

Observations on the State of Indigenous Human Rights in Mexico

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Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership and consultative status with ECOSOC. Cultural Survival is located in Cambridge, Massachusetts, and is registered as a 501(c)(3) non-profit organization in the United States. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly; and on its website: www.cs.org

Cultural Survival
2067 Massachusetts Avenue
Cambridge, MA 02140
Tel: 1 (617) 441 5400
www.culturalsurvival.org
agnes@cs.org

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I. Executive Issue Summary

Violence against Indigenous Peoples plagues Mexico. The Mexican government has made some legislative steps to protect Indigenous rights through international agreements and within its constitution. Mexico voted for the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in 2007, is a signatory to the Indigenous and Tribal Peoples Convention (ILO Convention 169), and lists protections for Indigenous Peoples in its constitution, guaranteeing to respect, protect, and fulfil their rights to languages, environments, use of natural resources, and representation. Despite these protections, Indigenous activists face violence and intimidation from illegally operating companies, drug cartels, and from government and police officials. Crimes against Indigenous Peoples are committed with impunity and the government's support to the affected communities has been limited.

II. Background

Mexico has a population of 124,574,795 people. The National Population Council (CONAPO), and the Economic Commission for Latin America (ECLAC) estimate the Indigenous population to be 16,933,283 people, representing 15% of Mexico. Sixty-eight Indigenous languages and 364 dialect variations are spoken.¹ The most spoken language groups include the Nahuatl, Maya, Zapoteco, Mixteco, Otomí, Totonaco, Tzotzil, and Tzeltal.

Mexico faces security problems that disproportionately impact Indigenous communities. Drug violence, arbitrary arrests, and torture, and extrajudicial execution have all occurred numerous times throughout the country in the last year. According to Amnesty International, in 2017, 42,583 homicides occurred. Police are sometimes complacent in these crimes or do not report them. While legislation and reform have been enacted to address these problems, social injustice and inequality of access to justice still remain.

Twenty recommendations were made specifically mentioning Indigenous Peoples in the 2nd cycle regarding Indigenous Peoples. These recommendations concerning combatting discrimination, violence against Indigenous women, administering justice, improving education and economic welfare, ensuring prior consultation, remain not implemented.

III. Continuing Rights Violations

A. Obstacles to Freedom of Expression

1. Indigenous Peoples and Journalism:

Indigenous Peoples face violence for practicing their right to free speech. Journalists and activists in particular have faced violent retaliation in the countryside from cartels, paramilitaries, and police. The *New York Times* reports that 100 journalist were murdered since 2000. In 2018, three journalists have been killed, following 12 murdered in 2017. In Mexico, 90% of murders of journalists go unpunished, according to the Mexican National Commission for Human Rights, which also reports that the most affected areas Mexico are Chihuahua, Guerrero, Veracruz, and Oaxaca, home to an estimated 3.5 million

¹ <https://www.iwgja.org/images/documents/indigenous-world/indigenous-world-2017.pdf>

Indigenous people.

2. Indigenous Human Rights and Environmental Defenders

Indigenous activists also face intimidation for exercising their rights. Protesters, journalists, and radio workers have all been arbitrarily detained or extorted. Protesters have been wrongfully imprisoned for months at a time and community radio station workers have been forced to pay unfair fines by the government. Between 2012 and 2016, the organization Red Nacional de Organismos de derechos Humanos Todos los Derechos para Todos reported 302 aggressive actions against environmental journalists in the country, ranging from threats to extrajudicial executions. Indigenous Peoples have little means to fight the intimidation and corruption that targets them.

Violence against Indigenous activists continues. Guadalupe Campanur Tapia, a 32-year-old environmental activist from Michoacán was murdered on January 11, 2018. On June 3, 2017, Indigenous radio host Marcela de Jesus Natalia was also murdered in Guerrero and was the sixth journalist killed that year. Radio hosts and journalists have been targeted multiple times with two murders also occurring in 2006. Pedro Canché is an Indigenous journalist who faced wrongful imprisonment in Quintana Roo for supposedly sabotaging waterworks after he reported on a protest over water costs in Mayan communities. He had no relation to the protest leaders and was illegally held for nine months before his release. Cases such as these highlight the need for improved justice and protections of activists within Mexico, and the recent violence warrants a strong response from the Mexican government.

Another case of mass violence against activists occurred in the September of 2014 when 43 students of the Ayotzinapa Normal School went missing during a protest in Iguala, Guerrero. Police, along with other armed men, had ambushed the busses the students arrived in and shot two students in the head while detaining the rest. Authorities claim the students were killed after they were handed over to a gang following their detainment and then disposed of in a garbage dump, but little evidence exists to support this claim. Missing evidence and irregularities in the investigation process have highlighted the lack of justice and accountability within Mexico.

3. Lack of Compliance with the Telecommunications and Radio Broadcast Law

With the signing of the Telecommunications and Radio Broadcast Law in 2014, federal agencies are now obligated, under clause 89 section VII, to broadcast official publicity campaigns via contract with community and Indigenous media. Although a positive step towards supporting newly authorized community/Indigenous radio stations in the country, a deeper analysis suggests discrimination towards community and Indigenous media and interpretation and implementation of the law to date has been faulty and insufficient.

The law allocates just one percent of the communications budget will be spent across all Indigenous and community media nationally, compared to 99% to be spent via commercial media shows discrimination when considering that Indigenous and rural audiences who could access these media are significantly higher than 1% of the population.

Second, the clause indicates that the community/Indigenous media organizations will “sell” airtime to the state agencies. The concept of selling airtime, although a common business practice among commercial media, is extraneous to community and Indigenous media which operate without seeking a profit. In applying a commercial concept to non-profit radio, stations are ill-equipped to determine appropriate and standard pricing structures. To date, federal entities responsible for allocating their budgets accordingly have received no trainings or information regarding this process. Therefore, due to lack of awareness of the law and its requirements, many have failed to implement.

Third, some of the state agencies have argued that they will choose to purchase airtime depending on the “rating” or audience size that community/Indigenous media stations have. However, this interpretation should be considered invalid because the clause establishes that the funding must be distributed “equitably between existing concessions at the national level” [community/ Indigenous media]. The law also fails to clearly define “equitable.”

Between the signing of the law in 2014 to August 2017, there was zero compliance with clause VII of Article 89. Last August, the first and only federal entity to initiate a contract with community/Indigenous radio stations was the Federal Telecommunications Institute itself.

B. The Federal Mechanism for the Protection of Human Rights Defenders and Journalists

“Strengthen and expand the Mechanism to Protect Human Rights Defenders and Journalists including by providing it with adequate resources and powers to carry out its work and creating a mechanism for consultation with Indigenous and other communities affected by land transactions.” -United Kingdom 2nd Cycle UPR recommendation

The 2016 Human Rights Council [Resolution 33/2](#) obligates states to take measures to prevent, protect from, and prosecute cases of violence against journalists. Mexico’s pre-existing mechanism for the protection of Human Rights Defenders now is held to this new standard.

Given the high degree of attacks on journalists and human rights activists, in 2010, the Human Rights Unit of the Secretary of Government (SEGOB) (equivalent in other countries to the Ministry of the Interior) met with civil society organizations to discuss consensual and joint construction of protection mechanisms. Initially there were separate tables to create two different mechanisms and later, the mechanisms were unified. From the SEGOB, the first mechanism proposal was made for each federal entity to create its own mechanism, a proposal opposed by civil society organizations, which considered that a single federal-level mechanism should be created, since in Mexico, aggressions are planned and executed by public officials of the state or municipal government.

Towards the end of 2011, the creation of a mechanism was initially announced by the SEGOB and the National Commission for Human Rights with an assigned budget. Later, Senator Rubén Camarillo Ortega (PAN) called on civil society organizations to draft a bill. In the draft, AMARC-Mexico included important participation for the incorporation of gender perspective and for the definition of journalists to include radio and community journalists, which often also includes Indigenous people. This law was the

second legal instrument at the federal level in which community media was defined. In October 2012, this law was approved by the Mexican Congress, and the mechanism previously created began to be governed by it.

Now, the Mechanism, entitled "Federal Protection Mechanism for Human Rights Defenders and Journalists" is coordinated by the SEGOB through the Unit for the Defense of Human Rights and its highest decision making body is the Governing Board.

The Governing Board is made up of Mexican federal institutions and four members of the Advisory Council (two people from human rights organizations and two from organizations that work with journalists). The Advisory Council has nine members from civil society organizations. The federal institutions included in the board are: Attorney General of the Republic, Ministry of Foreign Affairs, Ministry of Public Security, National Commission of Human Rights and Secretary of Government, the last of which is responsible for the coordination of the entire board and has created the Unit of Case Reception and Rapid Reaction, the Unit of Risk Evaluation and the Unit of Prevention, Monitoring, and Analysis to aid the board.

In an article by Mexican journalist Gisela Martínez, she states: "When there is a high risk against a life, the mechanism can grant extraordinary measures of protection, which have to be implemented in less than nine hours or it must give ordinary protection measures when there is a risk to the person but their life is not in imminent danger." In these cases, the mechanism must prepare a risk analysis within 10 days and apply it within 72 hours.

The measure that is granted the most is called a "Panic Button", a device that records the location of the beneficiary at all times and, when activated, sends an alert so that the person is assisted by authorities. This device is both an ordinary and extraordinary measure and is the one that has raised the most questions, since according to the Office of the Rapporteur for Freedom of Expression of the Inter-American Commission on Human Rights, the "panic button" is not efficient for journalists or activists in at risk in rural areas, thus, it marginalizes Indigenous and community journalists in a systematic way in terms of their security.

Like many of the laws or public policies that have been created in Mexico in compliance with international instruments, the Federal Mechanism for the Protection of Human Rights Defenders and Journalists has a structure that complies with international standards. However, its application is not efficient. Unfortunately, several journalists have been attacked even though they were protected.

C. Rights to Land and Natural Resources

Land use within Mexico has been a source of conflict that strongly impacts Indigenous Peoples. Indigenous Peoples rely on the land for their livelihoods, and its destruction can have damaging effects to their communities. Deforestation for agriculture remains a problem and activists who stand up for the environment can face violent retaliations. With the murder of eight environmental activists in 2017,

Indigenous Peoples' rights to land use have been severely threatened. Illegal logging in particular has threatened the lives of those in Mexico with multiple murders of activists.

The violence these activists face comes not only from organized crime groups and their hitmen, but from authorities themselves. A recent report by the Mexico's Center for Environmental Rights (CEMDA) found that "43 percent of the attacks carried out against environmentalists came from the authorities themselves." While the Mexican federal government has promised to increase protections for environmental activists, Indigenous residents still live in fear as their land is destroyed and they have little resources for justice.

Mexico has also not obtained Indigenous Peoples' Free, Prior, and Informed Consent in regards to land usage. Recent cases have shown an alarming disregard for Indigenous rights to land, with major projects impacting natural resources being implemented without the consultation of Indigenous groups. The Mexican government recently building a highway through the land of the San Francisco Xochicuátla Otomí community. This project led to the demolition of a home and resistance camp and threatened vital natural resources the community relied on. The Me'phaa Indigenous community of San Miguel del Progreso had to contend with a mining operations on their land after the Mexican government allowed 42 concessions for the company to operate on the land. Despite protests, only 30 of these concessions were removed.

D. Indigenous Women

Violence against women has continued to be a problem in Mexico. The National Institute of Statistics and Geography published a survey estimating that 66.1% of girls and women aged 15 or above had experienced gender-based violence at least once in their lives, and that 43.5% of women had experienced gender-based violence committed by their partners. In a recent evaluation, 150 civil society organization submitted a report detailing that Mexico failed to comply with the article of the International Covenant on Economic, Social and Cultural Rights (ICESCR) on gender equality. The organizations sites the high gender violence, lack of access to abortion, and poverty that disproportionately impacts women as violations. They also point out the lack of social reforms undertaken by the government. The also report calls for more legislation to protect women in areas such as poverty alleviation, job equality, and maternity leave and to evaluate what social programs could be implemented improve living standards, particularly in regards to gender violence. Lack of disaggregated data on Indigenous women does not accurately portray their situation in the country.

The civil society network *Todos los Derechos para Todas y Todos* (TDT) also recently released a report detailing injustices toward women in Mexico between 2008 and 2017. In regards to violence against women, they found that the number of missing women in Mexico increased from 168 to 1,572 between 2008 and 2017. The report also found a lack of data disaggregation for sex and lack of access to justice. It also highlighted the injustices Indigenous women in particular face, as they are more at risk for sexual trafficking and exploitation, persecution for abortion, and murder and sexual assault. The network noted that Mexico has adopted and signed international treaties and legislation on the protection of women in recent years, including the General Law on Women's Access to a Life Free of Violence and the Gender Violence Alerts, but has seen little evidence of change in regards to violence against women. They urge

the federal and state governments to assess the human rights violations against women and to address these issues through legislation and professionalism from the justice system.

Indigenous women in Mexico have also struggled to secure their rights to land. The *Red Nacional de Mujeres Indígenas: Tejiendo Derechos por la Madre Tierra y Territorio* (RENAMITT) has reported that there is a lack of government policies protecting Indigenous women's ownership of land, which is needed due to the inequality, violence, and bureaucracy that often prevents them from doing so. Without these land titles, women have little influence over decisions made about what is done with the land. Other obstacles Indigenous women face to their land is the long distances from offices where they can register land titles, and the difficulty of providing proper documentation. RENAMITT has called for laws that apply gender perspective to land rights and better representation of women in decision-making processes regarding land rights.

IV. Questions

1. What steps is Mexico taking to ensure the obtaining of Free, Prior and Informed Consent of Indigenous Peoples before projects move forward on their lands and territories?
2. How is Mexico implementing Telecommunications Law Article 89. VII?

V. Recommendations

1. Create a National Action plan on implementing the rights of Indigenous Peoples based on the World Conference on Indigenous Peoples' Outcome Document.
2. Collect disaggregated data on Indigenous Peoples in the next nationwide census, including health and social indicator data on Indigenous women and children.
3. In consultation with Indigenous communities, construct more infrastructure in remote communities, especially health care facilities.
4. Implement the UN Special Rapporteur on the Rights of Indigenous Peoples' recommendations from her 2018 visit to Mexico.
5. Implement Telecommunications Law Article 89. VII in consultation with Indigenous and community media practitioners.
6. Ensure that services provided by the Federal Mechanism for the Protection of Human Rights Defenders and Journalists are inclusive of and accessible by Indigenous journalists and community media practitioners in rural areas.
7. Create national legislation to ensure the Free, Prior and Informed Consent of Indigenous Peoples is obtained regarding any on their lands and territories.

8. Respect the rights of Indigenous Peoples to Free, Prior, Informed Consent on any legislative or administrative measure that may affect them.