



Suprema Corte
de Justicia de la Nación



DERECHOS
HUMANOS

This overview contains the cover page, the summary and the extract of a decision of Mexico's Supreme Court of Justice. Changes were made to its original text to facilitate the reading of the extract. This document has informative purposes, and therefore it is not binding.

**RIGHT TO LAND IN DISPUTE BETWEEN INDIGENOUS COMMUNITIES
(DERECHO A LAS TIERRAS EN CONFLICTO ENTRE COMUNIDADES INDÍGENAS)**

CASE: *Amparo Directo 33/2020*

REPORTING JUSTICE: Alberto Pérez Dayán

DECISION ISSUED BY: Second Chamber of Mexico's Supreme Court of Justice

DATE OF THE DECISION: June 30, 2021

KEY WORDS: indigenous peoples and communities, self-determination and autonomy, land rights, property rights, possession, de facto community, ancestral territories, ejido lands, endowment and recognition of communal property.

CITATION OF THE DECISION: Supreme Court of Justice of the Nation, *Amparo Directo 33/2020*, Second Chamber, Alberto Pérez Dayán, J. Decision of June 30, 2021, Mexico.

The full text of the decision may be consulted at the following link:
<https://www.scjn.gob.mx/derechos-humanos/sites/default/files/sentencias-emblematicas/sentencia/2022-06/AD33-2020.pdf>

CITATION SUGGESTED FOR THIS DOCUMENT: Human Rights Office of Mexico's Supreme Court of Justice, *Extract of Amparo Directo 33/2020*, Mexico.

SUMMARY OF THE *AMPARO DIRECTO* 33/2020

BACKGROUND: The Choréachi Indigenous Community (de facto Choréachi Community), which since immemorial times has been, as its ancestors were, in possession of a territory composed of an approximate area of 15,200-00-00 hectares, sued for the absolute nullity of the authorization to modify the use of forest resources and advanced forest management program, granted to the Coloradas de los Chávez Community, municipality of Guadalupe y Calvo Chihuahua, as well as the absolute nullity of the presidential resolutions on endowment and expansion, recognition and titling of communal assets of, among others, the Pino Gordo Ejido. The Court hearing the case declared the invalidity of various claims made. The de facto Choréachi Community filed a *recurso de revision* against this decision, which was heard by the Superior Agrarian Court, and which considered that the de facto Choréachi Community's fundamental right of access to justice and to the protection and guarantee of the right to communal property protected by article 21 of the American Convention on Human Rights had been violated. The Pino Gordo Ejido filed an *amparo* lawsuit against this decision, arguing the violation of the rights enshrined in articles 1, 2, part A, section VI, 14, 16, 17 and 27 of the Political Constitution of the United Mexican States (CPEUM). The Collegiate Court that heard the case requested the Supreme Court of Justice of the Nation (this Court) to exercise its authority to assert jurisdiction to hear the *amparo* lawsuit, which was exercised on July 8, 2020.

ISSUE PRESENTED TO THE COURT: What rights should prevail when de facto indigenous communities and ejidos or communities recognized by the agrarian authorities, which also have an indigenous population, enter into conflict and both defend their rights over the same lands, derived from articles 2 and 27 of the CPEUM and the applicable international treaties.

HOLDING: The *amparo* was granted for the following reasons. Since the land conflict occurred between two peoples belonging to indigenous groups, it is important to recognize that A) Both are constitutionally and conventionally protected; B) The principle of self-determination of indigenous peoples and respect for their customs and practices, enshrined in article 2 of the CPEUM, does apply retroactively; C) In order to respect the principle of legal certainty, the better

right over the land must be determined; D) The decision must be made based on the constitutional guidelines and the rules existing in the agrarian legislation applicable at the time when the events occurred so that, without neglecting the rights of the de facto Choréachi Community, the rights generated when the Pino Gordo Ejido received the endowment of land must prevail as well as the recognition of the ownership of the lands that it now defends, especially when there is no certainty that the lands that the de facto Choréachi Community now claims are the same as those that it claims to have owned ancestrally.

VOTE: The Second Chamber decided this case by a majority of 4 votes of Justices Yasmín Esquivel Mossa, Alberto Pérez Dayán, Luis María Aguilar Morales (reserved the right to formulate a concurring opinion) and José Fernando Franco González Salas (separated himself from considerations and reserved the right to formulate a concurring opinion). Justice Javier Laynez Potisek cast a dissenting vote (reserved the right to formulate a dissenting opinion).

The votes may be consulted at the following link:

<https://www2.scjn.gob.mx/ConsultaTematica/PaginasPub/DetallePub.aspx?AsuntoID=277422>

EXTRACT OF THE *AMPARO DIRECTO* 33/2020

p.1 Mexico City. The Second Chamber of Mexico's Supreme Court of Justice (this Court), in session of June 30, 2021, issues the following decision.

BACKGROUND

p.5 The Choréachi Indigenous Community, municipality of Guadalupe y Calvo, Chihuahua, is a de facto community, also known as the Pino Gordo Community (hereinafter, de facto Choréachi Community), composed of Rarámuri Indians. It is located in the Sierra Tarahumara, in the south of the state, a place they say constitutes its ceremonial center. It is made up of more than 40 rural settlements, where around 400 inhabitants live with their families scattered throughout their territory composed of an approximate area of 15,200-00-00 hectares, who since immemorial time have been, as their ancestors were, in possession of that territory, even before any settlement of mestizos not belonging to that ethnic group.

For cultural reasons, they continue to preserve the communal status of their lands as a social, economic and cultural unit settled in a territory, in terms of article 2 of the Political Constitution of the United Mexican States (CPEUM).

p.6 This community has a plan for the management and use of forest resources according to the customs and practices that govern their lives, in which they have declared the prohibition of the expansion or establishment of new zones of clearing or forest use; the traditional authorities control and regulate the management of natural resources.

On the other hand, the following title registrations exist:

p.6-7 a) Presidential Resolution of land endowment to the town of Pino Gordo, in Guadalupe y Calvo, Chihuahua, of November 14, 1961, where an area of 3,000-00-00 hectares of summer pastures and mountains was granted, for collective uses by the petitioners, less 50 hectares of urban zone (Presidential Resolution of November 14, 1961).

b) Presidential Resolution on the expansion of the ejido to the town of Pino Gordo, in Guadalupe y Calvo, Chihuahua (Pino Gordo Ejido), of October 17, 1967, in which they

were granted an area of 11,412-24-00 hectares of summer pastures and mountains (Presidential Resolution of October 17, 1967).

c) Presidential Resolution of Recognition and Titling of Communal Lands of the town Las Coloradas, municipality of Guadalupe y Calvo, Chihuahua, of August 5, 1969, in which an area of 25,364-00-00 hectares of land in general was documented and titled in favor of that town (Presidential Resolution 1 of August 5, 1969).

d) Presidential Resolution on recognition and titling of communal property of the town of Tuaripa, in Guadalupe y Calvo, Chihuahua, of August 5, 1969, which documents and titles an area of 21,070-00-00 hectares of land in general (Presidential Resolution 2 of August 5, 1969).

p.7-8 By complaint filed on February 15, 2007, before the Unitary Agrarian Court of District 45 (TUAD 45), CBR, in his capacity as Indigenous Governor of the de facto Choréachi Community, and 29 other persons, sued the Delegation in the State of Chihuahua of the Ministry of the Environment and Natural Resources (SEMARNAT) for the absolute nullity of SEMARNAT's authorization to modify the use of forest resources and advanced forest management program, granted to the Coloradas de los Chávez Community, municipality of Guadalupe y Calvo, Chihuahua by means of official notice dated December 6, 2006.

p.8 On March 15, 2007, the complaint was amended and the absolute nullity was requested of the presidential resolutions on endowment and expansion, recognition and titling of communal property; of the informative technical works of the towns Pino Gordo, Las Coloradas or Coloradas de los Chávez and Tuaripa, all belonging to the municipality of Guadalupe y Calvo, Chihuahua; and of the documents containing the execution works, the assembly minutes and the informative technical works; as well as the cancellation of all the registry entries derived from them.

The complaint also requested the judicial recognition and fulfillment of article 2 of the Constitution and Convention 169 of the International Labor Organization (ILO) on Indigenous and Tribal Peoples (ILO Convention 169); the right to ownership and

possession of the land they traditionally occupy; and the right to use and preserve natural resources.

- p.11-12 On August 15, 2008, the complaint was again amended with respect to the responsible authorities, and the nullity of Presidential Resolution 1 of August 5, 1969 by which a final decision was issued in the case of Recognition and Titling of Communal Property for the Las Coloradas Community was demanded, on the grounds that it does not correspond to the land area of the vertices mentioned in the presidential resolution and it includes an area of approximately 15,200-00-00 hectares of land that correspond in ownership and position to the de facto Choréachi Community.
- p.12-13 On March 24, 2009, the relocation of TUAD 45 to the City of Ensenada, Baja California was resolved and, by resolution of April 20, 2009, the territorial jurisdiction of the Unitary Agrarian Court of District 5 (TUAD 5) was modified.
- p.13, 20-21 On April 28, 2007, TUAD 5 issued a decision declaring the invalidity of various claims filed by the de facto Choréachi Community, including the recognition and titling of communal property they assert belongs to them with an area of 29,912-00-00 hectares.
- p.23,25 The de facto Coméachi Community filed a *recurso de revisión* against this decision, which was heard by the Superior Agrarian Court (TSA) and which, on August 30, 2018, decided to reverse the decision, considering that the judge who heard the case only resolved the issue of the nullity of the forest use agreement granted in favor of Las Coloradas de los Chávez Community, and the nullity of the challenged presidential resolutions, without ruling on the plaintiff's petition for recognition as a community, in terms of articles 98 and 99 of the Agrarian Law, which was also a violation of the fundamental right to access to complete justice, as well as the protection and guarantee of the right to communal property protected by article 21 of the American Convention on Human Rights (ACHR).
- p.26 Accordingly, the TSA resumed its original jurisdiction.

- p.55 The TSA noted its obligation to protect the fundamental right of the de facto Choréachi Community to possess its ancestral territory, in an ex officio exercise of control of conventionality.
- p.57,59 It established that the right of possession of the lands occupied by indigenous peoples is recognized by both the CPEUM and the ACHR, resulting in a framework of international law that provides for a broader protection of that right. The Inter-American Court of Human Rights (Inter-American Court) held that the traditional possession of indigenous people of their territories has effects of full ownership and the mere traditional possession gives members of indigenous peoples the right to demand from the State the recognition of ownership and its registration.
- p.66-67 Subsequently, within the study of the action of nullity of the authorization of forest use granted in favor of Las Coloradas de los Chávez Community, the TSA declared the nullity of the authorization to modify the Forest Management Program, as well as the use of forest resources in favor of that community. It considered that the authority did not seek the respective authorization over the area that the de facto Choréachi Community holds in possession from time immemorial.
- p.68 In addition, and on the basis of the provisions of article 2 of the CPEUM and ILO Convention 169 in its articles 13, 14 and 15, it considered that the de facto Choréachi Community should have been consulted in an informed manner, in good faith and in order to obtain its consent, since it was in possession of the area covered by the authorization.
- p.1 On January 25, 2019, the members of the Pino Gordo Ejido filed an *amparo* lawsuit against the decision of August 30, 2018, issued by the TSA, arguing that articles 1, 2, part A, section VI, 14, 16, 17 and 27 of the CPEUM had been violated, and indicating the de facto Choréachi Community, among others, as an interested third party.
- p.71 In the *amparo* lawsuit they claimed the violation of the human right to property, possession and use of the ejido, as well as the retroactive application of the law to their detriment, mainly because with the challenged decision the TSA disregarded the

legislation in force on the date on which that indigenous community was created as an ejido (via endowment and expansion by presidential resolutions of 1961 and 1967, respectively), which prohibited a community from claiming the restitution of lands endowed to an ejido and thereby annulling the presidential resolution of ejido endowment, regardless of whether the community had a title of inviolability over those lands, and especially if it did not have such a title.

p.72 They also argued that by applying Convention 169 of the ILO, the TSA only benefits the de facto Choréachi Community, ignoring that the indigenous people of the Pino Gordo Ejido have the human right to ownership and possession protected by the same conventional provisions, but above all, by the CPEUM, which cannot be contravened or affected. This is also the case with article 21 of the ACHR, which protects the right to the use and enjoyment of property.

p.77 They also pointed out that in the event that the Presidential Resolution of November 14, 1961 on the endowment to the Pino Gordo Ejido could be challenged, which they considered was not possible, article 21 of the Amparo Law in force at that time would be applicable, which indicated a term of 15 days, after which the action to file an *amparo* lawsuit would expire, as would have happened in this particular case.

p.2 On January 24, 2020, the Collegiate Court asked this Court to exercise its authority to assert jurisdiction to hear the *amparo* lawsuit.

On July 8, 2020, this Court decided to exercise its authority to assert jurisdiction.

STUDY OF THE MERITS

p.79 It is appropriate to note that in this case the agrarian dispute arose mainly between the recognition sought by the de facto Choréachi Community over the right to ancestral possession that it claims to hold with respect to an area that the TSA determined to be 32,832-30-56,355 hectares, constitutionally protected by article 2 and conventionally by ILO Convention 169, and the right to ownership over these lands accredited by people from the Pino Gordo Ejido, as well as from Las Coloradas of the Chávez and Tuaripa Communities, made up of Rarámuri and Tepehuan ethnic

groups, branches of the Tarahumara Indians, which right was granted by the President of the Republic through resolutions resulting from the procedure established by the CPEUM and regulatory laws in force at the time.

p.81 In principle, the plaintiff ejido is correct that the de facto Choréachi Community lost the right to challenge the land endowment resolution when it did not file an *amparo* lawsuit within the 15-day period established to do so, since the Community did not go before the TUAD to demand its nullity until March 15, 2007.

p.97-98 Now we will analyze the plaintiff's claim that the TSA's approach fails to take into account that the Pino Gordo Ejido is also made up of Rarámuri indigenous people and, therefore, they also have the rights of ownership and possession of the land contained in articles 2 and 27 of the CPEUM, as well as ILO Convention 169.

p.99 In this case, the parties in dispute come to defend a legal asset that is regulated in a special way, since they are indigenous people of the State of Chihuahua, who claim to have a better right over the territory in dispute.

p.113 In order to resolve the dispute, it is necessary to address both the evolution of the rights of indigenous peoples and communities, nationally and internationally, and the regulation existing at the time when the challenged presidential resolutions were issued.

I. Evolution of the rights of indigenous peoples and communities at the national and international levels

The recognition at the constitutional level of the multicultural composition of the Mexican Nation, based on its indigenous peoples, was established for the first time in article 4, through a reform published on January 28, 1992.

p.114 The Agrarian Law published in the Federal Official Gazette (DOF) on February 26, 1992, in the second paragraph of article 164, expressly provides that in lawsuits involving the lands of indigenous groups, the courts must consider the customs and practices of each group, as long as they do not contravene the law or affect the rights

of third parties; that is, it is the outline of the protection of the right to land, limited by the protection of another pre-existing right.

- p.115 Given the social reality of the country at that time and the need for greater recognition of indigenous rights, on August 14, 2001, the Constitution was reformed based on ILO Convention 169 as reflected in the current article 2, part A, of the CPEUM.
- p.117 This constitutional norm recognizes the multicultural composition of the Nation, originally based on its indigenous peoples and communities, who will be recognized in local constitutions and laws.
- p.117-118 It further recognizes the right of indigenous peoples and communities to self-determination, which they will exercise within a constitutional framework of autonomy that ensures national unity; where awareness of their indigenous identity is a fundamental criterion for determining the application of the respective provisions.
- p.120 The Political Constitution of the State of Chihuahua reiterates that the lands belonging to indigenous peoples are inalienable and imprescriptible, subject to the forms and modalities of ownership and tenure of land established in the CPEUM and in the relevant laws, as well as to the rights acquired by third parties or by members of the community. The use or enjoyment of the lands or waters occupied or inhabited by indigenous peoples will be in accordance with the provisions of the law, observing in principle and at all times the internal normative systems of indigenous peoples.
- p.121 Likewise, the local Constitution referred to considers the indigenous community as the group of persons belonging to an indigenous people who make up a cultural unit with its own identity, which develops its forms of territorial organization and its internal normative systems, through which indigenous people exercise their rights. The indigenous community has the status of a subject of public law with its own legal capacity and patrimony.
- p.122 In this context, the right of indigenous peoples and communities to self-determination to decide their internal forms of coexistence and social, economic, political and cultural organization is constitutionally and conventionally recognized; however, the right to

self-determination of indigenous peoples is not absolute, its exercise is limited by the constitutional framework of autonomy that ensures national unity, with the guarantee, among others, that they will be able to have access, respecting the forms and modalities of ownership and tenure of land established constitutionally and legally, and the rights acquired by third parties or by members of the community, to the preferential use and enjoyment of the natural resources of the places inhabited and occupied by the communities, except those of strategic areas.

p.122 This is on the understanding that the awareness of their indigenous identity will be a fundamental criterion to determine the application of the respective provisions.

p.122-123 Hence, we refer to section VII of article 27 of the CPEUM, which provides that the original ownership of the lands and waters included within the national territory correspond to the Nation, which has the right to transfer its domain to individuals to constitute private property.

p.124,125 Thus, the right to land ownership of indigenous peoples and communities finds its origin in article 27 of the CPEUM, which expressly instructs that the regulatory law will establish the concrete guidelines through which the right of the community members on the land and that of each ejido member on their plot will be exercised, as well as the terms under which the lands, forests and waters will be restored to the population centers; of course, within the framework of respect for rights acquired by third parties or by members of the community.

p.127-128 Now, within the framework of international law, we refer to the interpretation of the Inter-American Court, which has become a point of reference in the defense of the right to land, territory and natural resources, reflected in the judgments that have been shaping that interpretation; as an example, when resolving the Case of the Mayagna Community (Sumo) Awas Tingni v. Nicaragua, it considered that "article 21 of the Convention protects the right to property in a sense which includes, among others, the rights of members of the indigenous communities within the framework of communal property", adding that the " Indigenous peoples' customary law must be especially

taken into account for the purpose of this analysis. As a result of customary practices, possession of the land should suffice for indigenous communities lacking real title to property of the land to obtain official recognition of that property, and for consequent registration".

p.128 In addition, it pointed out that the lack of effective delineation and demarcation by the State of the boundaries of the territory over which there is a collective property right of an indigenous people may create a climate of permanent uncertainty among the members of the community concerned, as they do not know with certainty how far their right to communal property extends geographically and, consequently, they are unaware of the extent to which they can freely use and enjoy their respective assets.

p.130-131 The Inter-American Court has repeatedly recognized the right of indigenous peoples to ownership of their traditional territories, and the duty of protection that emanates from the invoked article 21 of the ACHR, in light of the norms of ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), as well as the rights recognized by States in their domestic laws or in other international instruments and decisions, thus forming a *corpus iuris* that defines the obligations of States Parties to the ACHR, in relation to the protection of indigenous property rights.

p.131-132 The Inter-American Court has established that the duty of States to adopt measures to ensure indigenous peoples' right to property necessarily implies, in accordance with the principle of legal certainty, that the State must delineate, demarcate and title the territories of indigenous and tribal communities; it is necessary to materialize the territorial rights of indigenous peoples through the adoption of legislative and administrative measures to create an effective mechanism of delineation, demarcation and titling, which recognizes such rights in practice, through the granting of a formal property title, or another similar form of State recognition that grants legal security to indigenous land tenure against the action of third parties or agents of the State itself, since a merely abstract or legal recognition of indigenous lands, territories or

resources is practically meaningless if ownership is not established, delineated and physically demarcated.

- p.132 Based on the above, court precedent regarding community ownership of indigenous lands adds the State's duty to "delineate, demarcate and grant collective title to lands to members of indigenous communities".

From the above, it is possible to draw the following conclusions:

First. The right to land ownership of indigenous peoples and communities finds its origin in article 27 of the CPEUM, which expressly states that the regulatory law will be responsible for establishing the concrete guidelines through which the right of the community members over the land and that of each ejido member on their plot will be exercised, as well as the terms under which the lands, forests and waters will be restored to the population centers; of course, within the framework of respect for rights acquired by third parties or by members of the community.

- p.132-133 Second. Article 2 of the CPEUM establishes how the right to ownership of land will be exercised, stating that the exercise of self-determination of indigenous peoples and communities contemplates the right to conserve and improve their habitat, preserve the integrity of the lands and have access to the preferential use and enjoyment of the natural resources of the places they inhabit and occupy; which translates into the prerogative to have and use the lands in better conditions, always in the terms established by the CPEUM itself and the special law.

- p.133 Third. The right to self-determination of indigenous peoples is not absolute, its exercise being limited by the constitutional framework of autonomy that ensures national unity, with the guarantee, among others, that they will have access, respecting the forms and modalities of ownership and tenure of land established constitutionally and legally, and the rights acquired by third parties or by members of the community, to the preferential use and enjoyment of the natural resources of the places inhabited and occupied by the communities, except those that occupy strategic areas.

Fourth. In accordance with the precedent held by the Inter American Court, the interpretation of article 21 of the ACHR, in light of the rules of ILO Convention 169, the UNDRIP, as well as the rights recognized by States in their internal laws or in other international instruments and decisions, form a *corpus iuris* that defines the obligations of States Parties to the ACHR, in relation to the protection of indigenous property rights.

p.135 Corollary to the above, in cases such as this one, in order to solve the problem between the de facto Choréachi Community which claims to have ancestral possession over the territory and the Ejido which holds property rights recognized in a presidential resolution, both composed of indigenous people, the following premises must be considered:

p.135-136 A. Both groups are protected by articles 2 of the CPEUM, 24 of the UNDRIP, 21 of the ACHR, as well as ILO Convention 169.

p.136 B. The principle of self-determination of indigenous peoples and respect for their customs and practices, enshrined in article 2 of the CPEUM, does apply retroactively.

C. In order to respect the principle of legal certainty, the better right to land must be determined.

D. It must be resolved on the basis of the constitutional guidelines and the regulations existing in the agrarian legislation applicable at the time when the events occurred.

In this context, in order to decide on the better right to keep the territory, when there is a conflict between the ancestral possession that a de facto indigenous community claims to have, and the title obtained by a community or ejido, also composed of indigenous people, the status cannot be considered of just one of the parties; rather the decision must be based on the result of weighing the rights that each one has.

II. Regulation in force at the time of the issuance of the presidential resolutions

p.136-137 To elucidate whether the de facto Choréachi Community has the right to title to the lands it claims to possess since time immemorial, which were granted to the Pino

Gordo Ejido and the Tuaripa and Las Coloradas de los Chávez communities, all of the municipality of Guadalupe y Calvo, Chihuahua (composed of Rarámuri Indians) through presidential resolutions executed more than 50 years ago, it is necessary to start from the legal context, in force and applicable at the time when these events occurred, searching for the best solution for the parties and avoiding irreparable consequences.

p.142 The normative context shows that to process the restitution and endowment or expansion of land, as well as the titling and recognition of communal property, it was sufficient to submit a request to the local Government in whose jurisdiction the population center was located simply stating the intention to do so, or for an initiation resolution to be issued *ex officio*. And the publication of that request or resolution would have notification effects, so all presumptively affected parties could go before the Agrarian Department to give evidence and present any objections.

Once these procedures were completed, and based on who among the contenders has the best right of possession or ownership over the territory, it is possible to resolve to whom the disputed ownership corresponds, with the consequent recognition of the rights that this generates.

p.143 There is no reason to conclude that in view of the existence of the de facto Choréachi Community and its proven possession of the lands subject to the challenged presidential resolutions, it was necessary to give the Community the opportunity to exercise the right to a hearing enshrined in article 14 of the CPEUM regarding its claim to possession of the land; that right should have been exercised based on their possession of the disputed territory at the time the resolutions were processed.

p.145 Thus, to enforce the right to a hearing, it is essential to prove possession over the land being defended, and this must be done precisely at the time when the decision considered to be a violation of the right in question was issued.

In this case it was evident that the communities and the ejido in conflict have existed since immemorial time and held the possession of the land, determining themselves

as indigenous people of the Sierra Tarahumara, located in the south of the state of Chihuahua, in the municipality of Guadalupe y Calvo, which means that they have lived sharing the same territory.

Even the plaintiff in the agrarian trial has pointed out that the differences that arise over time with respect to the ranches or settlements forming Choréachi are understandable because over the years new settlements are generated as people grow and have needs and rights.

p.145-146 In addition, the records in the summary show that indigenous inhabitants have been facing an agrarian problem for several decades in the Municipality of Guadalupe y Calvo, Chihuahua, derived in part from the failure of the authorities to recognize any right for them within the process of creating the Pino Gordo Ejido and the Las Coloradas de los Chávez Community.

p.146 On this aspect, there is a resolution issued on November 4, 2002 by the TUAD 5 itself, in a case filed by AAR and 161 other indigenous farmers, who came to demand that the Assembly of Ejidatarios of Pino Gordo, municipality of Guadalupe y Calvo, Chihuahua, recognize them as ejido members. In this case, the action was declared invalid because they had to go directly before the legally constituted assembly of ejido members to resolve such a claim; and only if they received a refusal could they go to the agrarian body to resolve the dispute.

p.149 It can be presumed that this is the same community in which only one part went to the authorities to obtain the titling of its territory through the procedures of endowment and expansion of lands offered at that time.

Thus, considering that the parties to the original lawsuit are all Tarahumara Indians and, therefore, human rights govern all of them to the same extent, granting them the broadest protection of the best standards that are now available in terms of recognition and titularity of land ownership and community possession and without neglecting the rights of the Choréachi, the rights generated by Presidential Resolution of October 17,

1967, Presidential Resolution 1 of August 5, 1969 and Presidential Resolution 2 of August 5, 1969 must prevail.

p.150 This is because these rights were generated 60 years ago, when they received the endowment and the recognition of the ownership of the lands they now defend; especially when there is no certainty that the lands that the de facto Choréachi Community now claims are the same as those they claim to have owned ancestrally.

Thus, for legal certainty, the ownership exercised over the land under the protection of presidential resolutions must be respected, because even if there was a procedural defect in how that right was recognized, the unchallenged possession of the land by the agrarian entities during the more than 38 years since that occurred, without the de facto Choréachi Community exercising its legal action, has undoubtedly generated a right over that land.

DECISION

p.154,152 The Judicial System covers and protects the complainant against the judgment issued on August 30, 2018 by the TSA, with the effect that the responsible court should annul the judgment and instead issue a new one in which, in addition to considering the guidelines given on the right of possession and property for indigenous peoples and communities, it determines:

p.152 A. That the de facto Choréachi Community lost the right to challenge the presidential resolution on the endowment of land issued on November 14, 1961 by the then President of the Republic, having not claimed it through the *amparo* lawsuit within the term of 15 days it had to do so, in accordance with article 21 of the then Organic Law of articles 103 and 107 of the CPEUM.

p.153 B. That it is not appropriate to declare the nullity of the presidential resolutions challenged.

C. Based on the above, a study should be done intended to resolve what is appropriate according to law regarding the recognition of the territory claimed by the de facto Choréachi Community.