

# **Violación del derecho a la consulta indígena: siembra de soya transgénica en comunidades mayas del estado de Campeche, México**

***Violation of the indigenous rights to be consulted: transgenic soy bean sowing in Mayan communities from the state of Campeche, Mexico***

***Violação do direito à consulta indígena: plantio de soja transgênica em comunidades maias no estado de Campeche, México***

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## **Resumen**

En el año 2012, fue autorizada la siembra de soya genéticamente modificada a escala comercial en comunidades mayas del Estado de Campeche, México. A este hecho se opusieron organizaciones indígenas mediante la vía legal -amparo-, obteniendo, luego de tres años, un fallo favorable de la Suprema Corte de Justicia de la Nación, pero aún no definitivo, ya que la máxima instancia condicionó la siembra de soya genéticamente modificada a la realización de una consulta en las comunidades afectadas.

Las primeras convocatorias de dicha consulta se realizaron desde el 31 de marzo de 2016.

De acuerdo con el protocolo presentado por las autoridades encargadas de la organización y puesta en marcha del proceso de consulta, el mismo constará de cinco fases. Hasta el 23 de septiembre de 2017, se han realizado cinco sesiones que corresponden apenas a la primera fase del proceso de la consulta, que es la de acuerdos previos.

Debido a que esta figura de la consulta es relativamente nueva en México, y a la marcada y tradicional relación asimétrica que existe entre autoridades oficiales y comunidades indígenas, el

proceso al que se hace referencia se ha visto entorpecido debido a que las primeras están acostumbradas a imponer condiciones y las segundas están decididas a defender sus derechos.

De esta manera, el tema principal del presente trabajo es mostrar el desarrollo, por demás irregular, de este proceso de consulta.

**Palabras clave:** derecho a la consulta, organismos genéticamente modificados, pueblos indígenas.

### **Abstract**

In the year 2012, the planting of genetically modified soy bean on a commercial scale was authorized in Mayan communities of the state of Campeche, Mexico. Indigenous organizations have opposed this fact by the legal means, obtaining, after three years, a favorable ruling from the Supreme Court of Justice of the Nation, but still not definitive, since this maximum legal authority conditioned the planting to the realization of consultation in affected indigenous communities. The first calls for the consultation were made by the authorities since March 31st, 2016. In accordance with the protocol presented by the authorities in charge of the organization and implementation of the of consultation process, it will consist of five phases. Up to September 2017, there have been carried out five meetings that correspond scarcely to the first phase of the process (Prior Agreements).

Since consultation figure is relatively new in Mexico, and to the marked and traditional asymmetric relationship between official authorities and indigenous communities, the process to which we refer has seen hampered, since the first ones, accustomed to imposing conditions, have determined in this sense, and the second ones, are decided to defend their rights. The extremely irregular development of this consultation process is the main theme of this paper.

**Keywords:** right to consultation, genetically modified organisms, indigenous people.

## Resumo

Em 2012, foi autorizado o plantio de soja geneticamente modificada em escala comercial nas comunidades maias do Estado de Campeche, no México. Este fato foi combatido pelas organizações indígenas por meio do regime jurídico-amparo, obtendo, após três anos, uma decisão favorável do Supremo Tribunal de Justiça da Nação, mas ainda não final, pois a instância mais alta condicionou o plantio de soja geneticamente modificados para realizar uma consulta nas comunidades afetadas.

As primeiras chamadas para tal consulta foram feitas a partir de 31 de março de 2016.

De acordo com o protocolo apresentado pelas autoridades responsáveis pela organização e implementação do processo de consulta, consistirá em cinco fases. Até 23 de setembro de 2017, foram realizadas cinco sessões que correspondem apenas à primeira fase do processo de consulta, que é de acordos prévios.

Como este número da consulta é relativamente novo no México, e a relação marcada e tradicional assimétrica que existe entre autoridades oficiais e comunidades indígenas, o processo referido foi prejudicado porque os primeiros estão acostumados a impor condições e os últimos estão determinados a defender os seus direitos.

Desta forma, o tema principal deste trabalho é mostrar o desenvolvimento, de outra forma irregular, deste processo de consulta.

**Palavras-chave:** direito à consulta, organismos geneticamente modificados, povos indígenas.

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## Introduction

Historically, the communities and indigenous peoples of Mexico have faced adverse conditions in their struggle to achieve better living standards.

During the colonial era, these towns were subdued and exploited by the Spaniards. From the sixteenth century to the present, they are still one of the sectors most affected by poverty and discrimination.

The indigenous communities are one of the most important sectors of the nation for having had a key participation in the two processes of greater historical significance: the Mexican Independence and the Mexican Revolution; however, it has not claimed them before the State or society. Both have an outstanding debt with this vast social sector.

At present, national and international organizations have been founded that have assumed the responsibility of ensuring respect for human rights, particularly the rights of indigenous peoples. These agencies have pressured states to ensure that indigenous rights are respected within the framework of the law.

Within this context, the right to consultation is framed, representing a right of fundamental importance for the protection of the ethnic and cultural diversity of humanity.

Since the last decade of the previous millennium several consultation processes have been developed in Latin American countries, for example, Guatemala and Peru (Fulmer, 2011, p.38), being a response to the increase of large projects that seriously impact the nature: of open pit mining and extractive industry, in general, that affect territories of ethnic communities and the great diversity that characterizes most Latin American countries.

Free, prior and informed consultation is an issue that is generating considerable debate in all the countries of the continent (Padilla and Rodríguez, 2016, p.14). It is in this region where this right has had a greater legal and political development (Proceso, 2015, p. 2; Rodríguez-Garavito, 2011, p. 268).

Mexico is not the exception. In recent times, it is being the center of mining, wind and agricultural projects, among others, against which the indigenous communities are wielding their right to a free, prior and informed consultation.

However, the great legal relevance of prior consultation and informed consent are few cases in which they are properly implemented. Although the majority of the States that ratified

Convention 169 of the International Labor Organization [ILO] come from Latin America and, in this region, since 1990 the rights of indigenous peoples have been increasingly instituted in constitutions, the implementation of the right to consultation continues to be deficient (Schilling-Vacaflor and Flemmer, 2013, page 32).

In the present work, we present the particular case of the right to consultation of indigenous communities of the state of Campeche, which was violated by the federal government, by authorizing the planting of genetically modified soybeans without the consent of the community (2012).

In 2015, the Supreme Court of Justice of the Nation [SCJN] ordered the provisional suspension of the planting of soybean and conditioned it to the development of a consultation process that began in 2016, which has been carried out irregularly and that deserves to be analyzed.

## **Background of the right to consultation**

### **The legal framework in Mexico and international treaties**

#### **Political Constitution of the United Mexican States**

Article 2, Section B, section IX of the CPEUM, obliges the Federation, States and municipalities to: "Consult the indigenous peoples in the preparation of the National Development Plan and the state and municipal and, where appropriate, incorporate the recommendations and proposals they make." (Political Constitution of the United Mexican States, 2017).

#### **Convention 169 "On Indigenous and Tribal Peoples in Independent Countries" of the International Labor Organization**

This agreement, ratified by Mexico in 1990, establishes the commitment to guarantee the right to prior consultation of indigenous peoples. Its article 8°, indicates:

1. In applying the provisions of this Convention, governments shall:

- a) Consult the interested peoples, through appropriate procedures and in particular through their representative institutions, each time that legislative or administrative measures are contemplated that may affect them directly;

b) Establish the means through which the interested peoples can participate freely, at least to the same extent as other sectors of the population, and at all levels in decision-making in elective institutions and administrative and other bodies. responsible for policies and programs that concern them;

c) Establish the means for the full development of the institutions and initiatives of these peoples, and in appropriate cases provide the necessary resources for this purpose.

2. The consultations carried out in application of this agreement must be made in good faith and in a manner appropriate to the circumstances, in order to reach an agreement or obtain consent on the proposed measures.

Additionally, the SCJN, in the Thesis: 1a. CCXXXVI / 2013 (10a.), Resolved that the protection of the fundamental rights of indigenous peoples and communities requires guaranteeing procedural rights, such as access to information, participation and access to justice. In that judgment, the Supreme Court of Justice stated that:

All authorities, within the scope of their powers, are obliged to consult them before taking any action or measure likely to affect their rights and interests, which must comply with the following parameters: a) must be prior; b) culturally appropriate through its representatives or traditional authorities; c) informed; and, d) in good faith. In the understanding that the duty of the State to the consultation does not depend on the demonstration of a real affectation to their rights, but on the susceptibility that they may be damaged, because precisely one of the objects of the procedure is to determine if the interests of the indigenous peoples would be harmed. (Semana Judicial de la Federación y su Gaceta, 2013, p. 736).

### **Current legislation in Mexico regarding consultation**

Nowadays, the right to consultation in Mexico is only recognized in the limited way in the Constitution. There are also other federal ordinances that regulate specific matters.

The General Law of Ecological Equilibrium and Protection of the Environment, in its article 158, section I, contemplates the participation of indigenous peoples in the planning, execution,

evaluation and monitoring of environmental policy and natural resources (General Law of Equilibrium Ecological and Environmental Protection, 1988).

Another order that contemplates a similar procedure is the Law on Biosafety of Genetically Modified Organisms [LBOGM], in its article 108, third paragraph, that the Intersecretarial Commission on Biosafety of Genetically Modified Organisms [Cibiogem] "will establish the mechanisms to carry out the consultation and participation of the indigenous peoples and communities settled in the areas where the release of GMOs is intended, considering the value of biological diversity " (LGOGM, 2005).

### **Initiative of the National Commission for the Development of Indigenous Peoples, proposing the issuance of a law on the right to consultation**

In the years 2010 and 2011, the National Commission for the Development of Indigenous Peoples [CDI] carried out a consultation on the initiatives in the matter presented up to that moment. This consultation was carried out through 71 workshops held in 28 states of the Mexican Republic, with the participation of 2969 indigenous representatives in rural and urban areas, including Afro-Mexicans. This exercise yielded extremely valuable information because it allowed knowing the opinion of indigenous peoples and communities about the content that the law of consultation should have.

### **General Law of Indigenous Consultation**

Your article 1o. It states that this law is of public order, social interest and general observance throughout the Republic and its purpose is to establish the principles, general bases and procedures to guarantee the right to free, prior and informed consultation of indigenous peoples and communities.

At the local level, San Luis Potosí and Durango are the only entities that have a specific law regarding indigenous consultation and 25 states recognize this right, either in their constitutions or in their different legal systems; are the cases of Baja California, Campeche, Colima, Chiapas, Chihuahua, Durango, Guanajuato, Guerrero, Hidalgo, Jalisco, State of Mexico, Michoacán, Morelos, Nayarit, Nuevo Leon, Oaxaca, Puebla, Querétaro, Quintana Roo, San Luis Potosí , Sonora, Tabasco, Tlaxcala, Veracruz and Yucatan. It should be noted that the states of

Aguascalientes, Baja California Sur, Coahuila, Mexico City, Tamaulipas, Sinaloa and Zacatecas do not contemplate the recognition of this right.

As can be seen, although the right to consultation is recognized by the Mexican Constitution and ILO Convention 169, in Mexico there is no legislation to guarantee the full exercise of this right.

### **Recommendation on the right to consultation of the National Commission on Human Rights**

On July 11, 2016, the National Commission for Human Rights [CNDH] issued General Recommendation No. 27/2016 "On the Right to Prior Consultation of Indigenous Peoples and Communities of the Mexican Republic," addressed to the owner of the Federal Executive Power, the Congress of the Union, the governors, the head of government of Mexico City and the Legislative Powers of the states.

In its recommendation, the guarantor organization of human rights in Mexico, in the exercise of its legal powers, made a respectful call to the institutions of the Republic, in accordance with the need to present and approve a law that recognizes the right to prior consultation, free and informed of the indigenous peoples and communities of Mexico (CNDH, 2016).

### **Origin of the conflict in the Mayan communities of the state of Campeche**

Transgenic soy of the solution type Faena resistant to the glyphosate herbicide;<sup>1</sup> It was introduced in its experimental phase in the state of Campeche since 2001, while in Yucatán it was in 2003 and Quintana Roo in 2005.

For 2008, the Secretary of Agriculture, Livestock, Rural Development, Fisheries and Food [Sagarpa], through the National Service of Health, Safety and Agri-Food Quality [Senasica], authorized the company Semillas y Agroproductos Monsanto S.A. of C.V the sowing of transgenic soybean in an area of 7200 ha. in the municipalities of Hecelchakán, Campeche and Champoton (Campeche), and in many others in the states of Quintana Roo and Yucatán.

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<sup>1</sup> Herbicida al que es resistente la soya transgénica y que debe aplicarse a la misma. Ambos son producidos por la transnacional Monsanto.



In the same year, also in experimental phase, another permit was granted (No. B00.04.-2121), increasing the area to 12,000 ha., Including the municipalities of Champotón, Hecelchakan, Hopelchén, Tenabo and Calkiní, all belonging to the state of Campeche, as well as others in the neighboring state of Yucatán.

On June 20, 2011, a new permit was granted (No. B00.04.03.02.01.-5076) again in the pilot phase, reaching 30,000 ha. and expanding to the municipalities of Escárcega, Carmen and Palizada in the state of Campeche. Likewise, the municipality of Felipe Carrillo Puerto in the state of Quintana Roo was included.

For 2012, the company Monsanto Comercial S.A. of C.V., presented to Sagarpa the application for a release permit to the commercial environment for transgenic soybeans, for 253 500 ha., distributing them in vast regions of the Yucatan peninsula, but now they extend to the huasteca plain and Chiapas. The Secretary of Environment and Natural Resources [Semarnat] issued a binding opinion favorably on May 11 of that same year, through the letter SGPA / DGIRA / DG / 3530. In the end the Sagarpa-Senasica granted to Monsanto the permission of liberation at commercial level on June 6, 2012.

It is very important to underline that the Sagarpa, through the Senasica, grants the aforementioned permits without considering the recommendations of the official qualified bodies of the country, such as the National Commission for knowledge of the use of Biodiversity [Conabio], the National Institute of Ecology [Ine] and the National Commission of Protected Areas [CONANP], entities that, at the time, issued unfavorable opinions in all cases.

To the foregoing, a ruling issued by the Court of Justice of the European Union, on September 6, 2011, in which the commercialization within the European area of all honey containing pollen from transgenic crops was banned (Gómez , 2016).

Eighty-five percent of Mexican honey is exported to the European market (The College of the Southern Border [Ecosur], 2012, p.5), so that the ruling of this court puts Mexico at risk of

losing its largest market , exposing thousands of beekeepers from the southeast (Sagarpa, 2010),<sup>2</sup> that they would leave their families without an important economic contribution.

Before the affectations that could cause them the problematic exhibited, in 2012, two organizations of beekeepers belonging to indigenous Mayan communities of Campeche<sup>3</sup> they filed two writs of amparo,<sup>4</sup> claiming the protection of federal justice for the following violations of their rights:

- To the indigenous consultation. The respective consultation was not carried out, as it is protected and obliged by the LBOGM<sup>5</sup> in its article 108 (article 54 of the regulations of the LBOGM). La Cibiogem not only has not established the consultation mechanisms indicated and mandated by the Law, but its owner states that "it is not aware of the existence of indigenous communities in the authorized polygon", as stated in the official letter No. MOO / 781 / 12 of October 7 of 2012, issued by the head of that unit in response to the Secretary of Urban Development and Environment of the state of Yucatan. So the main official of a commission formed by the National Council of Science and Technology (CONACYT) and six state secretariats (Education, Health, Finance, Economy, Sagarpa and Semarnat) stated in writing that they did not know the existence of an indigenous population in the states of Yucatan, Campeche, Quintana Roo, Chiapas and the Huasteca Potosina.
- To health. The transgenics have not been subjected to evaluation tests through which all medicines and foods originating in laboratories pass, which prevents analyzing the effect of genetic modifications on the sequences of proteins when they are assimilated by the human body. There are scientific works that suggest that transgenic foods are harmful.

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<sup>2</sup> De acuerdo con datos de la SAGARPA, los Estados con mayor número de apicultores son Campeche, Chiapas y Yucatán, donde se encuentran censados más de 4,000 por cada Estado.

<sup>3</sup> Comunidad maya de Pacchen amparo No. 753/2012 y Cancabchen (Sociedad de apicultores Miel y Cera de Campeche), amparo No. 762/2012.

<sup>4</sup> El amparo es un recurso jurídico en contra de las autorizaciones de semillas transgénicas. Otro recurso ya está contemplado en la Ley de Bioseguridad de Organismos Genéticamente Modificados y consiste en el establecimiento de Zonas Libres de Transgénicos.

<sup>5</sup> También conocida como ley Monsanto, porque al parecer fue redactada para favorecer a dicha transnacional.

Among others, we can mention the recent studies by Giles Eric Seralini's group, in France, in which signs of hepatorenal toxicity were found in rats fed genetically modified corn.

- To a healthy environment. The glyphosate and other components (poly-oxy-ethoxylated amines) of the Faena solution, upon coming into contact with the water table, will contaminate and destroy aquatic organisms such as frogs and fish in the cenotes and aguadas, and fish when the currents flow to the sea (Benbrook, 2012, p.24). Besides that the wind will transport these toxic chemicals to the areas where the houses next to the agricultural fields are located, many species will disappear and both the diversity and the ecological balance will be altered with damages that are difficult to predict in a specific way. (Paganelli, Gnazzo, Acosta, López y Carrasco, 2010, p. 1593).
- To the means of subsistence. When the use of transgenics is approved, local beekeepers will lose two thirds of their income; One third, consequently, to the import ban imposed by the European Community, since, not being sold in that traditional market, honey will have to be sold cheaper in the United States, and another third, comes from the decrease of the honey flowering associated with agricultural fields. It is remarkable, for example, that the tahonal<sup>6</sup> has disappeared from the mechanized fields, since glyphosate has destroyed the annual reproduction cycle of this millenary plant. It is estimated that the reduction in harvest of tahonal, by peninsular beekeepers, reaches 8000 tons, that is 250 million pesos.
- At the beginning of legal security. Article 27 of the regulations of the Semarnat states that the General Directorate of Impact and Environmental Risk is obliged to determine the applications submitted for the release of genetically modified organisms, collecting the "BINDING OPINION" of the Conabio, the Ine and the CONANP . These bodies, when issuing their opinion regarding the permit for the planting of 253 500 ha of transgenic soybeans - which, currently, is suspended - said that it is not viable. That is, we have a specialized body on biodiversity and a minor official, under the orders of the president of

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<sup>6</sup> Posiblemente la flor nativa peninsular que constituye la materia prima que ha proveído la mayor cantidad de néctar a las abejas melíferas.

the Mexican Republic, which rules favorably, despite the fact that its regulations dictate that the judgments of these institutions are binding opinions.

- Unconstitutionality of the LBOGM (2005), which, in fact, does not adequately regulate the precautionary principle<sup>7</sup> (Organización de las Naciones Unidas para la Educación, la Ciencia y la Cultura [Unesco], 2005) y no considera la participación de las comunidades indígenas cuando puedan ser afectadas.

After two years of litigation, approximately, in 2014 -as a response to the requests for amparo-, the second judge of the district of the state of Campeche, in a historical ruling, granted the suspension for the planting of transgenic soy in the state. However, the legal representation of Monsanto in that state requested the appeal for review and the Collegiate Court revoked the suspension allowing the planting to be legal again.

Given the challenges of the two parties to the conflict and the consequent judicial revocations, the legal process was elevated to the Supreme Court of the Country, the SCJN, whose second chamber, on November 4, 2015, in a second historic ruling for the Mexican Republic, was pronounced in favor of the Mayan communities when suspending the permission granted by the Sagarpa.

According to the ruling of the SCJN, the federal authorities violated the right to free, informed, and culturally appropriate prior consultation with the Mayan communities of the states of Yucatan and Campeche, so the permit for planting genetically modified soybeans was suspended until a consultation is made to the affected communities.

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<sup>7</sup> Este principio señala que cuando exista una amenaza de reducción o pérdida sustancial de la diversidad biológica, no debe alegarse la falta de pruebas científicas inequívocas como razón para aplazar las medidas encaminadas a evitar o reducir al máximo esa amenaza.

## Development of the indigenous Mayan consultation

As already mentioned, the SCJN ordered (499/2015) the suspension of the permit for the planting of genetically modified soya in the commercial stage until a prior, free and informed consultation with the affected communities is carried out. According to the ruling, the authorities responsible for the consultation are the CDI and the Cibiogem, dependent on Sagarpa.

Recall that a few months before, the CNDH recommended exactly the same as the SCJN: the completion of the consultation to the Mayan people (CNDH, 2016).

Given the traditional asymmetric relationship between authorities and indigenous communities, the latter publicly requested the formation of an observation mission to ensure that the consultation on the planting of genetically modified soybeans is carried out in accordance with international standards. This mission was integrated and included academics, representatives of civil society organizations and people interested in the promotion and protection of the human rights of indigenous peoples. In fact, all the members of the Mission have the experience of field research in the region to which the communities object of the consultation belong.

The Observation Mission has documented the consultation process since its inception through on-site observation, interviews, review of official documents, news, among other research resources.

In fact, the reports of the Mission,<sup>8</sup> which are available to the public for general consultation, were a fundamental source for the preparation of this work.

The first calls for consultation to communities in the municipalities of Hopelchén and Tenabo were made on March 31, 2016 and April 1, 2016, respectively. These calls were directed only to ejidal and municipal authorities, and there was no interpreter-translator, despite the fact that, in Hopelchén, about half of the population speaks Mayan and in Tenabo, approximately one quarter is Maya. .

The first sessions of previous agreements were held on April 14, 2016, in Hopelchén, and on April 15, 2016, in Tenabo. In both sessions, the authorities presented the proposal of "Specific consultation protocol". Since then, five more sessions of the previous agreements phase have been held in both municipalities, but in Hopelchén, three communities continued with the process and

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<sup>8</sup> Página electrónica: <http://consultaindigenamaya.org/>

in principle reached the consultative phase. (Table 1)

**Tabla 1.** Sesiones de Acuerdos Previos del proceso de Consulta Indígena

Comunidad/Municipio	Fecha	Fase I Acuerdos previos	Fase II Informativa	Fase III Consultiva	Fase IV Deliberativa
Hopechén	14 abr 16				
Hopechén	30 jun 16				
V. Guerrero-/Hop.	9 jul 16		15 jul 16	15 jul 16	15 jul 16
Chenco/Hop.*	10 jul 16		14 ago 16		
Dzibalchén/Hop.	10 jul 16		23 jul 16		
Xcupil/Hop.	30 jun 16		24 jul 16		
Hopechén	28 ene 17				
Hopechén	25 mar 17				
Hopechén	27 may 17				
Tenabo	15 abr 16				
Tenabo	1º. Jul 16				
Tenabo	15 oct 16				
Tenabo	29 ene 17				
Tenabo	26 mar 17				

Fuente: Misión de Observación de la Consulta Indígena Maya.

\* The community of Chencoh decided not to advance to the deliberative phase. In a letter of August 10, through his ejidal commissioner, he expressed his desire to continue together with the other communities in the stage of prior agreements that should hold the next session on October 15, 2016. In the same sense, The representatives of the communities of Dzitbalchén and Xcupil made statements dated August 23 and 24 respectively.

(Observation Mission, 2016).

It is very important to note that, during the last session of previous agreements, held on May 27, 2017, the authorities responsible for the consultation - Cibogem and CDI - did not know the legitimacy of the representatives of the communities, so that, in Currently, the consultation process is still suspended.

With the intention of resuming the work of the consultation, the representatives of the Mayan communities of Hopelchén sent to the Cibogem and the CDI a written proposal dated August 23 to agree the next session of prior agreements on September 9, 2017 .

However, the executive secretary of the Cibogem responded, through official letter MOOO /

775/17, stating that "it is not feasible to carry out the seventh meeting of prior agreements on day 9, due to the time involved in the preparation of an event of these characteristics". He also said that it would be carried out once there is accreditation of the representatives elected or appointed by their communities.

That is, after a year and a half of holding sessions worked with all the representatives of the communities together, the Cibiogem ignored them and now intends to enter the villages separately to elect new representatives, in a clear attempt to divide the communities , creating a representativeness to mode.

From the first consultation sessions, the vast majority of the communities accredited their representatives through minutes and statements demonstrated in all sessions.

The decision of Cibiogem goes against the agreements taken at the beginning of the consultation process and is a sample of the lack of good faith with which it has been conducted, being an important criterion governing all consultation (Carrillo, 2015, p.10) .

In this way, it violates one of the fundamental rights that every indigenous community has: its autonomy and self-determination to choose, from its own internal processes, its representatives in the consultation process.

It is not the first time that this commission violates the basic principles of the consultation. Previously, it had allowed in several sessions that GM soybean growers demonstrate aggression and abuses against community representatives and legal advisors. The fact that, in other sessions, the commission had provided tendentious information speaking only about the benefits of GM soybean planting, despite not being at the information stage, adds up. Finally, that body would have tried to divide the communities, causing internal conflicts.

Even, its owner directly threatened one of the legal advisors of indigenous communities (Observation Mission, 2016).

These are some of the events considered by the Observation Mission as more serious for the consultation process, but they are not the only ones.

The behavior of the Cibiogem violates the principles established in the Federal Constitution, ILO Convention 169 and the Declaration of the United Nations [UN] (UN, 2007) on indigenous peoples, in addition to disregarding a judicial order of the SCJN, which establishes, as a guiding

principle of the consultation, good faith and respect for the cultural practices of the communities consulted.

Along with these irregularities, the planting and illegal marketing of GM soya was detected in several communities of the municipality of Hopelchén, which was supported by the Senasica and justified by the same Cibiogem, which allowed the sale of the transgenic soy that was detected last year, even though the permit for their release and sowing is suspended by resolution of the SCJN.

These actions prove that the federal government does not intend to reach agreements with the indigenous communities. This is reflected in the systematic discrimination with which they are still being treated and suggests that what the authorities are looking for is to erode the consultation process and diminish the organizational capacity and resistance that the Mayan communities have opposed to a policy that affects them. cultural, economic and environmental areas. The above reflects a tendency in the consultation processes, since it is a situation that is repeated in other countries (Schilling-Vacaflor, 2015, p.509).

However, the lack of awareness of their representativeness is indicative of the state's disregard for communities, which seems to demonstrate a systematic practice of the federal government to sabotage the various consultation processes that exist in the country, for the benefit of the economic interests of large companies.

The Mayan communities of Campeche remain in the position to continue with the consultation process and require the federal authorities (Cibiogem and CDI) to adhere to the standards established in the constitution and international treaties, which are also recognized by the SCJN in its judgments.

As if the above was not enough to seriously jeopardize the consultation process, on September 20, 2017, the second district judge in the state of Campeche, Adrián Fernando Novelo Pérez, issued at the request of the transnational Monsanto (third party interested ) an agreement stating that Cibiogem-CDI should consult only six <sup>6</sup> and not the 34 communities with which the consultation was carried out from the beginning. In this agreement, the judge also set a term of 40 days to complete the consultation, which, as explained, has not been able to overcome the first phase in a year and a half (previous agreements), and now the judge mentioned ordered that the

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<sup>9</sup> Suc Tuc, Xmabén, Cancabchén, Pakchén, Ich-Ek y Bolonchén de Rejón.



other 4 phases (informative, deliberative, consultative and execution and follow-up of agreements) are carried out in forty days.

The Mayan communities of the Yucatan Peninsula have made public their determination to stand firm in the defense of their biocultural heritage and for the respect of their human rights. They have invited society to be part of this movement of peaceful but not passive resistance. However, the academic community also has a commitment to indigenous communities.

## Conclusions and recommendations

In principle, it must be recognized that the authorities have complied with some of the agreements reached with the communities, but it is important to underline that these are purely procedural aspects such as the provision of the spaces for the consultation sessions, the proposal and distribution of the times. for the implementation of the same sessions and the design and delivery of a video in Mayan language on the right to consultation.

It is important to insist that serious obstacles are being presented for the full application of the rights of the Mayan people, since, on the one hand, the illegal planting of genetically modified soya persists, which causes a feeling of impunity and injustice among the Mayan communities; On the other hand, the authorities are committing irregularities ignoring the original agreements, ignoring the representativeness of the communities, violating the right to self-determination of the indigenous peoples.

For all this it is recommended:

1. That the authorities abide by the SCJN's sentence and that the illegal planting of genetically modified soya be suspended definitively and that the representatives of the communities can participate in the inspection and monitoring of the sowing of said crop, as a measure to repair the breach of the standards of informed consultation and in good faith.
2. That those instances in charge of organizing the consultation guarantee the conditions of safety and respect in the corresponding sessions, so that these can take place in an environment of trust. In this sense, it should be stressed that the representatives of the communities, despite the various aggressions they have received, have insisted that they want to avoid any confrontation or act of violence with the soy producers.

3. The right to consultation must be applied in accordance with the provisions of international law, that is, not as a mere procedure or procedure for a measure previously approved by the State, but as a safeguard of the substantive human rights of the indigenous peoples. Therefore, it is considered essential that the objective of the consultation is to obtain the prior, free and informed consent of the Mayan communities consulted.

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