

In San Cristóbal de las Casas, Chiapas, Mexico, on May 18, 2022, Hereby, Daniel Marcelo Ardita, Lawyer, Specialist in International Law, acting as an active member of the INTERNATIONAL MOVEMENT FOR THE RIGHTS OF MOTHER EARTH NATURE, in relation to what is happening in the sister country of Guatemala, I come to provide an analysis of the legal situation, based on the consultation by Legislative Initiative No. 5923/2022, <https://mcd.gob.gt/iniciativa5923-law-for-the-rescue-of-prehispanic-heritage/> law for THE RESCUE OF PRE-HISPANIC HERITAGE.

A) The following legal analysis is attached, for its dissemination, reading and knowledge.

It is made known that said Legislative Initiative has already obtained two approval readings, and only its approval remains in a simple third reading, which would presumably be on June 2, 2022; Said Bill consists of 12 articles, prepared at the proposal of a single deputy, without public consensus, without the participation of indigenous communities or spiritual leaders, and without consideration of the current regulations in relation to the Rights of Indigenous Peoples, in which the following is observed:

1.- In its first article, where it raises the OBJECT of this law, a complicated rhetoric is observed, which is not easy to understand, and the same unspecific grammatical technique is observed in the entire text of the initiative, for this purpose we copy literally what is established in art.1, *"Its purpose is the **rescue of the tangible Pre-Hispanic Heritage of Guatemala, as well as the strengthening of the protection, defense, research, conservation and recovery functions** of said Heritage, contained in the Law for the Protection of the Cultural Patrimony of the Nation; with the **creation and application of the National Program for the Rescue of Pre-Hispanic Heritage, through which the financial resources** contemplated in this Law will be granted to the Ministry of Culture and Sports."* <https://mcd.gob.gt/wp-content/uploads/2022/05/PROPUESTA-FINAL-TOTAL-CONSENSUADA-LEY-DE-RESCATE-AL-PATRIMONIO-PREHISPA%CC%81NICO-1.pdf>

With what is read, the following can be deduced, on the one hand, the object of the law, coincides with the regulations already in force on the matter, which is the LAW FOR THE PROTECTION OF THE CULTURAL HERITAGE OF THE NATION, of 04/29 /1997, <https://www.acnur.org/fileadmin/Documentos/BDL/2008/6706.pdf>

The law of Sacred Places and of the Practice of the Spirituality of the Mayan, Xinca and Garífuna Peoples", and the Framework Law of the Peace Agreements, Decree 52-2005, but nevertheless on the other hand, ESTABLISHES THE CREATION OF A NATIONAL PROGRAM FOR THE RESCUE OF PREHISPANIC HERITAGE, WHO WILL ADMINISTER THE RESOURCES ASSIGNED BY LAW, through a NATIONAL TECHNICAL COUNCIL FOR THE RESCUE OF PREHISPANIC HERITAGE.

Thus , the law initiative continues its development with the following articles, and we will only focus on the most important in order to break down what the law intends to install.

https://www.congreso.gob.gt/noticias_congreso/6524/2021/3#gsc.tab=0

https://www.congreso.gob.gt/noticias_congreso/8263/2022/3#gsc.tab=0

https://www.congreso.gob.gt/noticias_congreso/8312/2022/3#gsc.tab=0

"Article 2. Declaration of Public Utility. It simply defines the need to rescue pre-Hispanic heritage.; Article 3. Pre-Hispanic Heritage. It defines what it is and even when it is considered Pre-Hispanic; Article 4. Scope of application. The entire national territory of Guatemala.; Article 5. Definitions. It elaborates a series of definitions that only serve for legal self-reference".

2.- The most outstanding Part that constitutes the creation of a New State Organ, which means new hirings, new jobs, and responsibilities, that although the norm itself says that it is constituted by personnel that already exists in other dependencies of the state, but it only refers to 6 people, who clearly will not be able to administer the annual amount assigned lightly and necessarily implies the hiring of new personnel, as stated in the norm when decreeing the creation of the following Executive body, called TECHNICAL ADVISORY COUNCIL, that is, there must be an Executor, and an administrator, which is not even contemplated in this chapter: “ **CHAPTER II - NATIONAL TECHNICAL COUNCIL FOR THE RESCUE OF PRE-HISPANIC HERITAGE. Article 6.** *Creation of the National Technical Council for the Rescue of Pre-Hispanic Heritage. The National Technical Council for the Rescue of Pre-Hispanic Heritage is created, which has the nature of an eminent technical Council with expertise on protection, restoration and management of pre-Hispanic heritage. Said Technical Advisory Council will be made up of the authorities of the dependencies of the Ministry of Culture and Sports, which are listed below: 1. General Director of Cultural and Natural Heritage, who chairs it. 2. Technical Director of the Institute of Anthropology and History. 3. Technical Director of Research and Registration. 4. Head of the Department of Archaeological Atlas of Guatemala. 5. Head of the Department of Conservation and Rescue of Pre-Hispanic Archaeological Sites. 6. Head of the Department of Pre-Hispanic Monuments. The Regulation of this law will regulate what concerns the operation of said Council.*”

Already in the development of the following chapter, it establishes a National Investment Prioritization Plan, which must **be prepared by said technical council** already mentioned, **and then approved by the** Respective Minister of Culture, without mentioning any requirement, condition, or directive. That is to say, it is not understood what PRIORITIZATION OF THE INVESTMENT means, to which investment it refers, because it speaks of priority, in what sense is it the priority? Who defines the importance of investment, and how to carry it out?

The body in charge of the Execution of said Plan will be the GENERAL DIRECTORATE OF CULTURAL AND NATURAL HERITAGE OF THE MINISTRY OF CULTURE, as established in chapter 4, art. 8, who will be in charge of the execution and controlled by the Vice Minister of cultural heritage, but admits the caveat that the MINISTRY OF CULTURE MAY MAKE AGREEMENTS WITH INTERNAL STATE ORGANIZATIONS, OR WITH MUNICIPALITIES, OR INTERNATIONAL ENTITIES, thus opening the door to the outsourcing of certain services or activities for the intended rescue.

(**"CHAPTER III - NATIONAL PLAN FOR PRIORITIZING INVESTMENT FOR THE RESCUE OF PRE-HISPANIC HERITAGE. Article 7.** *National Plan for Prioritizing Investment for the Rescue of Pre-Hispanic Heritage. The National Technical Council for the Rescue of Pre-Hispanic Heritage must prepare the National Plan for Prioritization of Investment for the Rescue of Pre-Hispanic Heritage, which must be approved by the Minister of Culture and Sports. The Regulation of this law will regulate matters concerning the application of this article.*" " **CHAPTER IV - EXECUTION OF THE NATIONAL PLAN FOR PRIORITIZATION OF INVESTMENT FOR THE RESCUE OF THE PRE-HISPANIC HERITAGE Article 8.** *Execution of the National Plan The General Directorate of Cultural and Natural Heritage of the Ministry of Culture and Sports will be the entity in charge of executing the National Investment Prioritization Plan for the Rescue of the Pre-Hispanic Heritage and the Vice Ministry of Cultural and Natural Heritage of the Ministry of Culture and Sports s will be in charge of supervising said execution. For the execution of the Plan, the Ministry of Culture and Sports as the governing body in matters of protection, defense, research, conservation and recovery of the assets that make up the cultural heritage of the Nation, may enter into inter-institutional cooperation agreements with the Ministry of National Defense, the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Communications, Infrastructure and Housing, the Guatemalan Institute of Tourism -INGUAT-, the National Council of Protected Areas -CONAP-, local municipalities and other centralized, decentralized and autonomous of the State of Guatemala. Likewise, the Ministry of Culture and Sports may enter into cooperation agreements with international entities, and must be accompanied by the Ministry of Foreign Affairs.*")

3.- Regarding the economic issue, we enter a whirlwind of entities and programs that are difficult to understand, but we will try to shed light on this proposal, so ambiguous, abstract and out of context, as it can be read literally. Let us remember that at first the law establishes as the Executive Body of the National PRIORITIZATION Plan... which we will call the prior plan, to simplify, and within that plan, there is in principle a SUBPROGRAM, WHICH IS CALLED THE NATIONAL EMERGENCY PROGRAM FOR RESCUE OF THE PRE-HISPANIC HERITAGE. (*Article 9. National Emergency Program for the Rescue of Pre-Hispanic Heritage. The National Emergency Program for the Rescue of Pre-Hispanic Heritage is hereby created for the purpose of executing the National Plan for Prioritizing Investment for the Rescue of Pre-Hispanic Heritage, which must be created within the corresponding budgetary structure, to be programmed and executed annually within the General Budget of Income and Expenditures of the State assigned to the Ministry of Culture and Sports, to be executed by the General Directorate of Cultural and Natural Heritage of that Ministry. the validity of this law, the State, through the Ministry of Public Finance, will allocate the funds and allocate an item in the General Budget of Income and Expenditures of the State, which amounts to one hundred and fifty million quetzales (Q150,000,000.00) per year, earmarked exclusively for the National Emergency Program for the Rescue of Heritage Pre Hispanic. The Ministry of Culture and Sports must include within its strategic plan and its operational plans the sum that is exclusively assigned to it for the execution of the National Emergency Program for the Rescue of Pre-Hispanic Heritage in order to execute the National Investment Prioritization Plan. for the Rescue of the Pre-Hispanic Heritage and ensure the correct planning and execution of said program. In the first year of execution of the National Investment Prioritization Plan for the Rescue of Pre-Hispanic Heritage, investment in the Tikal National Park, Quiriguá Archaeological Park and the Tak'alik Archaeological Site should be prioritized Ab'aj .)*

In other words, within the National Plan, there is an Emergency program, as part of the specific budget item for the Ministry of Culture, that is, next year, that money must be set aside and it will be assigned to this national emergency program. , within the National Prioritization Plan, within the National Technical Council for the Rescue, that is, one cannot believe that there will be no hiring of new personnel with a budget of 150 million Quetzales, which would be about US\$ 2,142,857.142 , that is to say, more than 2 million dollars, of which, distributed over twelve months, is US\$ 178,571,428, that is, one hundred and seventy thousand dollars per month of net expenditure, in this NATIONAL PROGRAM, when the income in said Archaeological Sites is not It does not even reach 10% of the amount that the rescue program will receive. Giving rise to a game of numbers that have no logic.

It must be clear to the reader that, if he proceeds to read article 10, he will clearly see that the Emergency program, which we had said is a subprogram of the National Prioritization Plan, is a part, which by way of example is established in article 8, but that the door remains open to different subprograms, as stated in art. 10. Which establishes 7 different items where a subprogram can be created, for example security, infrastructure improvement, etc... With which, the government advertisement is once again false, where it says that this IS NOT A PRIVATIZATION, NOR IMPLIES THE HIRING OF NEW PERSONNEL, and it says so clearly, since the law itself art. 10 establishes “..... *The execution of the projects **may include contracting of personnel in the different budget lines** , of a temporary nature and according to the technical needs approved by the Technical Council. The regulations of this Law will define the general characteristics of the projects that qualify within these modalities, as well as the criteria and technical parameters for their approval and certification...*” With which it is clear that everything important, that is, those who have access to the Ceremonial centers, under what conditions and in what circumstances, will be subject to the decision of the regulation of this law, and above all to the elaboration of the TENCINCO plan, to which they do not have GRANTIZED ACCESS, PARTICIPATION, VOICE, OR APPEARANCE, ANY ORIGINARY PEOPLE, NEITHER SPIRITUAL GUIDES, NOR THE PUBLIC IN GENERAL, configuring a lack of current legislation in Guatemala as we will point out promptly later.

(“Article 10. Projects. The modalities of projects to be prioritized by this Law, will be those identified by the National Technical Council for the Rescue of Pre-Hispanic Heritage, which are illustrative but not limiting: a. General maintenance of archaeological sites and parks; b. Management of visitor centers or local museums of archaeological sites and parks; c. Safety of archaeological sites and parks; d. Development of physical infrastructure to improve archaeological sites and

parks; e. Archaeological research; f. Intervention of vestiges and pre-Hispanic structures in archaeological sites and parks; g. Restoration of movable cultural assets that are part of the pre-Hispanic heritage. All projects must be approved by the Ministry of Culture and Sports and must be supervised by the Vice Ministry of Cultural and Natural Heritage of the Ministry of Culture and Sports. The execution of the projects may include contracting of personnel in the different budget items, of a temporary nature and according to the technical needs approved by the Technical Council. The regulations of this Law will define the general characteristics of the projects that qualify within these modalities, as well as the criteria and technical parameters for their approval and certification.”)

4.- As an incentive, the law proposes the Promotion of Community Work, as a way to implement the projects of the National Investment Prioritization Plan , but it only says... “it should be taken into consideration... Allowing with this to generate sources of employment...” When could it establish in a clearer and more concrete way the necessary participation of the communities that, due to cultural belonging , as the law itself says, could participate in the decisions and guarantee the continuity of their ancestral practices, of which this initiative says nothing.

(“ Article 11. Promotion of community work. For the implementation of the projects contemplated in the National Plan for Prioritizing Investment for the Rescue of Pre-Hispanic Heritage, the promotion of local work must be taken into consideration, thereby allowing the generation of sources of employment for communities that due to cultural and local relevance contribute to the rescue and recovery of the pre-Hispanic heritage of the Nation.”)

5.- And already in the final part, the bill, provides the icing on the cake, where it clearly shows the intention of the economic reactivation of the tourism sector, with the “..... purpose of supporting local sectors that depend on this activity....” In other words, once again the ambiguity, the lack of clarity, and the absence of operative terms in the standard, once again color this initiative gray, dark, unclear, and not at all efficient.

(“ Article 12. National Tourist Reactivation. One of the objectives of this Law is the economic reactivation of the tourism sector, due to its importance and impact on Guatemalan society. The tourist reactivation linked to the rescue of pre-Hispanic heritage will be an aspect to be taken into account within the execution of the National Investment Prioritization Plan for the Rescue of Pre-Hispanic Heritage, in order to support the local sectors that depend on this activity.”)

By way of conclusion, we can affirm that it is a legislative initiative that basically establishes the creation of a SPECIFIC TENCINCO body, which will function within the Ministry of Culture, under a financial subprogram with a large and specific allocation, set aside for an unspecific project. , ambiguous, and open, with regulations drawn up practically by the person who receives the money. Opening the door to private and international contracting, without any participation of citizens, of native peoples, and without guarantee of compliance with national laws that protect access to sacred places.

B.- Legal Background to CONSIDER: Next, I will expose the current legislation, and the background that is necessary to consider in order to get a general idea of the scope of the substantive issue that is not correctly exposed.

Characteristics of the Original Indigenous Population in Guatemala: Today the indigenous represent more than half of the total population of Guatemala, around 6 million inhabitants. The Agreement on Identity and Rights of Indigenous Peoples (AIDPI), signed in 1995, <https://ridh.org/news/derechos-de-los-pueblos-indigenas-en-guatemala-por-cecilia-aracely-marcos-raymundo/#:~:text=The%20Agreement%20on%20Identity%20and,of%2075%25%20of%20the%20population%20C3%B3n>.

recognizes that the Guatemalan nation has a multiethnic, multicultural and multilingual character, and that indigenous peoples including the Maya, Garífuna and Xinca peoples constitute more than 75% of the

population. Estimates of the indigenous population vary, as there are no exact figures. However, the Guatemalan State confirmed that it is 60%. The Maya, in turn, are subdivided into 21 linguistic groups and the Garífuna are essentially of African descent. The rest of the Guatemalan nation, from an ethnic point of view, is made up of ladinos or mestizos and the Euro- descendant or “white” population. Guatemala is a multiethnic, multicultural and multilingual society, around half of the population of 12 million inhabitants are Mayan, Xinka and Garífuna indigenous peoples. In several regions of the country, especially in rural areas, indigenous peoples constitute the majority of the population. Guatemalan national identity is largely based on the living cultures of its indigenous peoples; with its traditions, community values, languages and spirituality.

Background of the Initiative in Question: It is worth mentioning that this law initiative had been presented by the Culture and Sports Commission in June 2021 and at that time the Indigenous Peoples Commission showed its rejection alleging, among other points, that the initiative did not had been consulted with the indigenous communities settled in areas surrounding these sites. Another of the issues highlighted by those who reject initiative 5923 is that there is no clarity about what would be the sources of financing for the budget of more than 150 million quetzales (close to two million dollars) that according to the law would be destined to the rescue of heritage and sacred sites for indigenous peoples.

Legal Basis:

1. The Political Constitution of the Republic, establishes in its article 66 that Guatemala is made up of various ethnic groups, among which are the indigenous groups of Mayan descent. The state recognizes, respects and promotes their ways of life, customs, traditions, forms of social organization, the use of indigenous dress in men and women, languages and dialects that are respected as a form of customary law.
2. In the Agreements on the Strengthening of Civilian Power and the Role of the Army and on the Identity and Rights of Indigenous Peoples, which are part of the Peace Agreements, the centers for the administration of justice and various conciliation and arbitration systems. The Human Rights Ombudsman's Office has an Indigenous Defender's Office, a still small project for attention to indigenous peoples, as well as the Office of the Attorney General of the Nation.
3. Some institutions created with the purpose of facilitating indigenous participation, such as the Ombudsman for Indigenous Women, the Guatemalan Indigenous Development Fund (FODIGUA) and the Academy of Mayan Languages do not, in fact, enjoy the autonomy granted to them by Law nor do they have sufficient resources, among other things.
4. There is a series of National Norms in the Guatemalan System, which guarantee access to the sacred sites of the Spiritual Guides, since the culture in this sense is strongly maintained today, and they have great prestige and power in society, something that has been recognized in the Ministerial Agreement 981-2011, Related to Spiritual Guides.
https://www.congreso.gob.gt/assets/uploads/info_legislativo/iniciativas/Registro3835.pdf
5. Likewise, at the international level, it is the duty of the state to guarantee the exercise of the practice of any religion or belief, as well as the recognition, respect and promotion of the ways of life, customs, traditions and forms of social organization of the indigenous groups of Mayan, Xinka and Garífuna ancestry.
6. It should also be considered that Convention 169 of the International Labor Organization -ILO- on Indigenous and Tribal Peoples in Independent Countries, establishes that it is the duty of governments to develop, with the participation of the interested peoples, coordinated and systematic actions to protect the rights rights and guarantee integrity with the inclusion of measures that promote the

full realization of the social, economic and cultural rights of peoples; respecting their social and cultural identity, their customs, traditions and institutions.

7. That Sacred Places are located in the national territory, where the indigenous peoples of Guatemala exercise the right to practice their ancestral spirituality, individually or collectively and in accordance with the Law for the Protection of the Cultural Heritage of the Nation, Decree Number 26- 97 of the Congress of the Republic of Guatemala and its Reforms, it is necessary to regularize joint actions in compliance with respect for the validity of the specific law and the preservation and conservation of the National Heritage.

8. That, through the Agreement on the Identity and Rights of Indigenous Peoples, the State recognizes the importance and specificity of Mayan spirituality, as well as that of the Xinka and Garífuna peoples, as an essential component of the worldview and the transmission of values and the respect due to spiritual guides, ceremonies and sacred places, as part of the cultural and historical heritage of the peoples. <https://repositorio.flacsoandes.edu.ec/bitstream/10469/1863/6/TFLACSO-05-2004JRMS.pdf>

9. Based on 10 considered and in compliance with articles 57, 58, 59, 60, 61, 64, 65, 66 and 194 literals a) and f) of the Political Constitution of the Republic of Guatemala; 1,2, 3, 4, 6 and 70 of Decree number 26-97 of the Congress of the Republic of Guatemala, Law for the Protection of the Cultural Heritage of the Nation; 5 and 6 of Convention number 169 on Indigenous and Tribal Peoples in Independent Countries; 27 literals a) and m), 31 of Decree number 114-97 of the Congress of the Republic of Guatemala, Law of the Executive Organism; and 3 of the Framework Law of the Peace Agreements, Decree number 52-2005 of the Congress of the Republic of Guatemala.

10. Convention for the Safeguarding of the Intangible Heritage, UN 2003. Which establishes that “.... The member states must adopt the necessary measures to guarantee the safeguarding of the intangible cultural heritage, in turn must identify and define elements of the same with the participation of the communities, respecting traditional uses...”

11. Operative Point No. 02-2006, Executive Branch of Guatemala, in which the state recommended “.... That the sacred places recognized by the indigenous communities not be used for purposes that contradict or impede the traditional ceremonial functions that the indigenous communities carry out as part of their culture...”

12. Agreement on the Identity and Rights of Indigenous Peoples... Where it is established that “.... The temples and ceremonial centers are part of the cultural heritage, guaranteeing the free practice of indigenous spirituality... Government Agreement No. 261-2007. <http://onu.org.gt/wp-content/uploads/2017/03/AIDPI-Informe-final-PDF.pdf>

13. Inter-American Commission on Human Rights, Indigenous Peoples. <http://www.cidh.org/indigenas/indigenas.sp.01/articulo.III.htm>

(The Law of Sacred Places and Spiritual Guides in Force is transcribed below.

<https://www.espiritualidadmaya.org/articulos-espiritualidad/98-acuerdo-ministerial-981-2011-relacionales-con-los-guias-espirituales>

Article 1. The spiritual guides or Aja'ijab ', individually or accompanied by a group of people who practice ancestral spirituality, have the right to enter, prior identification that accredits them as such, to the Sacred Places or Sites, Monuments, Parks, Complexes or Archaeological Centers, which are located throughout the national territory and are

under the legal jurisdiction of the Ministry of Culture and Sports, for the performance of their ceremonies at the altars located for this purpose; Except for the rules of respect, safety, hygiene, cleanliness and others, which must be observed for the protection and conservation of said places, which will be contained in the regulations that will be prepared for this purpose.

Article 2. All the spiritual guides or Ajq'ijab ', listed in the previous article, must perform their ceremonies within the regular schedule from six (06:00) to eighteen (18:00) hours, prior identification with the administrator of the place to effects of knowledge, safety, guidance and corresponding protection. In the event that the interested parties express their desire to celebrate their ceremonies outside the indicated period, it will be necessary to give advance notice to the administration of the place.

Article 3. For the legal purposes of this agreement, it will be understood as:

SACRED PLACE: The sites, monuments, parks, complexes or archaeological centers, which constitute space and source of cosmic and natural energy, of life and wisdom, for the spiritual communication of the human being with the Supreme Being or Ajaw and their coexistence with nature. , for the strengthening and articulation of the present with the past and future; SACRED ALTAR: The space or physical circumscription where the ceremonial act is performed as a manifestation of faith and spirituality of the human being, located in the sacred places; and AJQ'IJ O SPIRITUAL GUIDE: It is the person who serves as an intermediary between the Ajaw , nature and the person, who exercises his function as such, in a born and innate way, for the benefit of the community.

Article 4. For cleaning and hygiene purposes both in the sacred places and in the altars where the ceremonies are held, the attendees must leave the place clean after each celebration, collecting natural and artificial waste, except ashes, which are generated after each event and deposit them in the containers located for this purpose. The General Directorate of Cultural and Natural Heritage must, through the respective administrations (must) provide adequate deposits or containers for the collection of the aforementioned waste, in order to conserve the surroundings of the place and the environment.

Article 5. In compliance with the norms of protection, conservation and restoration of the cultural and natural heritage, for the celebration of ceremonies of Mayan spirituality in the sacred places contemplated in this Agreement, only the following genuine offerings will be allowed to enter: a) pom , storax (rijche '), sticks (utza'm xik'a'y), raxpom , cuilco , incense, honey, ocote, pericón, cocoa, sesame, rosemary, myrrh, cinnamon, panela, sugar, oregano, resin, menjui , chocolate, bait candles, candles or wax candles , flowers, pine and aromatic natural waters; and b) Likewise, the entry of the clothing, symbols and other distinctive features of the spiritual guides or Ajq'ijab ' in the celebration of their ceremonies will be allowed.

ARTICLE 6. In all the sacred places or archaeological sites, monuments, parks, complexes or centers identified in this Agreement, the following is not allowed: a) The performance of ancestral ceremonies outside the altars built or existing in the place, to avoid accidents such as fires and deterioration of cultural and natural heritage; b) Sound instruments and equipment, horns, loudspeakers and other wind instruments; c) the entry of pyrotechnic products. d) the entry of people under the influence of alcohol or drugs.

ARTICLE 7. When entering sacred places or sites, monuments, parks, complexes or archaeological centers, persons or groups of other religious denominations must show due respect to the spiritual guides or Ajq'ijab ', to the Sacred places and to the practice of ancestral spirituality.

ARTICLE 8. In the case of the celebration of special ceremonies of significance for the Mayan people, individually or collectively, such as the Wajxaqib ' B'atz ' O Mayan New Year and other events of importance in Mayan human life, if It will allow the entrance to the sacred places musical instruments of a ritual nature, such as the marimba, the tun, the shawm, the snail, the drum, the harp and the violin, as they are an integral part of the ceremonies.

Article 9. The spiritual guides or Ajq'ijab ' individually and their companions are exempt from paying the entrance fee to the sacred places defined in this Agreement, when they attend to celebrate their spiritual ceremonies and present the document or proof that credit them as such.

ARTICLE 10. To enter the sacred places administered by the Ministry of Culture and Sports, the spiritual guides or Ajq'ijab 'must present the card or record that accredits them as such, as references for the extension of such document are the following organizations : Association of Mayan Priests of Guatemala; National Conference of Ministers of Mayan Spirituality of Guatemala Oxlajuj ajpop ; Kakulja Foundation - Council of Elders; and, Great Confederation of Principal Ajq'ijab ' Mayas of Guatemala. Individual spiritual guides or Ajq'ijab ' must organize or join existing Ajq'ijab ' organizations.

ARTICLE 11. In the sites, monuments, parks, complexes or archaeological centers, considered as sacred places and that are under the administration of the State, where there is no contemporary altar, the General Directorate of Cultural and Natural Heritage, through the Department of Pre-Hispanic Monuments -DEMOPRE- and the Linguistic Territory Unit, will determine their location and construction.

Article 12. Ministerial Agreement number 525-2002, dated November 15, 2002, and Ministerial Agreement number 042-2003, dated January 31, 2003, are repealed.)

CONCLUSION: In conclusion, we can recognize that Guatemala has the capacity, as well as the obligation to implement an effective human rights policy, in the company of other organizations in order to eradicate discrimination against indigenous peoples, which it has been trying since the Celebration of the Peace Agreements, back in 1996, and which has manifested itself in various regulatory bodies, such as the Agreement on Identity and Rights of Indigenous Peoples. <https://soy.usac.edu.gt/?p=11776>

Specifically, the exercise of the Law that the original peoples have already been assigned is being left out, since even in the General Provisions of the Law of Development Councils, the constitution of the Indigenous Advisory Councils at the community level is determined, with the objective that they can provide advice to the Community Council and the Municipal Development Council. In turn, the Indigenous Advisory Council is made up of the authorities themselves recognized by the indigenous communities, attending to the self-determination of their procedures. Article 26 of said norm mentions that, until a special law is issued that regulates the consultation of indigenous peoples, consultations with them as a form of direct decision-making, related to development measures promoted by the Executive Organism, may optionally be done through the representatives of the peoples in the development councils, and until now that law has never been regulated nor has progress been made in its implementation.

On the other hand, making a general analysis we can also affirm that the General Decentralization Law, in articles 17, 18 and 19, encourages the promotion of citizen participation in the decentralization process, recognizing that an organized community can participate in planning, execution and control of government procedures in their administrative scales to facilitate the decentralization and direct control procedure, with the motivation that the central government's political and administrative decision-making power be made viable by being transferred to autonomous entities, in order to achieve an effective closeness with the population, and guarantee citizen participation in legitimate responses to the needs of the communities.

From the above analysis, it follows that one of the very principles that inspire the law is citizen participation through respect for the multiethnic, multicultural and multilingual reality. <https://www.iidh.ed.cr/IIDH/media/1548/pobreza-y-peritajes-baja-2010.pdf>

However, of all the provisions analyzed, the AIDPI itself -Law of the Republic, in accordance with the Framework Law of the Peace Agreements-, ILO Convention 169 and the United Nations Declaration on the Rights of Indigenous Peoples , as well as the Political Constitution of the Republic, it can be affirmed that the

indigenous peoples have a sufficient and effective legal framework so that their rights of participation and decision are a reality. However, throughout the 20 years of life of the AIDPI, no process of consultation with indigenous peoples by the State has been recorded –motu proprio–, in accordance with the parameters of ILO Convention 169.

And to date, the same situation is maintained and repeated, reaching the point of having legislative initiatives that seek to deprive the roots of the sacred ancestral practice of the Mayan peoples, and their intimate relationship with the territory, their Ancestral centers. , and their relationship with mother earth, thus depriving them of the most sacred connection a culture can have.

Daniel Marcelo Ardita Jaureguiberry

Lawyer Specialist in International Law,

International Movement for the Rights of Mother Earth Nature.