

Constitutional Reform on the Rights of Indigenous and Afro-Mexican Communities

On October 1st, 2024, the *Decree amending, supplementing, and repealing various provisions of Article 2 of the Political Constitution of the United Mexican States, concerning Indigenous and Afro-Mexican Peoples and Communities* (the “**Decree**”), came into effect.

The Decree stems from an initiative presented by the President of Mexico on February 5th, 2024, which, among other objectives, seeks to vindicate native cultures as subjects of public law and recognize their normative systems in the Constitution to contribute to the resolution of problems faced daily by indigenous and Afro-Mexican peoples and communities.¹ Among the most important points of the Decree, we highlight the following rights recognized to indigenous peoples and communities:

1. They are recognized as subjects of public law, with legal personality and their own patrimony.
2. They are recognized as having the authority to decide in accordance with their normative systems, forms of government, and social organization; likewise, they can apply and develop their normative systems to resolve their internal conflicts, subject to the principles of the Constitution.
3. They are recognized as having the right to access the jurisdiction of the State, in any trial and/or proceeding, and their normative systems and cultural specificities must be taken into consideration. Furthermore, indigenous persons have the right to be assisted and advised, at all times, by interpreters, translators, defenders, and experts specialized in indigenous rights, legal pluralism, gender perspective, and cultural and linguistic diversity.
4. The right to free, prior, and informed consultation, conducted in a culturally appropriate manner and in good faith, is incorporated regarding administrative and/or legislative measures that might affect or generate an impact on their lives or environment.²

1 President of the United Mexican States (February 5th, 2024), Explanatory Memorandum of the Initiative with Draft Decree amending, adding to, and repealing Article 2 of the Political Constitution of the United Mexican States regarding Indigenous and Afro-Mexican Peoples and Communities, p. 6. Available at: http://sil.gobernacion.gob.mx/Archivos/Documentos/2024/02/asun_4696946_20240205_1707785303.pdf

2 This legal figure is of paramount importance for the development of any energy and infrastructure project, given that, for the granting of any authorization, license, concession, permit, or any necessary governmental authorization, the consent of indigenous peoples and communities might be required if such projects have an impact on their lives or environment. Moreover, it is established that when a private party receives a profit from the administrative measures subject to consultation, indigenous peoples and communities must obtain a fair and equitable benefit.

While certain rights and principles were already recognized and enshrined in international treaties, and several of them have even been developed by jurisprudential doctrine in Mexico and the Inter-American Court of Human Rights, this constitutional reform seeks to reinforce, guarantee, and systematize at the constitutional level a set of rights that strengthen the legal sphere of indigenous peoples and communities, providing them with legal tools for the defense and guarantee of their rights.

For those players interested in the development of projects in Mexico, whether in energy, mining, and/or infrastructure in general, it will be essential to have adequate legal advice and support, in order to ensure the observance and respect of the rights of indigenous peoples and communities, not only as compliance with an ethical duty and total respect for the human rights of indigenous peoples and communities, but also to ensure the successful and sustainable development of projects and investments in the long term.

Finally, the Decree provide that, within 180 days as from its commencement: (i) Congress must issue a general law on the matter and harmonize the legal framework of existing laws to adapt them in accordance with the Decree;³ (ii) the Executive Branch must harmonize all administrative provisions to ensure respect for and implementation of the rights of indigenous and Afro-Mexican peoples and communities; and, (iii) the authorities of the three levels of government must adapt the regulations to ensure the characteristics of self-determination and autonomy of indigenous and Afro-Mexican peoples and communities.

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3 Among the current laws that, by way of example, we can identify and that could be subject to modifications are: (i) Law of the National Institute of Indigenous Peoples; (ii) Federal Law on the Protection of the Cultural Heritage of Indigenous and Afro-Mexican Peoples and Communities; (iii) General Law of Linguistic Rights of Indigenous Peoples.

S I N C E R E L Y

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Mexico City, October 15, 2024.

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