THE CHALLENGE OF THE CULTURAL DIVERSITY IN MEXICO THROUGH THE OFFICIAL RECOGNITION OF LEGAL PLURALISM

JOSÉ ISRAEL HERRERA[1]

Abstract: This article explains the factual situation of the recognition of Legal Pluralism in Mexico, the way it has been handled out in a formal way and how Diversity has become a challenge in Mexico. Cultural rights are in a process of discovery and recognition, and have been focus as a way to restrict indigenous rights' instead of a broad way that can fit all indigenous people with respect and consideration to the national legal order.

Keywords: Interlegality, Multiculturality, Legal Pluralism, Indigenous Human Rights, Mayan Law.

Summary: I. INTRODUCTION; II. THE PROBLEMATIC; III. THE CULTURAL DEFENSE; IV. RULES OF CONFLICT AND INTERLEGALITY; V. LEGAL PLURALISM; VI. FORMAL LEGAL PLURALISM; VII. 32 STATES, 32 DIFFERENT POLICIES; VIII. FORMAL LEGAL PLURALISM IN THE YUCATAN PENINSULA; IX. ON THE RECOGNITION OF MAYAN LAW AS A CULTURAL RIGHT; X. RESTRICTED FORMAL LEGAL PLURALISM; XI. CONCLUSIONS ON THE INTERLEGALITY IN QUINTANA ROO; XII. FINAL CONSIDERATIONS; REFERENCES.

I. INTRODUCTION

Mexico has been defined as a multicultural nation but at the same time as indivisible and indissoluble. Since the mid-90's, there began a series of changes paving the way to eventually recognize officially the local legal institutions of the ethnic groups peoples living in the country. These changes occurred as a result of different factors such as the establishment of alternative legal systems of justice, "the adoption of the Indigenous and Tribal Peoples Convention 169 of the International Labor Organization" (Krotz 2001: 2 - 3) "the First International Decade of the World's Indigenous Peoples (1995-2004), the Zapatista movement uprising, national and international pressures, among others." (Herrera 2014: 70)

The formal recognition as a multicultural country, leads us to the question, how many ethnic and minority groups there are (or were) in Mexico? Which are these? Which

[1] Faculty of Law of the Autonomous University of Yucatán, México. Member of the National Council for Sciences and Technology of Mexico (CONACYT) - Level 1. (israel.herrera@correo.uady.mx).

might be officially recognized as such? Who are the members? Where are they? What kind of policies will be established for them? And what kind of policies will be or must be established? I am dealing with the how local people and or traditional judges are interacting with state law and vice versa.

The Mexican state at this point is facing a process of alterity, that is to say an encounter between two groups (Krotz, 1994: 6) that have not met each other before causing astonishment and that hitherto has never been recognized in its history. It is also a relationship between Deep Mexico and Imaginary Mexico (Bonfil, 1989: 21), as well as a process of establishing formal legal pluralism by officially recognizing the social existence of distinct groups and peoples as well as their right to govern themselves and to develop their own institutions of administering justice.

In the last 30 years there have been four big amendments to the law which recognize different indigenous rights in Mexico:

1. The signature and ratification of the Convention 169, the Indigenous and Tribal Peoples Convention of the International Labor Organization in 1989;
2. The addition of a paragraph to Article 4 of the Federal Constitution in 1992, abrogated as of 2001 and
3. The constitutional reform on indigenous rights and culture of August 14, 2001.
4. The legal reform of June 16th 2011 where the international instruments such as treaties and agreements were turned into mandatory and at the same level of the Mexican constitution (which prior to this reform was considered the highest legal instrument), which also reinforces and strengthens the judgments of the Inter-American Court of Human Rights.

II. THE PROBLEMATIC

Because of the ratification of the Convention 169 in some states the legislature reformed their constitution and recognized different indigenous rights. In the first case are located the states of "Guerrero (March 1987), Oaxaca (October 1990), Querétaro (November 1990 now repealed), Hidalgo (October 1991). Later, in 1992, the Mexican rulers added a paragraph to Article 4 of the Federal Constitution (which was repealed in 2001).

In the second case, in the repealed document of 1992, the multicultural nature of the Mexican nation was recognized as well as its obligation to protect and promote the distinctive characteristics of indigenous peoples and moreover, ensure their access to state jurisdiction. The states that adhered to this reform and adapt their local constitutions on the basis of the federal mandate were: Sonora (December 10, 1992), Jalisco (July 13, 1994 now repealed), Chihuahua (October 1, 1994), State of Mexico (February 24, 1995), Campeche (July 1996), Quintana Roo (April 30, 1997), Michoacán (March 16, 1998), Chiapas (June

17, 1999), Nayarit (August 21, 1999), Veracruz (February 3, 2000), Durango (November 26, 2000, now repealed), Sinaloa (May 9, 2001).

On August 14, 2001 the Constitutional reform on indigenous rights and culture was published. Since that time there have been important legal adjustments which sought to lay the groundwork for a new relationship between indigenous peoples, the state and society in general.[2] The Mexican states however decided to implement the reforms one by one, state by state. They were allowed to decide how the indigenous reforms would be applied in their territory (DOF 14TH August 2001), how to treat or regulate the relationship of the state with the indigenous groups living over there. On this basis reformed their constitutions: the states of San Luis Potosi (July 11, 2003), Tabasco (November 15, 2003), Durango (February 22, 2004), Jalisco (April 29, 2004), Puebla (10 December 2004) Morelos (July 20, 2005), Querétaro (January 12, 2007)." (Guerrero García et al, 2007: 97-98) The states are free to decide if these reforms would be applied at all.

These recognitions made at a constitutional level in the country, coincide in time with those made by a number of Latin American States, reinforced by the ratification of Convention 169 of the International Labor Organization (ILO), and are a significant symbolic break with the past. It has been suggested that perhaps we can speak of a "multicultural model emerging regional" model described by Van Cott consists of five elements: "the rhetorical recognition of the multicultural nature of their societies and the existence of local indigenous peoples as distinct, the recognition of the customary law of indigenous peoples as official public law (protected in Articles 8-9 of ILO Convention 169), the collective property rights protected in the sale, fragmentation or confiscation of lands, the status or official recognition of indigenous languages and bilingual education guarantees. In different ways the new constitutions include several elements of this model. (Assies et al, 1999: 506)

So far, there are only seven states in Mexico, which have officially recognized the presence and legal validity within their state legal system of institutions of traditional (indigenous) justice. These are: Campeche (1996), Quintana Roo (1997), Chiapas (1999), Puebla (2000), San Luis Potosi (2006), Michoacán (2007) and Yucatán (2011).

As we can notice, the Yucatan Peninsula has three states, and only two did reform its legislation, Campeche in 1996 and Quintana Roo in 1997. The state of Yucatan, has neglected the reforms. This is conflicting because the states have not coordinated their policies towards the indigenous peoples and therefore issue different policies, which are not reciprocal or comparable among the three. This is the more deplorable as these three states together represent the second largest ethnic population of the whole country, the Mayans.

[2] The recent Mexican reform (August 2001) to recognize indigenous rights has been widely questioned by the indigenous movement and sectors of civil society as a limited reform that recognizes rights that cannot be implemented. (Sierra, 2005: 295)

Mexico is a country that officially harbors 62 ethnic groups and 68 linguistic groups. (DOF, January 14, 2008). At present in the country there are more than 10 million people considered indigenous[3] representing 10.5% of the total population of Mexico[4].

The clashes between these ethnic groups and the Mexican state judicial system are frequent; their legal traditions often confront national state legislation defining them as criminal by the state law. This is highly related to the fact that "ethnic homogeneity is exceptional according to some estimates, "most societies are now characterized by diversity, distinct identities and relationships, and statistics show that only about 10% of countries can be considered ethnically homogeneous. Most states now face the demands of the minorities to award them a place in the set up of the state as different but equal partners". (Auriat, 1995: 460)

The recognition of socio-cultural differences in legal systems within one country and state around the world has become one of the points discussed by governments, commissions, rulers and judges in Latin America. The challenge of diversity (mentioned by Assies et al, 1999) is about everywhere although the challenge takes a different form depending on the specific country involved. Responses by the various states however have been very uneven and often did not lead to a proper understanding and acceptance of the distinct lifestyles of groups, while in terms of the legal recognition of these differences especially regarding local institutions of administration of justice, laws coordinating this local justice with the national state justice system are notoriously absent.

Regarding this latter point, coordinating laws, constitutional reforms almost always require the formulation and legislation of additional rules to establish the forms, ways and means of coordination and providing compatibility between the local and the national legal institutions. In Mexico, very little progress has been achieved in the actual formulation of such laws of coordination. The lack of progress in formalizing the laws of coordination suggests a fundamental political difficulty and sensibility when it comes to the formulation of e.g. the limits within which an indigenous jurisdiction has to stay lest its decisions will be declared invalid and not binding by higher non-indigenous courts. This is the case of the indigenous tribunals of the state of Quintana Roo, established in 1.

Up till today the number of studies in Mexico of what can be called cultural defense is not too big. Cultural differences cases are those in which elements are related to diversity and cultural difference are playing a role in the judicial proceedings and reasoning. Judges e.g. might try to produce better and more legitimate outcomes by taking into account

[3] 10,253,627 Overall people are indigenous according to the National Commission for the Development of Indigenous Peoples. (Serrano, 2002) and in 2010 this official number was 10,180,8216 according to the mexican oficial census of 2010. (Instituto Nacional de Estadística, Geografía e Informática 2010)

[4] This census does not include how many minority groups like the Roma, African descendant population, Asian ones are in Mexico.

elements related to the distinct customs of persons belonging to indigenous people. Renteln affirms that this issue has not yet attracted a lot of scholars because "they have mistakenly assumed that the field of investigation produces only a few and rare cases. Of course, the numbers of cases are not necessarily an indication of importance." (Renteln, 2005: 18)

The Yucatan Peninsula of Mexico has not been the exception to all this and has its own answers to the challenge of diversity. In this area I will deal with a variety of socio legal fields. None of these has been studied thoroughly and even less so regarding the way the official legal systems deal with Maya customs and administration of justice.

III. THE CULTURAL DEFENSE

This study locates within the discipline of legal anthropology and cultural human rights. In this area specific attention goes to phenomena and processes of interlegality, formal legal pluralism, the empirical way of administration of justice by indigenous peoples and its relationship to the legal systems of nation states central topics also are the recognition or denial of indigenous rights within the set up of the state and its legal order, and the way in which cultural arguments appear in court proceedings and are taken into account or rejected or ignored. This last topic is the issue of cultural defense.

Currently in various countries like USA, Canada and in Europe, there is a debate about the boundaries and scope of the cultural defense, and if this debate is to be admitted or how it must be done. Also there is discussion as to its role as a kind of mediator between official law and local, minority or indigenous law. While traditionally cultural defense has been considered in some countries, mostly it is not recognized explicitly. Woodman for instance notes that the cultural defense as such does not exist in English law. But there are four types of defense in which it is possible that culture be taken into consideration.

"While there is no culture defense as such in English law, there are four defenses in which it might be thought possible for culture to be taken into account. These are mistake, duress, self-defense and provocation. It has been said of each that they apply only subject to all that are subject to a test of 'reasonableness', that is, they apply only in cases, which satisfy an objective criterion formulated in the terms of reasonableness. The possibility that arises in that in considering whether an accused acted reasonably, it may be necessary to use the criterion of reasonableness held in the culture to which the accused belonged." (Woodman, 2009: 13)

So, even if recognition is not explicit, cultural elements of the accused may be taken into account in the legal processes that take place daily.

In Mexico the situation is comparable. No explicit recognition of cultural defense exists at any level, and it is more an exception to the rule which is accessed through legal twists and subjective interpretations of the legislators. But, since the beginning of the

decade of the 90's, arguments of cultural differences and cultural defense in federal criminal cases is are becoming increasingly common. (However this does not mean they are accepted but only that they are mentioned.)

Still, within the Mexican legal system we find that within the judicial practice and even within the codes themselves are enough elements that provide openings for judges to defend and set free indigenous suspects who claim existence of a cultural difference between them and the average population which as the case may be might lead to the judgment that their behavior although violating official law, should not be punished.

The cultural defense is a topic with little discussion in law and legal anthropology. This is indicated by Renteln, who utters:

"Because the practice of barring cultural evidence is so common, a cultural defense is necessary to ensure that such evidence is considered by the court. The adoption of a formal cultural defense does not mean that every defendant should be exonerated, nor does it mean that every plaintiff should prevail in a quest for damages or an injunction. A formal cultural defense would simply guarantee that cultural evidence could be presented in a court of law". (Renteln, 2005: 6)

IV. RULES OF CONFLICT AND INTERLEGALITY

The analysis of the way in which justice is exercised by federal judges in cultural defense cases and by Mayan judges respectively leads us to the analysis of the limits within which they themselves define their competences which they derive from the official regulation of their competences. Such rules define the scope and limits of personal competence and material of indigenous jurisdiction and procedures for resolving the problems of mixed cases and disputes arising in the case law. According to Hoekema they can be defined as follows:

"The scope and limits, the personal and material competence of the indigenous jurisdiction as well as the procedures to solve problems of mixed cases and conflicts over jurisprudence" (Hoekema, 2003: 190).

In recent years in Latin America with the adoption of international treaties and the recognition of various indigenous rights, the decade of indigenous peoples, and the protests and claims of ethnic groups, generated a process of changes in various legal devices. In (drafts of) coordination laws trying to delimitate competences of traditional (Mayan) judges, to define the place of human rights as a requirement for the local judge, and in laws defining the material and personal competence of these judges, we meet such rules of conflict. Also in the purely *de facto* practice of federal judges pondering whether or not to seriously consider a claim of cultural defense, one try to reconstruct *de facto* "rules" or rather "principles" that these judges seemingly see as guidance for their decisions. Also in

this *de facto* judicial practice rules of conflict are to be found. Sometimes, then, these rules have a legal standing, sometimes they just refer to empirical patterns to be detected in judicial practice.

A different phenomenon is interlegality that also will play a central part in this article. This phenomenon manifests itself purely in day to day social life for instance when Mayan people borrow elements of state law –or see themselves as a judge forced to take over state legal procedures and concepts, or vice versa, when official Mexican state authorities borrow concepts from the Maya culture and mix these with state law and procedure. Hoekema develops the concept of interlegality as follows:

"My leading question for these studies has been framed in terms of *interlegality*. National law and local law do not exist the one next to the other as self-contained entities or like billiard balls that perhaps hit each other, instead they are closed, massive entities in itself. On the contrary, there has been and there is a constant interpenetration between, for instance national Norwegian law and the legal sensibilities of the original Nordic inhabitants, the Sami. Certainly this often seems to be a one-way penetration only, from the powerful top to the bottom, but the minorities are not just helpless victims. They appropriate majority concepts and build these actively into their own legal outlook. Sometimes there is such penetration in the reverse direction, when elements of minority law are accepted within the dominant legal order and perhaps even leave an imprint on the dominant legal concepts, procedures and practices." (Hoekema, 2005: 6) And "It can be defined as a process and as an outcome. A process of adoption of elements of a dominant legal order, both national and international, and with frames of meaning that constitute these orders, into the practices of a local legal order and/or the other way round. Or as the outcome of such process: a hybrid new legal order." (Hoekema, 2005: 10 - 11)

He uses as an example the aboriginal Canadian practice of so called "healing circles" meant to try to conciliate someone who broke the order with his fellow community members. Canadian state authorities sometimes borrow this ¨procedure¨ and introduce it in the official administration of criminal justice.

"The term 'interlegality' was introduced by Santos (2002: 437, first mention in Santos, 1987). *Internormativé* and *métissage* are the terms Le Roy uses (Le Roy, 1999: 250, 271). As a phenomenon it has already been common in legal anthropology for more than 30 years, after the legal anthropologists parted with the concept of and the quest for 'pure' indigenous law, and after national (colonial and postcolonial) administrators quit structural and evolutionary thinking (Moore, 2001; Merry, 2003)." (Hoekema, 2005: 10) The first to use the concept of interlegality has been Santos, but it was Hoekema who developed its methodology. (Simon Thomas, 2009: 3)

In Mexico, Teresa Sierra (2004) uses a somewhat different definition with greater reference to the functional structure of society. She remarks that interlegality is defined as

"the stakes of legal regulations and legal discourses as it is updated in specific situations... that allow us to conceptualize legal dynamics ...the interlegality actually turns out to be an empirical dimension of legal pluralism and the practice of justice in indigenous regions." (Sierra, 2004: 43)

This definition though linked and limited to the recognition of indigenous customs and certain functions of society, reveals that the large number of indigenous groups in Mexico will produce a surprisingly rich and wide gamma of mixing and interweaving of local and state legal institutions.

These ways and forms of recognition of local authority and law "can be called internal conflict rules.[5] These may be defined as follows: legal rules, part of national law, that define the scope and limits as well as personal and material competence of an officially recognized indigenous (or other distinct community-based) jurisdiction. They also establish the procedures to solve problems of mixed cases and conflicts over jurisdiction between this indigenous justice and the official one." (Hoekema, 2005: 2) This is a purely empirical process, as result of which a constantly changing hybrid form of law develops.

V. LEGAL PLURALISM

Latin America since the mid 80's began a series of transformations, at the constitutional level aiming at admission, accommodation, recognition and affirmation of the existence of populations and groups different from the dominant culture. [6]

"Clearly these communities cannot be just grouped under one heading, but for the sake of briefness I use one term: *distinct communities*, sometimes switching to *local communities* as well. Almost every society is host to many socio-culturally different or 'institutionally distinct'." (Moore, 2001: 106) encompassing societies like 'first nations' (indigenous peoples), national minorities, immigrant community[7] and the like.[8] (Hoekema, 2005: 8 -9)

[5] "Internal" to distinguish this category from conflict rules to be found in international private law

[6] The emerging international standards and the new pluralist constitutionalism imply recognition of collective rights granted to indigenous peoples and suggest the explicit recognition by the State of the right of indigenous peoples to self-government in a given territory based on their own political and legal traditions. Such formal recognition presents the challenge of striking a balance between, on one hand, indigenous participation in the state and its institutions and, on the other hand, respect for the autonomy of indigenous institutions. (Assies et al, 1999: 507 - 508)

[7] Not all immigrant communities are "institutionally distinct" over the whole range of human endeavours.

[8] In this article I distinguish sharply between two constellations which are often taken together by the experts in legal pluralism. Often the reference is also to the coexistence of state law and the normative ordering capacity of functional groups like medical professions, the New York sweat shop business, street-level bureaucratic groups and other "semi-autonomous fields". The case of non-functional encompassing communities is different in that matters of identity, ethnicity, and socio-cultural diversity pose problems of

When talking about communities, here I follow the idea of Hoekema when he mentioned:

"I am dealing mostly with indigenous and with immigrant groups. National minorities pose similar questions as to the set-up of a multinational society as well as pluralist order of law and state. To one's mind come cases like the Catalan and Basques in Spain, the Scottish and Welsh in the UK, perhaps similar French examples like the Bretons, as well as cases of national minorities such as there was on the Balkan and in many other European countries (Russians in the Baltic States, Hungarian minorities in Romania)." (Hoekema, 2005: 8 -9)

Particularly the acknowledgement of the fact that distinct communities are part of the population tends to open the eyes for a phenomenon hitherto denied and ignored, with the exception of some anthropologists and anthropologically oriented lawyers.

Griffiths (1986) provides a definition of legal pluralism that is attractive for its simplicity which I believe is still valid even after the passage of time. He defines legal pluralism as "The Presence in the social field of more than one legal order" (Griffiths, 1986b: 1) and then remarks that "'Law' is present in every 'semi-autonomous social field', and since every society contains many such fields, legal pluralism is a feature of social organization" (Griffiths, 1986: 38). A situation of legal pluralism is therefore "one in which law and legal institutions are not all subsumable within one 'system' but have their sources in the self-regulatory activities of all the multifarious social fields present, activities which may support, complement, ignore or frustrate one another" (Griffiths, 1986: 39).

The term legal pluralism refers us to the *de facto* existence of different orders and inter-related regulatory systems. Particularly interesting are the encounters which take place day to day between state law and its authorities on the one hand, and on the other hand indigenous leaders and community members involved in their institutions of resolving conflicts and restoring order within their territories.

The moment that these *de facto* existing non state institutions –local law– are becoming visible and even recognized as part of the state legal order, a series of new questions come to the fore. These questions can be grouped under the heading of formal, or official, legal pluralism.

The way in which formal legal pluralism is established has been multiple and varied, from the recognition and establishment of "resguardos" in Colombia (Van de Sandt, 2004) Bolivia's formal and informal ways of justice (Assies, 1999; Orellana, 2004), or, as in the case of Mexico in which the recognition of legal pluralism is still in the discussion

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their own. Let me follow here the footsteps of Moore, who calls these two situations "entirely different" (Moore, 2001: 106).

phase and largely unfinished. (Sierra and Chenaut, 1999; Krotz, 2001, 2002). I shall now turn to this formal legal pluralism.

VI. FORMAL LEGAL PLURALISM

Formal legal pluralism is introduced when governments officially recognize the existence of distinct indigenous groups, ethnic or minority groups in their country and accord them the right to apply and develop their own institutions of administering justice. In the case of Mexico, the relation to these distinct communities has been shaped and reshaped by different historical circumstances and legal changes. Recently more interest has emerged in accommodating the grievances of the indigenous peoples in Mexico while also within the social sciences somewhat more attention is paid now to the issues involved. "The restructuring of international political forces is in relation to processes of decolonization in the world. It also situates the grievances and social movements for autonomy and / or self-determination in Africa, Europe and Asia." (Valdivia, 1992: 111)

Moreover in the words of Krotz, "the impact of the international debate on the ethnic question related to the Central American wars, the unusual attention of various international agencies (from environmentalists to politicians) to indigenous people around the world, preparations for the fifth centenary of the arrival of the first Spanish to American shores and the debate on the cultural aspects of human rights" (Krotz, 2003: 95), has become "one of the three main fields of study of culture (religion, politics, indigenous people.)" (Krotz, 2003: 93). In particular legal anthropology is the discipline that is doing most to study the changing relations between the indigenous peoples in Mexico and the Mexican official policies.

The Mexican nation once started life as an independent entity from Spain, and reinforced by the revolution of 1917, issued a series of measures and laws to promote and advance the unity of the country and the existence of one Mexican nation. On this basis, through legal provisions as to legal equality, it was thought that social equality would follow automatically. The Mexican Constitution established the basic rule that "All Mexicans are equal before the law." But in real life social differences and discrimination persisted particularly in the case of indigenous peoples and persons.

In the early 90's however the government signed the "Convention 169 on Indigenous and Tribal Peoples in Independent Countries" of the International Labor Organization that is replacing the Convention 107 of the same organization and doing away with the assimilative thrust of this former convention 107. Mexico at this time was in a period of great changes and structural reforms designed to bring the country to first world in a very short period, to improve the country's international image as the "Free Trade in North America" was approved. One of the main concerns of the government of the day was to silence the claims of indigenous groups that after almost five hundred years of the first European contact, still were the most neglected, abused and least developed parts of the

population. The signing of the Convention 169 would show that the country had them in mind and was doing its best to correct the former injustices.

Assies comments: "In 1989 it adopted the new ILO Convention 169. Mexico was the first Latin American country to ratify the Convention, although it was to project itself as a progressive country in the international arena. Within the country the ratification went almost unnoticed." (Assies, 2003: 75)

De la Peña coincides with a similar view, noting that in 1989 this document was signed because of international pressure and political-economic concerns and not because the government took the indigenous case as a case of major concern. Mexico ratified the convention in 1991, at the time, former President Salinas was interested in gaining legitimacy for his government both within Mexico and beyond.[9] De la Peña notes that the changes also had strong relations with international political and economic circumstances and concerns of the government of the day.

"After a highly contested election in 1988, the –president Salinas– needed to build domestic support for radical reform policies and solicit international approval for the admission of Mexico to the Organization for Economic Co-operation and Development (OECD). He also craved for the partnership of the Unites States of America and Canada in the North American Free Trade Agreement (NAFTA). Accordingly President Salinas pushed legislative changes to allow for an easier flow of capital and commodities. Most importantly, Article 27 of the Constitution was modified to allow for privatization of the collective peasant holdings created after the revolution. Simultaneously, Salinas promoted a change in Article 41, in order to comply with the principles of ILO Convention 169. After a rather cursory consultation conducted by the INI with indigenous organizations and a swift discussion and approval in the Institutional Revolutionary Party (PRI) –dominated Congress of the Union in July 1991." (De la Peña, 2006: 287)

Nevertheless, some modifications were made in Mexican laws and some regulations to implement the Convention, no serious obligations were entered into concerning the position and rights of the indigenous groups. Assies called this move "The Betrayed Reform." (Assies, 2003: 74) It is required to all indigenous legal systems to be under the state conception of multiculturality "but without changing the constitutional order." (Escalante, 2004).

Jane Collier and her studies at Zinacantán in the 70's were among the first studies examining the relationship, reproduction and relationships of the regulatory systems of indigenous groups from one region and processes of interlegality that could be observed.

[9] The Mexican post-revolutionary model, regarded with sympathy by the US government and academia in the 1940 - 70 period was no longer approved by the powerful northern neighbor: its populist and protectionist legislation was a hindrance to foreign investment and free enterprise. (De la Peña; 2006: 287)

The existence of these proper indigenous regulatory institutions is due to circumstances like the absence of formal authority in those regions, the big distance to the state capital and the strong legitimacy of these institutions within the local communities. She discusses several examples of interlegality and forum shopping.

However, since the mid-sixties and for over two decades, the study of contemporary indigenous peoples of Mexico, ethnic relations and ethnic issues was practically abandoned. (Krotz, 2003: 95). In Mexican anthropology, sociology and jurisprudence, the study on indigenous groups, were designed as studies of an oppressed social class, identified under concepts such as indigenous, peasants, rural, suburban, urban or migrant workers. However, in such studies the indigenous population in a very short time came to occupy a central place in the anthropological discipline, which is due largely to the confluence of several factors outside the Mexican anthropological discussion itself, among which the movements for autonomy and self-determination in various parts of the world.

In the present day research of the legal practices of indigenous peoples, "not only become visible some structural features, but above all, cultural, that lead directly to the old and new debates in anthropology and dynamic configuration of symbolic universes The processes of diffusion and transformation of cultures and cultural relativism." (Krotz, 2003: 98)

VII. 32 STATES, 32 DIFFERENT POLICIES

Mexico has thirty-one states and one Federal District as capital of the country. In total, the new reforms established that not the federal government should implement the reforms, but the states. Therefore 32 different entities are responsible for carrying out the same number of policies towards indigenous groups and minorities living in their respective territories. With this strategy the federal state "wash their hands" giving the responsibility of the implementation of the strategy to all the states. The argument used was it would produce more effective results because the states are in contact with the population. But the reality has proved otherwise because this alone generated a large variety in the policies applied to the indigenous peoples because each of the states has a fair amount of political independence.

An interesting aspect of the Mexican case is the debate about the forms and extent of indigenous autonomy. The critical issue here is that the confinement of indigenous self-government to the local community provides a too narrow basis for a kind of self-government that provides real opportunities for the peoples involved. The community is only the last line of defense of indigenous identity and must be strengthened through the establishment of supra-autonomous schemes, such as municipalities and autonomous regions. The Mexican government opposes these proposals invoking the spectre of balkanization.

In fact, the presidential initiative for constitutional reform published in March 1998 takes a very restricted turn. While it says that "indigenous peoples"[10] have the right to self-determination, a concrete expression of which is the autonomy of indigenous communities, the formula is reduced to a minimum: autonomy on the community sub-municipal level. These examples show that decentralization in itself "does not grant meaningful power or improved participation of hitherto marginalized groups." (Assies et al, 2001: 527 - 529)

One of the groups affected was the Mayan one, living in three states where they are the main ethnic group. Because of different policies and different implementation thereof in each of the three states one and the same Maya indigenous people is now divided artificially into three, even though they share a common past, language, traditions, culture throughout its history. For this reason we may expect different social processes of interlegality at work in the different states.

VIII. FORMAL LEGAL PLURALISM IN THE YUCATAN PENINSULA

Let me finally consider some of the legal changes in the three states of Yucatan that have promoted formal legal pluralism in the sense of official legal recognition of the processes, traditions and customs of indigenous peoples and, in a wider sense, the recognition and acceptance of the indigenous peoples right to be respected in their difference and therefore in their existence as a distinct entity.

The fact that constitutional changes have been approved and new laws issued, in which indigenous people's identity and specific administration of justice are recognized officially could be interpreted as the legal conformation of a social process of reverse interlegality, as I have mentioned. However, it is difficult to determine to what extent these changes have been incorporated as a result of an influence of minority or indigenous groups in the country. In the case of Mexico, from my point of view and experience this recognition is due more to the Mexican state's own strategy than to a real influence of the indigenous peoples, with exception of the impact of the San Andres agreements and the 500 years of resistance.

In the Yucatan Peninsula, we found several interesting situations, such as the one in the state of Yucatan, where the Maya ethnic group constitutes in number and a majority in the population. Even though their influence on the ruling elite is limited mainly because of a lack of structures of representation and influence. In this case we have to do with an underrepresented group."" (Herrera 2014: 70-71)

Customary law is not a coherent body of shared norms in a society, but in a specific way of organizing competing interests and "an arena where different strategies are

[10] It should be noted that in Spanish the word people means both "ethnicity" or "nation" (people) and "village" or "settlement", a semantic feature that often lends itself to confusion and deliberate manipulation.

deployed existing asymmetrical power relations (Dorontsky, 1990: 70). As Comaroff and Roberts have shown for the Tswana in South Africa, the rules or standards do not directly determine the outcome of the conflict resolution processes, but rather resources are managed by the actors and thus subject to negotiation." (Comaroff / Roberts, 1981: 14, 216; Roberts, 1979: 200 in Gabbert, 2003: 136)

In this movement the indigenous element was used as a common indicator to unite the ethnic Mayan that hitherto had been dominated while their internal social structures had been broken. Through the Caste War new structures emerged especially of the military and religious type, which prevail to this day especially in the state of Quintana Roo. The Caste War was a movement that promoted and revived the Mayan identity in the region to such an extent that the structures are still standing even today, after more than 500 years of colonization, with more than 1 million members, the second largest in the country, a culture still alive and active." (Herrera 2014: 70-71)

Ethnic relations on the Peninsula have been intense throughout the history of colonization, Mexican independence and the revolution, but because of the fragmentation of Yucatan in three states these relations developed along different lines. However, even though changes and challenges in the region are long standing and profound, research and researchers are just a few. As a result up till today there is no solid ground to evaluate properly how legal pluralism, both empirical and formal, manifests itself on the Peninsula.

IX. ON THE RECOGNITION OF MAYAN LAW AS A CULTURAL RIGHT

The recognition and incorporation of part of the traditional structure into the official system have formed a dual phenomenon. On the one hand, incorporation of parts of the traditional structure has led to an explicit recognition of their justice. On the other hand, the Maya judiciary and their traditional administration of justice have been transferred and absorbed by the state of Quintana Roo. This is a phenomenon of mutual interlegality. Both sides are influenced at the same time.

Also, the state of Quintana Roo shows signs of interlegality in reverse. On the one hand and for the first time anywhere in the country, the traditional judge's decisions in criminal, civil, and family cases are accepted. On the other hand, the Mayan ethnic group uses the criteria, characteristics and forms provided by the state of Quintana Roo in their judgments. In fact, a traditional judge's monetary compensation comes from the state of Quintana Roo.

The judges write sentences in Spanish, using seals and official documents and act on behalf the state of Quintana Roo although the resolutions are made verbally in the Mayan language. This recognition, however, occurs in a geographical area that is still limited. There are only 17 communities where traditional courts are located even though the law applies to the entire state. Due to a lack of resources, this law has not been

implemented in all communities that have requested it. "This means that the law allows and guarantees indigenous justice only in places where traditional courts have been installed. If there is no traditional court in town, no action taken by the inhabitants related to justice will be considered legal." (Herrera 2014: 72-73)

Gabbert mentions "Due to the cultural diversity of indigenous peoples at a local level, the recognition of customary law can be based on a corpus of legal rules already established at a communal level. In both cases a compromise or consensus on the rules should be the result of a democratic decision-making. The structure of what is wrongly called customary law is quite different from national law. It is not a separate and autonomous sphere from society and therefore encoding it would mean a profound change. Furthermore, due to its close relationship with the social structure, the customary law is changing continuously according to the economic and social conditions." (Gabbert 2006: 190)

But what about communities where there is no traditional judge? Resolving conflicts involves going to the nearest authority, such as municipal commissioners or delegates, or the nearest public ministry. That is a purely state official justice.

X. RESTRICTED FORMAL LEGAL PLURALISM

Throughout this article I described the formal legal pluralism encountered in Quintana Roo as restricted. Let me now summarize my arguments for that judgment.

Because of the historical processes the Mayan people only had a judicial structure in an area covering no more than ten thousand people. In the other areas no form of communitarian justice exists at all or only at the family level only. But even in the area where communitarian justice still functions in the way.

The combination of traditional and formal justice implemented in the state of Quintana Roo, has produced a new experience were Mayan traditional judges nominated within the new state system are still "learning" how to deal with their position. They are still discovering how it works, they are watching how the other state institutions react to their competences, how the people in the communities respond to their work. This hybridization makes me to catalogue this system as restricted because it avoids the possibility of a development of the indigenous justice as it is, even when then one from the area has been weak for decades and hardly used.

The experience of Quintana Roo has been mixed, because on the one hand there is a law that recognizes indigenous rights, and on the other side it is a law that recognizes these rights under some circumstances imposed by the state only. In Mexico, the Indian authorities' decisions are accepted only "if they do not contravene the federal constitution,

human rights and the rights of women. That is, indigenous authorities are ultimately autonomous judge."(Sierra 2005: 294)

This law, instead of promoting the development of a structure from below, promotes and establishes a structure from above. This law institutes a "higher" authority to organize and supervise the acts of the judges. It is not a self –regulated or community based kind of justice.

This higher authority is settled on the MAI, This figure is a judge who sanctions the work of the traditional judges and at the same time, an authority organizing and supervising the judges. On the one hand he tries to promote the traditional Maya way of dealing with conflicts; on the other hand he is also keeping the judges within the confines of the model Quintana Roo has laid down. He is the link between the two worlds, the translator, and the guardian in the name of the recognizing state.

Also, this "traditional" Maya system of administration of justice is not obligatory for Maya people. First of all, the law defines itself as alternate: "Article 6.- The indigenous justice is an alternative to the ordinary judicial courts and judges of the common order..."

The word alternate means it is also voluntary. People can go to the state judges without any reluctance, but when both parts agree to attend the Indigenous Justice and a solution is settled, it is when the decision is mandatory, if an agreement is not reached for both parties then the traditional judge tells the persons to go to another authority. In fact, the warning of "taking the case to other authorities if the problem is not solved" is quite frequent. It is also a way to pressure both parties to solve its case immediately instead of travelling far and spending money, time, and facing authorities who don't speak the language.

Another characteristic of this official traditional justice is related to pay heed to all human rights and to all other rules and laws of the federation and the state; "they are seriously supervised via the MAI, who reports to the officials instances like the Supreme Court. Also, through all this time, they have been developing their conflict rules which tend to suffocate and debilitate enormously the recognition of "Maya" justice-new-style." (Herrera 2014: 75)

At the beginning of this article I mentioned there are 32 different entities which are responsible for carrying out the same number of policies towards indigenous groups and minorities living in their respective territories. The argument used was it would produce more effective results because the states are in contact with the population. But the reality has proved otherwise because this alone generated a large variety in the policies applied to the indigenous peoples because each of the states has a fair amount of political independence.

In Quintana Roo, even when it has been a good move to leave the state the responsibility of the implementation, establishing a full indigenous system, they have forgotten to interact with the other two states of the Yucatan Peninsula splitting the same ethnic group in three parts that share the same past, present and the same future. This is because in the area, there is a dominant group: the Mayan group. They have been legally divided in three parts, three different policies. However, although some areas have been opened to build a multicultural justice, the experiences are limited and are framed by the constitutional requirement based on the model of legal "monism", which means that cultural difference must conform to this model and that justice is not open to the recognition of pluralism and indigenous rights. (Sierra 2005: 295) Hence the statement about a restricted formal legal pluralism found in the region.

XI. CONCLUSIONS ON THE INTERLEGALITY IN QUINTANA ROO

The state of Quintana Roo introduced a mixed system that has been called traditional and preserves some parts of the traditional structure. The clash of these schemes has generated processes of emerging interlegality still under development.

As I have described extensively, the Mayans of the region have taken over the new structure but have generated different ways to adapt their needs and idiosyncrasies to the formal establishment. For example, they have imposed their forms, stamps, styles and way of judging, they decided not to report all the cases, for the baptisms they have organized their own Mayan Christian church, and their marriages are valid only if they take place in the churches of their ceremonial centers. Other towns have decided to go against the MAI, choosing whether or not to use other formats.

They are still "discovering" what their jobs involve. Also, even when the MAI is the central figure, traditional judges decide what information to pass on. As we saw in one of the cases of divorce, although the sentences had been handed down in 2002, they were not officially registered with the MAI until 2008. Likewise, there are an indeterminate number of cases that never were or never will be reported. Returning to the example of divorce cases, the judge commented that he sought to protect the claimants' identity and personal privacy from the comments of the rest of the town. They develop their own rules of conflict and manifest a normative system consisting of the daily activities of official traditional judges.

The same applies when judging cases that are not specified in the formats; the judges have to make their own decision or choose to follow the oral tradition, and people abide by the reconciliation simply because of the force of the word they have pledged. These cases are also reported. The judges have taken on other attributions in the exercise of their duty. They judge cases from other towns, for example. However, they will not judge every case that comes before them. In other words, they extend their functions and their territory even beyond the formally established limits.

Summarizing all the features described, it is possible to see some characteristics of a weak and incipient interlegality under development. It is a new phenomenon arising from the clash between the law of the Mexican state system and the traditional structure of the state of Quintana Roo.

XII. FINAL CONSIDERATIONS

Human rights strengthen respect for cultural diversity, and at the present time, there is a new frontier of discussion on how difference should be understood, managed and answered. This response in Mexico has been given in the form of shattering diversity and sees it as something that is outside of what is could be considered a part of the Mexican society. In Mexico it is wanted the exclusion of what is legally understood as culturally diverse rather than start a dialogue to help understand the existence of equality in diversity and a diversity in equality that could allow the construction of an era that could be denominate a new edge of cultural human rights.

REFERENCES

Assies, Willem, Gemma van del Haar y André Hoekema, eds. (1999). *El reto de la diversidad. Pueblos indígenas y reforma del Estado en América Latina.* Zamora, México / El Colegio de Michoacán.

Auriat, Nadia. (1995) "Pluralisme culturel et multiculturalisme." In *Lettre de most,* n. 3, June. Online: <www.unesco.org/most/newlet3e.htm> [Accesed: 10th November 2014]

Barrera, L. (2001) Inicios de una jurisprudencia respetuosa de la cultura maya en Yucatán, In Krotz E. (ed). *Aproximaciones a la antropología jurídica de los mayas Peninsulares*. 107-111. Mérida: Programa de las Naciones Unidas para el Desarrollo & Universidad Autónoma de Yucatán.

Bastarrachea, M. (2009) *Mayas de Yucatán*, [online] México: Comisión para el Desarrollo de los Pueblos Indígenas. http://www.cdi.gob.mx/ini/monografias/mayas.html. [Accesed: 10th November 2014].

Bonfil Batalla, G. (1991) *México profundo: una civilización negada.* México: Grijalbo.

Buenrostro Alba, M. (2006) La justicia indígena de Quintana Roo impartida por los jueces tradicionales mayas. Oaxtepec: Paper presented at the 5th Congress of the Latin-American Network of Legal Anthropology. October 16-20 2006.

(2008) Cambios constitucionales en materia indígena en la Península de Yucatán: El caso de los jueces tradicionales mayas de Quintana Roo. Paper presented in the seminar ¿Una década de las reformas indígenas? Multiculturalismo y Derechos de los Pueblos Indios en México". Mexico. September 11th 2008.

Casares G. Cantón, R. et al. (1998) *Yucatán en el tiempo. Tomo I.* Mérida: Cares.

(1998b) *Yucatán en el tiempo. Tomo II.* Mérida: Cares.

(1998c) *Yucatán en el tiempo. Tomo III.* Mérida: Cares.
(1998d) *Yucatán en el tiempo. Tomo IV.* Mérida: Cares.
Chenaut, V & Sierra T. (1992) El campo de investigación de la antropología juridica. *Nueva Antropología.* 43. 101 - 109.
Chenaut, V & Sierra T. (eds.) (1995). *Pueblos indígenas ante el derecho*. Mexico: Centro de Investigaciones y Estudios Superiores en Antropología Social & Centro de Estudios Mexicanos y Centroamericanos.
De la Peña, G. (1996). Nacionales y extranjeros en la historia de la antropología Mexicana. *La historia de la antropología en México, fuentes y transmission.* In Rutsch, M. (ed.) México: Universidad Iberoamericana & Instituto Nacional Indigenista & Plaza y Valdés.
De la Peña, G. (2006) A new Mexican nationalism? Indigenous rights, constitutional reform and the conflicting meanings of multiculturalism. In *Nations and Nationalism.* 12. p. 279 - 302.
Escalante, Y. (2002). *La experiencia del peritaje antropológico.* México. Instituto Nacional Indigenista & Secretaría de Desarrollo Social.
Gabbert, W. (2003) La interacción entre derecho nacional y derecho consuetudinario en América Latina. In Beatriz Pérez G. & Dietz G. (eds.) *Globalización, resistencia y negociación en América Latina.* Madrid: Los libros de la Catarata.
Gabbert, W. (2006) Los juzgados indígenas en el sur de México. Oaxtepec: Paper presented at the 5th Congress of the Latin-American Network of Legal Anthropology. October 16th 2006.
Griffiths, J. (1986) What is legal pluralism? In *Journal of Legal Pluralism and Unofficial Law*. 24. P. 1 - 55.
Guerrero García, F. J. Jerónimo et al. (2007). *La Vigencia de los Derechos Indígenas en Mexico. Análisis de las repercusiones jurídicas de la reforma constitucional federal sobre derechos y cultura indígena en la Estructura del Estado*. Comisión Nacional para el Desarrollo de los Pueblos Indígenas. Mexico City.
Guevara Gil, A. (1999). Apuntes sobre pluralismo legal. In *Ius et Veritas. Revista de los estudiantes de la Pontificia Universidad Católica de Perú.* 19. p. 286-304.
Herrera, J. I. (2001) Algunas características del derecho maya. In *Aproximaciones a la antropología jurídica de los mayas Peninsulares*. In Krotz E. (ed). Merida: Programa de las Naciones Unidas para el Desarrollo / Universidad Autónoma de Yucatán.
Herrera, J. I. (2010) *Peritaje Antropológico. Sus realidades e imaginarios como prueba judicial federal*. Merida: J.I. Herrera & Manejo Cultural.
Herrera, J. I. (2013) Una aproximación a los expedientes de conciliación de los Jueces Tradicionales de Quintana Roo." In Temas Antropológicos, Vol.35, Pag.143-170.
Herrera, J. I. (2013) Una aproximación etnográfica-legal al sistema de justicia tradicional del Estado de Quintana Roo. In: TohilL. Vol.27, Pag.7-30.
Herrera, J. I. (2014) Justicia tradicional oficializada en la Península de Yucatán." In: *Diario de Campo.* Vol.1, p.1-10.

Hoekema, A. (2005). European legal encounters between minority and majority culture: Cases of interlegality. In *Journal of Legal Pluralism*. 51. p. 1 - 28.

Instituto Nacional de Estadística, Geografía e Informática. (2001). *Tabulados Básicos*. Aguascalientes: Instituto Nacional de Estadística y Geografía.

Instituto Nacional de Estadística, Geografía e Informática. (2003) *Anuario estadístico del Estado de Yucatán 2003.* Aguascalientes: Instituto Nacional de Estadística, Geografía e Informática.

Instituto Nacional de Estadística, Geografía e Informática. (2010) Hablantes de lengua indígena en México. Aguascalientes: Instituto Nacional de Estadística, Geografía e Informática. Available from: http://cuentame.inegi.org.mx/poblacion/lindigena.aspx?tema=P [Accesed: 10th November 2014]

Krotz, E. (1988) Antropología y derecho. In *México Indígena.* 25. p. 6-14.

Krotz, E. (1994) Alteridad y pregunta antropológica. In *Alteridades.* 8. p. 5-11.

Krotz, E. (1997) Aproximaciones a la cultura jurídica en Yucatán. In *Aspectos de la cultura jurídica en Yucatán.* Krotz E. (ed.) Mérida: Consejo Nacional para la Cultura y las Artes & Maldonado.

Krotz, E. (2003) "El estudio de la cultura en la antropología mexicana: una visión panorámica." In José Manuel Valenzuela Arce, coord., *Los estudios culturales en Mexico,* p. 80 - 115. Fondo de Cultura Económica. Mexico City.

Krotz, E. (ed.) (1997). *Aspectos de la cultura jurídica en Yucatán*. Mérida: Consejo Nacional para la Cultura y las Artes & Maldonado.

Krotz, E. (2001) *Aproximaciones a la antropología jurídica de los mayas Peninsulares*. Mérida: Programa de las Naciones Unidas para el Desarrollo & Universidad Autónoma de Yucatán.

Krotz, E. (2002) *Antropología jurídica: perspectivas sociales y culturales en el estudio del derecho.* Mexico: Autonomous Metropolitan University - Iztapalapa & Anthropos & International Labour Organization.

Merry, Sally Engle. (2003) "From law and colonialism to law and globalization." In *Law and Social Inquiry,* vol. 2, n. 2, April, p. 569 - 590.

Moore, Sally Falk. (2001). "Certainties undone: Fifty turbulent Years of Legal Anthropology." In: *Journal of the Royal Anthropological Institute,* n. 7, p. 95-116.

Orellana, René. (2004). *Interlegalidad y Campos Jurídicos. Discurso y derecho en la configuración de órdenes semiautónomos en comunidades quechuas de Bolivia*. Cochabamba: Huella editores.

Reyes J. & Pedro E. (2001) Solución de conflictos de acuerdo con la Ley de Justicia Indígena del Estado de Quintana Roo. In *Aproximaciones a la antropología jurídica de los mayas Peninsulares*. Krotz, E. Merida: Programa de las Naciones Unidas para el Desarrollo / Universidad Autónoma de Yucatán.

Ruz Lhuillier, A. (1989) *Los antiguos mayas*. México: Fondo de Cultura Economica.

Ruz, M. H. (2006) *Mayas. Primera parte. Pueblos Indígenas del México Contemporáneo.* Mexico: Comisión Nacional para el Desarrollo de los Pueblos Indígenas & Programa de las Naciones Unidas para el Desarrollo.

Serrano Carreto, E. et al. (ed.) (2002) *Indicadores socioeconómicos de los pueblos indígenas de México 2002.* Instituto Nacional Indigenista & Programa de las Naciones Unidas para el Desarrollo & Consejo Nacional de Población. Available from: http://www.cdi.gob.mx/index.php?id_seccion=91 [Accesed: 14th November 2014]

Simon Thomas, Marc. (2009) "Legal pluralism and interlegality in Ecuador: The La Cocha murder case." In *Cuadernos del CEDLA*, vol. 24.

Sierra, M. T. (1997). Esencialismo y autonomía: paradojas de las reivindicaciones indígenas. In *Alteridades.* 14. p. 131-143.

(2005) Derecho indígena y acceso a la justicia en México: Perspectivas desde la interlegalidad. In *Revista IIDH. Instituto Interamericano de Derechos Humanos*. 41. p. 283-316.

Van de Sandt, Joris (2003) *Communal resource tenure and the quest for indigenous autonomy: on state law and ethnic reorganization in two Colombian* resguardos. In *Journal of Legal Pluralism,* n. 48, p. 125 - 162.

Van de Sandt, Joris (2007) *Behind the mask of recognition: defending autonomy and communal resource management in indigenous resguardos, Colombia*. Phd Thesis. Faculty of Law. University of Amsterdam.

Villa Rojas, A. (1987) Los elegidos de Dios. Etnografía de los mayas de Quintana Roo. Mexico: Instituto Nacional Indigenista.

LEGAL CODES

(1989) Indigenous and Tribal Peoples Convention - C169 of the International Labour Organization.

(1997) Indigenous Justice Law of the state of Quintana Roo.

(1997) Law of Rights, Culture and Indigenous Organization of the State of Quintana Roo"

(2014) Mexican Political Constitution. México: Porrua.