

Tlapa de Comonfort, Guerrero Mexico, January 2012

Re: Submission of information for shadow report for the Committee on the Elimination of all Forms of Racial Discrimination, in regard to the Report submitted by Mexico: sixteenth and seventeenth periodic report due in 2008.

Distinguished Members of the Committee on the Elimination of all Forms of Racial Discrimination:

Regards from the Human Rights Centre "Tlachinollan"; the following report aims to provide parallel information to the 16th and 17th Periodic Report of the Mexican State, to be reviewed by this distinguished Committee on the Elimination of all Forms of Racial Discrimination (CERD) in its upcoming 80th Session. Furthermore, the present report presents complementary information to the report elaborated by the National Network of Civil Human Rights Organisations "All Rights for All", which includes information on the historic and current discrimination against indigenous people in the state of Guerrero, Mexico.

The Human Rights Centre Tlachinollan is a human rights organisation working in the southern Mexican state of Guerrero, promoting and defending human rights since 1993. Tlachinollan is based in Tlapa de Comonfort, working for the last almost eighteen years mainly in the Montaña and Costa Chica region of Guerrero, accompanying the Nuaa, Na'Savi (Mixteco), Me'phaa (Tlapaneco), Ñaancue Ñomndaa (Amuzgo) and mestizo peoples in their struggles for the full respect of their human rights. The work of Tlachinollan is reinforced with its participation in the National Network of Human Rights Civilian Organisations "All Rights for All" integrated by 75 Mexican organisations.

I. General context in Guerrero

In Guerrero, additionally to the recent situation marked by the violence, poverty and marginalization persist as excruciating structural problems. The Population National Council 2010 report informs Guerrero is the state with the highest level of marginalisation in Mexico: one out of four people lacks of sewer at their home; one out of three lives in a house without a concrete floor; three out of 10 do not have access to tube water and more than half of the population lives in overcrowding conditions. These high levels of marginalisation place Guerrero as the state with the highest rate on maternal mortality: 126.7 women out of 100,000 newborns, twice the number than the national level. Just as in the rest of the country, poverty impacts specially to the indigenous population, which in Guerrero is up to 600,000 Nuaa, Na savi, Me'phaa y Ñomndaa indigenous people; 80% of this population inhabits in the Montaña region.

For this reason, Guerrero is, along with Oaxaca, one of the states from where more people migrates: the National Institution of Statistics and Geography approximates each year more than 73,000 people from Guerrero, most of them from one of the 37 municipalities with the communities with the highest rates of marginalisation, leave the country searching for a better paid work in the United States.

In general terms, the critical situation in the Montaña region, where 80% of the indigenous population lives, has not change during recent years, including since the last evaluation of the Mexican State; the numbers of the latest national census in 2010 confirm the 19 municipalities are in the lowest levels in all indicators relevant for defining human development indicator. For example, on housing, 51.98% of the houses do not have access to potable water, 13.43% do not have access to electricity, 53.61% do not have sewer, 25.36% do not have concrete floor and 38.73% do not have toilet facilities. The numbers on education are not very different: the media on years of attendance to school for the Montaña region is of 4.89 years, which is around fourth year, while in Guerrero is around 7.3 years and the national level is 8.6.

The critical situation in the Montaña in Guerrero has been highlighted by the UN Found for Children, which has noticed on the rate on children mortality in municipalities such as Cochoapa El Grande, Metlatónoc, Alcozauca, Tlapa and Chilapa, which is around 89 children out of 1000 newborns alive; while in Mexico is around 28 and 6 on industrialised countries. In particular Cochoapa El Grande, according to the United Nations Development Programme, is the poorest municipality in Mexico, with the highest indicators on misery, malnutrition, lack of access to health and illiteracy, with levels compared to populations in the Sub-Saharan Africa.

This context of extreme marginality has become more complex on recent years due to unforeseen regional dynamics which have become more acute on recent years. The regional context has been modified by the extension of the violence associated with drug-trafficking and militarisation, and with new disputes for territory and natural resources, affecting indigenous communities in the Montaña. In the following section, further information on some of the recommendations formulated by the CERD in its last review to the Mexican Sate in 2006 will be provided.

II. Comments on the recommendations of Committee on the Elimination of all Forms of Racial Discrimination [CERD/C/MEX/CO/15] to México:

12. While the Committee takes note of the explanations supplied by the State party in relation to the constitutional reforms of 2001 as regards indigenous rights, it regrets that those reforms have not been followed through in practice. The Committee also regrets that the indigenous peoples were not consulted during the reform process. (Art.2)

The Committee recommends that the State party should put into practice the principles set out in the constitutional reform in relation to indigenous matters in close cooperation with the indigenous peoples.

15. The Committee reiterates its concern that indigenous communities have no legal security with regard to land tenure, particularly in the Huasteca region, where the indigenous communities' struggle for recognition of their ownership of land and the granting of titles has resulted in dozens of deaths over the past three decades. (Art.5 (d)(v))

The Committee reminds the State party of its general recommendation 23 on the rights of indigenous peoples, in particular paragraph 5 which calls on State parties to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands and territories. The Committee also recommends that the State party should ensure the effective implementation of the programme for dealing with hot spots, which is designed to settle conflicts caused mainly by disputes over land ownership. The Committee requests the State party to supply information in its next periodic report on progress made in this area.

In Mexico it is still pending a constitutional reform, which endorses all demands of the indigenous people, expressed in the San Andres agreements. The Mexican Constitution recognises the right to self-determination in the election and exercise of the indigenous people political issues, even though, it does not consider mechanisms to protect this population from state and non state actors looking for exploiting their territory, under the false arguments of development and benefits from megaprojects. The only legal framework which protects the territory of indigenous people in Mexico are the Constitutional Article 27 and the Agrarian Law; as the Mexican State does not consider the natural resources in indigenous territory the historic heritage of these people, of the as it is established on international conventions, limiting the population's legal relationship with its territory is limited to temporal occupation contracts.

The Agrarian Law establishes companies need the consent of General Assemblies from the *Ejido* and Community lands to temporarily occupying their lands but not to exploit their water and mining resources, as this is a State right, implying the control and displacement of the communities inhabiting the indigenous territories. The Assemblies are the highest decision-making organ in the agrarian lands, which might sign or reject agreements, impeding temporarily the companies to enter to their territories for exploring or exploiting the metal deposits, without annulling the concessions, which remain active.

The remarkable rise on mining concessions granted to private entities which attempt to exploit natural resources from the subsoil through damaging techniques of “open pit mining” is one of the highest concerns. Tlachinollan has documented that from 2005 – 2010 the Federal Government granted in mining concessions for more than 50 years, around 200 thousand hectares of the indigenous territory in the Montaña and Costa Chica region.

The concessions were granted to multinational companies for exploration and exploitation open-pit mining activities, without having previous, free and informed consent from the population; even though Article 2 of the Mexican Constitution establishes the preference right of indigenous people to enjoy the usufruct of the natural resources in their territory and contrary to what it is established by international standards, such as 169 ILO Convention, the UN Declaration on the rights of indigenous people and the norms and jurisprudence of the Inter-American System of Human Rights on the subject.

The lack of mechanism to demand territorial rights and of legal protection are an obstacle for the agrarian lands and indigenous communities to defend their territory, as the mining promoters enter to their communities imposing their actions, with the consent and complicity of the Mexican government, through its institutions such as the Agrarian Ombudsman (Procuraduría Agraria¹), the Economy and Social Development Ministries. These institutions, through misinforming the communities, pretend to convince the population to give away their lands and alienate its natural resources through agreements of temporal occupation for small economical benefits, salary based employments, and uncertain promises of a better future and even conditioning governmental programmes.

During this process is very common to document buying out and coercion of *ejido* and community lands authorities and local leaders, through the distribution of presents and uncertain promises, promoting the breakdown of the community consensus and downgrading the agrarian lands as a collective subject. When the agrarian community overpass these coercive methods, the governmental authorities in some cases have initiated legal process and threats against the community, promoting collective uncertainty and fear, cancelling projects or programmes for the communities, disregarding the local authorities, repressing and pointing those who are defending their territory as enemies of the progress; generating divisions and damaging the social fabric of the community, which in many cases are already confronted by internal disputes, especially by land delimitation conflicts.

In the Montaña, Costa Chica, Central and Tierra Caliente regions of Guerrero increased mining concessions and the implementation of mega projects of exploration and exploitation of minerals is exacerbating social tensions and environmental costs, creating conflicts and territorial claims.

¹ The Procuraduría Agraria has its two main functions: to supervise that due process is followed in applying the procedures outlined in the agrarian law; and to fulfill an ombudsman function in which it is charged to actively represent and defend ejidatarios, comuneros and other agrarian subjects such as small land owners, ejidos, comunidades, avecindados, and agricultural wage laborers. To fulfill this function effectively, a civil service structure that provides paralegal assistance (visitadores) and lawyers to the social sector was established.

These conflicts often have as background, deception by private contractors, and the lack of consultation and ransack of not only land and minerals, but water, forests. Contrary to what the State informs in his latest report, during the last two years at least, the conflicts in the Costa – Montaña region of Guerrero between the following agrarian lands have intensified and not diminished:

| Agrarian Lands | VS | Agrarian Lands |
|-----------------------|-----------|-----------------------|
| Alacatlazala | | Coatzoquitengo |
| Malinaltepec | | Alacatlazala |
| Ocuapa | | Tlacoapa |
| Coyul | | Cochoapa el Grande |
| Zitlaltepec | | Buena Vista |
| Tierra Colorada | | Tilapa |
| Colombia de Guadalupe | | Tilapa |
| Iliatenco | | Tilapa |
| Zapotitlán Tablas | | Acatepec |
| Huexuapan | | San Vicente Zoyatlan |
| Terrero Venado | | San Pedro Cuitlapan |
| Tenamazapa | | Tlacoapa |
| Marquelia | | General Rodríguez |
| Jicayan de Tovar | | Jicayan (Oaxaca) |

13. *The Committee expresses concern at the failure to implement article 10 of the Law on Linguistic Rights of Indigenous Peoples under which indigenous persons are entitled to use interpreters in the administration of justice. (Art.5 (a))*

The Committee, bearing in mind General recommendation 31 (Section B, paragraph 5e), recommends that the State party should guarantee the right of indigenous peoples to use interpreters and court-appointed defence counsel who are familiar with the language, culture and customs of the indigenous communities.

The Mexican government has attempted to reform a series of legislation to protect indigenous languages, for example, the mentioned “*Law on Linguistic Rights of Indigenous Peoples under which indigenous persons are entitled to use interpreters in the administration of justice*” establishes 62 indigenous languages as national languages. In addition, article 10 of this law, establishes that indigenous persons are entitled to use interpreters in the administration of justice; however these laws remain rather symbolic and have not been properly implemented.

“While the law requires that translation services from Spanish to indigenous languages be available for the accused at all stages of the criminal process, this is generally not done in practice. The indigenous populations of Guerrero and Oaxaca are particularly vulnerable to this violation of their rights due to the lack of translators and the disproportionately high number of different indigenous languages spoken in this region”². Even the Mexican authorities accept that “the lack of funds to procure translators undermined the justice system’s ability to implement the legislation and has continued to exacerbate the indigenous communities’ lack of faith in the criminal justice system”³. Moreover, in the report for the 2009 UPR the State has acknowledge that “Mexico still faces the difficult task of effectively providing counsel and

² Bar Human Rights Committee of England and Wales. Recalling the Rule of Law: Report of the lawyers’ delegation to Mexico A report on the protection of human rights defenders and the rule of law in the states of Guerrero and Oaxaca, Mexico, July 2010 p. 22.

³ *Ibid.* Interview with the Town Mayor of Tlapa, Guerrero

qualified translators and interpreters for all trials and procedures in which indigenous language-speakers are a party”⁴.

This situation generates that some indigenous persons who are going through a criminal process and who cannot speak Spanish are sometimes completely ignorant on the status of their cases and are forced to sign papers which incriminate them without fully understand them. For example in the case of Raúl Hernández, who was imprisoned for more than 2 years for a crime he did not committed, when initially interviewed by the police, was not allowed to speak in his indigenous language.

On 17th April 2008, five indigenous human rights defenders from the Organisation of the Me’phaa Indigenous People were arrested: Raúl Hernández Abundio, Manuel Cruz Victoriano, Orlando Manzanarez Lorenzo, Natalio Ortega Cruz, and Romualdo Santiago Enedina. They were arrested at a military checkpoint, which included members of the Mexican army, the Federal Bureau of Investigations, the Federal Preventative Police, the Ministerial Police from Guerrero State, the State Preventative Police and the Municipal Preventative Police in Tecruz community, located in Ayutla de los Libres, Guerrero. The same day, they were presented before the Judge Alfredo Sánchez , Mixed First Instance Judge in Allende Legal District, based in Ayutla de los Libres, Guerrero.

The Attorney General’s Office of Guerrero and Judge Alfredo Sánchez, accredited probable responsibility for the murder to 15 members of the OPIM, despite the fact that the only evidence against them were the declarations of two witnesses who did not even see the crime. The decision was based purely on suspicions, violating the principle of the presumption of innocence.

On 28th April, the Mixed First Instance Judge, Alfredo Sánchez Sánchez, ordered preventive detention of the five indigenous men. Subsequently, an attempt was made to impose a lawyer to “defend” the five prisoners, when it is a fundamental right of prisoners to choose their legal representative. When the five members of the OPIM wanted to make their preliminary statements in writing, the judge refused it, arguing that they were written in Spanish and not Me’phaa; an unjustified argument given that the Guerrero state code of legal proceedings establishes under article 12 that Spanish will be used within legal proceedings in the courts in Guerrero and a translator will only be required when documents are presented in different languages. However, this does not mean that a statement is inadmissible when produced in Spanish, just because the person who signs it speaks another language.

It was not until 15th May that they were able to make a verbal statement and even then, the Judge tried to impose Romualdo Remigio upon them as an interpreter, in spite of the fact that he is one of the people who participated in fabricating the crime, meaning that he was likely to falsify the facts. The five men were declared Prisoners of Conscience by Amnesty International in November 2008.

On 7th July 2008, the prisoners turned to the federal justice system to request an injunction against the preliminary detention order issued by the Mixed First Instance Judge. On 15th October 2008, the Eighth District Judge in Guerrero State, Livia Lizbeth Larumbe Radilla, granted the injunction to four of the five prisoners from the OPIM, who had been accused of being intellectual authors of the crime (Manuel Cruz, Orlando Manzanarez, Natalio Ortega and Romualdo Santiago). She ruled that the evidence presented during the process did not implicate them in the crime and therefore she ordered their release. In the case of Raúl Hernández, the Judge denied him the injunction against the preventive detention order because he had been accused of material authorship of the crime.

Raúl was imprisoned for more than 2 years; during his time in prison, Raúl received visits in jail for support and demanding his freedom, including the visit of the Special Rapporteurs for Freedom of Expression of the Inter- American System and of the United Nations⁵ on August 2010. Mr. Frank La Rue told Raúl

⁴ National report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council resolution 5/1, 10 November 2008 (A/HRC/WG.6/4/MEX/1) para 120.

⁵ See. CIDH Special Rapporteur of Freedom of Expression. 2011, Special Report on Freedom of Expression in Mexico, 2010. Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Mr. Frank La Rue. Visit to Mexico. 10 May 2011. A/HRC/17/27/Add.3

Hernández that there was no doubt that his imprisonment was a “great injustice” and as Special Rapporteur added “I give special importance to the freedom of expression of indigenous people, because they have the legitimate right to organise themselves and raise their voice”.

Three days after this statement, on 27 August 2010, the Mixed First Instance Judge in Allende Legal District ordered the absolute freedom of the human rights defender Raúl Hernández Abundio, after dictating an absolutory sentence in which he was declared “not guilty nor criminally responsible” for the crime of homicide of Alejandro Feliciano García in 2008. The Public Prosecutor presented an appeal to the sentence before the Supreme Tribunal of Justice in Guerrero, which confirmed the decision of the First Instance Judge. Raúl has returned to his community in Camalote and reintegrated to his activities as an active member of OPIM.

14. The Committee notes with concern that under Article 2, section VII of the Constitution, the right of the indigenous peoples to elect their political representatives is limited to the municipal level. (Art. 5(c))

The Committee reminds the State party of article 5 (c) of the Convention, and recommends that it should guarantee in practice the right of the indigenous peoples to participate in government and in the management of public affairs at every level.

In the context of participation in their political life and practice in government of indigenous people, in the Costa Chica region of Guerrero, the Nn’anncue Ñomndaa people has go through a series of repressive actions in response to their will to exercise their right to self-determination. The Xochistlahuca (Suljaa’) municipality, located in the South of Mexico, Costa Chica region of Guerrero state, has 23 thousand inhabitants; 95% of the population are indigenous Nn’anncue Ñomndaa people. Suljaa’, the name of the municipality in Nn’anncue Ñomndaa, is at the heart of a project which vindicates the Nn’anncue Ñomndaa people’s identity as indigenous people and their right to self-determination, in response against the authoritarian local cacique power group, supported by the Institutional Revolutionary Party (PRI).

During the last ten years, human rights defenders Nn’anncue Ñomndaa have focused their efforts on defending their traditional community decision-making process and election of authorities. Reacting to the imposition of non-traditional authorities, in 2001 they took the Major’s Office and established a government with their traditional authorities, elected by the community. These traditional authorities lead decisions on issues of impartation of justice, health, education, promotion of women’s rights, among others. In addition, on 20 December 2004, “Ñomndaa Radio” was created as community media, functioning as a mean to promote their culture, customs and tradition; today, it is the only one that broadcast in an indigenous language in the region.

Since the beginning Ñomndaa Radio, “La Palabra del Agua” (the word of water), has suffered different attempts of closure and seizing their equipment from the Communications and Transportation Ministry (SCT), members of the Armed Forces and from the Public Security Ministry (SSP). Furthermore, members of the Board of Directors of the Radio have been unjustly criminalised and harassed, through detentions and judicial processes, which only prove the collusion of powers and the lack of an impartial and autonomous judicial system.

On 10 September 2010, Judge Derly Arnado Alderete Cruz, of the Lower Chamber in Ometepec, Guerrero, pronounced a sentence condemning Genaro Cruz Apóstol, Silverio Matías Domínguez and David Valtierra Arango, Nn’anncue Ñomndaa indigenous defenders of the traditional authorities of Xochistlahuaca and members of the Ñomndaa Radio, to three years of prison and a fee of 1,753 pesos. The sentence marked the end of an irregular legal process through all the justice system started in 2004, in which all of the defendants were accused of deprivation of freedom of Narciso García Valtierra.

This accusation originates from a Community Assembly in Xochistlahuaca in May 2004, where all the assembly members, under their customs and traditions norms, requested Mr. García to stop invading and selling 12 fields of communal use of the *ejido* (a form of politically-established land ownership). When Mr. García reacted with violence, the Assembly decided, according to their customs and traditions, to keep him under custody of the Traditional Authorities; after 24 hours, Mr. García recognised his fault and was liberated. Nevertheless, in the aftermath, this became a lawsuit exclusively against Genaro Cruz Apóstol, Silverio Matías Domínguez and David Valtierra Arango.

In response to the sentence, on 27 September 2010, the defence, lead by Tlachinollan Human Rights Centre, interposed an appeal to the sentence, which was admitted and then heard on 21 February 2011, when the grievances were presented formally. The complaints presented by the defence show that the sentence was dictated without any solid proof that the defendants participated in the events; moreover, it was exposed that proofs were manipulated, when witnesses accepted that during the process the public prosecutor dictated them their declarations. Furthermore, Mr. García accepted that he did not know the defendants and that these did not deprive him of his freedom.

The defence also noticed that the Judge sanctioned conducts, which could not be imputed to the defendants. In reality the events developed from a collective sanction imposed by a general indigenous assembly, according to their customs and traditions, exercising their collective rights as indigenous people and without any solid proof that this had the purpose to attempt against the integrity of Mr. García. It was highlighted, that international and national standards on indigenous people's rights to use their community normative systems to solve conflicts within their communities were completely disregarded.

Notwithstanding, the Judge formulated in his sentence discriminatory expressions based on the ethnicity of the defendants; affirming that Nn'ancue Ñomndaa people are "*in general, distrustful, aggressive and vengeful*". This kind of expressions from a civil servant of the judiciary show how the decision is based on deep-rooted discrimination against the indigenous people.

Furthermore, it is important to contextualise, that the same Judge who decided against these indigenous rights defenders, simultaneously exonerated a person -member of the cacique power group of the region against which the traditional authorities of Xochistlahuaca and Ñomndaa Radio organised, who is responsible of attacking Silverio Matías, causing the lost of his eye; showing the impartiality of the judge, in addition to the rooted discrimination on the decision.

On 22 March, the Upper Chamber of the Guerrero State Tribunal (TSJ Guerrero) decided on the criminal case I-88/2011 in favour to the freedom of the human rights defenders David Valtierra Arango, Genaro Cruz Apóstol and Silverio Matías Domínguez after being accused of illegal deprivation of freedom.

16. The Committee remains concerned at the situation of migrant workers who originate principally from indigenous communities in Guatemala, Honduras and Nicaragua, particularly as regards women, who are victims of such abuses as long working days, lack of health insurance, physical and verbal ill-treatment, sexual harassment, and threats that they will be handed over to the migration authorities because they are undocumented. (Art.5 (e) (i))

Bearing in mind general recommendation No. 30 on non-citizens, the Committee recommends that the State party should ensure the proper implementation in practice of programmes for migrant workers, such as the Programme of Documentation for the Legal and Migratory Security of Guatemalan Farm Workers, the Regularization of Migration Programme, the Programme for upgrading migrant holding centres, the Plan of Action for Cooperation in Migratory Matters and Consular Protection with El Salvador and Honduras and the Agricultural day labourers' programme. The Committee calls on the State party to include in its

next periodic report information on progress made in relation to the situation of migrant workers in the State party.

Notwithstanding the Recommendation by the Committee focuses on migrant workers from Central America, the truth is that the terrible labour conditions and abuses suffered are shared by the indigenous population from different entities in Mexico, especially from states such as Guerrero, Oaxaca, Chiapas and Veracruz. A large number of indigenous population from these states work as seasonal agricultural workers and constitute a large number of the internal migration within Mexico, mostly devoted to the harvest of tomatoes and apples, among other crops, in the northern states of Sinaloa, Sonora, Coahuila, and others. These internal migrants, whose number is estimated at up to 3.5 million people, mainly indigenous peoples, live on ranches or agricultural fields for several months at a time and rotate according to the needs of each season under deplorable working conditions, health standards, housing, transport and education that have been registered as inferior to international standards⁶.

It is important to note that most of the population migrating from their communities of origin does it because of the poverty conditions in which they live, as mentioned in the general context, which force entire villages to make the decision to migrate: survival is the main reason. Thus, entire communities of indigenous people have to leave their homeland to go and look for a job which enables them to feed their families. This choice becomes a way of life, which triggers a series of human rights violations during the entire process, from coming out until they return to their communities, which show structural faults and deep-rooted discrimination and racism against indigenous people, as well as the failure of the State to take the necessary measures to ensure respect for human rights. This scenario shows the lack of corporate and State responsibility in order to monitor labour conditions and benefits which should be provided to all agricultural workers.

Guerrero has the first rank nationwide of internal migration. The first explanation for this phenomenon has to do with the high rate of exclusion prevailing in the state; according to the National Commission for the Development of Indigenous Peoples (CDI), 73.9% of municipalities with indigenous people are not capable of providing alternative employment for its population, mostly in naua, na savi and me'phaa.

Guerrero has the most marginalised regions across the country. According to the Ministry of Social Development (SEDESOL) out of the seven regions comprising the state, three are those with the highest annual rates of migration of seasonal agricultural workers: the Mountain region, Central and Costa Chica (mainly Ometepec municipality). In a context of "high marginalisation", indigenous families are perceived as highly profitable labour- workers being the cheapest in the rural labour market.

In Guerrero, over the past 13 years, 388 000 agricultural workers from rural and indigenous areas have migrated, mainly to the north-western states like Sinaloa, Sonora, Baja California, Baja California and Chihuahua⁷. There are more than 500 indigenous communities expelling yearly large contingents of agricultural workers.

Since 2006, Tlachinollan, based on records of the Council of Agricultural Workers of the Montaña, has documented the migration of more than 32 thousand agricultural migrant workers from the Montaña region. Only during the 2010-20101 High Season of Migration, which goes from September to January, there were a total of 7, 358 migrant agricultural workers where registered, out of which 3,858 were men and 3,500 women; out of these 3,309 were younger than 15 years old and 459 were children from zero to one year old. Tlachinollan has identified that out of the 19 municipalities in the Montaña region, at least 8 (Metlatónoc, Cochoapa el Grande, Tlapa de Comonfort, Copanatoyac, Atlixac, Xalpatláhuac, Alcozauca and Atlamajalcingo del Monte) expulse a large number of migrant workers. About 322 indigenous communities in these towns every year families recorded massive outflows of agricultural workers.

⁶ Report of the Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante. Mission to México. A/HRC/11/7/Add.2 24 March 2009 .

⁷ Minister of Social Development, 2009. Comprehensive Diagnosis on agricultural seasonal workers and their families.

These facts and figures are only part of the migration radiography performed not only annually, but even three times a year by the families of indigenous labourers in the region of the Central, Montaña and Costa Chica regions.

The human rights situation of indigenous agricultural from these regions is serious and ignored, both by government authorities and international organisations. It is an invisible population, which vulnerability increases when they do not have the possibility to demand better conditions at work.

The violations of their rights do not happen exclusively in the agricultural fields, but emerge from their places of origin, continuing during the journeys to reach the fields, and carry on in the working areas and on their way back, just as other migrant workers coming from Central American countries.

Tlachinollan has documented in a detailed report⁸ multitude of abuses such as unfair dismissals; withholding of wage and documents; excessively long working hours; abuse and discrimination as the seasonal agricultural workers are abundant and cheap labour-force, which force them to accept living under poor feeding, housing and health condition. In most cases, Tlachinollan has documented that violation of the rights of indigenous seasonal agricultural workers from Guerrero occur through negligence or omission of the State, and with its clear knowledge of the situation. The Mexican State has been negligent in implementing administrative, legislative and public policy to prevent these abuses and violations of the rights of indigenous migrants.

This has been constantly pointed out by, different mechanisms for the protection of human rights mechanisms, which have commented on the seriousness of the situation, for example the Committee on Economic, Social and Cultural Rights has expressed concern over poor working conditions of indigenous workers, with emphasis on the situation of women, who are ill or unpaid, or working deprived of social security benefits or paid vacations, often with contracts as members of a family or completely unpaid⁹.

In addition, at the end of his visit on June 2011, the Special Rapporteur on the Right to Food, Olivier De Schutter, spoke about the challenge of protecting the human rights of agricultural seasonal workers, which 90% does not have a formal employment contract. Even though the Minister of Labour and Social Protection [STPS] has taken a series of efforts to address this issue in recent years, establishing an inter-institutional coordination mechanism to address the issues raised by the situation of seasonal agricultural workers, the inspection services for labour conditions do not have enough staff and lack capacity - there are 376 inspectors working in the whole country and the number of registered workers has increased significantly since the new strategy was launched. The Special Rapporteur recommended that inspections of labour conditions should be strengthened and existing legal restrictions which forbid unannounced visits to the fields should be abolished immediately. Agricultural seasonal workers and unions in the agricultural sector should be informed of their right to report abuses anonymously to the STPS, as well as to provide an incentive to report such abuse, the employer is in violation of its obligation workers to register must submit to fines and the obligation to pay wages to workers 16¹⁰.

Despite these recommendations, actions have gone against the waves. A worrying factor is the fact that even though the number of migrant agricultural workers from Guerrero increases, authorities at the state and federal levels have dropped their support, to have restructured their institutions and limited staff dedicated to the care of migrants.

Notwithstanding, the creation of programs, which show the interest of the State to address this situation, Tlachinollan has identified serious deficiencies in them, mainly because these do not address the root problems, which will imply to target the structural issues, which led to the expulsion of indigenous people to become indigenous migrant workers. An immediate priority is to legislate on agricultural seasonal

⁸ See, Tlachinollan, *Migrar o Morir* [Migrate or Die]: <http://www.tlachinollan.org/Archivos/Migrar%20o%20morir.pdf>

⁹ Concluding Observations of the Committee on Economic, Social and Cultural Rights. 9 June 2006. E/C.12/MEX/CO/4. par. 13-14

¹⁰ Special Rapporteur on the Right to Food, Mr. Olivier De Schutter. Mission to Mexico, 13 -20 June 2011, Final Declaration during the mission.

workers and to improve their lives and labour conditions, but more important is to respect and enforce the laws that already count with detailed regulations. It is not just a question of modifying or not laws, rather it is about being a priority of public policy of the Mexican State.

III. Conclusion

The binomial indigenous - poverty in Mexico is the result of a complex historical process in which fundamental human rights of indigenous peoples have been violated for centuries. The former Special Rapporteur on the Situation of Human Rights and fundamental freedoms of indigenous people, Dr Rodolfo Stavenhagen after his visit to Mexico noted that discrimination against indigenous people is manifested in low levels of human and social development, extreme poverty, inadequate social services, the manner in which research and production projects are implemented, and the great unequal distribution of wealth and income between indigenous and non-indigenous¹¹; the situation has not improved. It is in this context of extreme poverty, where the indigenous people in Mexico face deep-rooted institutional and structural discrimination, which has been illustrated in the cases named above.

The lack of implementation of legal framework - including the new Constitutional reform to Article 1, which raises to constitutional norms all international norms and international treaties on human rights to which Mexico is a party, recognising all human rights as Constitutional rights – deepens the structural problem of discrimination in a context where, indigenous rights are considered officially protected by these norms, but the institutions replicate historic patterns of discrimination. The cases of the human rights defender Raúl Hernández Abundio and his colleagues of the OPIM, as well as the cases of human rights defenders from the Suljaa' community represent a clear example of the deep-rooted pattern of criminalisation and persecution of indigenous human rights defenders who demand their rights; furthermore, it represent the obstacles constantly faced by indigenous people who face a judicial process: stereotypes, lack of translators, interpreters or adequate defence counsel with an ethnic and cultural sensitivity.

Therefore, the lack of public policies addressing structural causes of extreme poverty which create a truth welfare and development policy and not mere governmental aid, remains being a main obstacle to suppress marginalisation and discrimination,

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¹¹ Report of the Special Rapporteur on the situation of human rights and individual freedoms of indigenous people, Mr. Rodolfo Stavenhagen. Mission to Mexico. 3 December 2003 UN DOC. E/CN.4/2004/80/Add.2