

# MEXICO

## BRIEFING TO THE UN COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

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Amnesty International submits the following information for consideration by the United Nations (UN) Committee on the Elimination of Racial Discrimination (the Committee) in advance of its examination of Mexico's 16<sup>th</sup> and 17<sup>th</sup> periodic reports, submitted under article 9 of the Convention on the Elimination of All Forms of Racial Discrimination (the Convention). This briefing focuses on Mexico's failure to comply fully with the Convention in the relation to two particular groups of people in Mexico: irregular migrants and Indigenous peoples.

## 1. IRREGULAR MIGRANTS – ARTICLES 2, 5(B) AND 6

In April 2010, Amnesty International published "Invisible Victims, Migrants on the move in Mexico".<sup>1</sup> The report, based on two years of research, documented systematic abuses committed by criminal gangs and public officials against predominantly Central American irregular migrants in transit in Mexico. Amnesty International concluded that tens of thousands of migrants travelling through Mexico are routinely victims of extortion, ill-treatment, abduction, rape, murder and forced recruitment into criminal gangs.<sup>2</sup> Migrant women and children are particularly targeted. Criminal gangs, often operating with the collusion or acquiescence of public officials, are responsible for the majority of these abuses, but Federal Police and migration officials are also responsible for violations such as excessive use of force when detaining people. The failure of federal and state governments to effectively combat instances of xenophobia and discrimination against irregular migrants means irregular migrants are at increased risk of abuses. The lack of adequate protection or complaint mechanisms available to migrants means they are usually denied access to justice or protection. Those responsible for abuses are rarely held to account creating a climate of impunity and tolerance of abuses against migrants.

In August 2010, the bodies of 72 irregular migrants who had been killed by a criminal gang were discovered in San Fernando municipality in Tamaulipas state. In April 2011, 183 more unidentified bodies, some believed to be irregular migrants, were discovered in the same municipality. They had apparently been the victims of a criminal gang operating in collusion with municipal police. Criminal investigations have resulted in the detention of at least 80 suspected members of the criminal gang, including 17 local police, but it is not clear how many of these arrests are in connection with abduction and killing of migrants.

Amnesty International recognises that the Mexican government has introduced some important legal reforms, such as the new law on migration, which improve recognition of migrants' rights, including access to justice. However implementing legislation to be enacted

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<sup>1</sup> AI index AMR 41/014/2010, available at <http://www.amnesty.org/en/library/asset/AMR41/014/2010/en/8459f0ac-03ce-4302-8bd2-3305bdae9cde/amr410142010eng.pdf>.

<sup>2</sup> In February 2011, the National Human Rights Commission published an update report on kidnappings of migrants and concluded that more than 11,000 had been kidnapped during a six month period in 2010: Informe Especial sobre Secuestro de Migrantes en Mexico, 22 febrero 2011, available at <http://www.cndh.org.mx/>

within 180 days of the bills approval remains to be consulted or approved.<sup>3</sup> The government has also announced new measures to coordinate between agencies and with state authorities the prevention of abductions of migrants, such as the Integrated Strategy to prevent and combat the kidnapping of migrants.<sup>4</sup> However, the government has not carried out an evaluation of these initiatives, and local migrants' rights defenders have repeatedly informed Amnesty International that these policies have not resulted in operation changes in areas where there are high levels of abductions. Amnesty International research indicates that federal and state governments and different agencies responsible for migration, criminal investigations, and policing often work without effective leadership or coordination to combat criminal gangs preying on migrants. As a result there has not been any marked improvement in the prevention and punishment of abuses, and public officials implicated are rarely held to account.

The government has also failed to implement measures to gather reliable data on abuses against migrants and actions taken to hold those responsible to account, or a database on missing/disappeared migrants in order to assist investigations and the identification of remains. For further detail on Amnesty International's recommendations, please refer to "Invisible Victims, Migrants on the move in Mexico".

Amnesty International has recommended that the government of Mexico:

- Implement protection measures for migrants at risk and ensure effective complaint mechanisms are available to guarantee access to justice.
- Implement measures to combat xenophobia and discrimination against migrants in Mexico.
- Ensure that all reports of abuses, including state or non-state actors, are promptly, impartially and effectively investigated, so that those responsible are brought to justice and victims receive protection and reparations.
- Ensure full and effective investigation and recording of all violent deaths of irregular migrants in order to establish the identity of the victim and the cause of death, and where there is evidence, conduct a full criminal enquiry.
- Establish a nationwide database for cases of migrants reported missing;
- Collect and publish nationwide data on abuses committed against migrants and measures taken to hold those to account to justice;

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<sup>3</sup> <http://cencos.org/node/27510>

<sup>4</sup> Estrategia Integral para la Prevención y el Combate al Secuestro de Migrantes, [http://mision.sre.gob.mx/oi/images/stories/boletines2/31\\_DGDH201.pdf](http://mision.sre.gob.mx/oi/images/stories/boletines2/31_DGDH201.pdf)

## 2. INDIGENOUS PEOPLES

In 2007 Mexico was one of 144 states that voted in favour of the adoption of UN Declaration on the Rights of Indigenous Peoples (the Declaration) by the General Assembly. The Declaration recognises the core rights to ancestral lands, consultation and free, prior and informed consent. In June 2011 Constitutional reforms expressly incorporating Mexico's international human right commitments into the Constitution marked a major step forward in the legal protection of internationally recognised rights. In recent years, reforms to Articles 1 and 2 of the Constitution have strengthened anti-discrimination standards and given greater recognition to the multi-ethnic nature of the country, and particularly the rights of Mexico's 10 million Indigenous peoples. Nevertheless, many of Mexico's Indigenous peoples continue to live in extreme poverty and marginalization and are routinely subject to direct and indirect discrimination. For example, the United Nations Development Programme human development indicator report of 2010 noted that, despite government measures, Indigenous peoples in Mexico suffer far greater social inequality than any other group and their access to health, education, social security, housing and other basic services is very limited.<sup>5</sup> In 2010, the Mexican National Council for the Prevention of Discrimination survey found that Indigenous peoples considered discrimination the most severe problem they faced.<sup>6</sup>

### 2.1 MATERNAL MORTALITY AND ACCESS TO HEALTH CARE – ARTICLE 5(E)(IV)

The Government's focus on reducing maternal mortality in recent years has produced important advances in reducing overall levels preventable maternal deaths. In 2010, according to public health data there were 51.5 maternal deaths per 100,000 live births across Mexico.<sup>7</sup> However, high levels of maternal mortality amongst Indigenous women compared with other non-Indigenous women persist and clearly indicate social inequality and limited access to poor health facilities for many Indigenous women.<sup>8</sup> The three states with the largest Indigenous populations, Chiapas, Guerrero and Oaxaca, averaged 82.5 maternal deaths per 100,000 live births in 2010, considerably higher than the national average.<sup>9</sup> In 2009 the risk of maternal death was three times higher in those municipalities with over 70 per cent Indigenous population compared to municipalities with less than 40 per cent Indigenous population.<sup>10</sup>

During field research on maternal health conducted by Amnesty International delegates during 2010 in Chiapas and Guerrero, health professionals, midwives, Indigenous women's

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<sup>5</sup> [http://www.undp.org.mx/IMG/pdf/Informe\\_Completo.pdf](http://www.undp.org.mx/IMG/pdf/Informe_Completo.pdf)

<http://www.eluniversal.com.mx/nacion/181286.html>

<sup>6</sup> Encuesta Nacional sobre Discriminación en México, ENADIS 2010, page 54 (CONAPRED), <http://www.conapred.org.mx/redes/userfiles/files/Enadis-2010-RG-Accss-002.pdf>

<sup>7</sup> [http://www.omm.org.mx/images/stories/MM\\_2002\\_2010.xls](http://www.omm.org.mx/images/stories/MM_2002_2010.xls)

<sup>8</sup> In 2009, the Maternal Mortality ratio was 62.2 per 100,000 for the whole population, but states with high indigenous populations recorded significantly increased ratios of maternal deaths, including Guerrero with 107.8. Observatorio de Mortalidad Materna, <http://www.omm.org.mx>

<sup>9</sup> [http://www.omm.org.mx/images/stories/MM\\_2002\\_2010.xls](http://www.omm.org.mx/images/stories/MM_2002_2010.xls)

<sup>10</sup> [http://www.undp.org.mx/IMG/pdf/Informe\\_Completo.pdf](http://www.undp.org.mx/IMG/pdf/Informe_Completo.pdf), page 66

rights organizations and community members identified a series of factors limiting the impact of government measures with regard to Indigenous communities. These included the frequent failure to ensure that health services are accessible, available, culturally acceptable and of sufficient quality to develop the trust and confidence of Indigenous peoples. Those interviewed also stated that a significant number of Indigenous women encounter discrimination when seeking healthcare which acts as a major deterrent to accessing health services and securing improved health outcomes for Indigenous women. For example, many health facilities and personnel do not speak Indigenous languages and translation is not available in most of them, so women do not understand what is happening to them or trust medical staff serving their communities. Amnesty International found that there is frequently a failure to consult effectively and in good faith with Indigenous women in affected communities to ensure their views are built into policy formulation and planning on health care provision. The failure to establish robust processes of consultation with Indigenous communities, particularly women, frequently prevents the development of a more positive relationship between state maternal health services and Indigenous women in many of the poorest regions of the country.

## 2.2 ACCESS TO JUSTICE AND EQUALITY BEFORE THE LAW – ARTICLE 5(A)

There have been important reforms to the criminal justice system since 2008,<sup>11</sup> including improved recognition of the right of Indigenous peoples in all judicial proceedings to interpreters and lawyers who know their language and culture.<sup>12</sup> However, in reality, the vast majority of judicial proceedings in which Indigenous peoples are accused, victims or witnesses, such lawyers and interpreters are not available. At the Federal level, there has been a gradual increase in the availability of Indigenous speaking lawyers and interpreters, but in state jurisdictions, where the great majority of cases are dealt with, provision is extremely scarce. As a result in many cases that Amnesty International has studied, Indigenous peoples were frequently forced to participate in all stages of judicial proceedings without adequate assistance and without being clear of the nature of the proceedings. As a result, Indigenous criminal suspects are often prevented from effectively defending themselves against criminal charges, resulting in unfair trials and convictions. Even in those cases where national and international pressure results in acquittal or charges being dropped, Amnesty International is not aware of any cases where Indigenous peoples have obtained reparations for unfair detention and prosecution.

For example, In April 2010, two Indigenous women, Alberta Alcántara and Teresa González, were released from prison after the National Supreme Court quashed their conviction. The two Indigenous women, both from Santiago Mexquititlán, Querétaro state, had spent three years in prison falsely accused and convicted of kidnapping federal investigative police officers. Amnesty International adopted them as prisoners of conscience after concluding that the detention, prosecution and conviction were the result of their status as poor Indigenous women with virtually no opportunity of defending themselves against unfounded

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<sup>11</sup> Constitutional Reforms on Criminal Justice and Public Security, <http://www.diputados.gob.mx/cedia/biblio/archivo/SAD-07-08.pdf>

<sup>12</sup> Mexican Constitution, Art 2, A, VIII (tienen en todo tiempo el derecho a ser asistidos por intérpretes y defensores que tengan conocimiento de su lengua y cultura)

charges filed by the Federal Attorney General's Office on the basis of fabricated evidence.

In October 2011, Alberto Patishtán, along with several other Indigenous inmates in prisons in Chiapas state, began a hunger strike against what they believed is their unfair detention and conviction. According to court records studied by Amnesty International, Alberto Patishtán was convicted in 2002 by the Federal Court for homicide on the basis of a single witness who initially denied knowing any of the attackers and subsequently altered his statement to accuse Alberto Patishtán. Evidence presented in defence of Alberto Patishtán demonstrated that he was in a different location at the time of the attack, and the trial was marred by other irregularities. Despite ongoing efforts to clear his name, the courts have upheld his conviction. In 2010, his case was submitted to the Inter-American Commission of Human Rights. Alberto Patishtán has also campaigned for prisoner rights while in custody. In the middle of the hunger strike to protest his innocence, the federal authorities transferred him 2000 kilometres to federal prison in Sonora. In the new detention facility, his access to lawyers, medical treatment and family have been severely restricted.

### 2.3 CONSULTATION AND FREE PRIOR AND INFORMED CONSENT FOR DEVELOPMENTS ON INDIGENOUS LANDS AND INCONSISTENT RESPECT FOR COURT JUDGEMENTS – ARTICLE 26 AND ARTICLE 32 OF THE DECLARATION

Indigenous communities are also increasingly under pressure from development and resource extraction projects affecting their communal lands. The failure to respect existing legal and Indigenous mechanisms, such as agrarian law and communal decision-making practices, or to institute good-faith and participatory consultation processes with all members of affected communities, falls below the standards of consultation established by the Declaration. Indigenous peoples must also give their informed consent to development projects that could significantly affect their lands and communities.

In April 2011, an Agrarian Court in Guerrero state once again ruled in favour of members of Indigenous and peasant farmer (campesino) communities challenging the legality of measures to try to expropriate their land for the construction of the La Parota Hydroelectric dam, in Guerrero state.<sup>13</sup> The long-running campaign against the dam by campesino and Indigenous communities has been ignored by the Federal Electricity Commission and the Guerrero state government, which have frequently restated their determination to move ahead with the project despite opposition from affected communities.<sup>14</sup> It is imperative that the latest decision of the Agrarian Court be respected.

Indigenous Wixáritari communities of central western Mexico have also expressed concern at more than 22 mining concessions that have been granted to a Canadian mining company, First Majestic Silver Corp to exploit silver deposits on a nature reserve that includes sacred sites of these Indigenous people at Real de Catorce, San Luís Potosí state. The free, prior and

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<sup>13</sup> E/C.12/MEX/CO/4. 9 June 2006, para 10, 28,

<sup>14</sup> Mexico: Human Rights at Risk in La Parota Dam Project, AMR 41/029/2007, <http://www.amnesty.org/en/library/info/AMR41/029/2007/en>

informed consent of the affected community has not been obtained regarding the granting of these concessions over Indigenous lands, and their exploitation is in contravention of Mexico's commitments under the Declaration.

#### 2.4 INDIGENOUS HUMAN RIGHTS DEFENDERS – GENERAL RECOMMENDATION 23 PARA 4(E)

Indigenous human rights defenders are increasingly subject to harassment and intimidation for their work defending Indigenous peoples' rights.

In November 2009, Mariano Abarca, an Indigenous activist opposing a barite mine run by Canadian company, Blackfire Exploration, in the municipality of Chicomuselo, Chiapas state, was shot and killed by two gunmen.<sup>15</sup> He had previously suffered threats and harassment for his campaigning against the mine. The investigation into his killing continues.

In August 2010, after intense national and international pressure, Indigenous rights activist and prisoner of conscience Raúl Hernández was acquitted for lack of evidence and released from prison in Ayutla, Guerrero state. He had spent more than two years in custody accused of murder. After his release, he and other members of the Organización del Pueblo Indígena Me'phaa, (OPIM) faced threats and intimidation.<sup>16</sup>

Inés Fernández Ortega and Valentina Rosendo Cantú, are Indigenous women who in August 2010 won their case before the Inter-American Court of Human Rights which found Mexico responsible for a series of human rights violations, including for their rape by members of the army in 2002 and discriminatory treatment of the two victims by the authorities.<sup>17</sup> They have suffered repeated threats and harassment during their long struggle for justice.<sup>18</sup> The Inter-American Court of Human Rights ordered the removal of such cases from military jurisdiction to the civilian justice system and a range of restorative measures. To date the government has failed to comply with most of the substantive elements of the sentence, including reforming the military penal code to exclude human rights violations.

On 13 January 2010, José Ramón Aniceto and Pascual Agustín, two Indigenous Nahua community activists, were arrested on charges of stealing a car. Although prosecution witnesses contradicted each other, the two men were convicted and sentenced to seven years in prison by a Puebla state court. In November 2010, the state superior court rejected their appeal, but reduced their sentence to 6 years. A further judicial review (amparo) is

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<sup>15</sup> UA: 321/09 Index: AMR 41/062/2009 <http://www.amnesty.org/en/library/info/AMR41/062/2009/en>

<sup>16</sup> Further information on UA: 63/10 Index: AMR 41/039/2011, <http://www.amnesty.org/en/library/info/AMR41/039/2011/en>

<sup>17</sup> [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_215\\_esp.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_215_esp.pdf)

<sup>18</sup> <http://www.amnesty.org/en/library/info/AMR41/005/2008/en>,  
<http://www.amnesty.org/en/library/info/AMR41/010/2011/en>

pending.<sup>19</sup>

**In response to the situations documented above, Amnesty International has recommended that the Mexican government:**

- Address inequalities in access to culturally appropriate and quality maternal health services for Indigenous women
- Ensure a full process of consultation with Indigenous women in order to ensure their views are built into the formulation and planning of maternal health services.
- Ensure Indigenous women who are victims of violence have access to justice, protection, health and social services;
- Provide trained interpreters and defence lawyers for Indigenous peoples and others subjected to criminal charges in all jurisdictions in order to ensure that they enjoy the right to effective defence and fair trial;
- Ensure military, police, prosecutors and judicial officials refrain from discrimination and uphold the rights of Indigenous criminal suspects, victims and witnesses;
- Call for the review of cases in which Indigenous criminal suspects allege denial of fair trial in order to ensure their rights are fully respected and they are not subject to unwarranted detention;
- Ensure Indigenous peoples enjoy the right to free, prior and informed consent regarding economic or development projects impacting their lands;
- Comply with Agrarian Court ruling (360/2010) which annulled illegally obtained approval for expropriation of land for the Parota Hydroelectric dam.
- Ensure that Indigenous people working to defend the rights of Indigenous communities are not persecuted for that work, including the provision of protection measures, effective investigations and compulsory training programs for government officials such as judges, prosecutors and police officers.
- Ensure the full compliance with the judgements of the Inter-American Court of Human Rights in the cases of Inés Fernandez and Valentina Rosendo.

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[http://centroprodh.org.mx/prodh/index.php?option=com\\_content&view=section&layout=blog&id=21&Itemid=142&lang=es](http://centroprodh.org.mx/prodh/index.php?option=com_content&view=section&layout=blog&id=21&Itemid=142&lang=es)



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