

Informe temático sobre Pueblos Indígenas
informe de organizaciones de la sociedad civil en relación al cuarto ciclo del
Examen Periódico Universal (EPU) al Estado mexicano 2024

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Perfil de las organizaciones redactoras:

Este conjunto de organizaciones de sociedad civil nos hemos agrupado para trabajar de manera colectiva un informe que sintetice los principales problemas que aquejan a los pueblos indígenas así como las propuestas que se identifican en las recomendaciones elaboradas. La mayoría de estas organizaciones realizan trabajo de base en las diferentes regiones, en conjunto se logra cubrir la mayoría del territorio nacional en el que se encuentra la población indígena. Se trata de un esfuerzo extraordinario que agrupa el conjunto de capacidades de documentación, análisis, incidencia y construcción de paz de manera cercana a las comunidades indígenas con las que se trabaja.

La situación en México de las comunidades indígenas no es homogénea y este ejercicio de articulación permite recoger las singularidades, reconociendo los patrones estructurales que han permitido elaborar seis recomendaciones.





ALDEA
Alianza por la libre
determinación y la autonomía

Alianza por la libre determinación y la
Autonomía. ALDEA.
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La Alianza por la Libre Determinación y la Autonomía (ALDEA), está integrada por una amplia diversidad de pueblos, comunidades y organizaciones civiles con representación en 20 estados de la República, tienen el objetivo de lograr el reconocimiento de los pueblos indígenas como sujetos de derecho público en la Constitución y generar mejores condiciones para la defensa y protección de los territorios.

Campeche

Ejido Miguel Colorado Champotón
Unión de Ejidos en defensa del Territorio Maya.
Consejo de vigilancia del Ejido División del Norte
Ejido Haro
Observatorio de violencia social y de género.
Mujeres por un Nuevo Amanecer Hopelchén
Las Mariposas Comunidad de Xpujil
REDMYH A.C.

Chiapas

Movimiento en defensa de la vida y el Territorio MODEVITE
Movimiento de pueblos originarios en resistencia MOPOR
Tianguis Campesino
CDH Fray Pedro
Bienes Comunes de la Selva Lacandona BCZL
Enlace Región Cañadas de Las Margaritas y Zona Fronteriza
Enlace Región Selva y Cañadas de Ocosingo
Petem Mango
Santa Cruz El Palmar
Yajtjik
Lindavista
San José Napila
San Ramon Segunda sección
Juxuechej
San Antonio Las Palomas
La Libertad
Las Delicias
Raya Limón
Corralchen
Tacuba Nueva
Banacaxa
Ejido San Antonio Bulujib
Xanail
Chik Aktik
Najchij
20 De Noviembre

Santa Cruz La Reforma
 Ejido San Jerónimo
 Guadalupe Xaquila
 Bonampak
 Xaquila
 Soteel
 Tunapas
 Ranchería Majchum
 Cabecera Yajlon
 Cabecera Sitala
 Santa Rosa Mamalik
 Mojontsuy
 Nuevo Progreso
 Mojontsuy
 Barrio Las Golondrinas
 Barrio Ojo De Agua
 Barrio Centro
 Ejido Luis Espinoza
 Ejido Santoton
 Ejido Petalcingo
 Ejido Tila
 La Unión
 Comunidad Xixintonil
 San Juan De La Montaña
 Gobierno comunitario de Chilón

- Sacun c'ubwitz
- Sacun Saquila
- Bawitz Jerusalén,
- Jol sacun,
- Sacun palma,
- Sacun San Pedro
- Yochibja,
- Q'uicisal,
- Onteel,
- Axupja,
- Jol Axupja segunda Sección
- Mojón,
- C'anal Ulub,
- Nup'ha,
- Laguna Verde,
- Crucero Saquila.

Red Ambiental en Defensa de los Humedales de San Cristóbal

Chihuahua

Bosques San Elías Repechique

Huitosachi

Bacajípare

CONTEC, A.C.

Ciudad de México

Coordinadora Agua para todas y todos, agua para la vida

Tonelhuayotzin Nuestra Raíz A.C.

Fundación para el Debido Proceso DPLF

Servicios y Asesoría para la Paz A.C. (Serapaz)

Colectivo de Abogadas

Oxfam México

Consejo Civil Mexicano para la Silvicultura Sostenible CCMSS

Fundar, Centro de Análisis e Investigación A.C

Proyecto de Derechos Económicos, Sociales y Culturales, A.C (ProDESC)

Enlace Comunicación y Capacitación AC

Estado de México

Comunidad de Tepetlaoxtoc
 San Francisco Magú
 San Jerónimo Amenalco
 Consejo Comunitario de San Jerónimo Amanalco Texcoco
 Consejo Supremo Indígena de San Francisco Xochicuaula
 Frente de Pueblos en Defensa de la Tierra (FPDT) – Atenco

Guerrero
 Centro de Derechos Humanos de la Montaña Tlachinollan
 Coordinadora Regional de Autoridades Comunitarias- Policía Comunitaria (CRAC-PC)
 Enlace Región Montaña Alta

Jalisco
 San Lorenzo Azqueltán
 Comunidad de Indígena de Tepizoac
 San Juan de los Potreros

Michoacán
 Consejo Ciudadano Indígena de Nahuatzen
 Santa María Ostula
 Comunidad de Cherán
 Comunidad de Comachuén
 Carapan
 Cheranatzicurín

Nayarit
 Niuwari A.C.

Oaxaca
 Enlace Región Tlaxiaco
 San Sebastián Ocotlán
 San Jacinto Ocotlán
 Tejas de Morelos
 San Felipe Apostol
 San Matías Chilazao
 Maguey Largo, Oaxaca
 El porvenir, Oaxaca
 Servicios del Pueblo Mixe (SER A.C.)
 Consejo Estatal de Derechos Indígenas y Afromexicano de Oaxaca (CEDIAO)
 Enlace Comunicación y Capacitación A.C.
 Coordinadora de Pueblos Unidos por el Cuidado y Defensa del Agua (COPUDA)
 San Isidro Zegache
 La Barda Paso de Piedras
 San Antonino Castillo Velasco
 Santiago Apóstol
 Santa Ana Zagache
 San Pedro Mártir
 San Martín Tilcajete
 San Pedro Apóstol
 Asunción Ocotlán
 Servicios para una Educación Alternativa (EDUCA)
 CDI Flor y Canto A.C.
 Comité en Defensa de los Derechos Humanos y de los Bienes Comunales de Unión Hidalgo

Puebla
 Colectivo Kalakgpaliw parte del semillero de mujeres defensoras de nuestros territorios

Quinta Roo
 U Yich Lu'um
 Kanan derechos humanos
 Colectivo de Comunidades Mayas de los Chenes

San Luis Potosí
 Tlalij, Yolojtli uan Nemililistlij A. C.
 SEDEPAC Huasteca
 Red de Mujeres Artesanas, Cocineras Tradicionales y Productoras del Campo de la Huasteca Potosina.
 Observatorio Indígena.

Centro Ceremonial Tenek.
 COCIHP A. C.
 Autoridades de comunidades de los municipios de Axtla, Coxcatlan, Huehuetlán y Xilitla.
 Xochitzotlajmani
Sonora
 Pueblo de Vícam
Veracruz
 Colectivo Kalakgpaliw parte del semillero de mujeres defensoras de nuestros territorios



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 Derechos para Todas y Todos" (Red
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Thematic report on Indigenous Peoples
Report of civil society organizations in relation to the fourth cycle of the Universal
Periodic Review (UPR) of the Mexican state 2024.

I. INTRODUCTION: STRUCTURAL RACISM AND HUMAN RIGHTS VIOLATIONS AGAINST INDIGENOUS PEOPLES

1. From its inception to this day, the relationship between Indigenous Peoples and the Mexican State has been characterized by an asymmetry of power. This is reflected in the gap between what the Mexican State can commit to doing for Indigenous Peoples and what it actually does. And so too, the gap widens in the actual lives of peoples that are indigenous. Today, Indigenous Peoples continue to be denied the full status of rights-bearing subjects, and we see only the interests of the most historically privileged sectors of society being served by the State.¹
2. Indigenous peoples in Mexico have been subjected to structural racism, discrimination, exploitation, and inequality. The state has failed in its duties to recognize, guarantee, and protect the rights of Indigenous Peoples, particularly Indigenous Peoples' rights to self-determination and autonomy. Furthermore, it continues to deny Indigenous Peoples the legal status of being subjects of public law, thereby perpetuating inequalities in their ability to access and exercise economic, social, and cultural rights. Indeed, the Mexican government seems to have adopted a stance of permissiveness and acquiescence to the encroachment of Indigenous Peoples' territories; their exclusion within the justice system; among many other violations.
3. Indigenous Peoples' conflict-ridden experience in Mexican society has historically gone in hand in hand with structural racism, discrimination, exploitation, and inequality; and this in a country that now has one of the highest rates of inequality. According to the National Council for the Evaluation of Social Development Policy (CONEVAL), in the year 2020, 73.2% of Mexico's Indigenous population experienced multidimensional poverty.

¹ Tauli-Corpuz and Stavenhagen. *Cerrando la brecha. Recomendaciones para la implementación de los derechos de los pueblos indígenas en México. Informes sobre México derivados de las misiones oficiales de las Relatorías Especiales de la ONU sobre los derechos de los pueblos indígenas (Closing the Gap. Recommendations for the Implementation of the Rights of Indigenous Peoples in Mexico. Reports on Mexico derived from the official missions of the UN Special Rapporteur on the rights of indigenous peoples)*. ONU-DH México, 2019. Available at: https://hchr.org.mx/wp/wp-content/themes/hchr/images/doc_pub/InformeRel_PueblosIndigenas2019_web.pdf

4. Indigenous People and communities in Mexico are subjected to racism, the systematic violation of their individual and collective rights, and structural inequality in all spheres of public life. There is a marked inequality in their ability to exercise fundamental human right—economic, social, cultural, and environmental. They are **afflicted by militarization, internal forced displacement, legal exclusion, the dispossession of their territories** to groups that wield economic, political, and even military power, as well as **the state's lack of attention to social conflicts** that it itself engenders.
5. To make matters worse, when Indigenous communities and individuals organize to defend their rights, they find that they are **stigmatized, criminalized, subjected to internal forced displacement, forcibly disappeared, and murdered.**² Here too, these crimes and violations are invisible to the judicial system.
6. Overall, the Mexican judiciary ignores Indigenous Peoples the cultural differences and fails to guarantee competent proceedings for Indigenous Peoples, even at the level of providing necessary interpretation services and staff that are competent in matters related to Indigenous Peoples and their culture.³ These marred processes regularly result in **the imposition of unjust punitive measures, such as preventive detention**, which is known to be disproportionately sanctioned against indigenous women.⁴
7. The documentation provided by the signatory organizations suggests that the level of violence against indigenous Peoples in Mexico has only risen in recent years. Particularly concerning is the series of **homicides** of indigenous people involved in territorial defense work. Since 2019 to the present day, 73 murders have been confirmed, including the killing of six women. This violence has impacted the Kumiai (Baja California); the Tzotzil and Zoques (Chiapas); the Rarámuri (Chihuahua); the

² For egregious examples of this repression, see: Guillén, Beatriz “Localizado el líder Yaqui Tomás Rojo en una fosa en Sonora” (*The Body of Yaqui Leader Tomás Rojo has been located in a grave in Sonora*). El País, June 22, 2021. Available at: <https://elpais.com/mexico/2021-06-22/localizado-el-lider-yaqui-tomas-rojo-en-una-fosa-en-sonora.html> Bulletin. “La ONU-DH condena el asesinato del defensor tzotzil Simón Pedro Pérez López” (*The ONU–DH condemns the killing of Tzotzil Defensor Simón Pedro Pérez López*). United Nations Human Rights–Mexico, n.d. Available at: <https://hchr.org.mx/comunicados/la-onu-dh-condena-el-asesinado-del-defensor-tzotzil-simon-pedro-perez-lopez/>. Anonymous. “Matan al defensor José Trinidad Baldenegro en Chihuahua, a 5 años del asesinato de su hermano Isidro” (*Defender José Trinidad Baldenegro is killed in Chihuahua five years after the murder of his brother Isidro*). Animal Político. March 11, 2022. Available at: <https://www.animalpolitico.com/2022/03/matan-defensor-jose-trinidad-baldenegro-chihuahua-isidro/>

³ See the factsheet on Impunity and Penal Justice and on Persons deprived of liberty in which we highlight some of the negative and disproportionate impacts of the criminal justice system and the lack of recognition of indigenous jurisdiction.

⁴ According to the Mexican National Institute for Statistics and Geography (INEGI), 62.1% of people who self-identified as Indigenous and indicated a need for interpretation were not afforded this service at the time that they met with the Public Ministry. See, INEGI. “Encuesta Nacional de Población Privada de la Libertad” (*National Survey of the Population Deprived of Liberty*). ENPOL. 2021. Available at: <https://www.inegi.org.mx/programas/enpol/2021/>

Nahua (State of Mexico City, Guerrero, Michoacán, and Morelos); the Mè'phàà' (Guerrero); the Wixárika and the Nahua-Otomi (Jalisco), the Purépecha and Jñato (Michoacán); the Triqui, the Zapotec, the Mixteco, the Mixe, the Chinateco, and the Chatino (Oaxaca); the Yaqui (Sonora); and unspecified groups in the state of Colima. Also of great concern is the recent **forced disappearance** of a Mixteco woman from Oaxaca, as well as the presence of criminal groups in Indigenous territories, not to mention the permissiveness and even complicity of state authorities.⁵

8. In the period of 2019–2021, the federal and state governments in Mexico have initiated mega-projects throughout the country. One of these, the Maya train project, has been presented as a windfall for the local economy, job availability, and regional and national development.⁶ However, the actual processes around the establishment of the Maya train project have created controversy and contravened against international law, specifically in relation to the matter of free, prior, and informed consent from the Indigenous Communities impacted by the project. Multiple human rights organizations have followed up by initiating lawsuits against the project.⁷ These formal challenges where the subject of the Mexican President's remarks, which stigmatized the organizations and characterized their members as "false environmentalists."⁸
9. A similar dynamic has played out with the interoceanic corridor project, a State-backed endeavor that impacts Indigenous territories in the Isthmus of Tehuantepec. In this case, anti-project protests were violently suppressed and four Mixe women and two Mixe men

⁵ See attachment "No debieron morir" (*They should not have died*).

⁶ Gala, Efraín. El Tren Maya: Peor que el proyecto de Peña Nieto (*The Maya Train: Worse than Peña Nieto's project*). *Animal Político*, November 13, 2018. <https://www.animalpolitico.com/analisis/organizaciones/mexico-como-vamos/el-tren-maya-peor-que-el-proyecto-de-pena-nieto>

⁷ Servicios para una Educación Alternativa (ADUCA). "Corredor Interoceánico: una amenaza a la vida de los pueblos" (*The Inter-Oceanic Corridor: A threat to the life of Indigenous Peoples*). *El Topil*, 49. May 3, 2023. <https://www.educaoxaca.org/el-topil-49-corredor-interoceanico-una-amenaza-a-la-vida-de-los-pueblos/>

⁸ Jorge, Ricardo. "Amenazan a activistas en Tren Maya" (*Maya train activists threatened*). *Reforma*, 6 de mayo, 2023. <https://www.reforma.com/amenazan-a-activistas-en-tren-maya-son-falsos-acuso-amlo/ar2600388?referer=-7d616165662f3a3a6262623b727a7a7279703b767a783a-->; Ed. "AMLO niega que se rellenen y destruyan cuevas para el paso del Tren Maya" (*AMLO denies that caves will be destroyed for the development of the Maya train*). *Animal Político*, May 6, 2023. <https://www.animalpolitico.com/politica/amlo-tren-maya-niega-danos-cuevas-quintana-roo>; Badillo, Diego. "AMLO vuelve a insultar a ambientalistas que se oponen al Tren Maya" (*AMLO again insults environmentalists that oppose the Maya train*). *El Economista*, December 6, 2022. <https://www.eleconomista.com.mx/politica/AMLO-vuelve-a-insultar-a-ambientalistas-que-se-oponen-al-Tren-Maya-ellos-le-contestan-20221205-0117.html> Ed. "'Vamos a continuar': AMLO insistió que el Tren Maya no causará problemas al medio ambiente" (*'We will move forward': AMLO affirms that the Maya Train will not harm the environment*). *Infobae*. April, 29, 2022. <https://www.infobae.com/america/mexico/2022/04/29/vamos-a-continuar-amlo-insistio-que-el-tren-maya-no-causara-problemas-al-medio-ambiente/>

were arbitrarily detained.⁹ Anti-project community organizers have also received threats.¹⁰

10. It is important to note that the Mexican military—an institution that was recently, and for the first time in the country’s history--charged with handling Mexico’s *internal* “national security”¹¹—now also owns projects and oversees their construction.¹² This unusual situation limits Indigenous Peoples and other civil parties’ right to access information and, by extension, the power their legal actions in support of Indigenous Peoples.¹³

II. HARMONIZING MEXICAN CONSTITUTIONAL LAW WITH INTERNATIONAL LAW ON THE COLLECTIVE RIGHTS OF INDIGENOUS PEOPLES

11. The Mexican Political Constitution has undergone a series of progressive reforms. This includes reforms that recognize Mexico to be a multicultural nation (1992); that require the establishment of principles to recognize and protect the rights of Indigenous Peoples (2001); that require voter equality (2015); and that establishing gender parity in the election of municipal representatives (2019).

⁹ Ed.. “Liberan a las 6 personas detenidas del campamento Tierra y Libertad de Mogoñé Viejo (*Six persons from the Tierra and Libertad de Mogoñé Viejo are liberated*). CódigoDH. May 1, 2023. <https://codigodh.org/2023/05/01/liberan-a-las-6-personas-detenidas-del-campamento-tierra-y-libertad-de-mogone-viejo/>

¹⁰ Ed.. “Denuncian amenazas contra integrantes de UCIZONI en el Istmo de Tehuantepec” (*Threats against members of UCIZONI in the Tehuantepec isthmus denounced*). *La Minuta*. Servicios para una Educación Alternativa (ADUCA). March 23, 2022. <https://www.educaoxaca.org/denuncian-amenazas-contra-integrantes-de-ucizoni-en-el-istmo-de-tehuantepec/>

¹¹ DOF. Decreto por el que la construcción [y] funcionamiento [...] de transportes, de servicios [...] para el bienestar y equipo tanto del Tren Maya como del Corredor Interoceánico del Istmo de Tehuantepec, así como los aeropuertos que se indican, son de seguridad nacional y de interés público (*Decree by which the construction [and] operation [...] of transport services [...] for the well-being and equipment of both the Mayan Train and the Interoceanic Corridor of the Isthmus of Tehuantepec, as well as the airports indicated, are of national security and public interest*). May 5, 2023 https://www.dof.gob.mx/nota_detalle.php?codigo=5689265&fecha=18/05/2023#gsc.tab=0

¹² DOF: Resolución por la que se autoriza la constitución de una Empresa de Participación Estatal Mayoritaria denominada Grupo Aeroportuario, Ferroviario y de Servicios Auxiliares Olmeca-Maya-Mexica [...], misma que estará agrupada en el sector coordinado por la Secretaría de la Defensa Nacional (*Resolution authorizing the constitution of a Majority State Participation Company called the Olmeca-Maya-Mexica Airport, Railway and Auxiliary Services Group [...], which will be grouped in the sector coordinated by the Ministry of National Defense*). April 13, 2022. https://www.dof.gob.mx/nota_detalle.php?codigo=5649068&fecha=13/04/2022&print=true

¹³ López, Alberto. “Acuerdo de AMLO sobre megaproyectos” (*AMLO’s agreement on megaprojects*). *El Universal Oaxaca*, December 1, 2021. <https://oaxaca.eluniversal.com.mx/municipios/acuerdo-de-amlo-sobre-megaproyectos-riesgo-para-pueblos-indigenas-del-istmo-de-oaxaca> ; Munguía, Aldo. “Ejército recibirá todos los beneficios del Tren Maya” (*Military to receive all benefits from the Maya train*). *El Financiero*, March 16, 2021. <https://www.elfinanciero.com.mx/empresas/ejercito-recibira-todos-los-beneficios-obtenidos-del-tren-maya-megaobra-sera-patrimonio-de-sedena/>

12. However, these reforms have not tackled the issue of reconfiguring the relationship between Indigenous Peoples and the state. This reconfiguration was stipulated in the San Andrés Accords on Indigenous Rights and Culture (signed in 1996 by the Mexican government and the Zapatista Liberation Army National [EZLN]). However, the accords were not implemented, and the wording of the reforms presented wordings that undermined the objectives of the constitutional reforms and flouted the international law on the collective rights of Indigenous Peoples. This includes the reform condition that it is the particular Mexican states that determine "the characteristics of self-determination and autonomy" as opposed to Indigenous peoples.
13. Similarly, the Mexican state has not advanced reforms that respect and guarantee to Indigenous Peoples' right to judicial jurisdiction under the principles of equality, horizontality, coordination, and complementarity, nor has it established mechanisms to respond to the social inequity and racism experienced by Indigenous.
14. In actual practice, administrative, judicial, and legislative authorities have not recognized legal pluralism, thereby impeding the development of respect and the guarantee of all Indigenous Peoples individual and community rights, as well as failing to resolve problems of legal lacunae and ineffective state presence.
15. It is thus imperative that the State **recognize Indigenous Peoples and communities as subjects of public law at the Constitutional level**. This would provide Indigenous Peoples with solid legal grounding to protect their collective rights and to demand that Indigenous jurisdiction be respected by all state authorities and public entities in conditions of dignity and equality. This reconfiguration is also necessary to effectively bring an end to the practice of treating Indigenous Peoples and Communities as subjects of "public interest" as is currently provided by Article 2 of the Mexican Constitution, even though this contravenes international law.
16. This constitutional reform would allow Indigenous Peoples the ability to exercise autonomy, self-governance, and self-determination, thereby fomenting Indigenous Peoples' power to effectively resolve community matters (regardless of whether they are comparable or not to state legislation). Moreover, it would enable Indigenous People to exercise their right to territory (including the right to territorial defense against interventions, policies, projects, or legislation that run counter to the decisions established under Indigenous jurisdiction), and to carry out civil acts such as the registration of births and deaths. Most importantly, it would guarantee that Indigenous

Peoples rights will no longer be dismissed out of hand by any state authority.

17. The necessary, intercultural reform would end the municipal governments' practice of treating Indigenous authorities as subordinates and protect Indigenous Communities' right to self-governance in local affairs.¹⁴
18. The formal recognition of Indigenous jurisdiction would significantly help to resolve the majority of limitations of the State, including the lack of indigenous language interpreters and rights defenders that are knowledgeable in matters of Indigenous culture, and Indigenous history.¹⁵ This constitutional reform is particularly urgent as the legacy of the Mexican justice system (to name just one state agency) is marked by **derision on the part of state authorities towards indigenous systems of justice and law**. This discrimination ultimately contributes to **the criminalization of Indigenous authorities** for exercising powers that are conferred by Indigenous decision-making bodies.¹⁶
19. Specifically, Article 2 of the Mexican constitution circumscribes Indigenous Peoples' right to autonomy and self-determination to issues related to "conserving and improving the habitat and preserving the integrity of their lands," which ignores the important concept of territorial integrity.¹⁷ The necessary constitutional reform would **maximize Indigenous Peoples' level of autonomy** and recognize their decisions concerning their territories as derived from internal (written or oral) regulations. They would also guarantee non-intervention in Indigenous territories without the free, prior, and informed **consent** of the communities.

¹⁴ According to the Inter-American Commission on Human Rights, the coexistence between cultures should occur "on the basis of respect for their different worldviews, human rights, and rights as peoples." This would require the "[distribution] of power in decision-making concerning [each group's] development, priorities, and existence," as well as recognition of cultural differences without discrimination. See, CIDH *Derecho a la libre determinación de los Pueblos Indígenas y Tribales* *The right of Indigenous and Tribal Peoples to self-determination*). OEA/Ser.L/V/II (2021). Doc. 413, párr. 8.

<https://www.oas.org/es/cidh/informes/pdfs/LibreDeterminacionES.pdf>

¹⁵ 62.1% of people who self-identified as indigenous indicated that they were not offered interpretation services at the time of coming before the Public Ministry. Ed.. Encuesta Nacional de Población Privada de la Libertad (ENPOL) (*National Survey of the Population Deprived of Liberty*). INEGI. 2021 <https://www.inegi.org.mx/programas/enpol/2021/> For more information, consult the thematic reports presented by civil society organizations in this session of the UPR: "Justice System and Impunity" and "Persons deprived of liberty."

¹⁶ Incidents involving the Zapotec communities of Santiago Quiavicuzas and the Chocholtec communities of Suchixtlahuaca (both in Oaxaca) exemplify this kind of derailed justice. See: Véase Cordero Aguilar, Luis. "La demonización de la justicia indígena" (*The demonization of indigenous justice*). *Saskab, Revista de discusiones filosóficas desde acá*, No.16. 2020. <http://www.idealz-institute.com/sp/CUADERNO16/C1610.pdf>

¹⁷ "Habitat" is not a concept with which Indigenous peoples identify, nor is there conceptual clarity on the semantics of "territory," which can refer to *relationships* as well as intangible elements pertaining to lands.

20. It is presently well-known that a Constitutional Reform initiative on the rights of Indigenous Peoples was presented to the current Mexican President in August of 2021 by the National Institute of Indigenous Peoples (INPI) and representatives of Indigenous communities.¹⁸ It thus appears that the Legal Department of the Presidency has buried this initiative by failing to present it to Congress. As such, the agreed-upon stipulations in the San Andrés Accords remain unfulfilled and the legacy of structural racism in Mexico continues.
21. The structural racism, discrimination, and asymmetry in power relations between the State and indigenous peoples can be transformed. However, this will require constitutional reforms that strengthens the autonomy of Indigenous Peoples and prevents their subordination. State functionaries can no longer be permitted to view community authorities as “auxiliaries.” Rather, they must operate with the understanding that Indigenous Peoples are subjects of public law whose internal jurisdictions, collective rights, and determinations over their own territories must be respected.

III. INDIGENOUS PEOPLES AND ACCESS TO JUSTICE

22. When it comes to dealing with the killings, gross human rights violations, land disposessions, and other wrongs committed against Indigenous human rights defenders, state prosecutors routinely fail to get justice for plaintiff party. Relevant lines of investigation related to the victim’s defense work are dismissed or ignored altogether. Investigators fail to learn about determinations derived from the pertinent Indigenous law systems and whether community members are exposed to immediate threats or vulnerabilities because of their involvement as members of the community, all of which serve to undermine the collective nature of Indigenous Peoples defense.¹⁹ These dynamics not only create undue legal vulnerabilities for Indigenous persons, they also foment patterns of violation repetition and misrepresentation.
23. Indeed, the state’s juridical operations involving Indigenous parties as claimant or defense subject provides data demonstrating Indigenous Peoples general lack of legal

¹⁸ Instituto Nacional de Pueblos Indígenas. “Propuesta De Iniciativa De Reforma Constitucional Sobre Derechos De Los Pueblos Indígenas Y Afromexicanos” (*Initiative proposal for constitutional reform for the rights of Indigenous and Afro-Mexican peoples*). Gobierno de México. nd. <https://www.gob.mx/cms/uploads/attachment/file/680625/Propuesta-Iniciativa-Reforma-Constitucional-Derechos-Pueblos-Indigenas-Afromexicano.pdf>

¹⁹ Ed.. “No es Justicia la sentencia contra el asesinato del defensor de derechos humanos Simón Pedro” (*The sentence given for the killing of human rights defender Simón Pedro is not justice*). Centro de Derechos Humanos Fray Bartolomé de las Casas. Bull 9. March 31, 2023. https://frayba.org.mx/la_sentencia_no_es_justicia

recourse. The legal cases that are initiated are characterized by lack of intercultural awareness, culturally competent counsel and necessary interpretation, case context (including economic, geographic, family and community matters, among other factors), and the objective and subjective situations faced by Indigenous Peoples. These dynamics ultimately create undue legal vulnerabilities for Indigenous persons.²⁰

24. Presently, Indigenous Peoples are effectively forced into the position of entering into burdensome and regularly unproductive legal processes to effectively *prove* that they possess collective rights or that their communities have experienced violations. This underscores the need for judicial powers in Mexico to respect Conventionality Control Doctrine in order to guarantee Indigenous Peoples collective rights as outlined in International law.

IV. INDIGENOUS PEOPLES AND ECONOMIC, SOCIAL, AND CULTURAL RIGHTS (ESCR)

25. Poverty significantly impacts Indigenous Peoples in Mexico. According to the 2022 Social Development Policy Evaluation Report prepared by the National Council for the Evaluation of Social Development Policy, data shows that poverty and extreme poverty among indigenous peoples has been on the rise.²¹
26. In 2020, seven out of ten indigenous persons could be classified as living in poverty. The data further highlight the marked difference in the level of extreme poverty between Indigenous Mexicans and non-Indigenous Mexicans. Whereas 6.4% of the non-indigenous population in Mexico live in extreme poverty, the figure is much higher—29.2%—in the case of the country's Indigenous population. According to the Mexican National Institute of Statistics and Geography (INEGI) expanded 2020 Census, 23.2 million Mexicans self-identified as Indigenous. Among them, 7.1 million of them speaking distinct indigenous languages. These statistics establish Mexico as the country with the largest indigenous population in Latin America.
27. Moreover, the Mexican state has failed to guarantee an adequate standard of living for Indigenous Peoples per the parameters outlined in the International Covenant on Economic, Social, and Cultural Rights. In 2020, 94% of Indigenous persons that reported

²⁰ Arellano, Astrid. "Las desapariciones son como una forma de castigarnos o de apaciguar a una comunidad que ha sido defensora de sus recursos y sus territorios" (*The forced disappearances are a way of punishing a community that defends its own resources and territory*). Mongabay, May 5, 2022. <https://es.mongabay.com/2022/05/amenazas-al-pueblo-indigena-yaqui-en-mexico-anabela-carlon-entrevista/>

²¹ Report. "Evaluación de la política de desarrollo social" (*Evaluation of Policy for Social Development*). CONEVAL. 2022. Available at: <https://www.coneval.org.mx/Evaluacion/IEPSM/IEPSM/Paginas/IEPDS-2022.aspx>

the ability to speak an indigenous language experienced at least one kind of social deficiency: 77.2% of the indigenous persons could not count on minimal social services; 57.9% have insufficient basic household services; and over a third of Indigenous persons reported not having received access to a basic formal education.

28. Further data demonstrates that 19.8% of the same population lack literacy, or 1.3 million people, and that only 17.2% of school-age children who speak an indigenous language will receive any form of professional training.²²
29. Furthermore, recent data demonstrates that Indigenous Peoples access to health services from 2018 to 2020 decreased. Inequalities in health care also became evident during the COVID-19 pandemic. In 2018, 15.3% of Indigenous language speakers reported not having access any form of health service, but by 2020 when the pandemic was most strikingly taking its toll, this number doubled to 32.8%.
30. It is crucial to acknowledge that the fulfillment of indigenous peoples' rights to work, social security, adequate living standards, health, education, and other economic, social, cultural, and environmental rights, as recognized in international law, should be carried out while fully respecting their collective rights. It goes beyond simply providing access to services through state institutions; rather, conditions must be ensured that enable indigenous peoples and communities to exercise their autonomy and self-determination while preserving their indigenous identity. This includes strengthening indigenous institutions that safeguard their cultural heritage, ancestral knowledge, scientific knowledge, and all elements that define them as indigenous peoples.
31. Hence, the persecution of traditional practices like midwifery and the coercion of indigenous women to give birth in hospitals are matters of great concern.²³
32. Thirty-five percent of the indigenous population in the country lacks access to nutritious and quality food. This issue is particularly severe in the Sierra Tarahumara region of Chihuahua, where regular droughts reduce the water supply and consequently impede agricultural production.²⁴ The Indigenous communities of this area are also being

²² Report. "Educación para la población indígena en México: el derecho a una educación intercultural bilingüe" (*Education for Indigenous people in Mexico: The right to intercultural, bilingual education*). CONEVAL. 2022. México. Available at: https://www.coneval.org.mx/InformesPublicaciones/Documents/Educacion_poblacion_indigena.pdf

²³ Arana Cedeña, Marcos. "Las parteras indígenas: recuento de agravio" (*Indigenous Midwives: An account of perpetrated wrongs*). *La Jornada del campo*, February 20, 2021. <https://www.jornada.com.mx/2021/02/20/delcampo/articulos/parteras-indigenas.html>

²⁴ Ed. "La sequía se extiende en 95 por ciento del territorio de Chihuahua" (*Drought afflicts 95% of the State of Chihuahua*). *La Verdad*, July 14, 2022. <https://piedepagina.mx/la-sequia-se-extiende-en-95-por-ciento-del-territorio-de-chihuahua/>

harmed by illegal logging on their territories,²⁵ a situation that has exacerbated environmental collapse and contributed to regional famines (particularly at the height of the pandemic).²⁶

33. In other territories, a monitoring program conducted by a coalition of civil society organizations found that violence against Indigenous communities increased during the confinement period of the epidemic and that the State failed to establish culturally appropriate protocols to convey critical information to indigenous communities.²⁷

V. RECOMMENDATIONS

34. FIRST. Amend the Constitution to **recognize indigenous peoples as legal persons under public law**. This recognition is essential to guarantee their collective rights to self-determination, autonomy, and self-government. It also ensures the protection of their institutions, justice systems, and rights over their lands, territories, and natural resources. These measures should be in accordance with International Human Rights Law, particularly the United Nations Declaration on the Rights of Indigenous Peoples.
35. SECOND. Implement measures to guarantee **the right of access to justice with an intercultural perspective** for indigenous communities whose human rights have been violated. (Directed towards prosecutors and the judiciary).
36. THIRD. **Significantly reduce the incarceration rates of indigenous people** by deferring to Indigenous jurisdictions and working collaboratively with traditional authorities to oversee precautionary measures and sentences. Concurrently, foment collaboration between the state and indigenous authorities to guarantee the cultural rights of incarcerated individuals and establish policies to facilitate their release and reintegration into the community.²⁸

²⁵ Ed.. "Acción urgente contra la Tala Ilegal y la violencia en la Sierra Tarahumara" (*Urgent Action is needed against illegal logging and violence in the Tarahumara mountains*). Red TDT. May 15, 2023. <https://redtdt.org.mx/archivos/18273>

²⁶ Holguín, Ricardo. "Sierra Tarahumara, donde se puede morir de hambre antes que de Covid-19" (*The Tarahumara mountains, a place where people die from hunger before they die from Covid-19*). *El Sol de México*. November 12, 2020. <https://www.elsoldemexico.com.mx/mexico/sociedad/sierra-tarahumara-ocoviachi-muere-la-gente-de-hambre-indigenas-raramuri-covid-19-6008145.html>

²⁷ Serapaz et al. "Monitoreo de comunidades indígenas y equiparables ante la emergencia sanitaria por el virus SARS-COV-2" (Primer Informe), (*Monitoring of indigenous and other communities during the SARS-COV-2 virus emergency – Report 1*). Comunidadesycovid.org. nd. <https://comunidadesycovid.org/2020/09/01/primer-informe-monitoreo-de-comunidades-indigenas-ante-la-emergencia-sanitaria-por-el-virus-sars-cov-2/> ; ibid, Report 2. <https://comunidadesycovid.org/2020/10/05/segundo-informe-situacion-de-las-comunidades-indigenas-ante-la-emergencia-sanitaria-por-el-virus-sars-cov-2/>

²⁸ See Factsheet on Persons deprived of liberty.

37. FOURTH. Reform article 420 of the National Code of Criminal Procedures (CNPP), which currently renders indigenous jurisdiction "optional." This reform should align with International Law and the rights of indigenous peoples, particularly the right to self-determination and autonomy²⁹.
38. FIFTH. Take proactive steps to **foster a culture of respect for the autonomy and self-determination of indigenous peoples**. (Directed at the criminal justice system).
39. SIXTH. Ensure Indigenous Peoples' exercise of economic, social, cultural, and environmental rights through policies that establish **affirmative actions** in the areas of education, health, work, and housing. These policies should honor Indigenous Peoples' rights to freely determine their political status and determine their economic, social, and cultural development.

²⁹ See Factsheet on Impunity and Penal Justice.