Access to Information and Justice for Indigenous Peoples

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Citizen demands for the State to create effective mechanisms for access to justice have gained force and relevance among indigenous peoples. The best proof of this is that since the 1980s, national and state laws were reformed to include indigenous peoples' *right* to a translator or interpreter. Judges had found that existing laws, which said that anyone who did not speak Spanish would need access to interpreters, were insufficient; they were rooted in a history that assumed that indigenous people, as Mexicans, had the obligation to master what was called the national language. Along the same lines, legislation now establishes that judges should take into account indigenous uses and customs in the process of sentencing.

Nevertheless, although legislation has improved in recent years, current laws still do not guarantee indigenous people full access to justice, under circumstances equal to the rest of the population. A major obstacle that has yet to be fully addressed is that it is impossible for indigenous people to access information about the legal processes in which they are involved.

Constitutional provisions relating to indigenous peoples were reformed in 2001, and one of the changes had an impact on the system of administration of justice: now, in all hearings, trials or other proceedings in which indigenous people play a part, individually or collectively, their customs and specific cultures shall be taken into account, as long as the Constitution is also respected. It also states that, "at all times, indigenous people have the right to be assisted by interpreters and legal defenders who understand their language and culture." These constitutional principles have been reflected in the implementing regulations of a number of federal laws and in similar state laws. The most developed to date are the Federal Code of Civil Procedures and the Federal Code of Penal Procedures. These establish the court's competence to judge cases in which one or both parties are indigenous; the means of verifying indigenous status; indigenous rights to have an interpreter when required to participate in a hearing; the translation of court actions and proceedings of a given case to the appropriate indigenous languages; and the judge's obligation to take into account indigenous customary law.

To read these constitutional paragraphs and legal reforms that seek to improve indigenous access to governmental systems of justice, one might get the idea that Mexican indigenous people have all they need to put them into practice. However, due to many intervening factors, this is not the case. One of these factors is that these constitutional and legal reforms were not accompanied by the corresponding reform of governmental institutions that would be needed to make them effective. For example, there is still no official government institution, either at the federal or state level, which offers professional translation and interpretation services in indigenous languages, like there is for various foreign languages. Another problem is that judges, prosecutors and others in the government's justice system lack information about the indigenous worldview, which permeates the organizational forms of these groups and frames their normative systems (which the law refers to as "usos y costumbres," or "customs and practices"). Ultimately, we are in a situation in which the ignorance about certain aspects of indigenous life that exists among those who administer justice has repercussions not only for how indigenous people access the justice system, but on how they are able to make it work properly.

In addition to the legal provisions mentioned above, the legal structure that regulates procedures in federal court establishes that:

> "[...] when pre-hearing statements are taken (and for the same reason during the entire penal process) without the designation of an expert interpreter for an indigenous person who does not speak Spanish but only dialect, this leaves him or her effectively defenseless. He or she has no way of knowing the name of the person who has brought charges or testified against him or her; the crime of which he or she has been accused, the nature and reason of the accusation; nor does he or she have the opportunity to prepare a defense or to appoint a representative to act on his or her behalf."[1]

This principle, which has been on the books in Mexico since 1995, should have been enough for the government to have reformed its institutions, so that individuals involved in legal processes could gather enough information to put together an adequate defense, but this is not the case.

It is in these conditions that members of indigenous peoples have had to deal with the government's legal system. According to the federal government's Ministry of Public Security, as 2005 drew to a close 8,181 indigenous people were being held in jails or prisons due to some involvement in a legal process: 279 women and 7,902 men.

[1] Penal Procedures Code for the Free and Sovereign State of Oaxaca, Article 146.

Of these, 1,091 cases were of federal jurisdiction (829 sentenced and 262 booked) and 7,090 belonged to the "common jurisdiction", or state courts (4,320 sentenced and 2,770 booked). The most common federal crimes for which they had been booked were: crimes against health; violation of the Federal Law on Firearms and Explosives; of the General Population Law; and to a lesser extent, of ecological laws. All were related to the lack of information about prohibitions regarding the use of specific plant substances or timber harvesting and, indirectly, with poverty. At the state level, the most common crimes were those against life and physical integrity (homicide and assault), property crimes (robbery, rustling, damages), and sexual crimes (rape and statutory rape). Clearly, such crimes are also connected with poverty and in some cases with cultural practices (such as marriage at an early age).

Official human rights commissions have done little about this situation, with the exception of the training of their own staff and indigenous people themselves. One exceptional case was when the Human Rights Commission of the Federal District (CDHDF in Spanish), reacted to the arrest and booking of two Mixteco men in 2002.[2] The two men did not understand Spanish, nor did they have translators when they gave their statement; the government said afterwards that this was because it could not find any. The Commission declared that:

> "[…] efforts were insufficient. Moreover, as the Attorney for the municipal district of Miguel Hidalgo admits, it is clear that there is a structural deficiency here, specifically a lack of expert translators and interpreters within the justice system. It is therefore crucial that the agencies in question be provided with the infrastructure and tools necessary to respond properly to this kind of situation, in order to be able to fulfill their duties effectively and efficiently."

In the same recommendation the ombudsman stated:

> "[…] this matter reveals a lack of training among the Public Prosecutors. Working with groups that are special because of their conditions, as in this case with indigenous people, requires greater sensibility and an expedited treatment. This did not occur in this situation, and as we see, the approach of equal treatment under the law, when applied to an unprotected nucleus, resulted in a miscarriage of justice […]."

[2] File CDHDF7122/02/CUAUH/D2878.00.

However, while this point was well made, the Commission's recommendation to the Attorney General's Office of the Federal District (PGJDF in Spanish) was not. That document only recommended that:

> "[...] as soon as possible, you should establish an inter-institutional agreement of collaboration with the National Indigenous Institute, or with some other institution specialized in indigenous matters to provide expert translators or interpreters who know about indigenous uses and customs, so that you can offer appropriate, timely and efficient service to the victims and alleged perpetrators who require it."

Why reduce a measure that was developed to reduce misunderstanding between two cultures to a matter of signing an agreement? Why did the Commission not go to the heart of the problem and propose an institutional reform to correct internal flaws? These problems involve discriminatory practices in which (according to the Commission itself) unequal subjects are treated equally. However, the problem is more serious than that. The CDHDF proposed that this collaboration should be arranged with an institution that, although it dealt with indigenous issues, was not equipped to offer translation or interpretation services. The fact that the INI was providing such services was due to the need for them, not because it was compelled under the law to do so, which would have been the case in any other government institution, since currently there is not a single agency that has the legal obligation to provide translation and interpreting services. Ultimately, the PGJDF accepted the recommendation and signed an agreement with individual translators and the Commission, in turn, accepted that as a response to its recommendation. In a strict sense, with the signature of that agreement, the Federal District was not ensuring that indigenous people would have translators in the future. They simply do not have enough translators [on staff] to really achieve an understanding between two different cultures and languages that must share the same space.

Clearly, we are facing two main problems. One stems from the multi-cultural reality of this nation—a reality whose recognition is built into the Political Constitution of the Mexican State. The other problem revolves around the right to access information. Each problem has been treated in a fairly narrow way by the State. Just as the multi-culturalism of the nation cannot be resolved by the mere recognition of the specific rights of individuals (in this case, indigenous peoples and their members), information cannot be reduced to only that information produced by the State.

A broader interpretation of these issues should be pursued. The concept of multi-culturalism should include recognition of how laws are put into practice, so that when

laws are reformed, they are accompanied by obligatory institutional reforms. With regards to the right to access information, the State should be obliged not only to share the public information it has, but to do so in the language in which it is requested. Along those lines, public officials should be duly informed about indigenous cultures when their work involves them.