

Participatory Social Protection for Migrants in Mexico: Cucapá VS. Cocopah in the Constitution

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This article aims to highlight the importance of defending the human rights of the Cucapá indigenous people, settled in the NE of the state of Baja California, in the Colorado River delta, Mexico vs. SO of the state of Arizona, United States of America with regard to its right to migration from a perspective of historical analysis and content of its constitutional norms.

Keywords: original towns, social law, cucapa, migrations

Introduction

In the journey of trying to approach this topic, the following questions were stated: why does Social Law protect the rights of the Cucapá? Why do the members of the native Cucapá people have to migrate as irregulars to meet their fellow settlers, in the United States of America? In other words, what are the reasons the Cucapá lack free movement in their original territory, despite having survived the colonial powers and the attacks of modernization, but above all, knowing that they have the only language in danger of disappearing in Mexico? Therefore, the fundamental hypothesis is defined as compliance with the constitutional norms in protection of native peoples, specifically the Cucapá, and helps to avoid migration and consequently the reduction of their population and therefore of their native language.

Regarding the scope of this paper, it makes reference to its spatial and temporal delimitation, with regard to the first, it includes all the Cucapás that inhabit the Valley of Mexicali, Baja California, Mexico and the cocopah that inhabit the SW region of the state of Arizona, United States of America, in terms of its temporality, as such it intends to describe and evaluate the situation precisely at this moment, if it is recognized that the reality studied is intrinsically changing.

This research is part of the General Line of Application and Generation of Knowledge of Social Law, because the topic addresses the lack of attention to one of the original people of Baja California, specifically, the Cucapá group. For Rodríguez, Sosa y Silva, and Lacavex, Social Law is conceptualized as: “the set of principles, norms and institutions that regulate the legal vindication of claims of social groups in disadvantaged situations” (Rodríguez, Sosa y Silva, & Lacavex, 2013, p. 19).

While justification is based on the fact that Mexico faces various challenges in economic, political, social,

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and legal matters that require investigation in order to prepare accurate diagnoses and propose alternatives to solve the problem raised.

Documentation is the method to be used, to fundament, as well as analysis and verification. The historical method in Law serves to demonstrate, among other things, that each town has laws and institutions according to its time. As for the phenomenological method, it will provide us with a worldview of the object of study, that is, of the original Cucapá people, based on intuition. The analogical or comparative method will help us to find the differences and similarities between the various systems that are studied and thus allow us to arrive at new knowledge.

Finally, an issue of importance and transcendence of general knowledge, that is, such as the human rights of native people, can hardly be represented in a single paper, however broad it may be, so the purpose of this article is not to propose a solution, but to give an approach with the research "Participatory Social Protection for Migrants in Mexico" of the CONACyT 2019 Border Science, in which it participated to contribute substantially to the knowledge of Judicial Law. To the after mentioned, the following have been published, among others: in defense of human rights of indigenous people (Sosa y Silva & Lacavex, 2010); migration phenomenon considerations: United States of America-Mexico-Central America (Sosa y Silva, Lacavex, & Rodríguez, 2011); globalization and migratory processes: regulatory regulations (Lacavex, Sosa y Silva, & Rodríguez, 2011).

Discussion

Cucapá means to some authors "worriers of the north", for their violent grupo behavior, for others it means "people of two houses", because of natural conditions of life and survival on the Colorado River, they are also known as "riaños", without forgetting that they call themselves *es pei* which means "he who comes", "coming". The most remote account given is that of Spanish explorer Ferdinand Alarcón (sic) Alarcón in 1540, when he points out, the Colorado River Indians, who lived in households for over 400 years in the Colorado and Hardy River Delta, as well as in the slopes and Sierras of the first. (Sosa y Silva & Lacavex, 2010, p. 23)

For the anthropologist, photographer, and historian, Anita Álvarez de Williams,

the highest authority on the Cucapá language is Dr. James Mack Crawford, who presented his doctoral thesis on this very language in 1949. ... She explains in effect that these indigenous people identified themselves as "Kukpas," a voice that pronounced quickly sounds like "kukpas." Pronounced slowly and more carefully, it seems to sound like "kwika pa" or "kucapa". They also identified with other groups and with each other as "capai", which means clue. The suffix "apa", meaning man; "follow" is equivalent to creator, and the verb "ipay" means to have life or come to have life. (Álvarez de Williams, 2020, p. 31)

According to the records, in 1605 there were about 22,000 Cucapas; by 1827 there were already about 5,000; in 1990 about 1,000, in 2010 about 344, and currently there are about 145, that is, in 416 years there has been a drastically reduction of 99.34% according to data provided by the National Commission for the Development of Indigenous People of Mexico (<http://portal.unesco.org/culture>, March 7, 2021).

The current population of Mexico is made up of approximately 85% of mestizos, less than 5% of white and other races, and 10% of indigenous people divided into groups that speak 52 different languages.

Within the framework of Endangered Languages program, the United Nations Educational, Scientific and Cultural Organization (UNESCO) carried out a project in collaboration with Discovery Communications, INC and the "UN Works" Program, where 18 languages in danger of disappearing were identified. Mexico has one of

them, which is precisely the Cucapá language, of the linguistic connection: Hokan, Esselen-Yuman, Delta-Californian (http://www.ethnologue.com/show_language.asp?code=coc, March 7, 2021), even though they also dominate the Spanish language. This tells us that the Mexican State must do everything necessary to promote the growth of this unique native language in danger of becoming extinct.

In addition to their status as indigenous people and given their conditions of marginalization, they have suffered a significant reduction in numbers and therefore their language is in danger of disappearing, this places them as a social group in a disadvantaged situation and places them under the protection of Social Law, with what has been described up to this point we may answer our first research question: why does Social Law protect the rights of the Cucapá?

“In data from writers and explorers of the 19th century, it is said that thousands of indigenous people lived scattered in different areas of the northern region of the peninsula, and mainly on the banks of the Colorado River” (Goldbaum, 1984, p. 26). Dedicated to agriculture for approximately a thousand years, they lost their land at the end of the 19th century when the government of Porfirio Díaz granted large extensions of land to Guillermo Andrade, which later passed into the hands of the Colorado River Land Co. In 1937 the agrarian reform took place in Baja California and the Cucapás received an endowment of 2,061 hectares for 42 heads of families. In 1973, 143,072 hectares of arid, sandy, and rocky land were titled, including those corresponding to the Sierra Cucapá and the Laguna Salada, null for planting. The flood that the Valley of Mexicali suffered in 1978 filled the Laguna Salada and other shallows near the community with water, so until 1989, when those deposits dried up, they were dedicated to fishing.

The State of Baja California is located between the parallels or geographic coordinates 28° and 32°43'05" north latitude, the distance that separates it from Ecuador and between 112°400'20" and 117°8" western longitude, its distance from the meridian of Greenwich, England. It is bordered to the east by the Sea of Cortez or the Gulf of California; to the northeast with the State of Sonora and with the American state of Arizona; to the north with the border of the United States of America—in an extension of 265 kilometers, of which 233 correspond to the state of California and 32 to the state of Arizona—to the west with the Pacific Ocean and to the south with the State of Baja California Sur. (Sosa y Silva & Lacavex, 2010, p. 21)

Today the Cucapás are settled in: Cucapá El Mayor Indigenous Community, Cucapá Mestizo El Mayor Ejido, Colonia La Puerta, Ejido Hipólito Rentería, Jesús Sansón Flores Village, Campo Camerina (Col. Terrenos Indios), Rancho San Pedro, Rancho Alberca Ramos, Poblado Sombrerete, municipality of Mexicali, between kilometers 55-60 of the Mexicali—San Felipe highway and Ejido Pozas de Arvizu, south of San Luis Río Colorado, Sonora, as shown on the map. In the United States of America, they live mostly in the Somerton, Arizona area.

Therefore, according to our second research question: why do the members of the original Cucapá have to migrate as illegals to meet their peers living in the United States of America? The answer being that given their human, anthropological, and social condition, the Cucapá ethnic group was one, as they settled down, the physical and legal borders came, and separated the territory bringing the division of two countries, but that should not be an obstacle and separate those who were once one, original people, so the neighboring States must allow free transit without further formalities, without being an obstacle for the Cucapás who wish to meet with the Cocopahes to do so and, not as is currently the case as irregular migrants lacking legal documentation.

The United Mexican States and the United States of America share a border with 3,107 kilometers (Méndez, 2016, p. 9), their legal, political, economic, social, and historical context is very different. In first place, Mexico was conquered by the Spanish and there was a mixture of them with the native people which gave rise to a wide-ranging cultural pluralism, for its part, the United States of America was colonized by the English and there was a separation in the majority of racial and economic cases between them and the native people.

Spain and England come from different legal families, “our national legal system finds its roots in the European culture brought by the Spanish conquistadors. In addition, to the cultural influence that goes back to the Roman-canonical legal systems ...” (Universidad América Latina, 2021, p. 44). While England finds its roots in its own system of judicial precedent, the common law. Regarding the context of the independence for both countries, the United States of America was the first to obtain it, derived from a war of the 13 original colonies against the English empire with the help of the French government. These 13 colonies, practically 11 years after declaring themselves independent, agreed among themselves to form a Federal State, thus being born in 1787 the United States of America.

In Mexico, the context in which independence occurred varies considerably. The struggle for independence which began in 1810 and was obtained on September 27, 1821, was the product of a pact between the elite, that consisted of the Viceroyalty of New Spain with considerable influence from the Catholic Church with the Spanish government, that is, there were no de facto federative entities, but were artificially created to administer power, but the source of it came from the central power. Despite the very different legal, political, and historical circumstances, the first Constitution of Independent Mexico of October 4, 1824 had marked similarities with the American Constitution.

In case of the United States of America Constitution, since 1787 it only has 27 amendments or reforms in its 234 years of history. The 1824 Mexican Constitution was replaced by the seven constitutional laws of 1836, which in turn were repealed in 1847 creating a different constitutional body, which was only valid for 10 years since it was completely modified in 1857, until it became The Constitution of 1917, which as of March 11, 2021, has issued 246 reform decrees with more than 700 constitutional changes.

Indigenous Constitutional Law in Mexico has been in constant evolution, especially in the last 28 years. The fundamental norm made a brief reference to tribes in Article 27, which regulates the ownership of land and water until 1992, when it recognized the multicultural conformation in Article 4, and later in 2001 with the comprehensive reform of Article 2, where the human rights of indigenous people are currently ensured. In Table 1 called “Genesis of Article 2° Constitutional”, data, content, and concept of the reforms published in the Official Gazette of the Federation are presented.

In the United States of America, indigenous affairs have been present on the political agenda since its foundation as a nation and since the first Political Constitution, on September 17, 1787, an example of this is that they recognized 234 years ago a special regime in tax and territorial matters. Additionally, a series of treaties were issued for each tribe:

Table 1

Genesis of Article 2° Constitutional

No. reform	Publication	Reform	Concept
	05 of February 1917, Tomo V, 4ª. Época, Número 30. Fe de erratas DOF 06-02-1917	Original text	Slavery is prohibited in the Estados Unidos Mexicanos. Slaves from abroad who enter national territory, will achieve their freedom and the protection of the law
First	14 of August 2001, Tomo DLXXV, No. 10.	Is reformed in its entirety	Result of the Zapatista struggle and the San Andrés Larráinzar accords
Second	22 of May de 2015, Tomo DCCXL, No. 17.	Fraction III, Section A is reformed	Promote gender equality
Third	29 of January 2016, Tomo DCCXLVIII, No. 21	Fraction III, Section A paragraph one and two, fraction IX, Section B is reformed	Promote equal opportunities and eliminate discriminatory practices
Fourth	06 of June 2019, Tomo dclxxxix. No. 5.	Fraction VII, Section A is reformed	Elect a representative before the municipalities
Fiveth	09 pf August 2019, No. de edición del mes: 8.	Section C is added	Include afro-mexican people and communities

Source: Own elaboration with data rescued from: <https://www.dof.gob.mx/index.php?year=2019&month=08&day=09>.

The signing of treaties with the Delaware Indians in 1787 marks the beginning of nearly a century in which the federal government signed more than 650 treaties with Indian nations. The treaties generally had clauses for the maintaining peace, hunting and fishing rights of the Indians, the recognition by the tribes of the authority of the federal government or its protection. Beginning in 1820, treaties began to focus on the cession of land by tribes and the creation of reservations under the protection of the federal government (Miranda, 2017, p. 85).

The Constitution of America precisely mentions indigenous people on three occasions:

1. In Article I, Section two, later modified by the Fourteenth Amendment, refers to Indians as tax exempt, excluded from the population census on the basis that the states must elect their representatives.

2. In Section eight, Article I, known as the “Commerce Clause”, gives Congress the power to regulate trade, among other things with the Indian tribes.

3. In a non-explicit manner, in Article VI The Constitution recognizes the legal status of treaties with indigenous tribes, stating that, with the Constitution and by law, treaties constitute the supreme law of the country (Centro de Recursos Informativos, n.d.).

It is noteworthy that the Mexican Constitution was inspired precisely by the American Constitution and specifically in Section XI of Article 50, of the Constitution of 1824, Congress exclusively has the power to arrange trade with foreign nations, and between the different States of the Federation and Indian tribes, however, there is no evidence of regulatory laws in this matter.

An essential difference between American and Mexican legislation, is that Native American Indians enjoy a special protection in fiscal and territorial matters, and establishes a series of requirements to be considered indigenous. Even if it is not recognized as such, it is necessary to comply with them so that the Office of Indian Affairs grants said legal status to a people in general or a person in particular. In the Mexican case, by the mere fact that a person or a group manifests its belonging to an indigenous people, it is already considered as such, and even as it is known to all, in some of the cases they hide their indigenous descent so as not to be the object of discrimination.

Although it is true of the analysis of the legal norms which protect the rights of indigenous people and considering that both the Political Constitution of the United Mexican States and international conventions, federal laws and state regulations establish specific mandates for the exercising of these rights, there are various legislative omissions, among which only by way of example we will comment on some of them.

The Magna Carta establishes the right of indigenous people and communities, consequently the autonomy to preserve and enrich their languages, knowledge, and all the elements that constitute their culture and identity. However, derived from notorious facts there is no alphabet and with the passage of time the teaching of the indigenous language has been left aside.

In this same context, it establishes the right to the autonomy of indigenous people and consequently to conserve and improve the habitat and preserve the integrity of their lands. Notwithstanding the foregoing, the traditional fishing that this indigenous group has carried out for centuries now faces restrictions due to the overexploitation of fishing and the smuggling of totoaba macdonaldi in the Upper Gulf of California.

Although it is true that an important sector enjoys the social rights stated in our Constitution, the exercising of the same, limited or frankly deficient, allows us to question the extent to which these rights are fully guaranteed, despite having access to them. (Carpizo, 2013, p. 28)

Fraction VII of Section A of Article 2 of the Constitution establishes:

... Elect, in the municipalities with an indigenous population, representatives before the town halls, observing the principle of gender parity in accordance with the applicable regulations. The constitution and laws of federal entities will be regulated in these municipalities, with the purpose of strengthening political participation and representation in accordance with traditions and internal norms...

situation which with in that the analysis of the constitutional norms of Baja California and its respective electoral laws, is not addressed.

Section B of the aforementioned regulation mandates that:

... The Federation, the States and the Municipalities, in order to promote equal opportunities for indigenous people and eliminate any discriminatory practices, shall establish the institutions and determine the necessary policies to guarantee the validity of the rights of indigenous people and the comprehensive development of their communities, which must be designed and operated jointly with them...

that in the specific case of Baja California is not being considered. This is so that since the examination of the organizational structure of the Government of the State of Baja California, does not identify any dependency or entity that attends to indigenous groups, thereby additionally omitting what is established in Article 7 of the Political Constitution of the Free and Sovereign State of Baja California.

In this same sense, Section I of Section B of Article 2, The Constitution establishes:

... Promote the regional development of indigenous areas with the purpose of strengthening local economies and improving the living conditions of their people, through coordinated actions between the three levels of government, with the participation of the communities. The municipal authorities will equitably determine the budget allocations that the communities will manage directly for specific purposes...

obligation that is also not identified.

These legislative omissions in local regulations, identified in the constitutional sphere, in international

treaties, in federal laws, in the Political Constitution of the Free and Sovereign State of Baja California, and its respective Law on Indigenous Rights and Culture reflect that there are diverse challenges that must be confronted to make social rights of the original people effective. As if the above were not enough, after the Zapatista movement that led to the constitutional reform of 2001, the indigenous issue is not on the agenda of State priorities. For this reason, it is necessary to introduce them on the political agenda in order to remedy legislative omissions and promote public policies for the effective exercise of their rights. With the above, we answer our third and final research question: what are the reasons why The Cucapá lacked free movement in their original territory, despite having survived the colonial powers and the attacks of modernization, but above all, knowing that they have the only language in danger of disappearing in Mexico?

Conclusions

From the analysis of the constitutional norms of the United Mexican States and the United States of America, the following conclusions are reached:

First: The Mexican Magna Carta seeks to protect the original people while the American Magna Carta seeks to make them independent.

Second: The Mexican Magna Carta is regulatory and programmatic, while the American Magna Carta is clear but limited to a specific issue, tax exemption.

Third: The Mexican Magna Carta establishes two specific sections in Article 2, one for the self-determination of the people and another regarding the obligations of the Mexican State and its authorities with these people. The American Magna Carta does not contemplate a special article for these people

Proposal

Given the foregoing, we came to highlight the importance of defending the Cucapá indigenous people human rights, since they de facto lack the prerogatives granted to them by the constitutional norm and given their desire to migrate with their congeners in Somerton, Arizona when they are unable to do, so they regularly, resort to irregular migration at an accelerated rate, which puts their own people at risk of extinction and, consequently, their native language, for which we propose that the State of Baja California must urgently comply with the constitutional mandate and, thus confirm ad hoc our fundamental hypothesis as it is the fulfillment of the constitutional norms.

References

- Álvarez de Williams, A. (2020). Los Cucapá del Delta del Río Colorado. *El Río. Revista de historia regional de Mexicali y su valle*, 13(49), 31.
- Carpizo, J. (2013). Los derechos de la justicia social: Su cumplimiento. *Revista Latinoamericana de Derecho Social*, 16, 28.
- Centro de Recursos Informativos. (n.d.). *Las tribus indígenas en los Estados Unidos su situación legal*. USA: Embajada de los Estados Unidos. Retrieved from <https://ar.usembassy.gov/wp-content/uploads/sites/26/2016/05/tribus.pdf>
- Congreso de la Unión. (2021). Retrieved from <http://www.diputados.gob.mx/LeyesBiblio/index.htm>
- Congreso del Estado de Baja California. (2021). Retrieved from <http://www.congresobc.gob.mx>
- Diario Oficial de la Federación. (2021). Retrieved from <http://www.dof.gob.mx>
- Goldbaum, D. (1984). Noticia respecto a las Comunidades de Indígenas que pueblan el Distrito Norte de la Baja California. *Calafia*, 5(3), 26.
- Instituto Nacional de Estadística, Geografía e Informática. (2021). Retrieved from <http://www.inegi.gob.mx>

- Lacavex, M., Sosa y Silva, Y., & Rodríguez, J. (2011). Globalización y procesos migratorios. Normatividad regulatoria. La frontera: Una nueva concepción cultural. In *XV Reunión Internacional*. La Paz, B.C.S.: Universidad Autónoma de Baja California Sur.
- Méndez, J. (2016). *Problemas Económicos y Sustentabilidad*. México, D.F.: Mc Graw Hill.
- Miranda, R. (2017). Análisis de los derechos reconocidos a los pueblos originarios en el Derecho Comparado (el caso de las comunidades autóctonas en México y las tribus de los Estados Unidos de Norteamérica). *Derecho Global, Estudios sobre Derecho y Justicia*, 3(7), 75-94.
- Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura. (2021). Retrieved from <http://www.es.unesco.org>
- Rodríguez, J., Sosa y Silva, Y., & Lacavex, M. (2013). *La Estabilidad en el Empleo y el Derecho Social*. Mexicali, B.C.: Universidad Autónoma de Baja California.
- Sosa y Silva, Y., & Lacavex, M. (2010). In defense of human rights of indigenous people. *US-China Law Review*, 7(1), 23.
- Sosa y Silva, Y., Lacavex, M., & Rodríguez, J. (2011). Migration phenomenon consideratios United States of America-Mexico-Central America. *US-China Law Review*, 8(5), 444-457.
- United Nations Educational. (n.d.). *Scientific and cultural organization*. Retrieved from http://www.ethnologue.com/show_language.asp?code=coc
- Universidad América Latina. (2021). *Evolución del derecho civil mexicano*. Retrieved from http://ual.dyndns.org/Biblioteca/Derecho_Civil/Pdf/Unidad_06.pdf p. 44