



Imprisoned by discrimination: The arbitrary detention and conviction of innocent indigenous people in Mexico

Report presented to the United Nations Committee on the Elimination of Racial Discrimination (CERD) in response to the 16th and 17th periodic reports of Mexico on the implementation of the Convention on the Elimination of All Forms of Racial Discrimination

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In this report, we provide information to the UN Committee on the Elimination of Racial Discrimination to assist it in its review of the 16th and 17th periodic reports of Mexico, scheduled for evaluation in Geneva in February 2012. The report focuses on discrimination against indigenous people in the context of the criminal justice system, and in particular the practice of arbitrary detention and false criminal accusations against indigenous people, in which authorities take advantage of the victims' vulnerable condition to make them scapegoats for unsolved crimes or use the law as a tool of social repression when indigenous people seek to defend their communities' rights. By analyzing five paradigmatic cases we demonstrate the structural flaws and discrimination that encourage the incarceration of innocent indigenous people while the real perpetrators of crimes go unpunished. We conclude by identifying current opportunities to reverse these violatory practices and to improve respect for indigenous peoples' human rights in Mexico.

"I do beg the authorities, the judge, the justices, to study well the case of my son. There is proof in these documents that my son is innocent. I do not know if because we are humble people, poor, of Mazahua ethnic origin, I do not know if being a Mazahua is a problem, because supposedly he was detained for being suspicious.

Does being a Mazahua make you a suspicious person?"

*- Doña Rosalba Ramírez, mother of Hugo Sánchez.
indigenous youth imprisoned for crimes allegedly committed in the State of Mexico*

I. Executive Summary

State of Mexico: A Mazahua indigenous youth is detained while driving his family's taxi because a group of police decides that he looks "suspicious." Based on false evidence, he is sentenced to more than 37 years in prison for a crime he could not have committed.

Quintana Roo: A monolingual Mayan woman is arrested for a crime she did not commit. Convicted based on false statements and lacking an interpreter in several parts of the proceedings, she does not understand why she is in jail.

Querétaro: Three Otomí indigenous women are accused of kidnapping six armed federal agents. No kidnapping took place and there is no evidence to support such a claim, yet the women are convicted just to send an intimidating message to their community.

Puebla: Two Nahuatl indigenous men, elected to traditional positions of authority in their community, are imprisoned for a crime that did not happen, after a trial that lacked full translation into their language. The reason: they defended their community's right to potable water.

The stories of human rights violations outlined above belong to real people: Hugo, Basilia, Jacinta, Alberta, Teresa, José Ramón and Pascual. We will get to know them in the following chapters. Their cases are paradigms of structural discrimination suffered by indigenous people in the Mexican criminal justice system. They and other victims of racial, economic and social discrimination in Mexico face an increasingly bleak panorama: in the midst of a failed "war" against crime, with security forces and judicial authorities under pressure to show that they are locking up criminals to improve public security, members of vulnerable social groups such as indigenous communities become scapegoats of the system.

The Miguel Agustín Pro Juárez Human Rights Center ("Center Prodh") has repeatedly denounced the structural problems facing the Mexican criminal justice system and the special situation of vulnerability of certain social groups in this system. It is not news that indigenous peoples suffer

discrimination at the hands of public officials responsible for law enforcement. However, the current context, characterized by a public security strategy based on militarization and the use of force rather than the investigation of crimes, requires an urgent response to reduce and prevent the arbitrary imprisonment of innocent indigenous people. That is why on this occasion, we provide the United Nations Committee on the Elimination of Racial Discrimination ("CERD Committee") with information on this problem to help it review the 16th and 17th periodic reports of Mexico, scheduled for review in Geneva in February 2012.¹

We focus our analysis on the study of five paradigmatic cases of arbitrary detention and unjust imprisonment of innocent people that Center Prodh, along with partner organizations in other states, continues to accompany through a comprehensive defense strategy. These cases illustrate the ease with which the authorities can fabricate crimes and criminalize expressions of discontent against abuses committed by state agents. These situations exemplify how the prosecution uses the vulnerability of indigenous people, especially those of scarce economic resources and those not fluent in Spanish, to simulate the trial and punishment of criminals.

It is important to note that the ethnic discrimination suffered by indigenous people occurs against the backdrop of procedural inequities and human rights violations that characterize the justice system in general. The system constitutes one of the historic weaknesses of the country and the abuses committed within it have worsened over the past five years due to the war on crime unleashed by President Felipe Calderón. In this context, the constitutional reforms enacted in 2011 to raise the human rights enshrined in international treaties to a constitutional level, have not resulted to date in the State's compliance with such instruments, including the various levels of the judiciary. It is still the case that within the Mexican criminal justice system there is a lack of presumption of innocence, as judges shift the burden of proof to the defendant. At the same time, equality in the trial is seriously compromised when judges use different criteria to assess the evidence for the prosecution and defense. In summary, due process is not respected.

These factors particularly affect groups belonging to socially discriminated and low income sectors. When victims, in addition to lacking financial resources and knowledge of the criminal justice system, do not fully speak Spanish and do not have interpreters, it becomes impossible to participate and defend themselves in the criminal proceedings. Their fate: to be condemned to spend years or decades of their lives in prison for crimes they did not commit or did not even exist, fracturing families and tearing the social fabric of entire communities.

After analyzing the situation of indigenous peoples before the criminal justice system and in particular, the case studies, the report concludes by identifying some current opportunities for

¹ CERD, *Reports submitted by the States parties under Article 9 of the Convention: combined 16th and 17th periodic reports due in 2008: México*, 7 December 2010, CERD/C/MEX/16-17, www2.ohchr.org/english/bodies/cerd/cerds80.htm. Hereinafter: the State's report.

Mexico to reverse the practices that violate fundamental rights and that allow and encourage the arbitrary detention and fabrication of charges against indigenous people in Mexico.

Who are we?

The Miguel Agustín Pro Juárez Human Rights Center is a nongovernmental organization that has defended and promoted human rights since 1988. Its headquarters are in Mexico City and it defends cases from all over the country before local, national and international courts. The aim of Center Prodh is to contribute to a structural change so that society enjoys all human rights in conditions of equality.

We especially orient our work toward individuals and groups in a situation of marginalization and/or exclusion, in particular our priority populations: indigenous peoples, women, migrants and victims of social repression.

In September 2001, Center Prodh received Consultative Status before the Economic and Social Council of the United Nations. Similarly, the institution is recognized as an organization accredited before the Organization of American States since 2004.

II. Context: discrimination and criminalization of indigenous people and communities

a) The marginalization of indigenous peoples and structural discrimination toward them in the criminal justice system

Indigenous peoples are the poorest people in the country. According to the Marginalization Index published in October 2010 by the National Population Council:

"The indigenous population is one of the groups that lag behind the most in indicators of national development. The range of economic, social, political and cultural factors that keep this group of the population marginalized is wide, recalling that this group is also located in a considerable part of the country. [...]

[O]ut of the 312 indigenous municipalities, 218 have a very high degree of marginalization, 75 have a high degree and only 19 have an average degree; it is striking that not one of the 312 indigenous municipalities has low or very low marginalization levels. This means that of the 441 municipalities identified in the year 2010 with a very high level of poverty, 49.4 percent are indigenous."²

Overall, as noted by the National Council to Prevent Discrimination, indigenous peoples are exposed "to a systematic exclusion and to a disadvantaged situation with regards to the rest of society" because:

"Phenomena such as poverty and discrimination worsen the living conditions of ethnic groups and minorities in the country. Access to justice is hampered by differences in language, stigma and contempt for cultural diversity. The right to education becomes inaccessible when the marginalization they suffer and the different traditions and languages are not considered. The same applies to access to health services and housing.

Indigenous peoples and ethnic minorities are vulnerable groups because they have been constant victims of discrimination. [...] The exercise of their rights and the unequal access to opportunities reaffirm old prejudices that facilitate the reproduction of exclusion and discrimination."³

The structural marginalization and discrimination suffered by indigenous peoples place them in a situation of gross inequality and disadvantage when they come into contact with the Mexican

² National Population Council, *Marginalization Index by state and municipality* (in Spanish), October 2010, page. 52, http://conapo.gob.mx/publicaciones/marginacion2011/CapitulosPDF/1_4.pdf.

³ National Council to Prevent Discrimination (CONAPRED), *Discriminación Etnias*, www.conapred.org.mx (viewed on 12 December 2011).

criminal justice system. According to information published in *El Universal*, one of the country's leading newspapers:

"National and international human rights organizations and public institutions like the National Women's Institute (Inmujeres), the National Commission of Human Rights (CNDH) and the National Commission for the Development of Indigenous Peoples (CDI) agree that indigenous peoples subjected to criminal prosecution face a judicial system with 'serious deficiencies', which arrests them, accuses and convicts them on racist and discriminatory criteria.

They state that indigenous people face trials riddled with irregularities such as: illegal arrest, fabrication of evidence, torture, disrespect for the principle of presumption of innocence, lack of translators, delay, and application of the maximum penalty regardless of their traditions and customs."⁴

In presenting its current periodic report to the CERD Committee, the State recognizes that although the Constitution guarantees the rights of indigenous peoples in paper, the reality with regard to due process and access to a fair trial is still not enough to fulfill this mandate:

"According to Article 2 of our Constitution, indigenous peoples and communities have the right to fully access the State's jurisdiction. [...]

In this sense, there are two challenges that Mexico is facing in relation to justice and indigenous peoples: first, give judicial officers the tools needed to have a comprehensive knowledge of the indigenous communities' cultural practices and regulatory systems and that ensure an absolute access to justice, while respecting their dignity and human rights, and, secondly, give authorities the tools to ensure due process and thus a fair trial through the participation of interpreters or translators and lawyers who know their native language, their characteristics, their lifestyle and values."⁵

Indeed, based on investigations conducted and cases documented by Center Prodh, we find patterns of human rights violations and situations of inequality that reflect the vulnerability of indigenous people before the criminal justice system. First, the vulnerability is compounded by the low incomes that this population often receives. The economic obstacles to hiring an attorney are insurmountable for most of the victims, leaving them in the hands of the public defender system in which they will likely not gain access to an adequate defense, which makes it almost impossible for them to overcome the presumption of guilt and leads to a pattern of false convictions for crimes that the people involved did not commit.

⁴ Liliana Alcántara, *En cárceles de México, 8 mil 400 indígenas*, EL UNIVERSAL, 31 January 2010, <http://www.eluniversal.com.mx/nacion/175326.html>.

⁵ State's report, *Op. Cit.*, paras. 421-22.

Another of the most visible forms of discrimination against indigenous people given their cultural identity is the lack of enforcement of the right to be assisted by interpreters and defenders who have knowledge of their language and culture. Despite national and international legislation,



indigenous people often do not have expert translators for some part of the process or at all of its stages. For example, according to a study of 406 indigenous women who were in prison in late 2009, 63% had not had an interpreter, in 29% of the cases it is unknown whether they had one or not and in only 8% of the cases women enjoyed the right to an interpreter.⁶ Therefore, of the 289 cases of women for which there is available data, in 89% the State did not meet its obligation to provide an interpreter at every stage of the process.

In the same line, in a study on justice in Oaxaca published in 2007 by the Mexico Office of the UN High Commissioner for Human Rights, the results of a survey of more than 1000 inmates revealed that:

"In 99% of the cases involving indigenous people there are no records of them being asked if they belong to any ethnicity or whether they are indigenous. In 94% of cases there is no other document that reflects the identity as indigenous in the preliminary investigation, and in only 4% of the cases they were allowed to testify in an indigenous language. Before the courts the determination of indigenous identity is relatively better. In 8% of the indigenous files we found explicit questions that are directed to identify indigenous people. In 53% of the preparatory statements made by indigenous people, the defendants identified themselves as belonging to an indigenous group and 8% stated that they speak an indigenous language. In 38% of cases it was the judiciary that facilitated interpreters during the preliminary statement when they were required. However, in no files of indigenous people was there a document translated into indigenous languages. On average only 16% had an interpreter during the trial."⁷

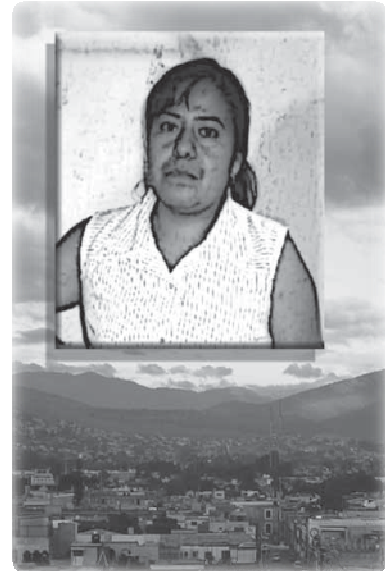
Indeed, in cases where Center Prodh has participated in the defense of wrongfully convicted indigenous people, they faced a flawed process that placed them in a state of helplessness including, among others, the lack of an interpreter, so that they could not fully understand what they were accused of and the legal process to which they were subjected.

⁶ Center Prodh, *Sociedad Amenazada: Violencia e impunidad, rostros del México actual*, February 2010, page. 29, www.centroProdh.org.mx. The data was calculated based on the information from the National Council for the Development of Indigenous Peoples registered until 30 November 2009.

⁷ Office of the High Commissioner for Human Rights in Mexico, *Access to justice for indigenous peoples in Mexico: the case of Oaxaca* (in Spanish), Mexico, 2007, available at <http://www.hchr.org.mx/files/informes/oaxaca/InformeDiagn%C3%B3sticoJusticia.pdf>, pages 93-94. Footnotes were omitted.

At a glance: Isabel Almaraz, a typical case of the misuse of the criminal system against indigenous victims

Isabel Almaraz is a native of the Loxicha Region, located in the district of Pochutla, in the southern state of Oaxaca. The population of the region consists almost entirely of Zapotec indigenous who mostly live in marginalized conditions. The inhabitants of the region have a significant percentage of monolingualism, especially among women. In the nineties this was a militarized region. The indigenous communities of Loxicha were subject to arbitrary arrests, illegal searches, extrajudicial executions, torture, forced disappearances, fabrication of offenses, threats, and other human rights violations.



In June 2002, Isabel Almaraz, a single mother, returned to the city of Oaxaca with her two daughters after being out for eight days while caring for her mother in the hospital. When she got home, men wearing black ski masks entered and arrested her. Before being brought before the public prosecutor, Isabel was beaten and threatened by the police. At the Public Prosecutor's Office, without a public defender or a translator to assist her, she was forced to sign a statement under threats and assaults.

She was charged with the crime of kidnapping. The defense of the case was assumed by the Human Rights Center Bartolomé Carrasco (Oaxaca) and Center Prodh.

In 2008, after six years of proceedings in which she was deprived of her liberty, Isabel was sentenced to three months in prison because, in spite of the insufficiency of the evidence, a judge found her guilty of the crime of unlawful deprivation of liberty, relying on a confession that was obtained in irregular circumstances. Having been detained for six years, Isabel was released but her innocence was never recognized by the authorities.

Human rights violations committed in this example case:

- Violation of personal integrity. During the arrest and the signing of the statement, Isabel suffered several blows and threats.
- Violation of the specific rights derived from her indigenous condition. Isabel Almaraz, despite being a Zapotec speaker and not understanding Spanish well, never had access to a translator or interpreter when she was before the public prosecutor nor when she rendered her ministerial and preparatory statements, which were used against her. She also did not have an interpreter in later stages of the proceedings on the grounds that she understood Spanish.
- Violations of due process. Isabel Almaraz did not have a public defender during her first statement even though the signature of a state attorney appears at the bottom of her

ministerial declaration. During the rest of the process, the lawyer did not provide her any information and thus she was forced to change lawyers on several occasions.

- Violation of the right to personal liberty and the presumption of innocence: the excessive length of pre-trial detention. The sentence that was finally imposed upon Isabel was of three months, but she was imprisoned for six years (72 months), i.e., she served 24 times her sentence.

b) The relationship between current public security policies and the arbitrary detention and unjust imprisonment of innocent indigenous people

Another aspect of the current context necessary to understand the subject of this report are the perverse incentives to detain innocent people that are generated by current policies on public security, and the adverse effects of such policies on the role played by the justice system.

Since Felipe Calderón assumed the presidency of Mexico in December 2006, the government has sought to wage a "war" against crime through militarization, the use of force, and reforms aimed at increasing penalties or providing prosecutors with more discretionary powers. These policies have not improved the security situation in the country; on the contrary, the number of people killed in the context of the war against crime has grown each year. What these repressive policies have caused is a dramatic increase in human rights violations, including thousands of complaints of abuses by the army, police forces and various state and federal prosecutors, among others. Among the serious human rights violations documented continuously by civil society organizations are arbitrary arrest, violation of the presumption of innocence, torture (used routinely to extract confessions of detainees, which often turn out to be false) and *incommunicado* detention. These are committed with more frequency as a result of the pressure on security forces and prosecutors to arrest and prosecute a large number of people, creating a context that allows for the commission of multiple abuses and unlawful or arbitrary actions by the authorities, particularly the "manufacturing of guilty people" achieved through arbitrary arrest and the production of false evidence against a person to achieve a conviction and thus appear to fight crime.

The crime-fighting strategy employed by the Mexican government based on increasing the number of arrests, as noted, has not decreased the incidence of crime and the perception of insecurity. Moreover, the available statistics conclude that 97% -98% of the crimes committed in the country are not punished. The impunity rate is mainly due to the unwillingness and/or lack of capacity of the authorities to investigate crimes through professional investigations based on the collection of evidence and on identifying the real culprits.⁸

Thus, in the absence of effective public policies aimed at preventing and combating crime, the various levels of government have favored the increase of the detainee population as an indicator

⁸ Such unwillingness or inability, along with other factors, generate a lack of confidence to report crimes before the competent authorities, which in practice means that many crimes are not denounced.

of efficiency, encouraging the fabrication of guilty charges. This criterion makes the arrests a superficial tool to hide the real inability of institutions to punish crimes adequately.

Therefore, although the majority of crimes do not end up in criminal proceedings, once a person is charged, the system seems transformed: the officers collect, without any rigor, evidence purporting to demonstrate the responsibility of the accused – evidence to be accepted without question by most of the judges, so that, of those prosecuted, most will be condemned. The criminal proceedings conducted in this logic are full of irregularities that mainly affect the marginalized sectors: the poor, people belonging to indigenous groups, and women. Another trend that aggravates irregularities and does not resolve the current situation of violence, as mentioned, has been to grant greater discretionary powers to police and prosecutors alike whose investigations are carried out without sufficient rigor and professionalism and without the proper control mechanisms to protect the rights of the people.

It is important to note that although the constitution was formally amended in June 2008 to give way to a new oral, adversarial criminal justice system based on the presumption of innocence, this reform has not been implemented in most of Mexico and even where it has been implemented, it has been distorted by state-level reforms and judicial interpretations that do not respect the purpose and spirit of the reform.

The context described here has made it possible, without any evidence and without any regard to the contradictions and flaws of the investigation, to punish many innocent people in the Mexican justice system, focusing disproportionately on marginalized sectors of society. The result is that prisons are populated not by the country's most dangerous criminals, but by the poor and those who suffer discrimination.

c) An alternative to the state's criminal justice system? The challenges that indigenous normative systems face in Mexico

In light of the evident structural discrimination and criminalization in the Mexican criminal justice system, it is important to remember that there are alternative dispute resolution mechanisms from the indigenous peoples themselves, usually based on reconciliation rather than on criminal punishment or imprisonment.⁹

There are examples of traditional systems that are benefiting their people and that become relevant in the current context as they improve the security of their communities. However, indigenous peoples continue to face resistance, imposition and criminalization by various state authorities, which may prevent the strengthening and development of these traditional systems.

⁹ CERD's General Comment 31 requires States "[t]o ensure respect for, and recognition of the traditional systems of justice of indigenous peoples, in conformity with international human rights law." CERD General Comment 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, para. 5(e), 2005, available at http://www2.ohchr.org/english/bodies/cerd/docs/GC31Rev_Sp.pdf.

The experiences of autonomy and self-determination of indigenous peoples vary like the different cultures, depending on factors such as: the historic path of their struggle for recognition, level of respect for their traditional systems, their worldview, the role of governmental entities and political parties (which often hamper their organizational processes), and a lack of recognition that before State proposals came about, they already had their own forms of social and political organization.

With respect to traditional systems and indigenous justice standards, there are systems that have emerged through the State's actions and others that arise within the indigenous peoples themselves in the search for autonomy and justice. The justice systems promoted by the State within the communities, which tend to be no more than a translation into various indigenous languages of the positive law of the State without adapting to the indigenous peoples' worldview or demands, have generally lacked success due to lack of ownership by the people. These processes have been imposed and not consulted; they have not been processes generated from the traditional indigenous systems.

Nonetheless, in the absence of adequate judicial bodies for indigenous peoples, many have sought to preserve and build their own systems. One of the many experiences that exist is that of the Tseltal judges or *jmeltsa'anwanej*, which means *dispute settlers*. The Tseltal are an indigenous group living in the state of Chiapas. Their paths toward harmony and joy of the heart are fundamental pillars of their philosophy, relying on community organization. For them, peace is a very important element, which is why Tseltal justice looks for the root of the problem and reconciliation rather than punishment, dialogue and agreement rather than finger-pointing and restoration of the communal harmony by repairing the damage. Judges are part of a system of traditional authorities and are appointed by the community assembly, based on service (that is, it is not paid work). They work in partnership with other traditional authorities to help them resolve conflicts. This experience has helped the cohesion between communities regardless of their political party affiliation or the religion they practice. Considering all these issues are incompatible with the system that the State proposes, they choose to strengthen their own culture instead.

Another experience that has been a mix between State initiatives and community initiatives is that of Cuetzalan, in the state of Puebla, where the State established indigenous courts. With the entry of political parties, the system started turning into a search for money and power instead of justice and reparation. However, the community took the space provided by the state and turned it into a community space based on their worldview.

In the state of Guerrero the Regional Coordinator of Community Authorities/Community Policing (CRAC-PC) is in the process of being established and in recent years it has become an important reference as an indigenous normative system. Given the lack of efficiency in the administration of justice by federal, state and local authorities, historic impunity, the presence of the military and rising crime and violence in the region, communities have organized themselves to ensure the security and justice that they did not have from the State. These authorities began to protect the roads and the settlements and have strengthened their functions. "The Justice administered by our regional authorities focuses on community spirit: it is a public and collective justice, where the eyes evaluating those who make mistakes are several. The most serious conflicts are always resolved within the assembly; in terms of justice, everyone in the community determines the sanctions, backed not only by the assembly, but also by the council of elders, i.e. the wisest

people that are respected the most. In community justice there is no idea of punishment. The principle is that whoever makes a mistake will have to be reeducated."¹⁰

In the state of Quintana Roo there was an experience imposed by the state government where indigenous courts were created. These courts were given a lot of publicity to spread the notion that the State was respecting indigenous peoples' rights, but they did not consider the systems and positions of administration that the Mayans already had. The experience was not successful given that the justice officials were appointed by the State. This only achieved the displacement of indigenous community justice and the breakdown of the social fabric.

In summary, despite the reforms that have been made in human rights and on the rights of indigenous peoples, a significant gap remains between the legislation and the reality in the different indigenous groups. With regard to indigenous regulatory systems in the country, a lack of willingness and openness on the part of the authorities (who often seek to impose and control rather than to keep the traditional processes) as well as ignorance, discrimination and the fear of Balkanization of indigenous peoples are some of the obstacles they face. So, in the current context the Mexican state system will remain the primary system of criminal justice for the majority of the inhabitants of indigenous regions in the country.

¹⁰ *Breve reseña y balance del Sistema de Seguridad y Justicia Comunitaria, a 14 años de lucha*. Regional Coordinator of Communitary Authorities/Communitary Police, Guerrero state. 2009.

III. International law and international bodies' considerations in previous evaluations of Mexico

The problem of arbitrary detention and unfair criminal proceedings against members of indigenous communities is not new to international human rights bodies, including the CERD Committee. This is because cases of social repression and arbitrary imprisonment under the current war on crime are an acute manifestation of the discriminatory actions already in force in the country, and largely due to the design and historic inequalities of the criminal system itself. In this regard, it is pertinent to recall some of the concerns expressed and recommendations made on these issues in previous years by United Nations bodies.

We proceed to highlight some of the internationally recognized human rights violated in these cases (enshrined in international treaties ratified by the Mexican State), and the previous conclusions and recommendations by international human rights bodies when analyzing the State's compliance with its binding obligation not to commit or tolerate acts of discrimination based on the ethnic identity of a person or a community.

Applicable rights: non-discrimination and the rights of indigenous peoples

The International Convention on the Elimination of All Forms of Racial Discrimination (CERD Convention) states:

Article 1

1. In this Convention, the term "racial discrimination" shall mean any distinction, exclusion, restriction or preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life.

Article 2

1. States Parties condemn racial discrimination and undertake to pursue by all appropriate means and without delay a policy of eliminating racial discrimination in all its forms and promoting understanding among all races, and, to this end:

(a) Each State Party undertakes to engage in no act or practice of racial discrimination against persons, groups of persons or institutions and to ensure that all public authorities and public institutions, national and local, shall act in conformity with this obligation;

2. States Parties shall, when the circumstances so warrant, take, in the social, economic, cultural and other fields, special and concrete measures to ensure the adequate development and protection of certain racial groups or individuals belonging to them, for

the purpose of guaranteeing them the full and equal enjoyment of human rights and fundamental freedoms. These measures shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved.

Article 5

In compliance with the fundamental obligations laid down in article 2 of this Convention, States Parties undertake to prohibit and to eliminate racial discrimination in all its forms and to guarantee the right of everyone, without distinction as to race, colour, or national or ethnic origin, to equality before the law, notably in the enjoyment of the following rights:

(a) The right to equal treatment before the tribunals and all other organs administering justice;

According to CERD's General Recommendation 31 on the prevention of racial discrimination in the administration and functioning of the criminal justice system, State Parties have the obligation to prevent racial or ethnic discrimination against defendants during interrogation or detention, preventive detention, criminal proceedings, trial and punishment. Indigenous individuals have the right to the presumption of innocence, legal counsel, interpreter, and an independent and impartial court, among other rights.¹¹ We emphasize in particular the right of every person not to be interrogated or detained on the grounds of "colour or features or membership of a racial or ethnic group, or any profiling which exposes him or her to greater suspicion".¹²

Meanwhile, the International Covenant on Civil and Political Rights (ICCPR) states:

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 14

1. All persons shall be equal before the courts and tribunals. [...]

Article 26

¹¹ CERD General Comment 31, *supra* note 9.

¹² *Ibid.*, para. 20.

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

The International Labor Organization's Convention No. 169 on Indigenous and Tribal Peoples states:

Article 2

1. Governments shall have the responsibility for developing, with the participation of the peoples concerned, co-ordinated and systematic action to protect the rights of these peoples and to guarantee respect for their integrity.

2. Such action shall include measures for:

a) ensuring that members of these peoples benefit on an equal footing from the rights and opportunities which national laws and regulations grant to other members of the population; [...]

Article 9

1. To the extent compatible with the national legal system and internationally recognised human rights, the methods customarily practised by the peoples concerned for dealing with offences committed by their members shall be respected.

2. The customs of these peoples in regard to penal matters shall be taken into consideration by the authorities and courts dealing with such cases

Article 12

The peoples concerned shall be safeguarded against the abuse of their rights and shall be able to take legal proceedings, either individually or through their representative bodies, for the effective protection of these rights. Measures shall be taken to ensure that members of these peoples can understand and be understood in legal proceedings, where necessary through the provision of interpretation or by other effective means.

The international treaties cited above are complemented by other treaties, such as the United Nations Declaration of the Rights of Indigenous Peoples and, at the regional level, by the American Convention on Human Rights, among others.

Regarding the United Nations treaties, it has been widely recognized by the treaty bodies and special rapporteurs that indigenous peoples are especially vulnerable before the Mexican criminal justice system. For example, the Special Rapporteur on the Rights of Indigenous Peoples concluded, after a visit to Mexico in 2003, that:

“It is precisely in the enforcement and dispensation of justice that one sees how vulnerable the indigenous peoples are; they report that they are discriminated against, harassed and abused (E/CN.4/2002/72/Add.1). The reports received indicate that many indigenous suspects are helpless when facing a public prosecutor or judge since they do not speak or understand Spanish and there is no interpreter into their own language, although this right is laid down by law. Official defence lawyers operating in indigenous areas are few in number and generally poorly trained, and for the most part people have neither the resources nor the opportunity to contract the services of a defence lawyer.. [...]”

“Trials involving indigenous people are frequently riddled with irregularities, not only because of the lack of interpreters and trained defence lawyers but also because the public prosecutor and judges are usually unaware of indigenous legal customs. On occasion the judgements handed down are out of all proportion to the offences [...]

“A recurring pattern in the regions in conflict is that those involved in protests, denunciations, resistance and social mobilization are treated as criminals: this frequently leads to accusations of numerous offences, the fabrication of offences that are difficult or impossible to prove, the illegal detention of the accused, physical abuse, delays in judicial proceedings from the preliminary investigations onwards, etc. There are reports of arrests, raids, police harassment, threats to and prosecutions of community authorities and leaders, the officials and members of indigenous organizations and their defence counsel.”¹³

The Special Rapporteur on the Independence of Judges and Lawyers expressed concern in 2002 regarding “[t]he general lack of access to justice for members of the indigenous community, the lack of interpreters and the lack of sensitivity within the legal system to their legal traditions[.]”¹⁴ In 2011, after a second visit to Mexico, the Special Rapporteur noted “[a]ccess to justice is an area in which Mexico must do more for the sake of many of its citizens, especially women, the indigenous population, immigrants and people living in poverty and in remote rural areas.”¹⁵

¹³ *Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people: Mission to Mexico*, 23 December 2003, E/CN.4/2004/80/Add.2, par. 29, 31, 34, http://ap.ohchr.org/documents/alldocs.aspx?doc_id=9180.

¹⁴ *Report of the Special Rapporteur on the independence of judges and lawyers, Dato'Param Kumaraswamy, submitted in accordance with Commission on Human Rights resolution 2001/39. Addendum: Report on the mission to Mexico*, 24 January 2002, E/CN.4/2002/72/Add.1, page 5, <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Visits.aspx>.

¹⁵ *Report of the Special Rapporteur on the independence of judges and lawyers. Addendum. Mission to Mexico*, 18 April 2011, A/HRC/17/30/Add.3, par. 93, <http://www.ohchr.org/EN/Issues/Judiciary/Pages/Visits.aspx>.

Similarly, in 2006 the CERD Committee stated in relation to the situation of indigenous individuals who are subject to a criminal trial in Mexico:

“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.”¹⁶

At a glance: Rights violated in cases of arbitrary detention and unjust imprisonment of indigenous individuals in Mexico.

Center Prodh and its partners, through the extensive documentation and defense of cases such as those listed in the section on case studies in this report, have identified several patterns of recurring human rights violations in the criminal proceedings against indigenous people. Below we include a summary of some rights commonly violated in contravention of the provisions of international treaties such as the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights and Convention 169 on Indigenous and Tribal Peoples, which are part of Mexican law and as of 2011 have the same legal status as the Constitution.



Personal liberty

The victims are arbitrarily detained, often without any explanation of the reasons for their detention or without an arrest warrant. They are then held and remain imprisoned for crimes they did not commit.

Right to a fair trial

The cases under study show the violation of various human rights, preventing victims from accessing a fair trial: lack of respect for the principle of presumption of innocence, violation to the right to an adequate defense and to have an expert interpreter or translator during the trial.

¹⁶ CERD Concluding Observations of the Committee on the Elimination of Racial Discrimination to the Mexican Government, 4 April 2006, CERD/C/MEX/CO/15, <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/412/61/PDF/G0641261.pdf?OpenElement>, para. 13.

Judges systematically give predominant value to statements taken by prosecutors (even if they are counterfeit or coerced), regardless of the evidence produced before the judge at trial. Other common practices are automatically granting full evidentiary value to evidence produced by State agents regardless of whether it was obtained legally or not; discarding exculpatory evidence and dismissing retractions of prosecution witnesses, even when they reported the use of coercion to force them to accuse the person in the first place. These practices violate the principle of presumption of innocence and encourage illegal practices by the prosecution during the investigations.

As regards the right to defense, the statements of the accused persons are rendered often without adequate assistance of an interpreter or legal counsel, preventing the victims from understanding the charges against them and the proceedings.

Non-discrimination

The National Council to Prevent Discrimination has stated that “equality between the indigenous peoples and the rest of the society has not been achieved. The repetition of the vicious cycle of discrimination and poverty, which generates further discrimination, keeps indigenous peoples in a position of social disadvantage and powerlessness from which equality and the exercise of fundamental rights is impossible”.

Violations to the right to non-discrimination are reflected in the cases described in this report; ethno-cultural affiliation, class status and sometimes the gender of the victims place them in a situation of structural disadvantage, exclusion and an aggravated form of social vulnerability before the criminal justice system, which is sometimes used as a tool of social repression or to legitimize justice and security authorities’ actions.

From the moment that the authorities choose the victims as targets for the fabrication of crimes or decide to use the criminal justice system to criminalize expressions of social discontent made by communities in marginal situations, these cases become paradigmatic examples of structural discrimination. Such discriminatory practices, far from improving public safety, increase impunity and affect innocent people who are wrongfully prosecuted, and/or end up hurting the entire indigenous communities whose members are sometimes repressed and imprisoned for exercising their human rights.

“Being here does not only hurt me, it also hurts my sons and daughters; I can probably hold on longer, but maybe my family suffers more by coming here to see me, by making an effort to visit me every Wednesday and Sunday and that is what hurts me, I want to be fine with my family so that I do not have to worry about so many things. I will never recover these years and these days that I have left my family out there.”

- Jacinta Francisco Marcial, unjustly sentenced for a kidnapping that never took place.

IV. Case studies

Center Prodh along with other organizations has documented cases and defended indigenous people arbitrarily arrested, detained and convicted. Five cases are included here as case studies. In the following sections we present summaries of the facts and some of the legal arguments with which the victims were sentenced. It should be noted that both the facts and references to judicial decisions are based on evidence and documents collected by the Center Prodh and/or public records of which we have copies.

It is also important to note that in the first three cases – those of Jacinta Francisco Marcial, Alberta Alcántara Juan, Teresa González Cornelio and Basilia Ucan Nah – the victims eventually recovered their freedom after years of wrongful imprisonment, having demonstrated the arbitrary nature of the arrests and the sentences. However, this is the exception to the rule and should not be construed as evidence that indigenous victims in general have access to adequate and effective remedies in the criminal justice system. Meanwhile, the limited capacity of NGOs makes it impossible for them to assume the defense of all cases in the legal, media and international arenas, as happened in the case studies that will be examined below. The majority of the Jacintas, Albertas, Teresas and Basilias remain in jail without ever reaching the National Supreme Court or the United Nations.

In fact, the victims of the last two case studies – Hugo Sánchez, José Ramón Aniceto and Pascual Agustin Cruz – remain imprisoned today after groundless criminal trials characterized by gross human rights violations. In both cases, the victims are exhausting the last legal remedy available in Mexico: *amparo* actions. If the judicial authorities resolve the cases under Mexican and international law, the victims will be released. If not, they are likely to spend long periods of time in prison for crimes they did not commit.

It is important to remember at all times that the cases that follow are just a sample of discrimination in a much larger universe of victims of arbitrary arrests and unfair criminal proceedings in Mexico. That is why we call the State to undertake the necessary actions, starting with the cases documented here, but not limited to them, to reverse wrongful police and judicial practices that generate serious human rights violations against indigenous people.

a. Jacinta Francisco Marcial: the vulnerability of indigenous women in the Mexican criminal justice system.

Executive summary

Jacinta Francisco Marcial is an Otomí indigenous woman from the state of Querétaro, who was wrongly accused of kidnapping six agents of the Federal Investigation Agency (AFI) in 2006 and sentenced to 21 years in prison. The trial was full of procedural irregularities and due process violations. Jacinta did not speak Spanish and her public defender did not guarantee her right to an interpreter that translated everything that happened during the trial.



Despite the lack of evidence (the most important piece of evidence being a photograph taken by a local journalist where Jacinta appeared in the background, doing nothing), Jacinta was convicted of kidnapping. After more than three years in prison, she regained her freedom after much national and international pressure for her release. However, the Attorney General's Office (PGR) continues to insist publicly that Jacinta never proved her innocence, when in fact the prosecutor has the burden of proof. Still pending is the claim for reparations by which Jacinta demands redress from the Attorney General's Office.

Background: Santiago Mexquititlán, the “crime” scene

The community of Santiago Mexquititlán belongs to the municipality of Amealco de Bonfil, located in the south of the state of Querétaro. Santiago Mexquititlán is about 30 minutes from the municipal capital, and is one of the most important communities in the municipality. Santiago Mexquititlán is divided into 6 neighborhoods, in which a largely ñhâñhú (Otomí) indigenous population lives.

Amealco has nearly 13,000 inhabitants above 5 years old that speak the indigenous language ñhâñhú, distributed in 39 communities similar to Santiago Mexquititlán. Agricultural activities are the base of the economy of this region, which consequently means that the living conditions in a social environment in which the rural sector has been practically abandoned in Mexico, are not very good. Extreme marginalization, characterized by a lack of basic public services, such as potable water and sewer systems, has led to migration among the population, with ever fewer reasons to stay and work the land; young people especially feel forced to search for a job in other places.

Thus, although the presence of the ñhâñhú population in the region is associated with subsistence agriculture and care of minor livestock as predominant economic activities, these activities have been decreasing due to structural problems and an improper economic model. This situation has promoted an increase in commercial activities, often in the informal sector.

The facts: arbitrary detention for a crime that never happened

On March 26, 2006, six agents of the Federal Investigation Agency (AFI), carrying no official identification or uniform, entered the street market in the main square of the community of Santiago Mexquititlán. They proceeded to confiscate the local merchants' goods, claiming that the products were pirated. The market vendors asked the AFI agents for their identification and the Agency's warrant; the agents refused to produce these.

As tension grew, an agent of the Attorney General's Office (PGR), stationed in San Juan del Rio, Querétaro, Gerardo Cruz Bedolla, as well as an AFI Regional Chief, arrived at the town's main square in order to strike up a dialogue with the affected people, acknowledging that it had been the agents who had made a mistake and that they were going to compensate for the damage caused. They offered to compensate the damages with cash, but that meant that they had to drive out of town to get the money. As a "guarantee" that they were coming back, the authorities ordered AFI agent Jorge E. Cervantes Peñuelas to remain with the people. According to witnesses' testimonies, this agent had communication with his superiors at all times did not suffer any kind of physical aggression at any time; on the contrary, he was armed and could move around freely. It is important to recall that PGR authorities were the ones that offered to pay damages and who proposed that the AFI agent remained in Santiago Mexquititlán while waiting for the money.

After three hours, the AFI agents returned to Santiago Mexquititlán together with more police from different bodies. At the same time, a journalist from the newspaper "*Noticias*" from Querétaro arrived in town. At that time, the affected merchants and the agents started dialoguing for the deliverance of the compensation money for the damages. Facing such an unusual situation, some people felt curiosity and approached the place where the "negotiation" was taking place to witness what was going on: among those people was *Doña* Jacinta Francisco Marcial, who ran a stall for selling refreshments in the market. Although *Doña* Jacinta, a ñhã-ñhú (Otomí) woman, was never involved in the incident and she was rather far-off from the people that were dialoguing, at the moment when she was walking by in order to witness the event, the journalist from "*Noticias*" took a photograph of the incident. It is important to mention that none of the photographs taken by the journalist show people carrying stones, sticks or any other object with which they might have hurt the AFI agents.

After delivering the money, PGR officials left the community around 7pm; together with them was AFI agent Jorge E. Cervantes Peñuelas, who had rejoined his group since 6pm. There were no further incidents after that. Not a single person was arrested.

More than four months after the event, on August 3, 2006, a group of people dressed as civilians went to Mrs. Jacinta's home looking for her. They told her that she had to come with them to a police station in Querétaro due to an investigation regarding the illegal felling of a tree, which needed her statement. She agreed to go voluntarily as she knew she had nothing to do with any illegal situation. They arrived at the Fourth District Court in Querétaro, traveling in a vehicle lacking official identification. Upon arrival, she was presented before the media: only then she learned that she was being accused, together with two other women, of having kidnapped six AFI agents during the incident in Santiago Mexquititlán in March, 2006.

At that time Jacinta spoke only ñhã-ñhú (otomí), therefore during the proceedings she was unable to communicate in Spanish, a fact that was corroborated in trial by the National Commission for the Development of Indigenous Peoples through an expert report. However, an interpreter was not always present in the hearings so she was unable to fully understand and participate in the trial against her.

Despite the lack of legitimate evidence against her, on December 19, 2008 the Fourth District Court in Querétaro sentenced Jacinta to 21 years imprisonment and a fine equivalent to 2 thousand days of minimum wage (around \$6,455 USD).

In December 2008, when Jacinta was notified of her conviction, she appealed the decision; the appeal was resolved in April 2009 to the effect of revoking the court's decision and ordering the presentation of new evidence. The Court of Appeal found that there were "substantial inconsistencies" in the accusations against Jacinta.

After Center Prodh and Fray Jacobo Daciano Human Rights Center (Querétaro) carried out a comprehensive defense strategy, which included publicizing the case both at the national and international levels (for example, Amnesty International named Jacinta prisoner of conscience based on the fact that Jacinta was deprived of liberty for being an indigenous woman), the Attorney General withdrew the accusation. Jacinta was released on September 16, 2009, so she could return to her community with her family.

Nevertheless, the Attorney General's Office refused to acknowledge the human rights violations that were committed. On September 14, 2009, the Attorney General's Office issued a document explaining that despite her release on the basis of a "reasonable doubt", "by no means has her innocence been proven in the case". It also stated that considering the existence of incriminating evidence against her "redress is definitely not an available option, regardless of the existing legal actions, which are notoriously inadmissible".¹⁷ These statements show the authorities' ignorance regarding the principle of presumption of innocence, by which the prosecutor has the burden of proof, and not the accused person.

In September 2010, in the context of the third anniversary of the United Nations Declaration on the Rights of Indigenous Peoples, Jacinta filed a claim for reparations for the human rights violations she suffered. This was the first time that someone filed this type of claim in the Mexican justice system regarding a criminal case. The objectives were to achieve proper reparations for Jacinta, who was deprived of her liberty for more than three years, and to advance reparations in the Mexican legal system. When the claim was finally admitted, the involved authorities, belonging to the Attorney General's Office, denied at all times their responsibility and the responsibility of the federal government in the case. Jacinta, with Center Prodh's support, presented her arguments and is now waiting for the claim to be resolved by the Attorney General's Office.

¹⁷ Attorney General's Office. *De la Procuraduría General de la República, con el que remite contestación a punto de acuerdo aprobado por la Cámara de Diputados*. Mexico City, 14 September 2009, page 2.

At a glance: Brief timeline of Jacinta's case

Jacinta Francisco Marcial was unjustly imprisoned and sentenced for supposedly depriving six federal agents of their liberty (kidnapping), and with the aggravating factor that those people were public servants.¹⁸

- **March 26th, 2006:** incident in Santiago Mexquititlán.
- **March 27th, 2006:** the federal agents submit their testimony before the Federal Public Attorney. In their testimonies, they identified several people involved in the incident; none of them were related to Doña Jacinta.
- **April 22nd, 2006:** the investigatory report containing the pictures of Doña Jacinta, taken from the archives of the picture published by the local newspaper “*Noticias*” on March 27th, 2006, was included in the preliminary investigation.
- **May 4th, 2006:** the AFI agents extended their testimonies, and, based on the picture mentioned above, they pointed to Doña Jacinta as responsible for a “kidnapping”, notwithstanding that in their initial testimony, they never specifically identified any indigenous woman. At the same time, agent Jorge E. Cervantes, who had stayed in the town as a guarantee and later was declared a victim of kidnapping, never identified or mentioned the name of Doña Jacinta in his testimony.
- **June 30th, 2006:** an agent of the Federal Public Prosecutor proceeds in the legal case against Doña Jacinta and two more women, Alberta Alcántara and Teresa Gonzalez, presenting the list of charges in the Fourth District Court of the state of Querétaro.
- **July 4th, 2006:** an arrest warrant is issued against Doña Jacinta, Alberta Alcántara, and Teresa Gonzalez
- **August 3rd, 2006:** the arrest warrant is executed. Doña Jacinta, Alberta, and Teresa are detained. Doña Jacinta's detention was made through misrepresentation: she was told she had to make a statement regarding the illegal felling of a tree.
- **August 9th, 2006:** the judge ordered that Doña Jacinta and the other two accused women have to await their trial in jail.
- **December 19th, 2008:** Doña Jacinta is sentenced to 21 years in prison and more than \$91,000 pesos in fines. One month after, Alberta and Teresa are also sentenced with the same terms, plus the payment of reparation.
- **December 22nd, 2008:** Doña Jacinta appeals against the sentence
- **April 7, 2009:** the XXII Circuit Unitarian Tribunal, responsible for the appeal resolution, orders the re-trial of the case and to extend legal procedures; considering that there were “substantial contradictions” in the accusation.
- **May 20, 2009:** the re-trial starts and lasts 5 days.
- **May 21 to 26, 2009:** Witnesses' evidence, ordered by the judge, is presented to the Fourth District Court in Querétaro.
- **July 10, 2009:** the National Indigenous Languages Institute issues Recommendation 01/2009 to the Fourth District Judge in Querétaro, in which it states that Jacinta's linguistic rights have been violated during the re-trial.

¹⁸ Sanctioned in Article 366, section I, subsection a), in relation to article 366, section II, subsection c), as well as the aggravating factor of crime committed against a public officer provided for in Article 189 of the Federal Criminal Code.

- **July 17, 2009:** the National Human Rights Commission issues Recommendation 47/2009 to the Attorney General's Office, after observing that Jacinta, Alberta and Teresa's rights to access justice and due process were violated during the investigations.
- **August 18, 2009:** Amnesty International names Jacinta prisoner of conscience considering she is in jail for being an indigenous woman.
- **September 3, 2009:** the Attorney General's Office announces its decision to withdraw the accusation against Jacinta.
- **September 14, 2009:** more evidence is presented to the judge.
- **September 15, 2009:** the Attorney General's Office drops charges against Jacinta. Later that day the Fourth District Judge dismisses the case and orders Jacinta's absolute and immediate release.
- **September 16, 2009:** during the first minutes of the day, Doña Jacinta is released from prison in San José el Alto, Querétaro.
- **September 13, 2010:** a claim for reparations is filed before the Attorney General's Office on the grounds of article 113 of the Constitution and the State Responsibility Law. It is the first time a claim such as this is filed to demand redress for irregular proceedings by federal bodies.

Jacinta: an emblematic case

For Center Prodh, Jacinta's case is paradigmatic of indigenous peoples' (especially women's) vulnerability before the deficiencies of the current justice system and how easily the authorities can use accusations, such as kidnapping, to criminalize objections against the authorities' abuses.¹⁹

It is a recognized right that in a criminal process a translator must be provided to indigenous people, either if they are victims or defendants, from the moment of the arrest. The translation should be not only for legal terms, but the interpreter must transmit to the indigenous person the whole idea of what is said, taking into account possible cultural differences, so that the defendant understands the entire situation he/she is facing. It is quite common in Mexico that a person who is facing a criminal process does not have a translator or interpreter; even more serious is that public defenders, who are often the ones assigned to such cases, do not enforce this right, as happened in Doña Jacinta's case, which represents a human rights violation.²⁰

¹⁹ We must remember that the crime of kidnapping in this case never existed; it is implausible that six federal agents, trained to use public force and physically and materially capable of responding to any type of aggression, carrying firearms, were kidnapped by three unarmed indigenous merchant women. Furthermore, the only evidence used to accuse Doña Jacinta were the pictures taken by the *Noticias* journalist and the contradictory statements made by the agents themselves (who acted as victims, witnesses and investigators at the same time) and added to the case files by a prosecutor who participated in the events. Consequently, it is possible to conclude that authorities incriminated Jacinta and her co-defendants in retaliation for the way the local community reacted in protest against the illegal actions and abuses of the AFI agents.

²⁰ Procedural rights acknowledged in Arts. 2, 14, and 16 of the National Constitution; Art. 12 of the International Labor Organization's Convention 169; Arts. 8, 9, and 10 of the General Law on Linguistic Rights for Indigenous Peoples. On this particular situation, the Committee on the Elimination of Racial Discrimination has issued a recommendation for the Mexican Government to guarantee indigenous peoples' right to an interpreter and public defenders who know the indigenous communities' language, culture, and customs. CERD, *supra* note 16, para. 13.

Additionally, the case of Doña Jacinta is a perfect example of the deficiencies of the justice system in Mexico in which elements of the inquisitorial justice system remain entrenched. Since the system is based mostly on written testimonies, the prosecution enjoys countless advantages. In Doña Jacinta's proceedings, the Public Prosecutor prepared all the evidence before the trial with an absence of judicial control, which made evident the procedural inequality that persists in Mexican courts.

Then, the judge simply ratified the Public Prosecutor's version of the events, without having personally reviewed a single piece of evidence that might confirm Doña Jacinta's criminal responsibility. Likewise, when the judge had evidence before him confirming the innocence of Doña Jacinta, he refused to recognize its evidentiary value. For example, this happened to all the different defense testimonies that certified the presence of Doña Jacinta in her beverage stall in the market, which were discredited by the judge. Similarly, the testimony of one of the co-defendants, denying any participation of Doña Jacinta in the events, was also rejected.

The false accusations against Doña Jacinta highlight the growing tendency of the government to use criminal accusations such as kidnapping or premeditated kidnapping to prosecute whomever is present in a social protest.

People have a collective right to express a common opposition to state actions or omissions. It is the State's duty to guarantee an appropriate space for those citizens' protests. This is of especial relevance to protests led by low-income people, who often face serious obstacles in trying to make their opinion heard, as they are the ones most affected by social problems. Regarding Doña Jacinta's case, even though she did not participate in the protest against the AFI agents, the State's response to a group of indigenous merchants' protest was excessive and centered on collective punishment. The State decided to punish the Otomí community by arresting three female members of it, which would necessarily have negative consequences for the families and the whole community.

b. Alberta Alcántara and Teresa González: criminalization of social protest

Executive Summary

Along with Jacinta Francisco Marcial, Alberta Alcántara and Teresa Gonzalez were accused of allegedly kidnapping six federal agents. The arrest of these two indigenous women exemplifies the use of the criminal justice system to punish and criminalize indigenous communities demanding their rights. It is important to note that Alberta asked the federal agents to identify themselves when they were in the community committing abuses.



Alberta and Teresa were also named prisoners of conscience by Amnesty International, but contrary to the case of Jacinta, in which the Attorney General's Office dropped charges, in November 2009 the Attorney General ratified the baseless accusations against Alberta Alcántara and Teresa González and demanded the highest penalty, which exceeded 40 years in prison.

In April 2010, the National Supreme Court (SCJN), having assumed jurisdiction over the case at the appeal stage, unanimously decided to revoke the decision and ordered the immediate release of Alberta and Teresa, considering that the Attorney General could not prove the commission of the crime of kidnapping, among other issues.

On April 27, 2011, a year after their release, Alberta and Teresa filed a claim for reparations against the Attorney General's Office. As in the case of Jacinta Francisco Marcial, after being notified of the claim, the Attorney General's Office has always denied any responsibility.

The Attorney General's accusation against Alberta and Teresa

The false accusations against Alberta and Teresa refer to the same events described in detail in the previous case study on Jacinta Francisco Marcial. Unlike Jacinta, in this case, Alberta and Teresa were among the people questioning the acts of the AFI agents. In particular, Alberta demanded that they show identification.

The charges against Alberta and Teresa were based on investigation prepared by the AFI agents who claimed to have been kidnapped by the people of Santiago Mexquititlán. Initially, the agents reported that the kidnappers were male, except for one woman. However, 39 days later, on May 4, 2006, the agents made another statement, based on a photograph taken by a journalist from

“Noticias” in which Alberta and Teresa appear talking to a public officer with Jacinta at the back watching, in which they directly accused only the three women.

More than four months after the events, on August 3, 2006, a group of uniformed people went to Teresa’s home and also intercepted Alberta, who was getting off a bus. The uniformed people claimed that they had to take Alberta and Teresa to the city of Querétaro so that they could give their statements regarding other issues different from the criminal case. These people, who at that time did not identify themselves as federal agents, transferred the women to the Attorney General’s office in the city of Querétaro where they were presented to the media as the kidnappers.

They were then transferred to the female Social Rehabilitation Center located in San José el Alto, where they were forced to change clothes and then taken to the Fourth District Court in the state of Querétaro. There Alberta and Teresa gave their preliminary statement without the presence of an interpreter.

In November 2009, following the order for a re-trial (considering the contradictory accusations against the women), the Attorney General ratified the baseless accusations against Alberta Alcántara and Teresa González and presented accusatory conclusions demanding the highest penalty, more than 40 years in prison. In February 2010, they were sentenced to 21 years in prison, a decision which they appealed.

In April 2010 the National Supreme Court assumed jurisdiction over the appeal, due to the importance of the case, and unanimously overturned the conviction and ordered the immediate release of Alberta and Teresa. The commission of the crime of kidnapping had not been proven, among other issues. In its ruling, the Court highlighted the need to strengthen core elements of due process, such as the presumption of innocence, the independence and impartiality of law enforcement bodies, the right to an adequate defense and the right to have an interpreter and/or legal counsel who speaks the indigenous language.

On April 27, 2011, a year after their release, Alberta and Teresa filed a claim for reparations against the Attorney General's Office. As in the case of Jacinta Francisco Marcial, authorities have always denied responsibility for the events and never recognized the innocence of the victims, despite the ruling of the First Chamber of the National Supreme Court of Justice, which determined that the kidnapping never happened and that Alberta and Teresa were unjustly accused, imprisoned and condemned.

At a glance: Brief timeline of Alberta and Teresa’s case

- On **March 26, 2006** a federal public prosecutor opens investigation number AP/PGR/QRO/SJR-VIIA/064/2006 in San Juan del Rio, Querétaro. The investigation was opened in response to a report regarding the events in Santiago Mexquititlán. The next day the AFI agents ratify their report and give their preliminary statement.

- On **June 30, 2006**, the federal public prosecutor charges Jacinta and co-defendants Alberta Alcántara and Teresa González for kidnapping federal agents. The case is sent to the Fourth District Court in the state of Querétaro, under number 48/2006.
- On **July 4, 2006** the Fourth District Judge issued a warrant of arrest against Jacinta and her co-defendants Alberta Alcántara and Teresa González.
- On **August 3, 2006** Jacinta, Alberta and Teresa were arrested and on **August 9, 2006**, the Fourth District Judge formally ordered their preventive detention.
- Between **August 2006** and **November 2008**, over two years, evidence on the case was presented to the court. The delay was due to the difficulties in getting all the AFI agents to come and give their statements. They were summoned 15 times; however, they ignored the summons and failed to appear in a period of one year and a half arguing irrelevant activities.
- On **January 19, 2009** Alberta and Teresa were sentenced to 21 years in prison and a fine.
- Alberta and Teresa appealed the convictions and then on **April 7, 2009** the Court ordered re-trial due to the existence of "substantial contradictions" in the accusations.
- From **May 20 to 25, 2009** new evidence is presented to the court.
- After the release of Mrs. Jacinta on **September 16, 2009**, the Attorney General's Office ratified its accusation against Alberta and Teresa.
- On **October 8, 2009**, the Fourth District Judge in the state of Querétaro closed the trial stage of the case.
- On **November 23, 2009** the Attorney General's Office demands the highest punishment (40 years imprisonment).
- On **January 8, 2010** Alberta and Teresa's defense, led by Leónides Ortiz Castillo, presents its final statement.
- On **February 3, 2010** a hearing takes place in the Fourth District Court; Alberta and Teresa meet judge Rodolfo Pedraza Longi for the first time.
- On **February 12, 2010**, Amnesty International names Alberta and Teresa prisoners of conscience.
- On **February 19, 2010** the Fourth District Court sentenced Alberta and Teresa to 21 years in prison and 90 thousand pesos in fines.
- On **February 24, 2010** the judgment was appealed.
- On **March 17, 2010**, the First Chamber of the National Supreme Court discusses whether jurisdiction will be assumed on the case or not.
- On **March 29, 2010**, the First Chamber assumes jurisdiction over the case. According to the available information, this was the second time that the highest court assumed jurisdiction over a criminal appeal (usually it assumes jurisdiction over *amparo* actions).
- On **April 28, 2010**, the First Chamber of the Supreme Court discussed the draft resolution of the appeal and voted on the same day. In the resolutions, the Supreme Court recognized that, as the defense had argued from the beginning, there was no kidnapping; many irregularities were committed against Alberta and Teresa and evidence was not adequately analyzed.
- On **April 27, 2011**, a year after their release, they filed the claim for reparations.

Conclusion

Like the case of Jacinta Francisco Marcial, the case of Alberta and Teresa is paradigmatic of the discrimination and extreme vulnerability to which indigenous women are subjected in the Mexican criminal justice system; the misuse of this system and the unfair shifting of the burden of proof.

It is noteworthy that Alberta and Teresa were arrested through deception and gave their statements without the assistance of an interpreter or translator that explained to them the nature of the process, the seriousness of the charges, the circumstances of the crime attributed to them and their rights. This constitutes a very serious breach of their procedural rights and was repeated in the case of witnesses from the community, who were also Otomí.

It is also important to mention that the prosecutor who dropped charges in the case of Jacinta, used the same contradictory statements given by the AFI's in her case to incriminate Alberta and Teresa.

For his part, the Fourth District Judge in Querétaro violated the right to the presumption of innocence when arguing that Alberta and Teresa "could not disprove" the allegations against them. Similarly, the judge gave more evidentiary value to the federal agents' contradictory statements while discarding, without founding his decision, the statements of defense witnesses.

c. Basilia Ucan Nah: fabrication of crimes against a Mayan woman

Executive summary

In 2011, the Miguel Agustín Pro Juárez Human Rights Center and Indignation: Promotion and Defense of Human Rights assumed the defense of Mrs. Basilia Ucan Nah, a 43-year-old Maya indigenous woman, mother of seven, from the community of Yoactún, Felipe Carrillo Puerto municipality, in the state of Quintana Roo, Mexico. Basilia was arbitrarily detained by the state judicial police of Quintana Roo in March 2008 and was subsequently subjected to a flawed and violatory trial for sexual exploitation and trafficking of minors (which she did not commit), ending in her conviction and a sentence of 12 years in prison.

The “evidence” against Basilia consisted of coerced statements made by several people, among



which was an indigenous girl who had allegedly been a victim of sexual exploitation. Each and every one of these "witnesses" later explained to the judicial authorities that they were coerced by police to denounce Basilia and did not really accuse her of anything or did not know her. Such statements, which reflect the irregular and aggressive actions of police officers, should have been enough to order the immediate release of Basilia and the opening of investigations against the policemen. However, far from it, in April 2009, the court admitted the coerced

statements, while ignoring the explanations of how they were obtained through coercion by the police, and convicted Basilia to twelve years and three months imprisonment and 10,577.20 pesos in fines for sexual exploitation and trafficking of minors.

In short, for being a monolingual indigenous woman in a country where police, prosecutors and judges discriminate against groups and individuals in vulnerable situations, Basilia was subjected to an unfair trial for crimes she did not commit.

After three years of unjust imprisonment and thanks to a successful legal defense strategy supported by national and international solidarity, Basilia was released on May 23, 2011. Internationally, her case was filed before the United Nations Working Group on Arbitrary Detention, which determined that same year that her arrest was arbitrary and that the Mexican government had to guarantee redress.

Background: Information on the area where the violations took place

The city of Felipe Carrillo Puerto, seat of the municipality of the same name, is located in Quintana Roo state, in the southwest of Mexico. According to information published on its official website, this city has the highest concentration of indigenous inhabitants in the state of Quintana Roo and in fact, the majority of the population is indigenous (approximately 67%). Of the indigenous population, 99.2% is Maya.

Felipe Carrillo Puerto, along with the municipalities of Othón P. Blanco and José María Morelos y Pavón, apart from having the highest percentage of indigenous inhabitants, stand out for their economic marginalization in the state of Quintana Roo, in contrast to other municipalities such as Cozumel, Benito Juárez (Cancún), and Solidaridad (Playa del Carmen), touristic destinations with low or very low marginalization indices. While the municipality of Benito Juárez was #42 in 2005 in the ranking of human development, Felipe Carrillo Puerto stood at #1806, the lowest in the state. This reflects the inequality in public policies and resources directed toward the development of tourist areas versus indigenous regions where the main activity is farming or local administration, with many poor residents forced to migrate to the tourist zones in search of a living.

The poverty and exclusion suffered by indigenous residents of the state places them in a situation of heightened vulnerability vis-a-vis the criminal justice system. Basilia's case exemplifies the discrimination that is suffered by indigenous peoples in the Mexican justice system.

The facts of the case: fabrication of guilty charges due to lack of professional criminal investigations.

On Tuesday, February 6, 2007, an anonymous telephone caller reported to the public prosecutor of Felipe Carrillo Puerto, Quintana Roo that a 70-year-old man was committing the crimes of sexual exploitation and trafficking of minors against two girls. When called to make statements to the public prosecutor, one of the girls stated that she had been pressured by a light-skinned woman to have sexual relations on various occasions. It is important to mention that unfortunately sexual offenses are common in the state of Quintana Roo and vis-à-vis the justified social concern on the matter, authorities feel a lot of pressure to act against those crimes. However, they have generally not been very effective.

On March 7, 2007, the judicial police accused two people, Ambrocio Granadas Mohedano and Mary May, of these crimes. Mary May stated that she worked in Mr. Granados' home and that two girls were sexually exploited there. Mr. Granados stated that he only rented rooms and that he asked his renters not to bring children to the house. He stated that he was not going to tell the prosecutor the names of any of his renters, because they worked in the government of Felipe Carrillo Puerto or were police. On April 10, 2007, the judicial police completed their report, based on their questioning of various people.

On July 26, 2007, two women standing outside the municipal government building of Felipe Carrillo Puerto were questioned by several people who said that they were police. One of those women was Basilia Ucan Nah. Basilia, who speaks only Maya and does not know how to read, write, or understand Spanish, was taken to the prosecutor's office to give her statement with the

aid of an interpreter. She never referred to any criminal act. Basilia had no defense lawyer and had only a “person of confidence” who later turned out to be a government agent; this same person later denied being present during Basilia’s statement but stated that he signed the statement (supposedly indicating that he witnessed the statement) when asked to do so by the public prosecutor.



Several days later, one of the minor victims made a new statement before the public prosecutor. According to the prosecutor, she stated that she knew Basilia and that Basilia had convinced her to come to the house of Mr. Granados and have sexual relations for money.

On March 18, 2008, Basilia was arrested by the state judicial police of Quintana Roo for her supposed participation in the crimes mentioned above. In her preliminary statement on March 19, when told that her previous statement said that she knew the minor victims, Basilia stated that that information was false and that she did not know the victims.

On March 24, 2008, the judge determined that Basilia should be kept imprisoned as the accused party for the crimes of corruption of minors and procurement. The trial continued, based principally on the new declarations of various witnesses between July 2008 and February 2009. On March 23, 2009, the public prosecutor presented final arguments against Basilia. Basilia’s defense lawyer presented the corresponding defense arguments on April 8, 2009, within the allotted time frame, but the judge stated without basis that the arguments had not been presented on time.

Regarding the evidence presented in trial, everyone who made statements against Basilia retracted during the criminal trial, explaining that they had been coerced by the judicial police, who told the witnesses what to say.

One of the minors, in a statement made on July 16, 2008, stated that “I have never had sex with anyone and as for the woman whom they call Basilia, I don’t know her, therefore I have nothing to say against her”. She clarified that she did not recognize her first two statements because she had not said what was in them, and she had only signed under threat: “the judicial police told me that if I didn’t sign they were going to arrest me and take me to juvenile court.”

The father of the other minor made a statement the same day. He confirmed that on March 8, 2007, he had brought his daughter to make a statement, but he explained that: “[...] as my daughter made her statement I saw how they were forcing her to give answers to certain questions, how they kept insisting about that, I saw how they made her answer and pushed her to say things, how the judicial police kept threatening her [...] we came in at 7pm and left at midnight

[...] and we felt so harassed that we just signed and got out of there, my daughter just said yes to whatever they asked and she never denounced anybody for a crime.”

Despite the fact that witnesses withdrew their accusations and the lack of evidence against Basilia, on April 28, 2009 the court sentenced her to twelve years with three months' imprisonment and a fine of 10,577.20 pesos for sexual exploitation and trafficking of minors.

On August 27 the court ordered the re-trial of the case considering that on various occasions Basilia had not enjoyed her right to a translator. Afterwards, she was newly sentenced to 12 years in prison. Center Prodh and Indignation appealed to the Criminal Chamber of the High Court of Justice based in Chetumal, Quintana Roo state.

While the High Court was analyzing the appeal, the assistant attorney in the Maya area, accompanied by the police, tried to force a woman from Basilia's community to incriminate Basilia. Similarly, personnel from the Attorney's Office in Quintana Roo, located one of the two girls (now adult) who pressed charges against Basilia in order to pressure her to make public statements against Basilia.

The High Court acquitted Basilia in May 2011, which shows that in this case fundamental rights had been violated by the authorities in charge of the justice system.

Basilia's case was presented to the UN Working Group on Arbitrary Detention, which decided at its sixty-first session in 2011 that the arrest had been arbitrary and determined that the Mexican State had to remedy the violations that were committed. The Working Group considered that Articles 3, 5, 7, 8, 9, 10 and 11 of the Universal Declaration of Human Rights and Articles 2.3, 9, 10 and 14 of the International Covenant Civil and Political Rights were violated.²¹

Conclusion

Apart from highlighting once again the structural discrimination that indigenous people are exposed to in the criminal justice system, Basilia's case is a paradigmatic example of how the justice system, instead of encouraging professional and scientific investigations as a method to prosecute crimes, takes advantage of the existing discrimination against indigenous peoples to fabricate crimes and meet the social expectations that the authorities will act against crimes. This arbitrary and discriminatory policy, which is repeated in the last case study of this report, Hugo Sánchez, causes the incarceration of innocent people, breaks families and creates negative stereotypes about victims like Basilia. On the other hand, the real perpetrators of serious crimes (in this case, sexual exploitation and trafficking of minors) enjoy impunity (caused by the lack of effective investigation).

²¹ Opinion No. 36/2011 of the United Nations Working Group on Arbitrary Detention, adopted on 1 September 2011.

For Center Prodh and Indignation this case is an example of serious human rights violations for the following reasons:

A. It exhibits a double discrimination that persists in the criminal justice system: discrimination on the ground of ethnicity and sex. This situation is particularly alarming in an entity where the majority of the population is Maya.

B. Despite the existence of evidence of police involvement in child sexual exploitation, the public prosecutor never conducted an investigation and, on the contrary, incriminated an innocent person.

C. It confirms that the current criminal justice system is ineffective in carrying out quality investigations to decrease the level of impunity that affects society and to ensure that any person accused of committing a crime enjoys a fair trial as established in the Constitution and international treaties. The trial against Basilia is an example of why the Mexican criminal justice system has been consistently identified by international bodies as contrary to the minimum human rights standards. Violations remain the basis of criminal prosecutions, which neither guarantees public safety nor the existence of fair trials.

d. José Ramón and Pascual: indigenous authorities sentenced for defending the right to access water.

Executive summary

Center Prodh and the Ignacio Ellacuría Human Rights Center (which is part of Iberoamericana University, state of Puebla) have assumed the legal defense of the case of José Ramón Aniceto Gomez and Pascual Agustin Cruz, indigenous Nahua men from the community of Atla, Pahuatlán municipality, state of Puebla. Both men were unjustly arrested and sentenced to seven years in prison for supposedly stealing a vehicle, a crime that never existed. The real reason for their arrest was to silence them for legitimately and successfully defending their community's right to water.



José Ramón and Pascual were chosen as traditional authorities by their community for their good reputation and respectability. They exercised their office without receiving any economic compensation and carried out projects in favor of their community. However, Guillermo Hernandez, the local strongman (*cacique*), used his power to fabricate crimes against them in retaliation for defending the community's right to free water and thus affecting his own economic interests, since he had exercised a monopoly on water until that time. Now the water defenders are in prison, sentenced to 6 years, 10 months and 20 days, due to the accusations made by those who profited from the water monopoly and who were supported by the illegal actions taken by prosecutors and judges.

By defending José Ramón and Pascual, we seek their freedom because they are innocent and because their case is a paradigmatic example of the criminalization of human rights defenders in retaliation for advancing their community's rights. They must be supported, not silenced or punished; especially considering that their imprisonment has forced their community to return to a system based on the local strongman's power over the water services (a clear example of the multiplied negative effects whenever a human rights defender is imprisoned for his/her work).

On October 27, 2011, Center Prodh filed an *amparo* action, the last legal remedy available for the water defenders, before the Criminal Chamber of the High Court of Justice in the state of Puebla, which, after admitting it on November 11, 2011, transferred the case to a Collegiate Circuit Court

(a federal court) in the city of Puebla. This court's judges have the opportunity to reverse an injustice (the fabrication of a crime) committed against indigenous authorities. The *amparo* action contains enough elements to order the water defenders' immediate release. We await a resolution any time during the next 3 to 4 months.

José Ramón and Pascual, community water defenders

José Ramón Aniceto Gómez, 64 years old, was born in Atla and comes from a family consisting of 6 brothers (2 women and 4 men). He is married to Brigida Cruz, with whom he had 5 sons and 3 daughters. He is a farmer and beekeeper. 15 years ago he was Judge of the Peace, the second most important position in the community of Atla. The day of his arrest he was Auxiliary President.

Pascual Agustín Cruz, 48 years old, was born in Atla and comes from a family consisting of 3 brothers. He is married to Salustia Aparicio Cruz, with whom he had 2 sons and 4 daughters. He is also a farmer and has worked in other states as day-laborer. The day of his arrest he was serving as Justice of the Peace.

Atla is located in Pahuatlán, in the state of Puebla, and is one of the 23 communities that form the municipality. 3 of the communities are Otomí, 4 are Nahuatl and 16 are mestizo communities. Atla has 2,172 inhabitants, that is 1,072 men and 1,100 women. Among them 1,103 are children and 93% speak Nahuatl.²²

Health services in the region, as in many rural and indigenous towns, are deficient. 26.4% of the residents do not have access to health services and 72.6% are registered in Popular Insurance (a government-led health program), which is characterized by its low quality services. Additionally, 61 out of 499 homes lack water piping; one fourth does not have electricity or drainage. The average education level (fifth grade, Elementary School) is below the national average. These social indicators show that economic and cultural rights are not being guaranteed.

The community has governed itself for many years with an indigenous structure linked to the Municipal Government by means of two main representatives (a Municipal Auxiliary President and a Justice of the Peace), four councilors, a secretary and a treasurer. A police commander and four agents are also part of the local government organization. All these people work without a salary and are elected by direct vote at a general assembly every three years. Those elected are recognized in the community for their respectability and service.

The problem of water in Atla

Atla means "place where there is water" in náhuatl. In Atla there are four water sources that are distributed along the four parts in which the community is divided. Until de 70's people used to

²² Catalogue of National Indigenous Languages: different indigenous languages and statistical references. Available in Spanish at: http://www.inali.gob.mx/clin-inali/html/v_nahuatl.html

take water from the nearest springs. The water was not always clean due to the fact that it did not flow quickly enough to remove the dirt and the containers used to carry the water were not usually clean.²³



Doña Brigida Cruz, wife of José Ramón

In 1978 water supply infrastructure was built in Apipilhuasco, a part of Xochititla, with the aim of providing water piping to every home. To achieve this, a special Committee was formed and Guillermo Hernandez Cruz was elected its president.

According to multiple testimonies, Guillermo Hernandez gained control of the construction project and managed the available economic resources without transparency: he kept for himself a large part and demanded excessive working hours.²⁴ Free labor abuse by the Committee by forcing up to 40 continuous days of unpaid service, for example, irritated the inhabitants, but the need for water in their homes made them comply.

The fees to access water were extremely high (up to 5,000 pesos). After 6 years of struggle, a group of citizens decided to buy a piece of land that has a water source called Atezcapa, in the area of Xonocitla, Atla. This piece of land was used to provide free access to water. Considering that the Committee's members had gained control of the community's entire water supply system, the measure implemented by the group of citizens incurred the Committee's wrath.

Defending free access to water and opposing the local power group

According to Atla's residents, the conflict led by Guillermo Hernández included damaging the water premises of the dissident group, polluting the spring with garbage and dead animals, and also attacking the majority of the dissident group's members.

In 1988, the dissident group asked the State authorities to settle the problem. Given the silence of the authorities, the group strengthened its own process of organization. According to comments from Atla's residents, this angered the water Committee members, who began to generate conflicts involving people who attacked the residents who were part of the dissident group.

After generating more support among the beneficiaries of the water sources controlled by the dissident group, in late 1993 some members were elected as representatives of the community. This did not please members of the local power group, who besieged the house that served as the office of the Auxiliary President when the new authorities were gathered. They stoned and shot

²³ Montoya Briones, José de Jesús. *Atla: etnografía de un pueblo náhuatl*. Mexico DF. 2008, INAH. Page 76.

²⁴ Among the towns located in the mountains voluntary labor had been traditionally implemented. In Atla voluntary labor was implemented only on Mondays, considering that Monday is farmers' day off. In other words, farmers gave their day off away in order to benefit the community, doing maintenance to schools, roads, public spaces, etc

the facade, demanded the resignation of the Auxiliary President and threatened to kill those who were there. Due to the escalation of conflicts, the Auxiliary President resigned before the first anniversary of his administration. Afterwards, other members of the dissident group were murdered.

Over the next fifteen years, the dissident group gained strength and sympathy in the community. In 2008, José Ramón Aniceto Gómez and Pascual Agustín Cruz, members of the dissident group, were elected Auxiliary President and Justice of the Peace. The new authorities undertook a project to end the water conflict. Their first action was to call for a popular assembly to renew the old Water Committee. The new Committee endorsed the project sponsored by the municipal government to provide better quality water to the entire population. However, the group headed by Guillermo Hernández would not let their interests be affected.

Fabrication of a crime: José Ramón y Pascual, accused of stealing a car

Since José Ramón and Pascual began their water project, the local power group began to attack the engineer who was in charge of the construction work. On October 22, 2009, Abraham Aparicio (Cristobal Aparicio Dominguez's son), who belongs to the local power group, attacked José Ramón and Pascual and the group of laborers who had volunteered to work at the local cemetery that day by running his car at them.

After the attack, the victims called the municipal police and the Commander attended the call. When the police arrived, the attacker ran away leaving the car and its key. Municipal Police Commander, Carmelo Castillo Martinez took the car to the car pound.

The next day, in Pahuatlan, José Ramón and Pascual filed a complaint before the Secretary General of the Town Hall. Afterwards, an agreement was reached; the vehicle was given back to Cristobal and he was fined. The agreement was signed by Carmelo Castillo, José Ramón, Pascual, Cristobal Aparicio and his son, Abraham. Cristobal and Abraham never paid the fine.

Ten days later, Cristobal Aparicio brought criminal charges against José Ramón and Pascual for supposedly having stolen his car violently. According to the false facts repeated by the District Attorney in Huauchinango and the High Court of Justice in the state of Puebla:

“When Cristobal left Atla, Pahuatlán, state of Puebla, aboard his vehicle, criminal agents whom he identified [Carmelo, José Ramón and Pascual] came out of the bushes; they were armed with guns; one of them [Carmelo] approached the vehicle, took him out of it and told him he had problems with his son [Abraham] and threw him to the ground; then he [Carmelo] got in the car and sat in the driver's side, while the other two sat on the other side; he [Cristobal] passed out and when he woke up his car was not there anymore.”

These false accusations led to the arrest, prosecution and punishment of José Ramón and Pascual, water defenders. José Ramón and Pascual were arrested on January 13, 2010 by police agents of the state of Puebla for supposedly stealing a vehicle violently.

Irregular criminal proceedings began with the failure to provide José Ramón, Pascual and the witnesses, an official interpreter to enable them to understand questions posed by the authorities and to speak in Nahuatl when giving explanations. In July 2010 the water defenders were sentenced to 7 years and 22 days' imprisonment and to pay a fine, on the grounds of Cristóbal's statements and other statements from witnesses who were forced to incriminate José Ramón and Pascual.²⁵ The sentence was appealed and afterwards modified to 6 years, 10 months and 20 days and a fine equivalent to 550 days of minimum wage.

It should be noted that the judges only protected the interests of those who saw José Ramón and Pascual as an obstacle to their illegitimate profits from the community's need for water. This case shows how the justice system is many times used to criminalize those who demand their rights, a fact that has been continuously denounced by civil society organizations.

In relation to the causes of the conflict, and specifically the fact that the water defenders affected the power group's interests, the judges of the Criminal Chamber of the High Court of Justice of the state of Puebla stated that this "is insufficient to cause hatred". This reveals a lack of understanding of the context and the social and historical circumstances that gave rise to the unfair distribution of water in Atla and the attacks against the community authorities. Additionally, the right to the presumption of innocence was not protected and it was said that José Ramón and Pascual and the witnesses offered them were coached on what to say before the court, given that they testified weeks later after the events.²⁶

José Ramón and Pascual's relatives approached Center Prodh at the end of 2010. After documenting the case and analyzing the files, Center Prodh visited José Ramón and Pascual in prison in Huauchinango. Numerous statements were also collected both in Pahuatlan and in the community of Atla. Afterwards, Center Prodh, along with the Ignacio Ellacuría Human Rights Institute, decided to take the defense of the case. In October 2010, Center Prodh and the Ignacio Ellacuría Human Rights Institute filed an *amparo* action, the last legal resource available for the water defenders, and await a resolution.

Finally, it is important to note that the criminal proceedings against the water defenders led to the reappropriation of the springs by the local power group, a situation that has seriously affected the

²⁵ Serious contradictions became evident among prosecution witnesses' testimonies. For example, Cristóbal stated that he was held at gunpoint and then injured, which is important considering that the witnesses said that they did not see any weapons, although they "knew" that the supposed attackers were carrying them. The alleged weapons have not been found. The prosecutor also relied in other contradicting declarations. Meanwhile, the judges said that such contradictions were "not relevant" or were just "accidental data."

²⁶ Neither José Ramón and Pascual nor their witnesses had the opportunity to give their statements before the Prosecutor; therefore, their statements were made when they were before the judge.

entire community. This case is not just about a conflict between individuals, but about advancing a constitutionally and internationally recognized right and, furthermore, a sacred right from an indigenous point of view (springs and rivers are part of spiritual life in the indigenous communities).

At a glance: Timeline of José Ramón and Pascual's case

Background

Date	Event
15 May 2008	José Ramón and Pascual are elected Auxiliary President and Justice of the Peace, respectively.
22 October 2009	Abraham Aparicio Gómez attacks community authorities and the group of workers.
27 October 2009	An agreement was reached. Abraham Aparicio agrees to pay \$3,500 pesos for the attacks against José Ramón and Pascual. José Ramón and Pascual grant Abraham their pardon and refuse to press charges against him.

Criminal investigations

Date	Event
06 November 2009	Cristóbal Aparicio Gómez presses charges against José Ramón, Pascual and police agent Carmelo Castillo Martínez, for supposedly stealing a car on 27 October 2009.
09 December 2009	The prosecutor brings the case (registered under the number 71/2009/ERVT/HUAU) before the judge.

Criminal proceedings

Date	Event
10 December 2009	The court admits the case registered under the number 242/2009 and issues an arrest warrant.
13 January 2010	José Ramón and Pascual are arrested; but their detention is ratified the next day.
20 January 2010	The judge orders their formal detention.

12 July 2010	The Criminal Judge in Huauchinango sentences the defenders to 7 years and 22 days imprisonment and to a fine.
23 November 2010	The First Chamber of the High Court of Justice in the state of Puebla ratifies the sentence and modifies the punishment: 6 years, 10 months, 20 days and a fine.
27 October 2011	An <i>amparo</i> action is filed against the High Court's sentence.

Conclusion

In the case of José Ramón y Pascual, we found several procedural irregularities throughout the preliminary investigation, which can be attributed to the prosecutor based in the state of Puebla, the trial before the Criminal Judge in Huauchinango, Puebla,²⁷ and the Judges of the First Chamber of the High Court of the state of Puebla. The evidence makes it clear that on October 27, 2009, no crime was committed. José Ramón Aniceto and Pascual Agustin Cruz are two innocent people who are victims of human rights violations in the context of the criminal justice system that allowed for the wrongful admission of contradictory statements, and of the power and interests of the local strongman.

For Center Prodh and the Ignacio Ellacuría Human Rights Institute, this case illustrates serious human rights violations for the following reasons (among others):

A. Because it shows the vulnerability of indigenous and human rights defenders in Mexico. The case demonstrates that there are no minimum standards for indigenous rights defenders to access fair trials that take into consideration their cultural differences (like the fact that their language is not Spanish).

B. Because it confirms that the current criminal justice system does not encourage quality investigations to ensure that any person subject to criminal proceedings will enjoy minimum judicial guarantees established in the Constitution and international treaties.

Given the human rights violations against José Ramón and Pascual, the Mexican State has the opportunity to change its practices and not just its laws. Their release, the recognition of procedural irregularities and the human rights violations must be addressed if we really want to move towards the adoption of effective measures to guarantee human rights in Mexico, especially those of indigenous communities, who continue to be marginalized.

²⁷ The judge Juventino Hernández Flores was removed allegedly for corruption and organized crime. Cfr.: Monterrosa, Fátima, *En Atla, una muestra de la aberrante injusticia mexicana*, en Acento Veintiuno, Atla, Puebla, 14 March 2011, available at: <http://www.acento21.com/acento/06NP14032011.html>.

e. **Hugo Sánchez Ramírez: another example of the fabrication of crimes**



Executive summary

Hugo Sánchez, an indigenous Mazahua youth from the state of Mexico, was arbitrarily arrested by municipal police: in July 2007 while he was driving his family's taxi he was detained by police agents for supposedly having a "suspicious manner", which is a highly discretionary criterion in practice used to arbitrarily arrest members of indigenous peoples or people with low economic resources. Afterwards, the agents introduced firearms into the taxi to try to justify the arrest. Hugo was accused of illegal possession of weapons, but after being released on bail, he was later accused of a more serious crime: the kidnapping of two children that had occurred two months before. That accusation persisted even when two witnesses explained that it would have been physically impossible for Hugo to commit the crime. Additionally, the only statements against Hugo –those of the two children, made under the pressure of policemen –were withdrawn by the children during the trial.

The trial for kidnapping lasted two years and was characterized by the violation of basic rights, including the presumption of innocence. The judge arbitrarily rejected the defense witnesses and admitted evidence that was falsified or illegally obtained. The prosecutor was allowed to introduce as evidence a document that supposedly contained Hugo's confession of a series of kidnappings and other crimes. In other words, through this document the police pretended to "solve" various cases that were spontaneously confessed by Hugo. However, Hugo was not in the prosecutor's office the day he supposedly confessed the crimes and his signature does not appear on the document. However, the judge admitted the document containing the false confession as evidence.

Hugo was found guilty of kidnapping and sentenced to more than 37 years in prison. The sentence was appealed and confirmed by the appeals court. Consequently Hugo remains in prison



punished for a crime he did not commit. Meanwhile, prison authorities have said that Hugo cannot be considered indigenous because he speaks Spanish and drives a taxi.

Considering the legal importance of this case, on October 19, 2011 the National Supreme Court decided to assume jurisdiction over the *amparo* actions filed by Hugo through Center Prodh. Due to its paradigmatic nature, it is of great significance that the Supreme Court has decided to assume jurisdiction over Hugo's case. It will be an opportunity for the Supreme Court to set a precedent that hopefully will decrease and ultimately prevent arbitrary detentions. Particularly, the Court will be able to analyze the "suspicious manner" criterion that encourages arbitrary detentions especially against certain groups, such as those belonging to an indigenous community or those under certain economical conditions (e.g. low economical resources), among others. Through its decision on Hugo's case, the Supreme Court will be able to limit discretionary actions by the police, the fabrication of crimes and the criminalization of innocent people.

Background: The Mazahua Region

The region inhabited by the *mazahua* indigenous people is located in the northeast of the state of Mexico and a small eastern portion of the state of Michoacán. According to data from the national Institute of Statistics, prior to 2010, there were 133,430 people older than 5 years who spoke the *mazahua* language, 90% of them in the state of Mexico.

The *mazahuas* constitute the majority indigenous group in the state of Mexico and inhabit one of the poorest regions in the center of the country. The principal economic activity of this group is agriculture, normally for family consumption, although production is currently insufficient to meet numerous families' nutritional needs. This situation is aggravated by increasing erosion of the land and scarcity of water. Of the economically active population, 40% are farmers, 32% work in industries and 28% in service professions. Low income, especially for farmers, has driven waves of emigration to the cities of Mexico and Toluca, as well as to the United States.

The *mazahuas* maintain a traditional form of collective community work called *faena*, which consists in voluntary cooperation between community members to carry out works in benefit of the population such as schools, markets, and roads. They also maintain a system of community authorities, such as *mayordomos*, whose authority is centered in the celebration of religious festivals.

The community of Barrio de San Antonio, El Depósito, in the municipality of San José de Rincón, where Hugo's family resides, is located approximately 80 kilometers away from the capital of the state, Toluca. According to official data, the municipalities of San José del Rincón and Villa Victoria, the places of origin of Hugo's family and the site of the kidnapping, respectively, have the lowest human development index among the municipalities that make up the state of Mexico; that is, they are considered the most marginalized communities of the state.²⁸

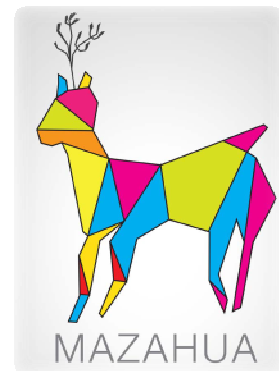
²⁸ Human Development and Gender Indicators in Mexico, 2000-2005, pages. 183-85, <http://www.undp.org.mx/desarrollohumano/genero/Doctos/Estado%20de%20Mexico.pdf>.

The facts of the case: Hugo's arbitrary detention and unjust imprisonment

Hugo Sánchez Ramírez is the second of the five children of Antonio Sánchez Domínguez and Rosalba Ramírez Estrada, *mazahuas* from the state of Mexico. Throughout his life, Hugo's father has held numerous community offices, with which Hugo has willingly become involved.

On March 10, 2007, Hugo and his relatives were by the side of Hugo's dying grandmother, Doña Isidora in a hospital located in Mexico City, before returning to their community located in Barrio de San Antonio, El Depósito, municipality of San José del Rincón, state of Mexico. The hospital's records and various witnesses confirm both Hugo's grandmother's stay at the hospital and Hugo's visit and return to the community the next day. On March 11, Doña Isidora left the hospital and was taken back home. Hugo stayed at her side and helped at his home, which was visited by family and community members. Numerous witnesses testify of his presence at home during those days. Doña Isidora passed away on March 14.

On March 10, 2007, the same day that Hugo's family returned home to wait for his grandmother, two 15-year-old children were kidnapped in Villa Victoria, another town located in the state of Mexico, 45 minutes from the community of San José del Rincón. The victims were taken to a house where they remained during the rest of the time they were kidnapped. The night of March 12th, the kidnapped children were released after their parents had collected and delivered 20 thousand pesos as ransom. On Wednesday the 14th, the children stated before the public prosecutor that they could not identify their kidnappers "because everything was so fast and we could not really see their faces".



The deer is the sign of the Mazahua people

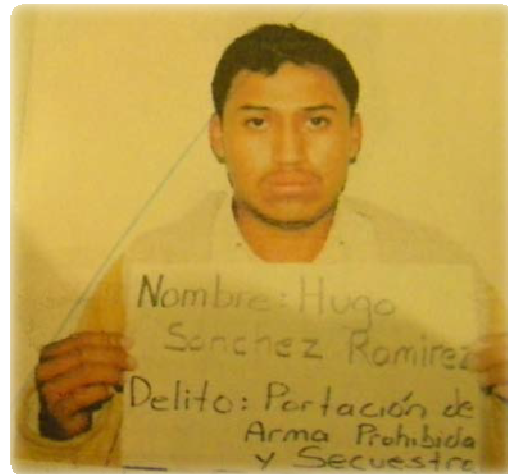
Four months after, on July 22, 2007 at around 8:30pm, Hugo Sánchez was at the taxi stand of La Providencia, in the municipality of San José del Rincón (he had started to drive the taxi on June 9, 2007; before that date his father had been in charge). That night a passenger asked Hugo to take him to Villa Victoria. As is customary in the area, they agreed to wait for more passengers before departing. Two more passengers got in the car and then the taxi left. Later, one more passenger got in the taxi, which was by then full. Upon reaching El Catorce, a community between the towns of La Providencia and Villa Victoria, a passenger asked Hugo to stop, because he wanted to get out of the taxi. Hugo made a full stop.

At that moment a municipal police truck blocked his taxi's path; two passengers (one in the front seat and one in the back right seat) jumped out of the taxi and ran away, leaving a backpack in the car. At the same time and without any clear explanation, the police started shooting at the taxi, leaving multiple bullet holes in it.²⁹ Hugo Sánchez and the other two passengers, Raúl Martínez and Manuel Mendoza, were forced out of the taxi and immediately restrained. The police agents planted firearms inside the car. Afterwards they took the detainees to an isolated place, beat them and intimidated them.

Later the three detainees were taken separately to the City Council in Villa Victoria. Members of the Specialized Group for High Risk Situations (CEISAR), arrived and took photos of the detainees, forcing them to hold weapons given to them; they were also photographed holding a piece of cardboard with the word "kidnapping" on it, as if they had been arrested for such a crime (see photo below). These actions show that from the beginning the police officers saw in Hugo and the other victims an easy opportunity to close unsolved cases of kidnappings. After the illegal photo-shoot, the victims were taken to the prosecutor's office on the morning of July 23, almost 12 hours after the arrest, accused of illegal possession of weapons.

That same day, Hugo appointed his father as a "person of trust", who demanded Hugo's release on bail. After paying eight thousand pesos, Hugo was released.

On July 23 CEISAR agents presented themselves at the home of one of the children that had been kidnapped and showed her 10 photographs (4 of Hugo Sánchez, 2 of Raúl Martínez and 4 of Manuel Mendoza), including ones that showed firearms supposedly confiscated from the people in the other pictures. Those photographs also showed Hugo and the other two men holding signs that read: "Crime: Illegal possession of weapons and kidnapping". The agents asked the child to identify the possible kidnappers, gave her their names and told her to declare at the prosecutor's office. Under pressure, the child accepted. She was then taken to the prosecutor's office by the CEISAR agent, Hugo Rolando Espinoza Rodríguez and stated, contrary to her first statement, that she could fully recognize Hugo Sánchez as one of her kidnappers.



²⁹ The police stated that agents from the Specialized Group for High Risk Situations (CEISAR) from the prosecutor's office arrested Hugo. According to the police version of events, Hugo and the others had been detained during a joint operation executed by municipal police and state police from the CEISAR for driving the taxi in "a suspicious manner". There is no evidence of such a joint operation and the CEISAR's contradictory statements during the trial show that the CEISAR police did not carry out the arrest, but arrived later. There is no evidence either of any attack against the police; everyone admitted that neither Hugo nor the passengers fired weapons.

On July 24, the case (number 29/2007) was sent to the Fourth District Court of Criminal Proceedings in the state of Mexico for the crime of illegal possession of weapons, despite the fact that only one of the agents declared having seen the weapon inside the car. According to his testimony he had seen the weapon in the middle of the car near the emergency brake, that is, even if this false story was true, there would not have been any proof that the weapon belonged to Hugo considering that there were 5 people in the taxi who did not know each other.³⁰

On July 27, Hugo Sánchez was supposedly questioned in the state prosecutor's office and supposedly confessed various crimes by stating that he and his friends "are engaged in kidnapping and killing at night". The report ties Hugo to other investigations on kidnappings. However, as his family and community members witnessed, Hugo was at home all day long, after the arbitrary detention and after he was released on bail. Hugo's signature is not in the report and there are no records of a summons. The report does not specify that his lawyer had been summoned or that he was present during the questioning. In summary, the police invented the confession and said that Hugo had written it, when in fact Hugo was not even present.³¹

On July 29, 2007 the prosecutor formally accused Hugo of kidnapping. On July 31 the case number 201/2007 was sent to the Sixth Criminal Judge of the Judicial District of Toluca, which issued an arrest warrant. On August 8, 2007 Hugo Sánchez was arrested for kidnapping.

³⁰ During the federal trial for the crime of carrying arms it was never possible to clarify what the police meant by the term "suspicious" when they stated that they had detained Hugo for driving the taxi in "a suspicious manner". Despite this, the arbitrary detention was admitted as legal. The only incriminating evidence was the policemen's statements, which were contradictory: only one state police agent declared having seen the weapons inside the car. The other two agents declared that their colleague had showed them the weapons outside the car. They also contradicted themselves regarding the person that was supposedly carrying the weapons. They also gave different versions regarding the place where they kept the detainees. Two police agents said that they had left them under surveillance at the City Council, while they looked for the ones that ran away; another agent declared that they never carried out the search for those persons. Despite the contradictions, the fact that Hugo and the other detainees declared that they did not know each other and that they continuously stated that the weapons were never inside the car, the judge gave more importance to the police agents' declarations. More serious is that the judge discarded as a "defensive argument" the detainees' statement that they did not know each other and were simply a taxi driver and passengers. As a consequence, the judgment stated without grounds, that those involved were not passengers in a taxi, but rather criminals engaging in some type of unlawful conspiracy. Finally, the judge considered that the weapons were located near the hand brake in the car and hence within all the detainees' range of action. That is, despite not being able to identify the person who owned or had carried the supposed weapons, it was determined that they were all guilty. On July 30, 2008, the Fourth District Judge in Criminal Procedure in the state of Mexico issued his guilty judgment against Hugo for the crime of illegal possession of weapons. Hugo's family filed an appeal, but it was unsuccessful as the Second Unitary Tribunal in the state of Mexico ratified on October 16, 2008 the judgment by which Hugo was sentenced to 5 years in prison.

³¹ It is important to mention that another of the passengers was released on bail and then arrested again for kidnapping with the same type of false evidence and under the same arguments used by the Public Prosecutor against Hugo. Based on the photographs and the induced identification of the kidnappers by the victims, the police incriminated Manuel Mendoza, Hugo's co-defendant. However, a court ordered his release among other reasons because the confession (presented by the prosecutor), apart from being made under illegal conditions, was dated when Manuel was in preventive detention, after being arrested in Hugo's taxi; in other words, it was physically impossible for him to be present the day of the questioning (which supposedly was carried out in the state prosecutor's office), because he was imprisoned in another building. Additionally, his physical characteristics did not match those of the kidnappers. It is important to recall this illegal action intended to fabricate a crime, since the same technique was used in Hugo's case.

The evidence presented against Hugo consisted of statements made by the children before the public prosecutor. Both identified Hugo as their kidnapper. However, during the trial one of the children withdrew his accusation saying that he had only identified Hugo because the other child had called him to tell him that he had to identify Hugo as the kidnapper. The girl also withdrew her accusation during the trial saying that during the session with CEISAR agents she was scared and she did not know what to do or say. She even asked Hugo's mother for forgiveness for having falsely accused Hugo.

Another piece of evidence used against Hugo was the report which contained the fake confession. Considering that it did not contain Hugo's signature, it was not admitted as a "confession" but as a police report (which the judge found to be convincing just because it had been written by state agents³²).

A series of witnesses declared that Hugo had been at home at his grandmother's side during the days that the kidnapping occurred. The judge did not consider these statements to be valid or relevant nor did he consider the children's first statements (in which they declared that they had not seen their kidnappers' faces) or the subsequent retractions important enough. On the grounds of the principle of "procedural immediacy", the judge explained that:

"It's true that in some of her statements at trial she said that she maybe made a mistake or was confused, that she is not so sure, she is possibly unfairly accusing him, and she even apologized if she made a mistake, that with all that is happening she does not know what to do, that she was possibly afraid and nervous when she accused him, that she did not know what to do and she does not know if he was him or not; however, she is not credible, since she was emphatic in pointing out before the Prosecutor that the accused was one of the individuals who kidnapped her and her boyfriend...it is not possible that she now mentions circumstances that modify her statement..."

On March 23, 2009 Hugo was convicted and sentenced to 37 years and 6 months in prison for the crime of kidnapping. On July 6, 2009 the first instance judgment against Hugo was ratified by an appeals criminal court (the First Chamber of the Collegiate Tribunal of Toluca), despite all the irregularities found in the case against him (including those parts where the sentence misquotes or contradicts the case's files).

Continuing discrimination: a public officer denies that Hugo Sánchez is indigenous based on the fact that he is a taxi driver, speaks Spanish and studied through high school.

In the last weeks of 2011, ignorance of the rights as well as of the definition of an indigenous

³² "...the mentioned defendant expressed that they went out at night to kidnap, usually couples...Evidence that, being produced by public officers, in accordance with law and due to their suitability and consistency with the facts...both the report and the officers' statements are a further indication of what happened...thus, based on this evidence too, the elements of the crime are considered to be proven...".

person became evident in Hugo's case. On November 23, 2011, the newspaper *Reforma* published an article entitled "A detainee is denied his indigenous ethnicity"³³ in which the reporter Silvia Garduño gave an account of Hugo's case and noted that her request to interview Hugo inside the prison was denied by the General Director of Prevention and Social Rehabilitation Center.

According to the answer given to the journalist by the General Director: "[Hugo] Sánchez proved his indigenous (Mazahua) ethnicity to the District Judge. However, studies conducted by the Social Work area of the Santiaguito (Almoloyita) Prevention and Social Rehabilitation Center do not refer any traits to catalogue him as such, considering that he speaks fluent Spanish and he only understands the indigenous dialect; he studied until the first year of high school and he was a taxi driver at the time of his detention".

Such expressions are clearly discriminatory. He is denied his Mazahua ethnicity on the basis of the fact that he speaks Spanish, studied in high school and worked as a taxi driver. Linking ethnicity to "dialects", the lack of schooling and certain working activities, and the non-indigenous to Spanish, education and certain other working activities shows how the indigenous identity is constructed from negative stereotypes and social roles.

Using criteria based on speaking Spanish or an indigenous language to define the indigenous population makes no sense in the light of the 2010 Population and Housing Census carried out by National Institute of Statistics and Geography (INEGI), a government agency, which reported that 6.6 % of the population aged 3 or more speak an indigenous language in Mexico, but 14.9% of the population identifies itself as indigenous.³⁴ In the case of Hugo, both his father (who holds a traditional office in his community) and his older brother speak Mazahua, while the rest of the family understands it but do not necessarily speak it in their everyday life. Denying Hugo's indigenous identity in prison is another element that adds to the various human rights violations in his case.

Center Prodh's intervention in the case

Hugo's relatives, having exhausted virtually all legal remedies with the aim of demonstrating his innocence, approached Center Prodh which, after thoroughly analyzing the case files and carrying out an exhaustive documentation process, concluded that Hugo is indeed innocent and that he was only convicted due to a series of human rights violations committed in the trial. In 2011 Center Prodh filed *amparo* actions against the judgments for the charges of kidnapping and illegal possession of weapons. The National Supreme Court assumed jurisdiction over these *amparos*, which are the last legal resource available for Hugo Sánchez, on the grounds of their legal importance. The Supreme Court will have the opportunity to release Hugo and to set a precedent that will guide judges in the country. Hugo's family is very hopeful that by assuming jurisdiction over his case, the Supreme Court will once again ratify its important role in reversing emblematic injustices in recent years.

³³ Silvia Garduño, *Niegan a detenido calidad de indígena*, REFORMA, 23 November 2011, page. 12. Center Prodh has a copy of the document containing the answer to the journalist (State Security Agency, reference number DGPRS/5681/2011, 28 October 2011).

³⁴ INEGI, *Principales Resultados del Censo de Población y Vivienda 2010*, pp. 62, 67, http://www.inegi.gob.mx/prod_serv/contenidos/espanol/bvinegi/productos/censos/poblacion/2010/princi_result/cpv2_010_principales_resultadosVI.pdf.

What does the Court’s decision to assume jurisdiction over the case mean?

In Mexico the Supreme Court has the capacity to assume jurisdiction over cases whenever it considers that they have very important and significant implications. In Hugo’s case, the Supreme Court considered it important to assume jurisdiction due to various reasons, among which are:

a) Considering that the police ordered Hugo to stop the taxi for having a “suspicious manner”, it is necessary to analyze the illegal acts by which the police arrest people based on highly discretionary criteria such as alleged “suspicious manners”. These discretionary criteria encourage discrimination against vulnerable groups.

b) Additionally, the Supreme Court has the historical opportunity to establish the requirements needed to admit and assess the evidence in criminal proceedings, including the internationally condemned judicial practice called “procedural immediacy”, which establishes that the first statements made by a person have greater evidentiary weight than whatever else the person might subsequently say. The Supreme Court will be able to analyze also fundamental issues such as the dismissal of illegally obtained evidence; equality in the assessment of evidence presented by the prosecution and the defense; the presumption of innocence, etc. The judicial practice in many of these issues is no longer consistent with the oral and adversarial justice system, established in 2008 and in process of implementation.



At a glance: Timeline of the events in Hugo’s case concerning the kidnapping

Date	Event
July 21, 2007	Hugo’s detention (8:30pm).
July 21-22, 2007 (night and early morning)	Photos are taken of the detainees.
July 23, 2007	Statements made to prosecutor within investigation PGR/MEX/ TOL-V/882/2007. Bail granted.
August 29, 2007	Judicial statement in Fourth District Criminal Court in trial 29/2007.
August 31, 2007	Preventive prison ordered.
July 30, 2008	The Fourth District Criminal Judge sentences Hugo to 5 years and a fine.
October 16, 2008	The Second Unitary Tribunal of the Second Circuit affirms the conviction in case: 190/2008.

June 3, 2011	The Fourth Collegiate Criminal Tribunal of the Second Circuit admits <i>amparo</i> (Constitutional challenge) 110/2011 against the sentence.
June 13, 2011	The First Chamber of the Supreme Court registers the assumption of jurisdiction case 135/2011.
June 22, 2011	Justice Arturo Zaldívar Lelo de Larrea presents the proposal of assumption of jurisdiction.
October 19, 2011	The First Chamber decides to assume jurisdiction over <i>amparo</i> 108/2011 and appoints the Justice who will be in charge of the case.

At a glance: Timeline of the events in Hugo's case concerning weapons

Date	Event
July 21, 2007	Hugo's detention (8:30pm).
July 21-22, 2007 (night and early morning)	Photos are taken of the detainees.
July 23, 2007	Statements made to prosecutor within investigation PGR/MEX/ TOL-V/882/2007. Bail granted.
August 29, 2007	Judicial statement in Fourth District Criminal Court in trial 29/2007.
August 31, 2007	Preventive prison ordered.
July 30, 2008	The Fourth District Criminal Judge sentences Hugo to 5 years and a fine.
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October 19, 2011	The First Chamber decides to assume jurisdiction over <i>amparo</i> 108/2011.

Conclusion: an emblematic example of the serious deficiencies in the criminal justice system

For Center Prodh Hugo Sánchez's case is a particularly clear example of the systematic flaws in Mexico's criminal justice system, especially the discriminatory acts carried out by police; the presumption of guilt; the use of false and illegal evidence to convict innocent people and the victimization of discriminated social groups. These patterns, in addition to destroying the lives of the victims, their families and communities such as Hugo's, aggravate crime and insecurity in Mexico, because for every innocent person in prison, the real perpetrators, in this case the authors of a kidnapping, remain at large.

The judge merely ratified the police's version of the facts; meanwhile, no piece of evidence against Hugo was even produced before him. He dismissed all the statements that placed Hugo at home and in his community at the time of the kidnapping. In contrast, the accusation made by the police officers was not subject to any legal controls; rather, the judges considered the accusation truthful since it was made by public officers.³⁵ They did not question either the arbitrary nature of the "suspicious manner" argument to arrest Hugo.

All this highlights the mechanisms of criminalization of vulnerable sections of the population to cover up the failure of the justice system in the investigation, prosecution and punishment of crimes.

³⁵ When admitting the police's version of the facts, the judge pointed out that: "they are deemed impartial, since they are police agents attached to the Attorney General's Office in the state of Mexico..."

V. Conclusion: opportunities for Mexico

The Mexican government has the opportunity to reverse discriminatory practices and human rights violations identified throughout this report, beginning with the paradigmatic cases discussed above. In particular, the Judicial Branch can play an important role in this process by resolving fairly and in accordance with the law and international treaties, two of the paradigmatic cases presented here:

- In the case of **Hugo Sánchez Ramírez**, the National Supreme Court will have the opportunity not only to free the victim, but also to declare unconstitutional two recurrent practices in Mexico that encourage arbitrary detentions and abuses against innocent people, especially those belonging to vulnerable groups:
 - The first one is the use of the "suspicious attitude" criterion by the police. This is an arbitrary criterion that allows abuses and the detention of individuals based on their ethnic identity, economical situation, etc.
 - Another criterion that can be invalidated by the Supreme Court is the judicial argument of "procedural immediacy," cited by judges to grant evidentiary value to a person's first statement, even if not made before a judicial authority and if the person retracted later in court explaining that he/she was a victim of coercion by police officers. This criterion, widely condemned by international human rights bodies, allows judges to give greater evidentiary value to confessions and other statements obtained under torture.
- The judges from the Collegiate Circuit Court that is analyzing the *amparo* action filed against the ruling in the case of the water defenders, **José Ramón and Pascual**, have the opportunity to release these innocent indigenous authorities, as well as to send a message in the sense that use of the criminal law as a tool of repression against community defenders will not be permitted. A decision to this effect would allow the community to access drinking water again.

For its part, the Attorney General's Office (PGR) must adequately respond to the claims for reparations filed by Jacinta Francisco Marcial, Alberta Alcántara and Teresa González for the years that they were unfairly imprisoned.

Apart from the human rights violations described in the case studies, the following recommendations should be adopted to reverse the practice of arbitrary arrests and improve access for indigenous people to a fair trial:

- **To carry out prompt, full and impartial investigations of arbitrary arrests committed by public servants**, as well as allegedly fabricated statements that criminalize a person or group of people, especially if it was for discriminatory reasons.
- **To ensure that indigenous individuals who are arrested or involved in criminal proceedings enjoy the services of an interpreter and a lawyer** that are familiar with their language, culture and social environment.

- **To ensure due process rights and a fair trial in any criminal proceeding, especially:**
 - **The presumption of innocence**, which means that the prosecution has the burden of proof to demonstrate fully that the crime was committed and the criminal liability of the accused person.
 - **The dismissal of illegal evidence** such as fabricated statements or statements made under coercion.
 - **The use of impartial criteria to assess the evidence**; in other words, to ensure that the same criteria are used to assess the evidence presented by the defense and the prosecutor; that is, to avoid granting greater evidentiary value to certain evidence just because it was submitted by the prosecution or giving lesser value to evidence submitted by the defendant.
 - **The non-application of the “procedural immediacy” criterion.**
- **Full implementation of the new oral and adversarial criminal justice system** in accordance with its object and purpose, in order to strengthen respect for the aforementioned rights.

The recommendations presented above will not, by themselves, solve the problem of discrimination based on ethnic identity in Mexico, but they can make positive contributions that would allow many victims and their families to exercise rights that would otherwise be impossible.

In a broader sense, but not less urgent, the State must take all the necessary actions to reverse the persistent discrimination and marginalization of indigenous people. Access to justice and dignified living conditions will only be ensured when structural violence (social, economic and cultural) against indigenous people is removed and their rights to their land and territory, cultural identity, traditional systems and the right to determine their way of life and development, among others, are respected.