

# Chapter 1

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## Political Communities in Indigenous Lands

### 1.1. Introduction to Indigenous and Political Communities

This chapter explores the relationship between indigenous communities, land, and rural politics, analysing how indigenous communities and their communal lives are conceptualized in significant legal documents, such as Mexico's 1917 Constitution, the 1989 International Labour Organization on Indigenous and Tribal Peoples Convention (ILO C169), and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). The elements of membership (a people), territory (country) and forms of organisation (institutions) are found to be central to their conceptualisations – elements which, this book highlights, exhibit a close definitional proximity to the components that in political theory are regarded as constitutive of a political community.

### 1.2. Land and Indigenous Communities in Mexico

The study of indigenous communities in Mexico incurs a variety of issues. The country has one of the largest indigenous populations in the world. Mexico's overall population is 119,930,473 (INEGI, 2020a), of which 25 million self-identify as indigenous persons (INALI, 2020). In addition to Spanish, 63 other languages are spoken, with over seven million speaking an indigenous language, mainly Náhuatl, Maya and Tzeltal (INEGI 2020b).

One of the defining aspects of an indigenous community is its attachment to land. The issue of indigenous communities in Mexico is addressed in the country's Constitution of 1917 – namely, within the legal framework of land reform (i.e., the Agrarian System). Indigenous peoples gained access to land through land reform, but ethnic identities were not a relevant criterion in land claims (see section 2.2.2. 'Indigenous Land' below).

In Mexico, some indigenous communities also have territorial foundation in the form of municipal jurisdictions. Municipalities have been at the centre of indigenous life. In Mexico's three-tier state structure, the federal republic is composed of 32 states and 2,457 municipalities (INPI, 2017)<sup>1</sup>: of those municipalities, 623 are 'indigenous municipalities,' 251 municipalities have 'indigenous presence'; 1,543 municipalities have a 'dispersed indigenous population' and 33 municipalities are 'without indigenous population.' Policymakers have noted that within those municipalities with more than 30% of indigenous population there are more than 6,000 agrarian nuclei – 79% of these are *ejidos* and 19% are agrarian communities (see DOF, 2014). Although indigenous peoples own land in the form of private property, social property is the predominant form of tenure (in terms of social property, *ejidos* are far more common than agrarian communities).<sup>2</sup> It is important to note that not all social property is owned by indigenous people; however, some indigenous communities do own significant tracts of land. This fact makes indigenous peoples central actors in national environmental policies (Boege, 2008). Lands owned by indigenous peoples represent approximately 14.3% (or 28 million hectares) of the country's total territory, and almost half of its main basin headwaters are inhabited by indigenous peoples (Toledo et al., 2019, p. 40).

Since these two landed foundations, the agrarian system and the federal structure of Mexico's state, indigenous communities have been part of the

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<sup>1</sup> An estimate of the indigenous population based on the criteria of households and its main sociodemographic indicators based on the Intercensal Survey 2015, carried out by INEGI. Cf. also Figueroa (2020).

<sup>2</sup> Robles Berlanga and Concheiro (2004: 5), based on different sources of data that included the 1991 INEGI's Censo Agropecuario, reported that *ejidos* and agrarian communities with an indigenous population owned more than 22 million hectares (22% of the area owned by *ejidos* and communities); they also reported that roughly one in five *ejidos* and communities have indigenous peoples as land reform beneficiaries.

country's political system. These foundations underpin a form of rural politics that has always been a complex and conflictive arena (Assies, 2008; Petras & Veltmeyer, 2001). Land reform dominated rural politics throughout the twentieth century. Specifically, land reform beneficiaries became part of a political system that demanded corporatist support and electoral loyalty to the Revolution's dominant force, the *Partido Revolucionario Institucional*. Land claimants outside the corporatist system organized what has been identified as the 'independent peasant movement,' from which they pressed for their land (and other) demands through social mobilization and electoral politics (Grammont & Mackinley, 2009; Mackinlay and Otero, 2004; Rubio, 1996; Paré, 1990). Moreover, armed land struggles have continued to exist as vestiges of the Revolution, until the rise of the *Ejército Zapatista de Liberación Nacional* in the context of neoliberal policies. Therefore, the study of indigenous communities in Mexico has been centred on land and rural politics.

### 1.3. Frameworks to Examine Indigenous Communities

This section examines three legal documents – Mexico's 1917 Constitution, the 1989 Indigenous and Tribal Peoples Convention (ILO C169), and the 2007 United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) – to analyse the way in which they have conceptualised indigenous peoples as collectives. The analysis reveals that the elements of membership (a people), territory (country) and forms of organisation (institutions) are central to their conceptualisation. The section further examines scholarly research into indigenous communities as cultural collectives, which underscores the importance of cultural, historical, and territorial dimensions in defining their identity and autonomy in more general terms.

#### 1.3.1. Mexico's Constitution

The Mexican Constitution explicitly acknowledges the existence of indigenous peoples within the country. The country's legal framework incorporates ethno-linguistic and geographic criteria to acknowledge the existence of indigenous peoples. Additionally, the country's subnational (state-level) constitutions and laws recognise indigenous peoples and communities. Furthermore, the indigenous community, in its capacity as a landowning

collectivity, has existed within the legal framework of land reform, specifically the Agrarian System.

Indigenous land rights are enshrined in Article 27 of the Constitution – which, since its enactment, was the subject of a major revision in 1992. Further legislation addresses issues such as water, natural resources, and underground resources. Of particular importance is the Agrarian Law (*Ley Agraria*), which regulates constitutional Article 27 in matters relating to indigenous lands (Gallardo Zuñiga, 2006a). At the local level, there are instances of customary practices (*Usos y Costumbres*). It is important to note that the authorities of communal landholdings (*ejidos* and agrarian communities) established under land reform legislation (*Ley Agraria*) may not be the same as the traditional (customary) indigenous authorities. Indeed, conflict between agrarian and traditional authorities is not uncommon.

Moreover, the Constitution, particularly through Articles 18 and 115, reinforces the protection of human rights for indigenous communities. Article 1 states that ‘all individuals shall be entitled to the human rights granted by this Constitution and the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights.’

Furthermore, the Constitution’s Article 2 recognizes the right of indigenous peoples to self-determination and establishes preferential access for indigenous peoples to the natural resources in the areas they inhabit. This article stipulates that the Mexican Nation is ‘unique and indivisible’ (the sovereign principle); however, it recognises that it is ‘multicultural’ in its composition ‘based originally on its indigenous peoples.’ In this article, indigenous peoples are described as ‘descendants of those inhabiting the country before colonization and that preserve their own social, economic, cultural and political institutions, or some of them’ (Article 2, as amended on August 14, 2001). Moreover, indigenous identity is understood as a matter of self-identification and awareness: ‘Consciousness of indigenous identity will be the fundamental criteria to determine to whom the provisions on indigenous people apply’ (Article 2, as amended on August 14, 2001).<sup>3</sup> Constitutionally, then,

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<sup>3</sup> The Mexican Constitution handles the concept of sovereignty by embracing a nuanced approach that acknowledges (in Article 2) both the indivisibility of the Mexican Nation and the existence of indigenous communities. The latter is acknowledged to have their own distinct cultural, economic, and social identities, and are settled in specific territories and governed by their own authorities and customs. Indigenous communities have

indigenous peoples form a number of ‘communities’ that often constitute ‘a cultural, economic and social unit settled in a territory and that recognizes its own authorities, according to their customs’ (Article 2, as amended on August 14, 2001).

Thus, Article 2, as a cornerstone of Mexico’s legal framework, recognises indigeneity by invoking three main criteria. Firstly, it acknowledges the indigenous communities as those descendants of the original inhabitants who to some extent maintain their distinct social, economic, cultural, and political institutions – thus forming what can be termed an indigenous ‘demos.’ Secondly, it emphasizes their connection to specific territories, highlighting the significance of geography and land in their identity. Lastly, Article 2 points out the importance of indigenous institutions, how these communities, deeply rooted in traditional territories, organize themselves according to their own customs and traditions. The article solidifies the foundation of Mexico’s recognition of indigenous peoples. This comprehensive recognition affirms and integrates aspects of historical legacies, self-identification, ethno-linguistic practices and territorial attachment within the constitutional narrative. By defining the indigenous community through the lenses of people, territory,

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the right to self-determination, but this will be exercised without threatening national unity, within the framework of the Constitution. As such, there is no dual sovereignty in Mexico. The Constitution recognizes and protects the indigenous peoples’ right to self-determination, and it sees the right to autonomy as a consequence of this recognition and protection. This means that indigenous customs cannot stand in contradiction of the Constitution; in no case shall communitarian practices limit the electoral or political rights of the citizens in the election of their municipal authorities.

The logic of the Constitution is such that since it recognizes and protects their right to self-determination and consequently to autonomy, indigenous peoples can determine their own internal forms of coexistence and organisation (social, economic, political and cultural). It also allows for them to apply their own legal systems in internal conflicts – within the principles of the Constitution. Moreover, they can elect their own authorities or representatives to exercise their own form of internal government (in accordance with their traditional rules, procedures and customs). Furthermore, they can elect indigenous representatives for the town council in those municipalities with indigenous population. State constitutions and laws recognize and regulate these rights in the municipalities, with the purpose of strengthening indigenous participation and representation, in accordance with their traditions and regulations.

In this book, English translations of the Mexican Constitution of 1917 are taken from [constituteproject.org](http://constituteproject.org) (2015).