



ACCESS TO JUSTICE FOR INDIGENOUS WOMEN

SHADOW REPORT FOR THE UN COMMITTEE ON THE ELIMINATION OF RACIAL
DISCRIMINATION



INTERSECTA



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EQUIS: Justicia para las Mujeres

A feminist organization based in Mexico City that works to transform institutions, laws, and public policies to improve access to justice for all women.

Red Nacional de Abogadas Indígenas

A national network of indigenous women lawyers that work towards the construction of an intercultural State that respects the rights of indigenous peoples.

Intersecta

A feminist research and advocacy organization committed to ending discrimination and human rights violations in Mexico, through the promotion of intersectional, evidence-based, and non-carceral policy solutions.

Red Nacional de Refugios

A network of shelters that provide security, protection, and specialized care to women and children that are at risk of suffering family violence, gender-based violence, sexual violence, and trafficking.

Centro Profesional Indígena de Asesoría, Defensa y Traducción, A.C.

An organization that seeks to ensure the full participation of indigenous persons, communities, and peoples in national life through the knowledge and defense of their individual and collective rights, and by promoting new and better mechanisms for the conformation of a new Pluricultural State.



1

ACCESS TO JUSTICE

1.1 The importance of strengthening community justice.



In Yucatán, **70%** of Mayan women that seek out community authorities do so for situations related to intimate partner violence.

In Oaxaca, **50%** of community authorities report that women seek them out for cases related to family violence.

Article 420 of the National Code of Criminal Procedures implicitly assigns to the Community Justice the stereotype of violating the Human Rights of Indigenous Women and limits the possibility to solve some conflicts.

Not one single community authority in Yucatán reported receiving training on their functions and powers as they relate to women's rights.

RECOMMENDATIONS



- ▶ Reinforce the recognition of indigenous justice systems—including indigenous courts, community police forces, and other community-based forms of prevention, protection, and conflict resolution—and support them with adequate resources. Develop mechanisms for harmonization and coordination between indigenous and state jurisdictions on the national level.
- ▶ Reform Article 420 of the NCPP to eliminate the implicit negative stereotypes that are associated with the Community Justice and, together with Indigenous Communities and Women, establish its limits and scope.
- ▶ In collaboration with the members of each community, and based on the results of an assessment, promote processes to strengthen indigenous authorities, such as training on the rights of indigenous peoples, human rights, and gender perspective. Additionally, allocate the human and financial resources necessary to resolve the cases involving violence that are heard by indigenous justice systems.
- ▶ Collaborate with experts, non-governmental organizations, and indigenous communities to design and implement protocols for providing care to indigenous women that are experiencing violence.

1

ACCESS TO JUSTICE

1.2 Deficiencies in the State's legal systems.

In Yucatán, of the **160** women interviewed, none were aware that they could seek support from the Women's Justice Centers or the Public Defender's Office in case of experiencing violence, and just one woman was familiar with the judiciary and its functions.

In Oaxaca, **48%** of the indigenous women interviewed were unaware of the existence of state authorities.

In Oaxaca, **1** out of every **5** indigenous women is unable to access state institutions because they do not have the resources necessary to travel to them.

In all of the country, there are approximately **1,649** interpreters accredited by the National Institute of Indigenous Languages and only **25** bilingual public defenders.

Not one single local court has accessibility mechanisms in place to guarantee that indigenous people can understand and read their rulings or that their rulings reach indigenous communities.

Although we know that some judicial rulings reproduce discrimination against indigenous women, it is still not possible to assess how many such cases there are, because full access to all judicial rulings is still not guaranteed. In 2017, only one state court published all of its rulings in Mexico.

RECOMMENDATIONS



- ▶ Increase the institutional coverage in indigenous communities of the institutions responsible for providing victim services and administering justice. For example, by implementing mobile courts and free legal assistance to facilitate access to justice for women that live in rural and/or remote areas.
- ▶ Increase the number of male and female interpreters and counsels that are able to provide services to indigenous people into the institutions responsible for law enforcement and the administration of justice and guarantee that said services are available through regional agencies and/or departments.
- ▶ Reform article 73, item II of the General Transparency and Access to Information Act so that local judiciaries are required to publish all of their rulings in a comprehensive, accessible, timely, and relevant way.
- ▶ Ensure that courts implement accessibility measures to guarantee that indigenous communities, particularly indigenous women, are able to access the information produced by the judiciary, including their rulings, in order to reduce the information asymmetry that exists regarding their rights.

1

ACCESS TO JUSTICE

1.3 Weakening civil society.



In Mexico, **60%** of shelters are operated by non-governmental organizations, and **90%** of these receive financial support from the State.

In 2018, the National Network of Shelters (Red Nacional de Refugios) provided assistance to **5,264** women and children, of whom **204** were indigenous. In 2018, the Grupo de Mujeres 8 de Marzo A.C., which runs the “China Yodo” Regional Indigenous Women’s Shelter in Juchitán, one of the 10 most violent municipalities in Mexico, provided assistance to more than **200** indigenous women from the Isthmus of Tehuantepec region.

Instead of strengthening women’s shelters, the government decided to terminate the annual process through which these shelters were able to access government funding. According to the RNR, **35%** of shelters have already suffered budget cuts. This puts the lives of the women and children that use these services at risk, particularly indigenous women and children.

The government also cut funding available for women’s organizations, including organizations run by indigenous women, by changing the way the Fondo PROEQUIDAD functions.

RECOMMENDATIONS



- ▶ Guarantee resources for women's shelters operated by non-governmental organizations, including reinstating the process to assign federal funds to women's shelters exactly as it previously operated.
- ▶ Guarantee resources for organizations run by women, including indigenous women, by reinstating the PROEQUIDAD Fund exactly as it previously operated.

2

CRIMINALIZATION

2.1 Mandatory pre-trial detention.



In 2008, the Constitution allowed mandatory pre-trial detention for certain crimes. Precisely in 2008, the percentage of imprisoned women in pretrial detention began to grow significantly, surpassing year after year the percentage of men.

In 2016, **42.2%** of indigenous women in prison were there without having been convicted. Only **26.9%** of indigenous men and **26.6%** of non-indigenous men in prison were in the same situation.

Instead of abolishing mandatory pre-trial detention, however, the incoming administration approved a constitutional reform to expand the type of crimes that require pre-trial detention.

RECOMMENDATIONS



- ▶ Repeal the constitutional provisions that allow mandatory pre-trial detention for certain crimes.
- ▶ In accordance with human rights standards, ensure that pre-trial detention is only implemented as a last resort and for the shortest possible time, pursuing alternative measures when appropriate.

2

CRIMINALIZATION

2.2 Drug policy.



According to the Census of the Indigenous Persons Deprived of Liberty (CPIPL), drug-related crimes are the fifth most common reason why indigenous persons are imprisoned. This persecution has also impacted indigenous women.

Data shows that the criminalization of drug possession and trafficking has not only failed to fulfill its own objectives –having “a drug free world”–, but it has also generated a series of costs and injustices which have disproportionately impacted groups that have historically been discriminated against, including indigenous women.

RECOMMENDATIONS



- ▶ Reform current drug policy to move away from criminalization to a model based on harm reduction and the respect for human rights.
- ▶ Implement a mechanism to release people who have been victims of this unjust, prohibition-based policy, including indigenous women.
- ▶ Implement public policies based on the respect for human rights that incorporate a gender and intercultural perspective to ensure the comprehensive social reintegration of people imprisoned for drug-related crimes.

2

CRIMINALIZATION

2.3 Militarization.



The presence of the armed forces in Mexico's indigenous communities is nothing new, nor is the fact that the armed forces have constantly violated the rights of these communities. Ever since the "war on drugs" was launched at the end of 2006, however, the participation of the armed forces in public security matters has only increased.

The results of the militarization of public security have been catastrophic: rather than reducing violence, the militarization of public security has triggered an increase in homicides, disappearances, human rights violations, and forced displacement.

In 2017 alone, it is estimated that **12,323** indigenous persons were forced out of their communities because of violence.

RECOMMENDATIONS



- ▶ Ensure that public security functions are carried out by civilian authorities, not military ones.
- ▶ Guarantee civilian command of the National Guard in order to preserve its independence.
- ▶ Guarantee that the soldiers and marines who join the National Guard in no way remain subject to these military institutions.
- ▶ Reform article 39 of the National Guard Act to guarantee that the professionalization of National Guard personnel is carried out exclusively in law enforcement training institutions.
- ▶ Repeal the authority granted to the National Guard to “inspect travel documents of foreign persons” as specified in article 9, section XXXV of the National Guard Act, as it is a discretionary power that lends itself to racist abuse.
- ▶ Reform the fifth provisional article of the National Detention Record Act to guarantee that, without exception, all authorities that carry out public security functions have the same obligations in terms of recording information.
- ▶ Publish figures on persons killed, wounded, and detained during security operations, including past and future operations carried out by the armed forces.

3

RIGHT TO CONSULTATION OF INDIGENOUS WOMEN AND COMMUNITIES



The State announced the construction of the “Mayan Train”, including the zones in which the construction was going to take place, without having consulted the **82** indigenous communities that will be impacted by the project.

The government has suggested it will implement a “consultation”. However, it has also suggested that the only ones consulted will be the *ejidatarios* (land owners). The problem is that not all *ejidatarios* are indigenous persons, nor are all indigenous persons *ejidatarios*. This is particularly true for indigenous women, who, because of gender discrimination, are rarely *ejido* owners.

In 2017, at least **15** land defenders were killed in Mexico. Almost **75%** of them were indigenous persons.

RECOMMENDATIONS



- ▶ Respect indigenous peoples' right to self-determination and development by guaranteeing the right to free, prior, peaceful, and informed consultation regarding all development projects that affect them. Suspend all development currently being implemented in indigenous territories, particularly the Mayan Train and the trade corridor across the Isthmus of Tehuantepec, until such consultation takes place.
- ▶ Create adequate mechanisms to ensure that indigenous women, particularly those who are not landowners or *ejidatarias*, are represented and able to fully participate in the consultation processes.
- ▶ Implement environmental, cultural, and social impact studies in cooperation and coordination with the communities that will be affected in order to assess the social, environmental, spiritual, and cultural impact that the project(s) might have on these communities. An inventory of possible impacts should be created in coordination with indigenous communities, along with measures to mitigate them.

4

DATA FOR RACIAL DISCRIMINATION

4.1 Deficiencies in the data collection process.



The National Survey on the Dynamics of Household Relationships (ENDIREH) is currently the most important tool used to measure violence experienced by women in Mexico. However, if the woman interviewed does not speak Spanish, the interview is “concluded”, without her testimony being recorded.

This is a common practice that disproportionately impacts indigenous women, considering that **15%** of women who speak an indigenous language are monolingual, compared to **9%** of men.

RECOMMENDATIONS



- ▶ Ensure the use and availability of statistical instruments in indigenous languages that have been validated according to cultural context, as well as interviewers that have received appropriate training in order to conduct research in these communities.
- ▶ Ensure the participation of indigenous women and communities in the design, implementation, analysis, and review of culturally appropriate statistical instruments to measure violence and access to justice.

4

DATA FOR RACIAL DISCRIMINATION

4.2 Variables to measure racial discrimination.



The National Survey on Victimization and Perception of Public Security (ENVIPE), which is the most important survey for measuring victimization in the country, does not include a single variable to detect racial discrimination (including discrimination against indigenous women).

Most statistical instruments on victimization and access to justice include the variable of “language” (whether or not a person speaks an indigenous language), but exclude other crucial variables to detect other forms of racial discrimination, such as a person’s skin color or a person’s self-identification as indigenous and/or afrodescendant.

RECOMMENDATION



- ▶ Include skin color and self-identification as indigenous and/or afrodescendant persons into all statistical instruments related to victimization and access to justice, starting with the National Survey on Victimization and Perception of Public Security.

4

DATA FOR RACIAL DISCRIMINATION

4.3 Ineffectiveness in Data Collection Efforts.



Even if we use language as a sole proxy for a victim's ethnic origin, it is still not possible to know how many indigenous women have been killed in Mexico because in most cases –**41.9%** of the murders committed between 2012 and 2017– the language the victim spoke was not registered.

This is the case in most statistical instruments related to victimization and access to justice: even when “language” is included as a proxy for ethnic origin, in most cases, the person's language remains unregistered. Authorities' capacity to effectively collect relevant data remains low.

On top of these shortcomings, the National Institute of Statistics and Geography (INEGI) announced that various surveys would no longer be conducted due to the new government's austerity policies. Included among the canceled surveys is the National Survey of Population Deprived of Liberty (ENPOL), which is key to measuring violence and discrimination experienced by incarcerated persons.

RECOMMENDATIONS



- ▶ Ensure that the authorities, particularly those working within the institutions responsible for administering justice, have the human, technological, and financial resources to effectively gather the information necessary to detect racial discrimination in access to justice.
- ▶ Guarantee the principle of progressiveness and non-regression in statistical instruments, by ensuring that the government's austerity policies do not impact its capacity to detect racial discrimination.
- ▶ Guarantee the periodic implementation of the ENPOL and the publication of the results.

4

DATA FOR RACIAL DISCRIMINATION

4.4 Lack of data regarding non-criminal law.



The data available for non-criminal law systems –such as civil law, family law, labor law, commercial law, administrative law, etc.– is even more inadequate than the one available regarding the criminal system: not only does it fail to measure racial discrimination, but it is wanting regarding the cases themselves or how they are solved.

With the information available, for instance, it is impossible to know how many cases of family violence are being heard by family courts, or how many cases related to sexual harassment or employment discrimination are being solved by labor authorities.

This lack of information is concerning, particularly considering that non-criminal cases represent the majority of the courts' caseload on both the local **(93.1%)** and the federal level **(77.5%)**.

RECOMMENDATION



- ▶ Improve the statistical information collected on family, civil, labor, commercial, and administrative cases brought before the courts in order to gather sociodemographic data on the parties involved in the proceedings, as well as the type of crime, the details of the case, and the ruling.



<http://equis.org.mx/informeCERD>



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