



**University of Oklahoma College of Law
International Human Rights Clinic
The United States of America**

Report on the United Mexican States to the 17th Session of the Universal Periodic Review, Human Rights Council, 21 October –1 November 2013

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EXECUTIVE SUMMARY

The International Human Rights Clinic of the University of Oklahoma College of Law (IHRC-OU) submits the following report to the 17th Session of the Universal Periodic Review, Human Rights Council. This report concerns indigenous communities of Mexico and surveys Mexico's compliance with certain human rights obligations. The report focuses on the selected areas of Exploitation of Indigenous Land for Mining and Drilling Operations, Indigenous Health, Land Rights, and Genetically Modified Corn. The purpose of this report is to provide a balanced view of indigenous concerns in Mexico and recommend measures to address those concerns. The IHRC-OU notes the commitment expressed by Mexico to develop and expand programs and policies for the protection of indigenous peoples.

I. MINING AND DRILLING ON INDIGENOUS LAND

Normative and Institutional Frameworks

International Provisions: In April 2012, the U.N. Committee on the Elimination of Racial Discrimination recommended that Mexico ensure compliance with international standards when, in exceptional cases, it is deemed necessary to relocate and resettle indigenous peoples. The Committee requested that Mexico include in its next periodic report information on indigenous peoples and land tenure, particularly in cases where attempts are being made to exploit the natural resources on the land. The Committee also recommended that all efforts be made to expedite the adoption of a law on the subject of exploitation of natural resources, noting that the absence of implementing regulations for International Labour Organization Indigenous and Tribal Peoples Convention, 1989 (ILO Convention No. 169) is no obstacle to holding prior consultations. Despite these recommendations, Mexico has not sufficiently prioritized additional protections for indigenous peoples.

The Special Rapporteur on the Right to Food recommended in January 2012 that the Mexico provides a comprehensive review of the procedures in place to ensure that large-scale development projects comply with international standards on the basis of the Guiding Principles on Internal Displacement and of the principles and guidelines on development-based evictions and displacement, and also ensure compliance with ILO Convention No. 169 and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP). As of February 2013, this comprehensive review has not been provided.

Domestic Undertakings: The 2012 CERD Report urged Mexico to ensure that at each stage of resource development projects, effective consultations are conducted with indigenous communities likely to be affected, with the aim of obtaining their free, prior and informed consent, particularly in the case of mining projects. Despite these recommendations, Mexico has not taken concrete measures to implement them, and has failed to appropriately consult with indigenous communities before mining, drilling, and development contracts have been approved.

Human Rights on the Ground. The 2008 Working Group cited stakeholder submissions who found that indigenous peoples of Oaxaca have been subjected to, among other things, the systematic ransacking of their natural resources and culture, and the situation has grown worse in the past four years. In 2009, attention was drawn to the attack by August 2008 attack by military forces on indigenous people from Sierra Sur, and to the implementation of the hydroelectric project in Paso de la Reina. In 2009, over 10,000 hectares of communal property in the Istmo de

Oaxaca region were earmarked for the construction of wind farms. When the IHRC visited this region, wind farms were abundant.

These submissions also found that development projects promoted by Mexico undermined the rights of indigenous people to self-determination, to receive appropriate information, to be consulted, and to participate in decision-making processes. The reports noted a number of cases of violations and threatened violations of human rights in relation to giant infrastructure and other projects involving public and foreign direct investment investors. The social and environmental impact of those projects had not been thoroughly analyzed by the Mexican authorities before permission was granted. The reports found that in many cases the hardest-hit communities were the indigenous people in the area, who had been deceived and pressured by various means, and who had been, or were in danger of being, displaced with none of the compensation required by law. The government continues to ignore the social and environmental impact of these projects. In some areas of Oaxaca, Mexico, indigenous land has been destroyed by mining activities carried out by international mining companies, causing devastation to habitat, and harmful effects to agriculture and water quality due to dangerous runoff. In the testimonies presented to the group of IHRC-OU that visited indigenous communities in Oaxaca, a common concern expressed was the lack of adequate consultation and efforts to ensure free and prior informed consent by the relevant authorities prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with large-scale development projects.

Recommendations

- As the Working Group recommended in 2009, adopt appropriate legislation in full conformity with international standards on the rights of indigenous peoples.
- Take necessary measures to ensure the rights of indigenous peoples affected by planned economic or development projects to be adequately and fairly consulted, in accordance with the commitments undertaken by ILO Convention No. 169 concerning Indigenous and Tribal Peoples.

II. LAND RIGHTS

Normative and Institutional Frameworks

International Provisions: In 2012, the CERD reiterated its concern about conflicts on lands traditionally owned by indigenous peoples and at the failure, in practice, to fully respect the right of indigenous peoples to be consulted before work starts on their land or resources are extrapolated. Such conflicts continue and the indigenous groups report being only rarely consulted in a meaningful way prior land takings. The CERD also expressed a concern about the absence of administrative measures to safeguard traditional forms of land tenure and ownership in 2012.

Domestic Undertakings: The Mexican Constitution, specifically article 27, recognizes indigenous peoples and their right to their land. Article 27, however, places significant restrictions on the land rights by asserting that indigenous peoples hold only communal title to their lands. The indigenous peoples state that this delineation prevents full ownership of their lands and perpetuates their oppression.

Human Rights on the Ground. The indigenous communities of Mexico sustain themselves wholly with the land. The ability to grow, eat and sell crops is vital to their existence. Similarly,

access to rivers and streams on that land is also necessary so that they may have clean water to drink and fresh fish to eat. Perhaps most importantly, the indigenous peoples feel a deep connection with, and obligation to, their land which they often call "madre." In the testimonies presented to the group of IHRC-OU by communities in Oaxaca, the continual and systematic loss of their lands to the Mexican government was consistently chief among their concerns. Several land takings have occurred through a variety of methods: by force, by fraud and by purportedly legal methods through the courts. The community of Santiago Tutla described the moving their village closer to their ever-shrinking border in an effort to be more offensive towards government encroachment. The communities report massive frustration with the inability to obtain timely and impartial rulings from the Mexican courts on existing or proposed land encroachments.

Recommendations

- Establish concrete rules of procedures in place to ensure that Indigenous Land title comply with ILO Convention No. 169.
- Ensure the complete participation of indigenous peoples in processes, which could affect their lands or territories and other resources.

III. GENETICALLY MODIFIED CORN

Normative and Institutional Framework

International Provisions: In 2008, the Report of the Working Group on the Universal Periodic Review recommended that Mexico take necessary measures to ensure the right of indigenous peoples and other marginalized communities affected by planned economic or development projects to be adequately and fairly consulted, in accordance with the commitments undertaken by ratifying ILO Convention No. 169 concerning Indigenous and Tribal Peoples. There is no evidence in several indigenous communities that the Mexican government has consulted leaders on the possibility of the commercial planting of genetically modified corn. Although the practice of planting corn is not a directly economic project itself, it negatively affects the economic capabilities of indigenous people by increasing the need for pesticides and decreasing the number of crops they can plant and sell. Additionally, genetically modified seeds are sold by large agricultural businesses like Monsanto, which independently decide the price of their seed, usually at a high rate. The government continues to overlook how its projects affect the wants or even overall needs of indigenous communities.

The 2012 Report of the Special Rapporteur on the right to food recommended that Mexico conduct an analysis of the ecological, agronomical, social, and economic effects of genetically modified crops as well as consider a return to their previous ban on the crops, even in field trials. Mexico has yet to conduct any analysis sponsored by the government, and is considered likely to allow not only field trials of genetically modified corn, but open commercialization.

Domestic Undertakings: In 2008, the Report of the Working Group on the Universal Periodic Review recommended that Mexico continue efforts and take further steps and strengthen the national program to ensure the right to food and to health, particularly for the vulnerable groups living in extreme poverty, including indigenous people. Mexico responded by amending its constitution in 2011 to guarantee the right to food to all citizens of Mexico. However, the Mexican government is now strongly considering allowing the commercial planting of genetically modified corn in the country, which is directly adverse to the health and diets of

indigenous populations throughout the country. Genetically modified corn adversely affects indigenous peoples' right to food by decreasing natural biodiversity in their fields.

The Mexican constitution also recognizes indigenous peoples' right to free determination, which includes the right to protect their culture and way of life. Growing maize has historically been a crucial aspect of indigenous way of life, as has the ability to feed the population through farming. Genetically modified corn directly interferes in this aspect of their culture by bringing unwanted technology to their fields that neither makes the growing process easier nor cheaper. As the Mexican government is considering legalizing this technology for use throughout the country, it is directly contradicting this element of its constitution regarding indigenous rights.

Human Rights on the Ground. Maize is a staple crop for Mexico and is vital to the indigenous communities in Oaxaca. It is part of their history, culture, and ability to sustain their communities successfully. With 17.8 million acres in Mexico currently containing corn, it is a crucial issue facing the country. The government is now allowing agricultural businesses to plant fields of their own genetically modified versions of corn throughout the country as a test, which has been strongly protested by the indigenous communities. There are currently 177 open field permits where genetically modified corn has been authorized to be planted and several companies have presented applications for commercial planting.

Indigenous communities explicitly expressed their specific concerns about genetically modified corn to the IHRC. Although the indigenous communities we spoke with expressed no interest in planting these altered seeds themselves, cross-pollination throughout the country is inevitable if large fields are planted commercially. This would result in several problems for these communities. Firstly, genetically modified corn often prevents the traditional practice of planting several crops in the same area because it takes over all of the available space. It is aggressive, which can lead to another concern: secondly, genetically modified corn may eliminate the growth of other, less aggressive types of corn, decreasing biological diversity in a country known for its many different types of corn. Thirdly, genetically modified corn often requires excessive amounts of items such as fertilizer, pesticide, and water, leading to higher production costs and more labor for indigenous farmers. Finally, indigenous farmers are concerned about the possibility of large agricultural companies discovering the existence of genetically modified corn on their lands, resulting in these companies charging the farmers prices they cannot afford for the seed.

Genetically modified corn interferes with several rights guaranteed to indigenous communities, including the right to food, to be consulted when projects are going to affect them, and their right to their own culture. It is threatening their way of life, their relationship with their land, and the ability to feed themselves. Indigenous peoples are worried and waiting anxiously for the Mexican government to protect their rights as it has promised.

Recommendations

- Perform studies that examine the effects of all new development projects on indigenous communities' way of life, in an effort to ensure indigenous culture continues to increasingly be understood and respected by the government.
- Dedicate government resources to forming committees that consult with indigenous communities when programs arise that may affect their culture, land and their way of life.
- If the Mexican government allows and contracts with agricultural companies for the commercial planting of genetically modified corn, no application should be approved without a specific agreement to not charge indigenous farmers for the presence of genetically modified versions of corn found in their fields as a result of cross-pollination.

IV. INDIGENOUS HEALTH

Normative and Institutional Frameworks

International Provisions: The 2012 CERD report recommended that Mexico create a comprehensive and culturally sensitive strategy to ensure that indigenous peoples receive quality health care. The CERD report also suggests a guaranteed by an adequate allocation of resources, the collection of indicators and transparent monitoring of progress. Mexico has not taken enough steps in advancing this subject.

Domestic Undertakings: In 2009, the UPR encouraged Mexico to dedicate more efforts and financial resources to eradicating the high rates of mortality and malnutrition, especially in rural areas and among indigenous people. It also recommended that Mexico continue to expand and strengthen its primary healthcare system and improve the quality of service. In particular, the Human Rights Council of the UPR recommended redoubling efforts to reduce maternal deaths by training birth attendants and establishing more obstetric clinics with particular attention to indigenous women. Article 4 of the Mexican Constitution affords healthcare to all Mexican citizens. This was followed by a February 16, 2009, announcement by President Felipe Calderon that stated all citizens would receive Universal Health Coverage by 2011. The government has not adequately addressed the recommendations of this committee. Mexico still has extremely high malnutrition and mortality rates. Those rates are even higher among indigenous communities.

Human Rights on the Ground. Communities and indigenous peoples in Mexico generally live in marginalized areas (even within urban centers), and consequently suffer disparate limits or constraints on their right to health. Many communities still suffer from so-called "diseases of poverty". An example of this is that three of the leading causes of death among the indigenous peoples are gastrointestinal diseases and respiratory infections (diarrhea, pneumonia, etc). The main causes are the lack of physical access to basic services, such as drinking water, as well as the lack of physical and economic access to medical facilities or basic health services.

While Mexico has been attempting to expand access to healthcare, the state has failed its communities. There are still many changes that need to take place in order for the indigenous communities to be able to have adequate access to healthcare. The situation of indigenous women and children is a matter of particular concern. The risk of dying in childbirth is more than twice as high for an indigenous woman as for a non-indigenous woman. Women in indigenous communities have the highest maternal mortality rate. The states of Oaxaca, Guerrero and Chiapas stand out since their population mainly indigenous accounts for almost half of the maternal deaths nationwide.

Recommendations

- Take concrete steps that really improve the access to health services of the indigenous communities, and reduce the maternal and infant mortality.
- Ensure the presence of interpreters in the health services, in order that indigenous communities have full access to this right.