their own practice of defence and for understanding 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 has led to studies focusing on the role of law in the construction of identities and in the strengthening of ethnicity.<sup>13</sup> A key aspect in such studies is the recognition of an indigenous legal system, also called customary law (*derecho consuetudinario*), as a prevailing normative system and as a central reference for 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 more about their normative systems as a way of legitimizing their own demands.

This new interest of indigenous organizations calls our attention to how anthropological discourses on traditional normative systems, legal customs or indigenous law as well as such topics as autonomy and human rights, are being appropriated by indigenous organizations as central elements of their own claims and as reference for determining their particular demands. Within indigenous organizations, such processes of appropriation tend to be selective concerning traditions, and they tend to lead to the idealized construction of past customs, as referents for thinking about present practices. Thus, anthropological research, which documents the rapid transformation of normative systems and their readjustment to present realities, is confronted with essentialist indigenous discourses. These essentialist discourses are elaborated by indigenous or mestizo intellectuals in order to strengthen identity processes and help indigenous people build their own imagined communities as a way of contesting the hegemonic vision of the state. But

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<sup>13</sup> For more information about the development of legal anthropology in Latin America, see Castro (2000); Castro & Sierra (1998).

such essentialist discourses also tend to reproduce views of “authentic” traditions and harmonious communities (Sierra 1997). At the same time, the advocacy practices of most organizations force them to incorporate new languages, such as the language of human rights or the language of gender, languages that in many instances come into conflict with essentialist visions of “authentic traditions” and “harmonious communities”.

### **Legal Recognition of Indigenous Rights**

The recent political context, which offers the possibility of recognizing indigenous rights in Puebla, as well as in the country in general, has opened an important space for critical discussions of rights and ethnicity. However, discussing questions of rights and diversity in workshops or seminars is a different matter from translating these discourses into legal language. For the past few years, different indigenous organizations of the north and south of Puebla, like similar organizations in other parts of Mexico, have built networks to discuss issues of human rights and advocacy. It is precisely this critical work that has allowed indigenous people to get together to develop a proposal for a constitutional reform to recognize indigenous rights in 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 for understanding the complexity involved in the legal recognition of cultural diversity. These two themes are the question of human rights and traditional normative systems and the rights of indigenous women.

### **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 for thinking about autonomy and indigenous jurisdiction.<sup>14</sup> Nevertheless, indigenous normative systems, or customary law, neither 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 inherited from colonial and postcolonial policies, as anthropological work in other places has shown (Moore 1986, Fitzpatrick 1990, Starr & Collier 1989). This is, for example, the case with the so called

“cargo system” a colonial institution imposed by the Spanish but appropriated and redefined by indigenous communities for their own political and ritual ends.

In the Sierra Norte de Puebla, the state has an important influence on communal institutions, exerting a strong control on political and legal practices. In contrast to other indigenous regions of Mexico, 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>15</sup> The principal indigenous authorities, the “*presidente auxiliar*” (auxiliary or assistant mayor) and the “*juez de paz*” (justice of the peace) have a limited sphere of action: the space of their immediate communities.<sup>16</sup> In the majority of the rural areas of the country, the municipal administrative centres (which are approximately equivalent to county seats) are centres of mestizo population, controlled by *caciques* (political strongmen) linked to the state government. This is the case in Cuetzalan, a municipality of the Sierra Norte, most of whose population is Nahua, with a smaller proportion mestizo and an even smaller proportion of Creole peoples of European descent. The indigenous authorities of the local communities – the auxiliary mayors – are treated as secondary authorities by the state<sup>17</sup> because the law does not recognize their autonomous jurisdiction, as revealed by the word “auxiliary” in their titles. Their decisions can be both questioned and annulled by the authorities of Cuetzalan. This fact reveals the structural subordination of Indian communities and the hegemony of the state.

This vulnerability of local authorities is the reason why one of the central demands of indigenous organizations in Puebla, as in the rest of the country, is that the state recognizes an autonomous jurisdiction for indigenous authorities at the different governmental levels of the community, the municipality and the region. Such a formulation implies the recognition of collective rights for communities, allowing them ample capacity to make decisions according to

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<sup>14</sup> See documents of the *Instituto Oaxaqueño de las Culturas* (1996).

<sup>15</sup> Indigenous jurisdictions in different regions of Mexico function differently and are structured in various ways. Their scope is also very different depending on the vitality of each group as an ethnic community, their control of natural resources and the historical relationship between communities and the state. Nahua involved different groups and communities located in different parts of the national territory, so it is not possible to talk of a Nahua jurisdiction in a general way. It is more acceptable to refer to the Nahua of the Sierra Norte de Puebla, the Nahua of the Alto Balsas, etc. This situation is similar to other indigenous Mesoamerican groups. Even if they are established in defined regions they only have a reduced jurisdiction, generally limited to the community, or in some cases, municipal level. Formally communal and municipal jurisdictions do not have the capacity to exercise penal action.

<sup>16</sup> Each state defines the titles and duties of the official authorities at the municipal and community level. Normally these official positions coexist with non-official or traditional posts such as *topiles*, *regidores* or *gobernadores*, depending on the particular indigenous group.

<sup>17</sup> The characterization of indigenous authorities as secondary authorities refers to the fact that they are considered lower authorities in relation to municipal and state institutions.

their customs and to their normative systems in everyday life. The demand for autonomous jurisdiction is, in fact, one of those included in the San Andrés Accords as a way of requiring the state to recognize the collective rights of indigenous peoples. The aim of this proposal is to support indigenous autonomy and to prevent state and national governments from overturning decisions made by indigenous authorities, as is currently the case.

Such a situation occurred recently (1999) in San Miguel Tzinacapan, a Nahua community of Cuetzalan, Puebla. The problem arose when the people of the community tried to remove an official because of his poor job performance. The auxiliary president (*presidente auxiliar*) – who, although elected, came to power with the support of the *caciques* of Cuetzalan – wanted to impose an authoritarian style in his relationship with community members and did not respect the local traditions. He was strongly criticized for his lack of commitment to local customs, for his way of speaking “very loudly” and for his negative behaviour in general. His assistants, the *regidores* and *topiles*, resigned, leaving him alone, and he was rejected by the community, who finally wanted him dismissed. The municipal authorities of Cuetzalan, however, refused to recognize the community’s wish to dismiss their *presidente* and they prevented the community from electing a replacement. As a result, he remained in office until the next election. Many other examples reveal the subordination of indigenous authorities to municipal power holders and the fact that indigenous authorities are under continual surveillance, especially if they do not collaborate with the municipal *cacique* of the moment or he does not regard them as trustworthy.<sup>18</sup>

The discourse of human rights has played an ambiguous role in indigenous regions such as the Sierra Norte de Puebla.<sup>19</sup> On one hand, human rights NGOs have used the discourse as a resource to prevent abuses of authority and to demand that state authorities respect the rights of individuals, which in these areas, where impunity reigns, is an achievement in itself. On the other hand, the discourse of human rights has also been used by the state as a resource to control and to put pressure on indigenous authorities. The state has been able to take advantage of those occasions when inhabitants of indigenous communities themselves accuse their authorities before

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<sup>18</sup> For example, state officials and *caciques* have continually harassed indigenous authorities in communities such as Huehuetla, a Totonacan municipality near Cuetzalan, where an independent indigenous organization (OIT) controlled the municipal government for nine years, until 1999. Finally, the political pressure supported by state and local powers provoked internal divisions within the organization who lost the power during the last election (see Maldonado 2002).

the state. Most of the time these accusations are lodged by community members who have been punished for failing to observe collective obligations such as participating in *faenas*, cooperating in fund raising efforts or taking on religious obligations, such as serving in *mayordomías*, etc. But the threat of being denounced to higher authorities for having violated the human rights of individual community members has limited the ability of traditional authorities to enforce local customs by imposing fines or arresting those who avoid community obligations.

In short, human rights have become an effective weapon for state authorities, who may use them at their discretion for the political purpose of exerting control. A similar purpose is being served by training workshops organized by state judicial officials and directed at “justices of the peace” and mayors of communities and municipalities, with the purpose of explaining to them their jurisdiction and functions as authorities. These training workshops end up being a kind of performance in which public officials teach indigenous 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 teach 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 national dynamics. Factionalism and power relations, which benefit some to the detriment of others, predominate and unjustified abuses sometimes occur. However, collective decision making and firmly rooted cultural traditions prevail in most communities. These principles guide the exercise of authority, ensuring community vigilance and the community’s commitment to reproducing certain social relationships and collective rituals.<sup>20</sup> As a result, authorities who do not fulfil the expectations of community members are severely criticized. Authorities play a central role in local dynamics because they are responsible for representing the community and for promoting projects of collective interest, which are generally discussed with the inhabitants.

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<sup>19</sup> In Puebla, as in many parts of Mexico, there are several human rights NGOs – some of them indigenous – as well as an official human rights organization, the State Human Rights Commission of Puebla. This State Commission is the counterpart of the National Human Rights Commission, which has been operating in Mexico since 1992.

<sup>20</sup> 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).

In addition to their advocacy work, human rights NGOs in the communities, such as the mostly indigenous Takachihualis Commission<sup>21</sup> of San Miguel Tzinacapan in Cuetzalan, have promoted the study of traditional law with the aim of vindicating certain traditions and strengthening indigenous normative systems. During its twelve years of existence Takachihualis (founded in 1991) has had an important impact on the lives of the Nahuas of Cuetzalan defending their rights in relation to the state but also in relation to indigenous authorities. This is what we discovered when we observed how people from the communities requested help from the members of Takachihualis when involved in legal trials at the municipality of Cuetzalan, or asked them to serve as advisers in different conflicts. The Takachihualis' well-organized archives contain reports on all the cases they are following, reveal the goals of their work. Takachihualis has 11 members – two of them are women and the rest are mostly Nahuas of San Miguel Tzinacapan – who decided to do something to confront impunity and human rights violations towards Indians. Almost all of the members 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, the members work to ensure that all legal authorities, whether indigenous or mestizo, respect individual rights and guarantees, even when these conflict with cultural practices. For example, in one case a “justice of the peace” was accused of “misuse of authority” for jailing someone without a legal reason. He had jailed the individual in accordance with his customary practice “to calm angry hearts.” This type of situation, in which a member of Takachihualis denounced an indigenous judge for following tradition, led the organization to reflect on their own practices and understandings of traditional justice. As a result, they decided to investigate what they call “their traditional law,” and implemented a co-participative research project in which they involved past authorities of the communities, the “*pasados*”.<sup>22</sup> This study led to the creation of a “*Consejo de*

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<sup>21</sup> The Takachihualis Commission is an NGO of indigenous and mestizo members for the defence of human rights. It was founded in 1989 as a way of responding to judicial arbitrariness towards indigenous peoples. The Commission has three areas of work: defence, training and research. Takachihualis has been very active participating in different local, regional and national settings, discussing issues of indigenous and human rights. They were invited by the Zapatistas to participate in the San Andrés Dialogues that took place in Chiapas in 1995. They are also central promoters of regional networks with other human rights NGOs in Puebla. As it is the case with any organization, the Commission is not homogenous; there are differences in social and ethnic origin and different positions sometimes become manifest regarding various issues. Nevertheless, all the members agree to fight for the defence of human and indigenous rights and are building together a collective project, respecting decisions made within the group. All the members receive a small and equal amount of money depending on the funding they can obtain. I have always been surprised to see the commitment members have to their project, in spite of the economic limitations.

<sup>22</sup> What is most original in the research was the procedure for its development and its implications for legitimating indigenous normative systems among the members of the communities (see *Comisión Takachihualis* 1998, Rivadeneira 2000).

*Ancianos*”, as a way to establish what they called “ancient” traditions. This *Consejo* made up of *pasados* was supposed to give advice to current officials. It functioned for a year. However, the new mayor (*presidente*) of the community did not recognize the *Consejo*, so it was dissolved, at least for the time being.

Even if the Takachihualis’ research produced an idealized vision of the past and its traditions in terms of the practice of justice and their normative system, the members’ interest in rescuing custom and their practice of advocacy, have also led them to reject certain old practices, such as physical punishment that are now seen as violating the human rights of individuals (cf. Takachihualis 1998).

In this way, Takachihualis has used the discourse of human rights to disqualify certain traditional customs and to consider other less oppressive ways to exercise authority. Such a use of human rights language by indigenous organizations has not occurred without conflict. There are cases of community authorities complaining of being watched over by “human rights”. The members of the Takachihualis Commission are also concerned about the problems they confront in trying to adapt human rights to their own cultural realities. The experience of Takachihualis reveals a central problem in the present debate in terms of the practice of human rights in ethnic contexts. Because practicing human rights in ethnic contexts brings different cultural and juridical logics into play, the situation cannot only be evaluated from an occidental point of view. What seems to be at stake are different conceptions competing in the practice of justice that have to be evaluated by considering cultural values and power relations.<sup>23</sup> What is usually involved in traditional justice are not only individuals as abstract subjects but as members, a concept that involves social relations and personal status within the communities. That is why some decisions taken by traditional authorities or in communal assemblies cannot only be evaluated from the point of view of individuals. Here lies, in fact, one of the big challenges faced by indigenous and human rights organizations – to defend collective rights without silencing other subordinated voices, both individual and collective.<sup>24</sup>

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<sup>23</sup> The prevalence of negotiation and social arrangement in indigenous trials is quite noteworthy in contrast to the imposition of unilateral sanctions, as it is the case in state administered justice. This type of social arrangement brings together other conceptions of duty and responsibility related to cultural conceptions of law and social life. Therefore, it is possible to refer to different senses involved in the practice of justice. Jane Collier’s work on Zinacantecos dispute resolution offers a very suggestive analysis in this direction regarding the interplay of cultural logics in indigenous justice (see Collier 1973, 1998; see also Sierra 1992).

<sup>24</sup> This challenge in fact is continually present in everyday practice of human rights organizations in indigenous regions. While state laws and procedures are the only legitimate reference to apply in the formal administration of justice, it becomes very difficult to invoke cultural difference as an argument in legal procedures. This has been the

What has happened so far is that the state ends up imposing the straight jacket of human rights, defined primarily 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 for recognizing indigenous rights – as stated in the San Andrés Accords signed in 1996 by representatives of the national government and the Zapatista rebels in Chiapas, and repeated in the legislative version in the *COCOPA* Legal Proposal.<sup>25</sup>

In a recent article, Shannon Speed and Jane Collier (2001) have documented the paradox created by 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 aimed at undermining 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 NGOs, make them open to discuss the subject.

Nevertheless, when we considered alternatives for indigenous jurisdiction, as we did during our meetings to discuss the proposal of an Indigenous Law with organizations in Puebla, what prevailed was a position condemning human rights as a western discourse alien to indigenous autonomy. Those who defended this position commonly criticized 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 vision of indigenous traditions, one that minimizes the recognition of indigenous jurisdiction.”<sup>26</sup> Such a critique, however, ends up legitimizing an essentialist view of indigenous normative systems, one 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 by building a discourse of local autonomy, as Nader (1989) has argued in another context. But there are also other voices in the community that insist on discussing human rights as a way of confronting oppressive local practices. Problems arise when dissent exists or when power is used to the detriment of those who question tradition. What has become very controversial is the question of women, who demand that the protection of women’s rights be incorporated not only

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experience of the *Frente de Abogados Democráticos* (Democratic Lawyers Front), when providing pro bono defence in Zacapoaxtla, Cuetzalan and Sierra Norte de Puebla.

<sup>25</sup> See note 5.

<sup>26</sup> Words expressed by an indigenous lawyer during a meeting in Cuetzalan.

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

### **The Critique of Custom and the Rights of Indigenous Women**

The rights of indigenous women are a complicated and controversial issue that reveals opposing interests at stake when proposals for legal reform are discussed. Even if organizations reach a public agreement on the recognition of women's demands, the discourse of gender encounters negative reactions when it is translated into the sphere of customary law. This presents a dilemma: even if women's demands are considered important, they are of secondary importance in comparison to high priority issues such as indigenous jurisdictions and autonomy. This means that the recognition of women's rights had to be postponed.

During the negotiations held in San Andrés Larrainzar in Chiapas between the federal government and the representatives of Zapatista army (the EZLN) in 1995, the session on women was one of the most important in terms of the wealth of proposals it generated and for the demands that indigenous and mestizo women presented (Bonfil & Sánchez 1996). However, only a watered down version of the women's demands was reflected in the San Andrés Accords. This minimizing of women's concerns has recurred in different national and international forums. As a result, indigenous women have organized themselves and held meetings and seminars to discuss alternative formulations of constitutional reform that include their point of view.<sup>27</sup>

At one of these forums, held in Mexico City in 1996, indigenous women from different parts of Mexico participated in formulating a document, "Proposals of the indigenous women to the Indigenous National Congress".<sup>28</sup> This document was elaborated with the objective of enriching the legal proposal being discussed by members of the National Indigenous Congress<sup>29</sup> regarding the recognition of indigenous rights. It presents demands of gender and autonomy, problematizing them. It questions the 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

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<sup>27</sup> See for example the meetings organized by ANIPA (National Indigenous Assembly for Autonomy) where the question of women was discussed (Gutiérrez and Palomo 1999), the sessions of the CNI (National Indigenous Congress) in 1998, and the meeting that took place in Nurío Michoacán in March 2001 during the Zapatista Caravan to Mexico City.

<sup>28</sup> *Propuestas de las mujeres indígenas al Congreso Nacional Indígena* (1996).

<sup>29</sup> The Indigenous National Congress (CNI) is a national network of indigenous organizations in Mexico, founded in 1997, after the Dialogues of San Andrés in Chiapas.

for building the National Indigenous Women's Coordination (*Coordinadora Nacional de Mujeres Indígenas*), whose first meeting took place in Oaxaca in 1998. The aim of the *Coordinadora* has been to promote the rights of indigenous women and to develop a gender perspective in defence of their rights. The *Coordinadora* exists as a network of regional organizations in different parts of the country<sup>30</sup>, although it is still too young to measure its effects on women's rights.

The voices of women, expressed in different settings, demand that women participate in the public decisions of their communities and in their organizations. Women question practices that deny them the right to own land or that minimizes their access to inheritance and they are against arranged marriages and especially against customs that justify violence towards them. Women propose building new relationship with their men, appealing to the discourse of complementarity between the sexes. They are, in fact, giving a new and subversive meaning to the ideal of complementarity; one based on the idea of equal rights rather than on some mythical idea of harmonious relations between men and women. But women also fight for indigenous autonomy and for the recognition of indigenous rights and culture. These sentiments are reflected in the words of indigenous women who participated in the meeting of the National Indigenous Congress held in Nurío, Michoacán, on March 2001:

“(...)We as indigenous peoples need to guarantee respect for the integrity and dignity of women. Given the principle of duality and complementarity 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 the total participation of women, it is the only way for our communities to grow in conditions of justice and equity (...) for this we support the implementation of ILO Convention 169. Based on this Convention, indigenous women are analyzing some community traditions principally those that segregate women and limit their participation in the public sphere, in and outside their communities. Because the Legal Initiative of the COCOPA emphasizes respect for the dignity and integrity of indigenous women, we give total support to this Legal Initiative. Finally the recognition we are looking for has to have impact not only inside our communities but also outside them where violations of human rights have occurred (...)”<sup>31</sup>

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

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<sup>30</sup> An analysis of the Oaxaca Indigenous Women Coordinator can be seen in Artia (2001).

<sup>31</sup> Discourse read by a Zapotec woman, a member of the National Women's Organization and of the National Indigenous Congress.

Women's demands are being used to discredit indigenous normative systems, particularly by state officials and intellectuals who fear that the recognition of indigenous autonomies will imply an erosion of hard-won liberal rights and democracy.<sup>32</sup> Coming from a liberal perspective, these officials and intellectuals are referring to oppressive customs to women in order to argue against the recognition of cultural diversity and the granting of collective rights, on the grounds that indigenous communities have authoritarian practices that suppress individual rights. This argument has become one of the key impediments to the recognition of cultural diversity.<sup>33</sup> Suddenly, well-known lawyers or recognized intellectuals (who have no record of supporting women's causes) are claiming to be worried about the negative impact on women's rights of a constitutional reform recognizing indigenous law and culture. In fact, the political scenario reveals how the issue of women questioning tradition has helped those who want to disqualify tradition as oppressive. Paradoxically, from a different position, women's criticisms of indigenous customs have also served those who consider women's demands a threat to authentic traditions, as is the case among some indigenous men. This in fact has happened in different contexts (including Puebla) when an Indigenous Law has been discussed.

This current period is therefore a crucial historical moment for indigenous women's demands. Rufina, a Nahua woman of Cuetzalan, clearly expressed women's worries at a meeting with NGOs in Cuetzalan:

“What can we do in order to ensure that the demands we have been working on for so long are recognized by the law. We want our political participation acknowledged, our customs respected, the right to participate in the politics of our communities and regions; and respect for our access to land, but we also want the authorities and the state to respect our identity as women and as indigenous women.”<sup>34</sup>

These words testify to a rich experience of participation during which indigenous women of Cuetzalan have developed a critical appreciation of their rights as women. Women's experience has allowed them to clarify their demands. Today, they have become a fundamental reference in ethnic dynamics at the local and regional levels. Women are in charge of successful productive projects, and their economic successes have contributed to undermining stagnant representations of women's traditional role in indigenous communities.

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<sup>32</sup> See Bartra (1997), Viqueira (2001).

<sup>33</sup> As Hernández says, this same strategy has been used in other context by the people in power to delegitimize women's demands. For a critical view of this perspective see Hernández (2001).

<sup>34</sup> Similar arguments have been expressed in other forums by indigenous women, Ojarasca (1994), Rojas (1995).

Organizations like *Maseaulsiuamej Mosenyolchikahuanij* (United Women Working Together) a Nahuatl women's organization in the Sierra of Cuetzalan, plays a very important role in the diffusion and practice of women's rights. This organization is made up of 200 indigenous women artisans from different communities of Cuetzalan, and it stands out for the strength and lucidity with which these women have built their organization in the face of opposition from their husbands, families and local authorities. Women who decide to participate in such organizations are usually denigrated as "gossipy women", or they are criticized by their family members for not fulfilling a woman's obligations, particularly at the domestic level. They become "transgressive women" confronting established customs. The different workshops and meetings that the *masehualsiuamej* have organized to discuss such problems as domestic violence, health or human rights, have become important spaces where women dare to express in their own language, in small groups, their feelings, their problems and their desires. Their life histories reveal the obstacles they have faced, but also the decision of each woman to continue. Again Rufina's testimony illustrates this process:

"(...) I began to participate, but I began to have problems because sometimes workshops lasted two or three days... Then he (her husband) got angry and said: 'what are you doing, what are you discussing, you go and then you go again the next day, you are neglecting your housework. No, I want to find my meal served and everything ready when I come (home)' (...) I sometimes felt bad, I began to cry, because I liked to participate (...) besides I felt I was learning new things; from the beginning we had discussions about women's rights, about health, and about problems in the community. I was very interested in all this."

"(...) When my husband became angry, I told him: 'I am also contributing money to our home'. When I went to the meetings, I took my sewing, my daughter, I did not care, I went in order not to have to listen his complaints: 'So you went to waste your time'."<sup>35</sup>

*Masehualsiuamej Monseyochicahuanij* has become one of the most important indigenous women's organizations at the regional level.<sup>36</sup> Its members 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 key figure in the Sierra Norte de Puebla, which is why her participation at public meetings is not surprising. Rufina was one of the main speakers at the meetings the Zapatistas held in the city of Puebla during their trip to Mexico City in February 2001. For all these reasons, when Rufina and other indigenous and mestizo women

<sup>35</sup> Translation of Rufina's words during an interview.

<sup>36</sup> See Alberti (1994), Mejía (2000).

bring up the question of women's rights during discussions of indigenous customs and autonomy, they draw on their deep experience of fighting for changing women's position in communities. Men hear the women's voices, but women's words are usually controversial and are not always accepted. Indigenous women are in fact central to the construction of a critical discourse concerning essentialist views of customary law.

The women's point of view has already influenced different indigenous and non-governmental organizations in Cuetzalan, and in other parts of Puebla, who now take into account women's concerns and recognize the importance of a gender perspective, at least in workshops and seminars. Nevertheless, these NGOs and indigenous organizations have problems accepting the women's point of view when discussing a legal reform regarding Indian rights and autonomy. This is what happened during the debates in Puebla. The question of women's rights was discussed but put aside in favour of defending the autonomy and legitimacy of traditional normative systems. The idea of incorporating the demands of women into the proposal for indigenous law is not always accepted by indigenous organizations, which ultimately see women's critique of indigenous customs as a threat to the recognition of indigenous jurisdiction.

The Nahua women of the Sierra Norte are not satisfied with this decision so they insist on fighting for gender equity as a principle to be recognized by both state and indigenous law. I have been interested in pointing out the contradictions that arise when dominant homogenous discourses are confronted by counter-hegemonic discourses at the level of the state as well as within indigenous communities. Because the dominant discourse favouring indigenous rights and jurisdiction is still ignoring women's concerns, indigenous and mestizo women are trying to formulate new legal alternatives.

One of the proposals put forward by some mestizo and indigenous women has been that of recognizing optional jurisdiction, allowing people, particularly women, the possibility of taking their cases to state authorities outside their communities in situations where they fear they cannot solve their problems locally. This proposal, however, has the effect of undermining indigenous demands for autonomy because it would render indigenous authority optional, rather than mandatory. For this reason more recent formulations have introduced the idea of hierarchical indigenous jurisdictions as a way of recognizing indigenous authorities as the first and second levels of government, but allowing the possibility of appealing to higher state authorities in cases of disagreement. These demands for access to higher courts express women's lack of confidence in some indigenous authorities, particularly those who are relatives or "*compadres*" of an accused

husband or aggressor. Our research has shown that women in Cuetzalan commonly approach mestizo authorities when they do not obtain justice in their communities. Nevertheless, taking cases to higher authorities cannot guarantee a satisfactory solution for women because of the corruption and discrimination that prevails in the administration of justice in indigenous regions.<sup>37</sup> Of course proposals for multiple jurisdictions generate contradictions not only because they call into question indigenous autonomy but also because they express indigenous and mestizo women's concerns about the gender injustices inherent in indigenous customs and normative systems. Although these proposals cannot solve the complex problems that women face within their normative systems, they at least present certain legal options that indigenous communities, and especially women within such communities, should consider. As the women of CADEM (*Centro de Asesoría y Apoyo entre Mujeres* – a mestizo NGO working with indigenous women in Cuetzalan), point out the issue has to be defended against two different fronts where male hegemony prevails: indigenous institutions and state judicial institutions.<sup>38</sup>

In sum, the demands of women reveal the risks of recognizing normative systems in general, and oblige to look for alternatives to homogeneous and essentialist views of indigenous customs so that the legal recognition of indigenous autonomies does not mean the legitimization of inequalities such as those of gender. Women's demands also force us to construct inclusive proposals that link indigenous peoples with the national society, calling into question the hegemonic model of democracy and nation that prevails in the country. It is also clear that legal reforms are not enough to guarantee the rights of indigenous peoples and the defence of their dignity; these causes must be taken up by the organizations, thus promoting a cultural redefinition that can enrich both indigenous and mestizo societies.

The participation of the Zapatista “*Comandanta Esther*”, a Tojolobal woman, at the National Congress in March of 2001, symbolizes the challenge that indigenous women pose 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 indigenous autonomy and rights, without abandoning the critical perspective of women who face oppressive traditions:

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<sup>37</sup> Vallejo (2000), Sierra (2000).

<sup>38</sup> This has provoked indigenous and mestizo women's organizations, like CADEM, to develop a critical perspective of indigenous and state administration of justice. Cases taken to municipal and district authorities involving rape of women, for example, have implied a fight against impunity and legal ideologies rooted among judicial officials; ideologies that support the male point of view to disqualify or minimize women's demands, which are not so different than the ones expressed during communal trials.

“(…) 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 nosotras 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>39</sup>

When *Comandanta* Esther – a small masked women dressed in her traditional “*enredo de lana*” – spoke before the National Congress of Mexico, her words provided a powerful argument for undermining hegemonic prejudices against Indian peoples, and especially indigenous women. She represented the voices of the oppressed teaching a lesson of civility and dignity to the whole country. In a clear and simple way, Esther summarized women’s demands in relation to their men and questioned oppressive gender relations, but she also defended the right of indigenous peoples to redefine and practice their own cultures without state intervention. In fact, while positing a practical theory of multiculturalism and gender rights, Esther was speaking both for herself and for other indigenous women.

*Comandanta* Esther’s words were the synthesis of a new way for doing politics, putting into play difference, rights, justice and democracy.<sup>40</sup> Her words were, in fact, a fundamental argument signaling a new position in the defence of indigenous and human rights. A discourse which not only revealed state hypocrisy towards the rights of women, but also revealed indigenous hegemonic discourse minimizing women’s demands, in defence of indigenous autonomy. Even though Esther’s words were only a discourse their impact is still fundamental in the formulation of indigenous rights. Unfortunately, women’s demands has not yet led to real changes in

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<sup>39</sup> “(...) We know which uses and customs are good and which are bad. It is bad to beat women, to sell and buy them, to force a woman to marry without her consent, to prevent women from participating in public assemblies, to forbid women from leaving their homes (...) This is why we want the Law on Indigenous Rights and Culture to be approved, it is very important for us indigenous women of Mexico. It will enable us to be recognized and respected as women and as the indigenous people that we are (...) this means that we want recognition for our way of dressing, of talking, of governing, of organizing, of praying, of healing and for our ways of working collectively, of respecting the earth and of understanding life, which is that we are part of nature (...) This law includes our rights as women so that nobody can revent our participation, our dignity and the integrity of our work, on an equal basis with men” (words spoken by *Comandanta* Zapatista Esther at the National Congress of Mexico, on March 28<sup>th</sup> 2001).

<sup>40</sup> Different interpretations of *Comandanta* Esther’s words can be found in a book edited by Gall (2001).

everyday practice of gender relations within indigenous communities; fact that is not very different in the Mexican society at large.

## Conclusions

In conclusion, during the past several years the question of indigenous rights has become a central issue in Mexican society. It is undeniable that the Zapatista uprising, the increasing organization of indigenous peoples as well as the internationalization of Zapatista and indigenous demands has shaken traditional politics in Mexico, provoking the reaction of the state in order to maintain its hegemony. The new Mexican government has incorporated in its political rhetoric the demands of indigenous rights, recognizing diversity and multiculturalism as central elements of Mexican society, as the following words of President Fox illustrate:

“Mexico is a pluricultural and pluriethnic nation and, for this reason, it is a priority of my government to build a new relation between the State, the indigenous peoples and the national society, based on the recognition of cultural diversity, the dialogue between cultures and the recognition of differences.”<sup>41</sup>

With these words President Fox attempted to appropriate the sense of a critical discourse to justify his disposition to build a new relation between the Mexican state and indigenous peoples. A central promise of this democratically elected government of “Change”, when assuming power in January 2000, was that the conflict with the Zapatistas would be solved in 15 minutes. The fifteen minutes were in fact an announcement of the lack of real disposition to solve the conflict, still alive in 2003. President Fox has also expressed his public support for the Law on Indigenous Rights and Culture (known as “*Ley COCOPA*”) defended by indigenous organizations and important sectors of civil society. Nevertheless, expectations regarding President Fox were soon thrown away when the new Indian Law was approved by the National Congress with the presidential support, leaving aside his commitment to defend the “*Ley COCOPA*”. The new law immediately met with the rejection by most indigenous communities and authorities because, as it has been said before, it leaves aside principal demands for autonomy, territory and indigenous rights. The government of “Change” has shown the political and economical limits of its praxis and commitments. Transnational capital, NAFTA and globalization are important reasons for not

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<sup>41</sup> President Vicente Fox’s words during the presentation of the National Program for the Development of Indigenous Peoples 2001-2006.

accepting a reform that will open the possibility of contesting policies of exploration and investment in indigenous territories, particularly of those located in areas of biodiversity and important natural resources like the Selva Lacandona in Chiapas. President Fox's position represents the conservative opinion of Mexican elites and intellectuals, who in the name of democracy and the equality of rights, are afraid to recognize, with all its consequences, the rights of indigenous peoples to autonomy and territory.

Different authors have shown the mechanisms by which liberal discourses have transformed a historical conceptualisation of life and rights into a universal reference to appreciate other world views (Santos 1998, Fitzpatrick 1992). The occidental concept of human rights based on the idea of an autonomous and "free" individual has been imposed as the parameter to measure human dignity without considering others societies' historical and cultural dynamics. The process of "orientalization" (Said 1979), by which Occident has built "the other" out of history and power, as an exotic being but inevitably inferior, to pursue colonization policies and modernity, is now being confronted by the demands and arguments developed by the "other", in different parts of the world. The Native is not only returning<sup>42</sup> but is confronting dominant schemes of representations and placing the discourse of difference and inequality at the centre of his demands; because equal rights hide in fact the real inequality of access to those rights. As different publications have shown, all over the world voices are emerging that question the liberal paradigm of rights and moral values in order to build alternatives that also have to confront ethnic particularism (Parekh 2000, Young 2001). In this process human rights discourse can play an emancipatory role when it is used to fight against oppressive practices and to defend plural positions of dignity. Every society has the moral obligation to respect human dignity, but what is human dignity must be open to permanent discussion, regarding historical context and cultural references. As indigenous women have shown, the claims of difference do not imply the legitimization of oppressive cultural practices, but rather an ongoing discussion, taking into account cultural references and the different positions at stake. In this sense indigenous women in Mexico, as is happening with other minority women in the world, are confronting established

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<sup>42</sup> I differentiate myself from Kuper's point of view (2002). In his article the "Return of the Native", Kuper disqualifies the legitimacy of indigenous peoples' demands based on the discourse of being native. His analysis points out the danger of an ethnic discourse based on authenticity, criticizing its instrumentalization by certain positions and interests. Nevertheless, he leaves aside other aspects involved in this claim related to resistance and indigenous peoples' history of racism and exploitation. This kind of discourse has to be understood as a symbolic argument in order to fight against domination and exclusion, without leaving aside a critical perspective to deconstruct the tendency to essentialize it and the power relations it conveys.

legal and universal horizons for building another world.<sup>43</sup> It is also in this sense that the Zapatista discourse has brought oxygen to the debate putting the fight for justice, democracy and dignity at the centre of their demands. Diversity and intercultural dialogue is seen as a condition to build bridges between cultures, in order not to shut themselves off but to be open to interaction and discussion (see *Causa Ciudadana* 2001).

The fight for regulation, for being recognized by the law, has become the centre of indigenous mobilization at the national and international level. This strategy has opened new settings for fighting and conquering rights. Nevertheless, in the era of globalization national States have lost their independence and autonomy to define the national project, and national priorities. Therefore legal reforms can only be one aspect in the fight for diversity and democracy. The political uses of the discourse of human rights, women's rights and multiculturalism can also have a perverse effect when these discourses are empty of their critical sense. The fight for difference has to be related to the fight against social inequality as Nancy Fraser states (Fraser 2000); without this perspective the emancipatory effect of the revindication of difference can be diluted and limited to mere discourse.<sup>44</sup>

The proliferation of debates over these issues, but first and foremost the emergence of new indigenous organizations fighting for their identity as indigenous peoples and participating in a national and international movement, has transformed the cultural discourse of society, encouraging sympathy towards Indians and cultural differences, even though racism and exclusion still dominate the Mexican political scenario. All over the country indigenous organizations have been discussing indigenous laws, and, in some places such as in Puebla, they have elaborated legal proposals for the recognition of their rights. The question of how human and gender rights are to be reconciled with indigenous demands for autonomy is a key issue raised by identity politics, one which requires us to propose new formulations that challenge established perspectives.

My personal experience of participating with members of indigenous and human rights organizations in discussing alternatives for the recognition of indigenous rights has been enriching in personal, political, and academic terms and has helped me to realize how an

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<sup>43</sup> See Mir-Hosseini (1999), Okin (1999), Mohanty (1991), Hernández (2001).

<sup>44</sup> In a critical analysis of the left, Díaz-Polanco affirms that what is needed from a leftist perspective to face the contemporary challenge of globalization and neoliberal policies is an identity policy of the left. This policy has to consider the articulation of structural changes to obtain justice and equity, with sociocultural changes to establish the recognition of difference, leaving aside inequalities that discriminate against and do not respect group identities (Díaz-Polanco 2002, Díaz-Polanco & Sánchez 2002).

anthropological discourse can inform political processes. The Mexican experience has provided me with an excellent occasion to observe the different political forces at stake in debates over indigenous rights, and how anthropological knowledge can be used to justify positions that are sometimes opposite to its critical intention. This is what happens when the State uses human rights and gender language to disqualify indigenous jurisdictions. It becomes a challenge for anthropologists sympathetic with indigenous causes to deconstruct such positions, informing people of their political objectives. It is also true that, as anthropologists, we have been supporting general proposals recognizing indigenous autonomy and Indian customary law against the State and conservative forces, even if such proposals reflect a homogenous view of indigenous culture. Nevertheless, it is of fundamental importance to support subordinated voices, such as those of indigenous women or other minority positions to promote a critical view of social and cultural practices within the groups and the society at large.

Zapatista indigenous people from Chiapas have provided the nation with a lesson in tolerance and open-mindedness with respect to the building of an inclusive and plural national project, one in which cultural diversity and autonomy are not in conflict with the language of gender and human rights. Fortunately, the Zapatista position on this issue has become the most important and legitimate discourse for indigenous organizations at a national level. It has also enriched anthropological perspectives on multiculturalism, ethnicity and rights.

## References

- Alberti, Pilar. 1994. *Identidad y género en tres generaciones de mujeres indígenas*. MA Dissertation in Social Anthropology, ENAH (Escuela Nacional de Antropología), México.
- Artía, Patricia. 2001. *Desatar las voces, construir las utopías: La coordinadora Nacional de Mujeres Indígenas en Oaxaca*. MA Dissertation in Social Anthropology, CIESAS, México.
- Bartra, Roger. 1997. "Violencias indígenas". In: *Suplemento La Jornada Semanal*. August 31th.
- Bonfil, Paloma and Lourdes Sánchez. 1996. Las mujeres indígenas y la política de lo cotidiano. In: *Revista El Cotidiano*, No. 76 May-June: 53-58.
- Castro, Milka (ed.). 2000. *Memorias del XII Congreso Internacional de Derecho Consuetudinario y Pluralismo Legal: Desafíos en el Tercer Milenio*. Chile: Universidad de Chile & Universidad de Tarapacá.
- Castro, Milka and María Teresa Sierra (eds.) 1998. Derecho indígena y pluralismo jurídico en América Latina In: *América Indígena*, Vol LVIII, No. 1 & 2 January & June: 1998.
- Causa, Ciudadana. 2001. *La marcha del color de la tierra: Comunicados, cartas y mensajes del Ejército Zapatista de Liberación Nacional, del 2 de diciembre al 2 de abril del 2001*. México: Rizoma.
- Comisión Takachihualis. 1998. *Investigación de la ley indígena*. Comisión Takachihualis, A.C., San Miguel Tzinacapan, Cuetzalan, Puebla.
- Collier, Jane. 1973. *Law and social change in Zinacantan*. Stanford University Press.
- Collier, Jane 1998. The peaceful Resolution of a Cortecabezas Case in the Tzotzil Maya Community of Zinacantan. In: *América Indígena*. Vol. LVIII, No.1-2: 203-257.
- Díaz-Polanco, Héctor. 1997. *La rebelión zapatista y la autonomía*. México: Siglo XXI eds.
- Díaz-Polanco, Héctor. 2002. La izquierda: desafíos y perspectivas. In: *Revista Memoria* 166: 5-12, México: CEMOS.
- Díaz-Polanco, Héctor & Consuelo Sánchez. 2002. *México diverso*. México: Siglo XXI eds.
- Fraser, Nancy. 2000. "¿De la redistribución al reconocimiento? Dilemas de la justicia en la era postsocialista". In: *New Left Review*. No. 0, Akal: Madrid.
- Fitzpatrick, Peter. 1990. Custom as imperialism. In: J.M. Abun-Nasr, U. Spellenberg and U. Wanitzek (eds.). *Law, Society and National Identity in Africa*. Hamburg: Helmut Buske Verlag.
- Gall, Olivia (ed.). 2001. Racismo y mestizaje. In: Special Number. *Debate Feminista*. Año12, Vol 24.

Gutiérrez, Margarita y Nellys Palomo. 1999. "Autonomía con mirada de mujer". In: Araceli Burguete (ed.) *México: Experiencias de autonomía indígena*. Guatemala: IWGIA: 54-86.

Hernández, Aída. 2001. Entre el esencialismo étnico y la descalificación total: la política de identidades en México y las perspectivas de las mujeres. In: *Revista Memoria*. No.147, México: CEMOS: 20-25.

Instituto Oaxaqueño de las Culturas. 1996. *Coloquio sobre derechos indígenas*. Oaxaca: Gobierno del estado de Oaxaca.

Kuper, Adam. 2002. "The return of the Native". Inaugural Address, Max Planck Institute for Social Anthropology, Halle (Saale), Conference on June 11th, 2002.

Mattiace, Shannan. 1996. ¡Zapata Vive! The EZLN, Indian Politics and the Autonomy Movement in Mexico. In: *Journal of Latin American Anthropology* 3. No. 1-2: 32-71.

Maldonado, Korinta. 2002. *En búsqueda del paraíso perdido del Totonacapan: Imaginarios geográficos totonacas*. MA Dissertation in Rural Development, UAM-X.

Mejía, Susana. 2000. Mujeres indígenas y su derecho al desarrollo sustentable, desde una perspectiva de género: El caso de la organización Maseualsiuamej Mosenyolchicauanij. In: Milka Castro (ed.) *Memorias del XII Congreso Internacional de Derecho Consuetudinario Pluralismo Legal*. Arica, Chile: 113-126.

Mir-Hosseini, Ziba. 1999. *Islam and Gender: The Religious Debate in Contemporary Iran*. Princeton: Princeton University Press.

Mohanty, Chandra 1991. "Under Western Eyes: Feminist Scholarship and Colonial Discourses." In: Mohanty Chandra, Ann Russo and Lourdes Torres (eds.). *Third World Women and the Politics of Feminism*. Broomington: Indiana University Press.

Moore, Sally Falk. 1986. *Social Facts and Fabrications: Customary Law on Kilimajaro 1880-1980*. Cambridge: Cambridge University Press.

Nader, Laura. 1989. *Harmony Ideology. Justice and Control in a Zapotec Mountain Village*. Stanford: Stanford University Press.

Okin, Susan Moller. 1999. *Is Multiculturalism bad for Women?* Princeton: Princeton University Press.

Ojarasca, documents.1994. "El grito de la luna" (Documento del Taller Los Derechos de las Mujeres en nuestras Costumbres y Tradiciones). In: *Revista Ojarasca* No. 35-36: 27-31

Parekh, Bhikhu. 2000. *Rethinking Multiculturalism: Cultural Diversity and Political Theory*. London: MacMillan Press.

Propuestas de las mujeres indígenas al Congreso Nacional Indígena, October 8th-12th, 1996, México, D.F. ms.

Rivadeneira, Ignacio. 2000. Investigación de la justicia tradicional. Una experiencia de San Miguel Tzinacapan, Cuetzalan, Puebla, México” In: Milka, Castro (ed.) *Memorias del XII Congreso Internacional de Derecho consuetudinario y Pluralismo Legal*. Arica, Chile: 63-70.

Rojas, Rosas. 1995. *¿Chiapas: y las mujeres qué?* México: Ediciones La Correa Feminista.

Said, Edward. 1979. *Orientalism*. New York: Vintage Books.

Santos de Souza, Boaventura. 1996. Towards a multicultural conception of Human Rights. In: *Working Papers Series on Political Economy of Legal Change*. No. 2, University of Wisconsin-Madison.

Speed, Shannon and Jane Collier. 2000. “Autonomía indígena. El discurso de los derechos humanos y el Estado: dos casos en Chiapas”. In: *Revista Memoria* 139: 5-11, México: CEMOS.

Sierra, María Teresa. 1992. *Discurso, cultura y poder: el ejercicio de la autoridad en pueblos ñahñús del Valle del Mezquital*. México: CIESAS-Gob. Estado de Hidalgo.

Sierra, María. 1995. “Indian Rights and Customary Law in Mexico: A Study of the Nahuas in the Sierra de Puebla”. In: *Law & Society Review*, Vol 29 (2): 227-254.

Sierra, María Teresa. 1997. Esencialismo y autonomía: paradojas de las reivindicaciones indígenas. In: *Revista Alteridades* No. 14. UAM-Izt. México: 131-143.

Sierra, María Teresa. 2000. Hay derechos humanos en Zacapoaxtla: Género, legalidad y derechos en la Sierra Norte de Puebla. In: Milka, Castro (ed.) *Memorias del XII Congreso Internacional de Derecho consuetudinario y Pluralismo Legal*. Arica, Chile: 137-145.

Starr, June and Jane Collier (eds.). 1989. *History and Power in the Study of Law. New Directions in Legal Anthropology*. Ithaca and London: Cornell University Press.

Vallejo, Ivette. 2000. Mujeres Masehualmej y usos de la legalidad: conflictos genéricos en la Sierra Norte de Puebla, MA Dissertation in Social Anthropology. CIESAS, México.

Viqueira, Juan Pedro. 2001. Los usos y costumbres en contra de la autonomía. In: *Letras Libres*, No. 27, March: 30-3.

Young, Iris Marion. 2001. Thoughts on Multicultural Dialog. In: *Ethnicities*. Vol.1, No.1: 116-121.