

A stylized, colorful illustration of a figure, possibly a deity or a person, rendered in a folk-art style. The figure has a green body, a yellow and pink face, and a crown of red and pink flames. The figure is positioned on the right side of the page, partially overlapping the text.

**THE HUMAN RIGHTS SITUATION AMONG THE  
INDIGENOUS PEOPLES AND COMMUNITIES IN THE  
STATE OF GUERRERO**

**November 2017**



The State of Guerrero encompasses a great variety of conflicts and problematic situations. The low development index has generated an unequal distribution of resources and an enormous inequality among the people in terms of Access to their rights. This inequality, poverty, and exclusion, added to the structural discrimination and generalized violence that characterizes Guerrero, has produced a scenario that fosters the commission of innumerable violations to the human rights of the indigenous peoples and communities.

Tortures, extrajudicial executions, arbitrary detentions, obligatory displacements, forced disappearances, dispossession of their territories, attacks, harassment, criminalization, as well as the lack of access to basic rights such as food, health, and education—these are part of an ordeal of sufferings that the people endure. At the same time, these realities tend to be the “bridge” that leads to more human rights violations against them. The indifference, the revictimization on the part of the authorities, the corruption, and the impunity are all part of the tortuous path that the indigenous peoples must traverse in their struggle for justice and in their efforts to be heard and to be attended to with dignity.

Mexico is living a human rights crisis; this has been recognized by different international mechanisms,<sup>1</sup> and it affects disproportionately the indigenous peoples, due to their state of greater vulnerability. Nevertheless, up to now the Mexican government has neither recognized nor responded in an effective way to the violations of human rights committed against the indigenous peoples and communities; nor has it worked to eradicate the structural failings that cause these violations.

In 2003, the Special Rapporteur of the human rights and the basic freedoms of the indigenous peoples, Rodolfo Stavenhagen, visited the State of Guerrero, and he acknowledged different problematic situations; these ranged from agricultural conflicts to serious violations against the indigenous peoples. Nevertheless, the reality that he experienced at that time is not very different from the reality that today persists in the State. It is for that reason that we have prepared the following report that coincides in time with the official visit to Guerrero of the Special Rapporteur of the United Nations for the Rights of the Indigenous Peoples. The goal is to present the situation that the indigenous peoples and communities live in Guerrero and to emphasize the neglect of the Mexican government in attending to the recommendations made 14 years ago; if these continue to be neglected, the rights of the indigenous peoples and communities will continue to be violated.

The present report is divided into the following sections: 1. The Context of the State; 2. Defense of Territory; 3. ESCER; 4. Situation of Women; 5. Access to Justice, and Impunity; 6. Conclusions and Recommendations; 7. Appendixes.

## **1. The Context of the State: Poverty, marginalization, impunity, and violence**

The State of Guerrero is one of the main states with a higher indigenous presence in Mexico; they represent 19.3% of the total population of the state. More than 70% of the indigenous peoples are concentrated in just 17 of its municipalities.<sup>2</sup> The more than 800,000 indigenous inhabitants are divided among four peoples: Me'phaa (Tlapanecos), Nuu Savi (Mixtecos),

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<sup>1</sup> See, for example, the declaration of the High Commissioner of the United Nations for Human Rights, Zeid Ra'ad Al Hussein, after his visit to Mexico: “[...] there is an ample national, regional, and international consensus in terms of the seriousness of the present situation of human rights in Mexico. For a country that is not at war, the calculated figures are, plainly speaking, impactful: 151,233 people murdered between December of 2006 and August of 2015, including thousands of immigrants in transit [...]”

Available at: [http://hchr.org.mx/index.php?option=com\\_k2&view=item&id=767:declaracion-del-alto-comisionado-de-la-onu-para-los-derechos-humanos-zeid-ra-ad-al-hussein-con-motivo-de-su-visita-a-mexico&Itemid=265](http://hchr.org.mx/index.php?option=com_k2&view=item&id=767:declaracion-del-alto-comisionado-de-la-onu-para-los-derechos-humanos-zeid-ra-ad-al-hussein-con-motivo-de-su-visita-a-mexico&Itemid=265)

<sup>2</sup> Official information presented by the National Commission for the Development of the Indigenous Peoples. Available at: <https://www.gob.mx/cms/uploads/attachment/file/239941/02-numeralia-indicadores-socioeconomicos-2015.pdf>

Nn'anncue Ñomndaa (Amuzgos), and Nahuas. These peoples are located principally in the region of the Mountain and the Coast of Guerrero, as well as in part of the Northern region. (See Appendix 1)

It is precisely in these indigenous regions where hundreds of problematic situations emerge, especially social deprivation and poverty. According to the figures of the Annual Report on the Situation of Poverty and Social Deprivation 2017, developed by the Secretariat of Social Development, Guerrero is classified this year as the second entity in the country with the highest level of poverty and social deprivation; in 2016 Guerrero was in third place, with half of its municipalities being evaluated as "High" and "Very High" in terms of social deprivation.<sup>3</sup> At the same time, according to figures from the National Council on Population (CONAPO), Guerrero is located in first place in terms of marginalization, where the lack of basic services such as electricity, sewage, and potable water is a common denominator especially in the areas where the concentration of indigenous peoples is higher.<sup>4</sup>

The United Nations Development Program (UNDP) has recognized the contrast in the level of human development between the municipalities with a high indigenous presence and others with less indigenous presence: in the former case the development index is lower.<sup>5</sup> This situation of inequality among the indigenous population means that they cannot access basic and indispensable rights such as food, housing, health, and education. In many cases the people are forced to migrate from their communities, or even their country, in search of better living conditions. Yet the Mexican authorities fail to implement effective public policies that would respond to these problems.

Indeed, it's just the opposite: the indigenous peoples and communities in Guerrero have been affected by the systematic and institutional violence that prevail in the State. Since the time of the Cold War, their territories have been militarized, using different arguments: first, by pointing out that these areas were a hotbed of counterinsurgency; and now, by citing the war on drugs. Nevertheless, the presence of the armed forces has not led to a reduction in the levels of violence in the State. According to figures from the Peace Index, Mexico 2017, of the *Institute for Economics and Peace*, this state continues to be the least peaceful in Mexico.<sup>6</sup> And according to the statistics of the Executive Secretariat of the National System of Public Security (SESSNSP), from January to September 1,726 criminal assassinations have been registered in Guerrero; in other words, an average of 6 people a day are assassinated.<sup>7</sup>

The geostrategic location of the State of Guerrero has been taken advantage of by large criminal groups who have taken control in strategic points to control the chemical processing of amapola (opium poppy) and the control of the delivery routes by land, air, and sea. The dysfunctionality of the system, the lack of internal control of the personnel who work in the governmental institutions, the rooted corruption, and the increasing collusion between the delinquent groups and the police forces and judicial authorities allow these groups to operate without difficulties and have meant that many people do not travel in certain areas of the territory of the State.

Given this situation, it is worrisome that a large number of the indigenous communities that inhabit the State are located precisely in those areas where there has been greater violence. Just in the region of the Mountain, the municipal centers of

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<sup>3</sup> Of the 81 municipalities, 8 achieved a classification of "Low" in terms of social deprivation, 24 were "Medium," 32 were "High," and 17 were "Very High." The column of "Very Low" registered 0. The "Very High" are mostly indigenous municipalities. Available at: <https://www.gob.mx/cms/uploads/attachment/file/186861/Guerrero.pdf>

<sup>4</sup> The municipalities of Tlapa de Comonfort, Cochoapa el Grande, and Metlatonoc are located in the worst levels of human development in the country. Cfr. [http://www.conapo.gob.mx/work/models/CONAPO/indices\\_margina/mf2010/CapitulosPDF/Anexo%20B2.pdf](http://www.conapo.gob.mx/work/models/CONAPO/indices_margina/mf2010/CapitulosPDF/Anexo%20B2.pdf)

<sup>5</sup> In 2010 Chilpancingo de los Bravo is the municipality with the highest human development in the State, with an index of 0.768. In contrast, the municipality with the lowest index is Cochoapa el Grande, with an index of 0.362. The gap in development between both is 52.9%. Cfr.

<http://www.mx.undp.org/content/dam/mexico/docs/Publicaciones/PublicacionesReduccionPobreza/InformesDesarrolloHumano/UNDP-MX-PovRed-IDHmunicipalMexico-032014.pdf>

<sup>6</sup> Peace Index México 2016, Institute for Economics and Peace, pages 4 and 5. Available at: [http://economicsandpeace.org/wp-content/uploads/2016/04/%C3%8Dndice-de-Paz-M%C3%A9xico-2016\\_ES.pdf](http://economicsandpeace.org/wp-content/uploads/2016/04/%C3%8Dndice-de-Paz-M%C3%A9xico-2016_ES.pdf)

<sup>7</sup> Information available at: <http://secretariadoejecutivo.gob.mx/incidencia-delictiva/incidencia-delictiva-fuero-comun.php>

Tlapa de Comonfort, Zapotitlan Tablas, and Copanatoyac lead the 19 municipalities in terms of the highest number of murders; and Acapulco is the most dangerous municipality in the country. This generalized violence in indigenous areas has meant that most of the victims are indigenous; and still the Mexican authorities haven't carried out effective actions to combat this problem. (With regard to this, see the maps in the Appendix.)

## 2. The indigenous communities and the defense of their territory

The indigenous peoples and communities of Guerrero have generated a surprising cosmivision of their people and their community; a sense of belonging to both is rooted in their culture. They have an indissoluble relationship with their territory. This ontological unity is valued more highly than any other enticement that an external actor might have. As indigenous peoples, their identity is the basis that guides their life; without that, nothing else makes sense. Their way of looking at the world, of understanding it, of living it, and of assimilating to a territory shared with material and immaterial beings cannot be understood except by conceiving themselves as daughters and sons of the earth.

It is this relationship and cosmivision with natural assets and with their history that reminds them why they must struggle to be and to live as the beings they are. This has been their motivation against all threats to their territory and their sacred goods; their communitarian wisdom is their only way of defense.

*"We defend it because we live here, it is this land that nourishes us, it is this land that feeds us, our ancestors lived here, under this soil we have buried our dead. In the hills we speak with Mba'tsún (Grandmother and Grandfather Fire), Begóo (Father Lightning of the Rain), and Kumbaa (Mother Earth)".<sup>8</sup>*

### - Mining and megaprojects

Mining represents one of the main predicaments that ravages the indigenous peoples and communities of the State of Guerrero. Just in July, the Mexican Geological Service reported a registry of 894 mining concession titles, equivalent to approximately 1,443,103 hectares, which represents 23% of the total area of the State.<sup>9</sup> The great majority of these concessions belong to foreign companies; these don't even really promote the idea of development, because the economic profits from the mining boom don't remain in the country, and the companies pay negligible land taxes on the areas where they mine, but not on the million-dollar benefits obtained. And the mining severely affects the territories of the indigenous communities.

Just in the region of the Mountain and the Costa Chica of Guerrero, the federal government has awarded 44 concessions to national and international mining companies. These involve an area of 142,430 hectares. These concessions were given with no process of previous free and informed consultation with the local people. The Mining Law, the reforms in the energy sector, and the recent structural reforms have affected the communities, and they have decided to defend themselves against this outside, unsupported legislation; their community identity is the backbone of their defense.

In 2012 several communities from the Mountain joined together and created the Regional Council of Agrarian Authorities in Defense of the Territory (CRAADT). Using informative, organizational, legal, and political actions, they decided to stand up against this threat to their territory. Their resistance led to 22 of the 44 aforementioned concessions being cancelled; and they were able to achieve that two of the communities involved—Iliatenco and Malinaltepec—be recognized as "mine free" in terms of the communal statutes and communal regulations authorized by the National Agrarian Registry. This juridical and

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<sup>8</sup> Testimonies from the community of Júba Wajjin, as part of the legal defense of their territory.

<sup>9</sup> Geological Mining Service, Mining Overview for the State of Guerrero, available at: <http://www.sgm.gob.mx/pdfs/GUERRERO.pdf>, consulted in May 2015

communitarian strategy has been replicated in several Mexican states; in this way the indigenous communities have set a precedent with the Mexican authorities in terms of their wishes.

So we can recognize that this has been a good practice on the part of these communities in the Mountain. However, there are hundreds of indigenous communities that have not achieved this, due to the lack of information on the part of the authorities and to the meshing of economic interests between the companies and the government and, most worrisome, even with organized crime. It is especially in the northern region of the State, where the presence of criminal groups is more predominant, that the communities have been “silenced” and obliged to accept different megaprojects, among them certain extraction projects.

The most long-term and clearest example of this is the case of Goldcorp, a mining company that set up in the territory of Carrizalillo and that has been using the territory there. This is even though the community has expressed that they do not want mining in their territory, due to its effects on land, health, rivers, and the fruits that they raise there. Nevertheless, this resistance has lessened due to the blindness of the authorities and the collusion with organized crime in the region; through threats and aggressions they instilled fear in the community so that they would not continue defending their case neither in the courts nor in the media.

In a similar fashion, the community of Rio Balsas has suffered attacks from organized delinquency allied with the Media Luna mining company; this has forced the communities to accept the mining project. The authorities have done nothing to impede this, despite complaints about health and about the contamination of the river and the fish in it. And as if that wasn't sufficient, the communities close to the river are suffering with the existence of two megaprojects. Besides the mining, part of the river's current is diverted to a hydroelectrical dam that takes water away from the communities; nevertheless, the communities were not consulted in terms of either of these projects, and they have been forced to accept them.

Like these, there are other megaprojects that have been put forward by the authorities and that have not respected the right of the indigenous communities to a free, prior, informed, and culturally adequate consultation. Generally, these are projects supported either directly or indirectly by the authorities. For example, there is the case of the hydroelectric dam called “La Parota”; this project was publicly recognized and launched by the Mexican authorities, even though they knew that such a project would affect many communities. In this case as in so many others, the communities were deceived; the processes of consultation and assemblies was corrupted so that the authorities could claim that they had fulfilled the requirement of “consultation” and they could pretend that the people had given their consent. But the authorities do not recognize the right of the communities to a real consultation.

- Lack of legal recognition of their territories and programs for certification

The main concern of the indigenous peoples and communities is the lack of recognition of their territories, despite the fact that they have been the original possessors. When the State of Guerrero was created, their property was not recognized, because there was no legal body at that time that could confirm ownership. Since then there have been many problematical situations in terms of the possession and the use of the land; many times, the indigenous communities must get involved in a legal process to prove their ownership of property.

Since the nineties, the federal government has been implementing different programs such as PROCEDE, RRAJA, and FANAR<sup>10</sup> that, disguised as a process of regularization of agricultural and communal lands that have no legal papers, offer a

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<sup>10</sup> Procede (Programa de Certificación de Derechos Ejidales y titulación de Solares) began at the end of 1992 and ended in November of 2006. FANAR (Fondo de Apoyo a Núcleos Agrarios sin Regularizar) began in 2007 and in 2016 changed its name. RRAJA (Regularización y Registro de Actos

certificate of possession of the land; in this way the collective ownership of agricultural or communal lands of the indigenous communities is affected. This opens the door to the megaprojects, since this eases the way for the purchase or rental of the land. However, this is not the way the recognition is presented to the communities; these programs are sold as a way of obtaining a legal document that is vital to have. Totally left out of this picture are the rights that the indigenous peoples and communities have as a body.

Guerrero has not been an exception. Just the opposite: here the authorities have sought to bring an end to social ownership and community-owned lands, so that these indigenous territories pass over to the system of private property; it is a way of working against the indigenous identity and of allowing a possible appropriation of their territories without previous consultation.

- Biosphere Reserve

The biosphere reserve is part of the mechanism of Protected Natural Areas (ANP) for the protection of environmental rights as well as biodiversity and ecological processes. These areas are decreed by the federal government and administered by the National Commission for Protected Natural Areas. Although the program is promoted as a way to preserve territories, in actual practice it has become another way to dispossess and displace indigenous communities who, in spite of the fact that historically certain lands have belonged to them, this ownership is not considered at the time that lands are decreed to be “protected.”

- Agrarian conflicts

Due to the fact that the lands and territories of the indigenous peoples have no legally recognized boundaries, and the fact that their right to collective ownership of the land that they have traditionally used is ignored—even though this is required in the ILO Convention 169 (art.14.1.2)— a great number of agrarian conflicts have occurred. Just in this year of 2017, the deputy minister for agrarian affairs in the State of Guerrero pointed out that in the State there persist 51 agrarian conflicts and that 14 are considered high risk situations.

Formerly, the agency in charge of resolving these kinds of conflicts was the Secretariat of Agrarian Reform. Nevertheless, the administration of President Enrique Peña Nieto created the Secretariat of Agrarian, Territorial and Urban Development (SEDATU) and with that separated the components of different offices and combined them with several agencies that are unconnected to rural areas. This change was justified with the argument that **Mexico is no longer rural, Mexico is urban, the distribution of agrarian lands stopped being a reality a long time ago.** *So, without failing to recognize the rural, without failing to recognize farming, knowing that there are still conflicts and resolutions pending, and above all knowing that the rural areas feed the urban areas, that the farms provide nourishment to the cities and so it is very important that agriculture be a part of this new, larger Secretariat that is connected to all of the territory and is related to all of the national territory, but in which the urban proceeds to play a transcendental role due to its importance in the country.*<sup>11</sup>

This declaration demonstrates the position of the Mexican: its attention to anything that is not “urban” is of lesser relevance. As well, this occurs within the framework of the extinction of a Secretariat dedicated only to the agrarian context—in that sense, to the territories of the indigenous communities. It seems inconsistent that now the institution that should be protecting these rights does not consider them “transcendental.”

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Jurídicos Agrarios) began early in 2016. Information obtained from an information pamphlet called *La defensa del CRAADT ante las amenazas del territorio*. Centro de Derechos Humanos de la Montaña “Tlachinollan”.

<sup>11</sup> This message can still be seen on the official website of the Secretariat of Agrarian, Territorial, and Urban Development in spite of its polemic. Available at: <https://www.gob.mx/sedatu/prensa/mensaje-de-la-titular-de-la-secretaria-de-desarrollo-agrario-territorial-y-urbano-sedatu-en-el-marco-de-la-maestria-en-administracion-militar-para-la-seguridad-interior-y-defensa-nacional?tab=>

The disappearance of the Secretariat for Agrarian Reform has meant that the SEDATU no longer has the capability to resolve conflicts; it has become an ineffective agency. Yes, there does exist an Attorney General's Office for Agrarian Affairs, but this agency is not capable either of responding to the conflicts among the peoples; in many cases people lose their lives in these conflicts. Such is the case of the conflict in Valle Hermoso, an agrarian conflict between two indigenous communities in the municipalities of Metlatonoc and Jicayan de Tovar: this conflict has persisted during many years and urgent appeals have been made for the intervention of the authorities; nevertheless, this far there has been no interaction or mediation to resolve the conflict.

- Criminalization of community leaders

Due to the high percentage of indigenous people in the State, as well as to the structural inequality and discrimination against the indigenous communities and peoples, many organizational processes have occurred in search of the collective rights of the peoples. The majority of these are made of the affected indigenous peoples themselves, and among the principal demands in their struggles are respect for the land, territory, environment, and normative communitarian systems, as well as the non-criminalization of their struggles.

Many of the national and international businesses with operations in Mexico do not respect indigenous rights, especially in relationship to the ownership of the land and to the right to prior, informed, and free consent. The operations of large business in the extraction industry frequently cause serious environmental damage, many violations of both national and international agreements on human rights, and conflicts within communities. The Mexican government allows these companies to act with impunity despite the fact that they act without due diligence.

In this struggle against these business empires, attacks are often launched against the communitarian defenders. In many occasions these can be attacks in the media; threats; physical aggressions; criminalization; harassment; monitoring of movements; or even a self-seeking use of the judiciary system, with the goal of inventing crimes that in most of the cases are related to the protests or struggles of the people.

In most cases one can identify a complicity between the government and the company; the latter is free to act as it wishes, and no legal agency is charged with investigating any complaints or denunciations. An example of this is the "La Parota" hydroelectric dam in Acapulco. Irregular consultations took place in an attempt to get the consent of more than 35 communities that would be completely flooded with the functioning of this dam. Nevertheless, to confront the resistance of the communities in the defense of their territories, several of the community leaders have been criminalized and harassed and threatened. This happened especially to Marco Antonio Suastegui, who had to face several legal processes against him; in one of these he was imprisoned for more than a year. It happened too to Julian Blanco, who was harassed in his home by elements of the military; on several occasions he was accepted in the Mechanism of Protection for Human Rights Defenders, operated by Mexico's Interior Ministry.

### **3. Economic, Social, Cultural and Environmental Rights (ESCR)**

The economic, social, and cultural rights together are those that we commonly identify when we speak of the right to health, to food, to sources of employment, to housing, to education. These are constantly violated in the State of Guerrero, especially among the indigenous population. The Mountain of Guerrero is one of the poorest regions in the world. The level of development in the municipalities of Metlatonoc and Cochoapa el Grande—indigenous municipalities—is like the level in Kenya and Malawi in the African continent.

The rights to health, dignified housing, and education are not a reality for the indigenous population of the Mountain. More

than a third of the State of Guerrero has no health coverage; in other words, they do not belong to any health plan that allows them to protect their health. The figure is even higher among the indigenous population: that number is 42.44%.<sup>12</sup> The state health services continue to be insufficient and, worse still, deficient. The scarcity of medicines, the lack of medical facilities and doctors, and the lack of an appropriate infrastructure help to explain the highest level of maternal and infant deaths in the country.

As well, the State of Guerrero is one of the places with the highest level of illiteracy: the rate is 17.53%. UNESCO and the United Nations Development Program agree that the rate of functional illiteracy and total illiteracy in Guerrero is alarming. Many of the people never see the inside of a classroom; many others begin their primary education but don't terminate it. In many places in the state, especially in indigenous areas, the high level of illiteracy is due to this inability to go to school.

This lack of access to basic rights and services hinders the possibility of good employment, especially if one considers the discrimination that often occurs against the indigenous population. According to data from the National Commission for the Development of the Indigenous Peoples (CDI), 73.9% of the municipalities in the state with indigenous peoples offer no employment alternatives to the people; this is even worse among the nahua, na' savi (mixtecas), and me' phaa (tlapanecos) of the Mountain region. On many occasions these people decide to migrate.

The majority of the migrations are carried out by peasant farming families who work as agricultural day laborers for periods of time; they are in charge of planting, harvesting, gathering, and other tasks related to growing food. In Mexico, due to the marginalization of many sectors of the population, many migrate to other states in the country and accept to work in deplorable semi-slavery conditions in agriculture fields belonging to Mexican and foreign businesses.

The State of Guerrero is a clear example of this predicament of high levels of marginalization and lack of opportunities and, thus, the expulsion of persons. Guerrero occupies first place in terms of internal migration and fifth place in terms of external migration.<sup>13</sup> Among the states that have high levels of migration, it is the indigenous municipalities with the highest levels of marginalization that have most migrants, due to the ancestral misery they confront. According to the Integral Diagnosis of Farm Workers and their Families that was presented by SEDESOL of Guerrero in 2009, During the previous thirteen years 388,000 day laborers (men and women) migrated from the indigenous and rural areas of the state. Their migratory routes are primarily to the states in the northeastern part of the country, such as Sinaloa, Baja California, Baja California Sur, and Chihuahua.<sup>14</sup>

To illustrate, a clear example of the infringement of the ESCER is represented by the Council of Affected Communities of the Mountain, created by communities affected by Hurricanes Ingrid and Manuel in 2013. After these natural catastrophes, the indigenous communities who were impacted by the destruction of their homes and crops saw many people forced to migrate to other places. The worst infringement of their rights was the indifference of the government authorities; in spite of knowing how serious the situation was for these vulnerable families, they channeled all of their support to the tourist area of Acapulco, leaving many people in the communities to live in improvised encampments for many months and, in some cases, for years. The Council played a go-between role with the state authorities so that they could receive support in the form of basic grains and materials for housing. Since this is a political agreement and not located directly in the budget assigned by the state government, the struggle continues every certain period of time so that these promises of aid are fulfilled.

A large part of the failure of compliance with ESCER is the alleged lack of economic resources. Nevertheless, the Mexican government continues to neglect its obligations; it fails to allocate the maximum resources available to meet these rights, and

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<sup>12</sup> INEGI, II Conteo de Población y Vivienda 2005

<sup>13</sup> Official figures from the National Council on Population, available at: <https://datos.gob.mx/busca/dataset/migracion-interna>

<sup>14</sup> Integral Diagnosis of Agricultural Day Laborers and their Families, SEDESOL, 2009.



it does just the opposite: for 2016 public spending in such areas was plagued with budget reductions. The main budget reductions can be added to the fact that several government ministries, the majority of them of implementing ESCER in indigenous communities, did not even spend all of the budget assigned to them. This has a direct repercussion in the way that the Mexican government guarantees the communities' rights. And as if that weren't enough, resources continue to be destined to non-essential areas such as government publicity, thus privileging state propaganda over effective access to ESCER by all of the population.<sup>15</sup>

#### **4. The situation of indigenous women**

The indigenous women in the State of Guerrero face a reality of structural violence and discrimination that converts them in the most vulnerable sector of the population. It is they who tend to present the highest levels of illiteracy, scarce economic resources, nutritional deficiencies, and monolingual. On many occasions they do not know their rights, especially their right to health, their reproductive rights, and their human rights. This includes adolescents and migrant women; women who have a subordinate position in relationship to their spouse and their families and the local community and the national society. It includes those who suffer violence in so many ways. Indeed, it is the women who lag behind at a social level and who suffer problems of discrimination who tend to be most affected by the context of the State of Guerrero.

According to official figures, the women do tend to be more disadvantaged. For example, 28% of the women in Guerrero speak only their native language; 23% are illiterate; and 54% of the women who live in municipalities with a high indigenous presence lack schooling or never finished primary school. Besides this, they encounter abuse at a family level, a community level, and a legal level; this limits and impedes their right to a life free from discrimination and violence.

Facing this lack of information, security, protection, denunciation, and accompaniment, it is difficult for the women to denounce the poor treatment of which they are victims. This may come from their spouses or from other men who live around them, and it sometimes leads to the worst kind of violence against them: femicide. This situation is not alien to the indigenous communities, and it is getting worse. In the remoteness of the communities, the women become forgotten victims: their cases don't draw national attention, nor even local attention; and the authorities revictimize them and often ignore them or scorn them just for being indigenous women.

Tlachinollan has accompanied several indigenous women during the past 23 years in cases related to different human rights violations. The most frequent issue tends to be violence they experienced and then violations in terms of due process and access to justice. In the period from July 2016 to June 2017, Tlachinollan offered direct assistance to 279 women who were victims of some kind of violence; the majority of these were indigenous women.

The violence against women is carried out not only by spouses or other family members but also by the authorities, who not only refuse service or revictimize the women but who also stigmatize them. Daily the women of the Mountain deal with discrimination and aggressions. In some cases, justice is not only denied to them, but it is they who are condemned. This happened in the cases of Elvia and Juana, who were processed unjustly for the crime of causing injury and who were sentenced to prison in 2016. They moved from a situation of domestic violence to one of institutional violence.

In the context of institutional violence, these women came to know each other as each defended herself in the face of a system that denied them justice. Their criminal cases were in the hands of the same female judge and they used the same secretary. Their confidence, that originally they had for knowing that their processes were in the hands of women, vanished very quickly. Both became victims of the macho stereotypes that corrode the workers in the legal tribunals. Arrest warrants

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<sup>15</sup> Figures obtained from the Secretaría de Hacienda y Crédito Público. See <http://www.pef.hacienda.gob.mx/es/PEF/R02> (see the indicator "DG" in each budget item)

were issued against both Elvia and Juana—rather than against their aggressors—in spite of the violence that had been exercised against them.

These stories of Elvia and Juana show how the cycle of violence is reproduced at all levels and in all spaces in which the indigenous women of the Mountain of Guerrero live their lives. The legal proceedings they have confronted give evidence that the judiciary system in our country is used as one more way of domination that reproduces patriarchy and punishes women who denounce violence. A judiciary system that, instead of guaranteeing them access to justice for the violence of which they have been victims, condemns them.

The sentences dictated by the female judge in both proceedings proves the presence of stereotypes and macho bias that functions in the judiciary system of Mexico. The context of gender violence that predominates in the cases of these two Nahua women makes it necessary and urgent that change occur, and that there be training for both male and female public servants in the institutions that ensue and impart justice in Mexico, especially in regions like the Mountain of Guerrero, where the violence against women is multidimensional.

## **5. Access to justice and impunity**

There are many factors that make it difficult for victims of human rights violations in Mexico to gain access to real justice and integral reparation of damages. Yet, the obstacles are even greater for the indigenous population. Evidently, some of those obstacles are due to deficiencies in the judiciary system of Mexico, yet these shortcomings are aggravated when the case involves an indigenous individual or community, because there tends to be an imbalance of power among the actors.

Even when the courts in many cases have reinterpreted the rights or have advanced in their criteria for understanding more fully the human rights of the indigenous peoples, the authorities at the executive level of government, whether local or federal, have systemically failed to fulfil, or they have complicated, the execution of judiciary resolutions. It is not only in the issue of the rights of the indigenous peoples and communities as related to the ESCER that sentences are not carried out; there also exist other serious violations of human rights against the indigenous population, in which the facts of the case have not been resolved or the court sentences are not met with compliance.

Thus, in a context so conflictive and dramatic as that of Guerrero, there exist several cases where justice has not been achieved and in which, in the legal proceedings, the indigenous condition of the victim represented an obstacle in order to get justice done; and more violations to human rights derive from that. This occurred with Ines Fernandez Ortega and Valentina Rosendo Cantu, indigenous me'phaa women, who were sexually tortured by elements of the Mexican army and whose case was taken up by the Inter-American Court of Human Rights (IACtHR) several years later; in Mexico they were re-victimized from the first moment when the authorities refused to receive their denunciations and then minimized what they said and considered them inferior just for the fact of being indigenous. This case is perhaps the most paradigmatic in Guerrero: presently both women continue being revictimized with unnecessary court appearances, and in many cases no mention is made of their being indigenous. Legal judgments have not been complied with, and those who were determined to be responsible for their actions against the women have still not received a definitive sentence even though the deeds occurred more than ten years ago; as well, legal compensation has not been fulfilled.

Another example is the case of Bonfilio Rubio Villegas, an indigenous Nuaa man who was executed extrajudicially in 2009 by elements of the army, when he was traveling in a bus going from Guerrero to Mexico City. His case reached the Supreme Court of Justice of the Nation (SCJN), and in 2012 the ministers of the Supreme Court declared for the first time the unconstitutionality and unconventionality of Article 58 section II of the Code of Military Justice, and they suggested that it be reformed to delimit military jurisdiction. Nevertheless, despite the fact that this was a paradigmatic case, no justice was

achieved in Mexico. At the beginning of this year a petition was sent to the InterAmerican system. This case also demonstrated violations to due process and access to justice by the indigenous population.

Without a doubt, another case that shows the pretension of access to justice and impunity is the forced disappearance of the 43 students from the “Isidro Burgos” Teachers College in Ayotzinapa, Guerrero. A large number of indigenous students from the region attend this school, since it is sometimes the only option to be able to study free of charge. The disappeared students had indigenous roots, and some spoke an indigenous language; they had begun to study at the teachers college and they were beginning to develop their political thinking. After their forced disappearance, they were criminalized, and their mothers and fathers have not been able to find either truth or justice during the past three years.

On the other hand, with regards to ESCER, one can mention the historic legal judgment that was won by the indigenous community of Mini Numa in the State of Guerrero in 2008, in which a judge ordered the government to provide health services to the community by sending in a doctor, a nurse, and a basic supply of medicines. Nevertheless, in the last judicial inspection carried out on March 8, 2016, the conditions of the Health Clinic in Mini Numa and the conditions of the municipal Health Clinic were evaluated, and it was indicated that neither of the two spaces was fully carrying out the stipulations of the legal judgment.

A similar situation occurs with the hydroelectric project of “La Parota” in the State of Guerrero. In April of 2011 an agrarian tribunal passed a legal judgment that put an end to the pretension of imposing the hydroelectrical project (with that determination, there are now five judgments resolved in favor of the communal landowners who oppose La Parota). Nevertheless, year after year the Legislature approves in its federal budget of expenditures an amount of money designated for the construction of the hydroelectric project. And recently, the National Plan for Infrastructure included the project once again. Moreover, parallel projects are taking place that lead some to believe that at a given moment the construction of the dam will be reactivated; for example, roads close to the area are being paved, and it is thought that this might be so that heavy machinery can more easily get to the project site.

These are some examples of different cases where justice has not been achieved. It turns out to be especially serious in a country where impunity and corruption reign, where the institutions that should be monitoring the fulfillment of the law are incapable of doing so. The lack of recognition by the government of the crisis in human rights and in impunity, as well as the absence of preventive measures that would deal with the sources and causes of the violence and the aggressions against the indigenous population, continues to foster the violations of their human rights.

## **6. Conclusions and recommendations:**

The visit to Guerrero of the Special Rapporteur of the United Nations on the Rights of Indigenous Peoples occurs within a framework of inequality, impunity, generalized violence, corruption, collusion of authorities with organized delinquency, the wrongful use of laws and other juridical regulations on the part of governing administrations. This is a context that violates the rights of the indigenous peoples and communities; something needs to be done to eradicate the structural flaws that provoke this situation.

In the visit that was made in 2003 by Rodolfo Stavenhagen, the Special Rapporteur for human rights and the basic freedoms of the indigenous peoples, he called attention to 42 recommendations for the Mexican government. We could reaffirm these same recommendations 14 years later, not only because these have not been carried out but also because actions have been carried out that go against these proposals. No attention has been given to the lack of adequate legislation to protect the rights of the indigenous peoples and communities; nor has respect been given to Convention 169 of the International

Labor Organization. Besides that, instruments have been created that infringe on these rights and go against international treaties.

At the same time, the situation of violence in the indigenous regions has not been dealt with; indeed, the situation is worsening due to the lack of a true rule of law and effectiveness of the governing institutions. This has meant that some situations that were a concern for Stavenhagen in his visit, such as internal forced displacement, have grown in terms of numbers. As well, priority continues to be given to the militarization of the territories of the indigenous communities, in spite of the existence of serious violations committed against this sector.

The agrarian conflicts have been ignored with the change and disintegration of one Secretariat and the ineffectiveness of an Attorney General's office that has not managed to resolve the problems between communities and that—just the opposite—has worsened the situations.

The inequality between the indigenous population and the rest of the population continues to grow, since more interest is now given to private and economic interests. The indigenous territories have been sullied by the government itself, which has also punished the defenders of their lands.

For all of these reasons and considering the situation of the indigenous peoples and communities of the State of Guerrero, we reaffirm and recommend the following:

### **General recommendations**

- I. That recognition be given to the serious crisis of human rights that Mexico is going through and the impacts this has on indigenous peoples and communities. And that the government be called upon to respond to the structural problems that generate this situation, such as corruption and impunity.
- II. That the necessary measures be taken (legislative and public policies) to guarantee that the indigenous peoples have full access to their rights.
- III. That indigenous women be treated with respect and dignity, as well as in their own language in administrative and justice institutions. Mexican authorities should be trained to mainstream gender perspective and multiculturalism in their public actions.
- IV. That any statutes that are harmful to human rights be abolished in legal frameworks such as the Energy Reform and the Mining Law and that the right to self-determination of the indigenous peoples be included in these laws. The federal Congress should reopen the debate in terms of structural reforms and those laws that have been passed that violate the rights of the indigenous peoples.
- V. That it be recommended to the government that it create and supervise the institutions in charge of protecting the rights of the indigenous peoples, as well as those personnel responsible for resolving agrarian conflicts that affect their territories; the goal is to be sure that these are functioning according to international standards related to indigenous peoples' rights.
- VI. That respect be given to the right of self-determination and to the system of norms used in the indigenous communities, recognizing at all times the indigenous customary law and avoiding the criminalization of the communities.
- VII. That all of the previous recommendations made by the Special Rapporteur be reiterated to the Mexican government, especially those related to the access to justice and the structural flaws in the Mexican judiciary system.

## Specific recommendations

- I. That the authorities responsible for the criminal process of Arturo Campos Herrera resolve and grant his release based on the lawfulness of his acts as an indigenous communitarian police member and human rights defender.
- II. That the sentence of the case of Ines Fernandez and Valentina Rosendo by the IACtHR be fully complied with, especially in terms of the collective reparation related to the Communitarian Center for Me'phaa and Tun' Savi Women. The Mexican government should take all measures necessary for this communitarian center to function with a sufficiently funded and culturally adequate structure. Additionally, a careful review of the provisional measures issued by the IACtHR should be performed, given that their objective is to prevent further actions against the beneficiaries. Withdrawing such measures could result in risking the non-repetition of the violations against Ines Fernandez, Valentina Rosendo and their families.
- III. That the authorities responsible for determining the administrative requirements for opening health centers in villages of less than 2.000 inhabitants be reviewed and accommodated to the necessities of indigenous communities. The right to health of the Mini Numa community should not be neglected to the detriment of communities that do not share the characteristics of the majority of the population, including their ways of life and the patterns of settlement.
- IV. That the authorities responsible for the compliance of the recommendation for El Coyul case take the necessary measures to grant their right to education. Adequate facilities, a sufficient number of teachers and books in the maternal language of the children should be provided as soon as possible.
- V. That the Mexican government refrains from further legal intervention against the resolution of the Júba Wajjin case for the protection of their land and ways of living against mining companies.

**For more information, contact:**

[internacional@tlachinollan.org](mailto:internacional@tlachinollan.org)