



# ACCESS TO JUSTICE FOR INDIGENOUS WOMEN

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



**INTERSECTA**



**MEXICO - SUBMISSION TO THE UN COMMITTEE ON THE ELIMINATION OF  
RACIAL DISCRIMINATION**  
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## Introduction

The organizations *Equis Justicia para las Mujeres* (EQUIS),<sup>1</sup> the *Red Nacional de Abogadas Indígenas* (RAI),<sup>2</sup> *Intersecta*,<sup>3</sup> the *Red Nacional de Refugios* (RNR),<sup>4</sup> and the *Centro Profesional Indígena de Asesoría, Defensa y Traducción, A.C.* (CEPIADET)<sup>5</sup> submit the following shadow report on indigenous women's access to justice in Mexico for the consideration of the Committee on the Elimination of Racial Discrimination (CERD Committee).

### 1. Access to Justice

Indigenous women's right to access justice is exercised through the right to self-determination and autonomy. In other words, indigenous women should be able to choose which justice system best addresses their needs and resolves their legal issues: the indigenous justice system or the state justice system.

#### 1.1 Indigenous Women's Access to *Indigenous* Justice Systems

Pursuant to article 2, section A, item II of the Mexican Constitution and article 5, sub-section a) of the Convention, the State has the obligation to guarantee indigenous women's access to justice as a fundamental right, as well as their equality before the law, from both an intercultural and gender perspective. This includes guaranteeing the conservation and strengthening of *indigenous* justice systems within a framework that respects the right to self-governance and self-determination of indigenous peoples.

According to assessments conducted by the RAI and EQUIS, in practice, indigenous women go to indigenous authorities in an effort to resolve their conflicts.<sup>6</sup> The assessment conducted by the RAI showed that 50% of community authorities interviewed in Oaxaca reported that women came to them to report cases of violence. Indigenous justice systems offer women certain geographic, economic, and sociocultural advantages, including a certain level of familiarity, a shared language, and proximity. In many cases, indigenous justice systems are often even more effective than state justice systems. Additionally, in its assessment of Mayan women's access to their community justice, EQUIS found that 70% of women that present their cases to local community authorities are seeking the resolution of a situation resulting from domestic violence.<sup>7</sup>

Instead of guaranteeing indigenous women's access to their legal systems, the State has undermined and eroded these systems. On the one hand, the State does not recognize the contributions or the importance of indigenous customary law in resolving conflicts, while on the other it criminalizes indigenous authorities due to their supposed violation of women's human rights.

An example of this can be seen in article 420 of the National Code of Criminal Procedures (CNPP)<sup>8</sup>, which limits the ability of community justice authorities to hear cases of violence against women. Implicitly, and in a discriminatory manner, this article assumes that indigenous justice systems violate women's rights, as if gender-based violence was something that exclusively impacts indigenous communities, rather than a universal issue. Instead of protecting and guaranteeing indigenous women's access to justice by strengthening both state *and* community

justice systems, this type of measure limits indigenous women's ability to choose, with full autonomy and self-determination, the conflict resolution system that is best for them.

EQUIS also found that indigenous authorities themselves indicated that they did not have sufficient training regarding their functions, the cases they are able to hear, the laws that protect women's rights, or the institutions to which they could refer women to. These authorities also indicated that they lack the infrastructure needed to rapidly intervene in situations of violence.

The RAI, on the other hand, also found that community authorities often have a limited understanding of the law, including the fact that article 420 of the CNPP goes against the Constitution and international human rights law. This leads to community authorities refusing to get involved in cases of violence against women out of fear of being denounced for "violating human rights".

This, again, ignores the needs of indigenous women, who have expressed a desire for mechanisms within indigenous law to address gender-based violence within their communities. This will only be possible insofar as the collective right to maintain and strengthen indigenous justice systems is guaranteed.

#### *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.<sup>9</sup>*
- *Reform article 420 of the CNPP to eliminate the existing limitations on community authorities' ability to hear cases of violence against women and ensure that indigenous women are able to choose the justice system that they prefer.*
- *Generate and disseminate culturally accessible and relevant information in collaboration with indigenous communities so that indigenous peoples and public officials, particularly those responsible for law enforcement and the administration of justice, are familiar with the right of indigenous peoples and communities to use their own customary law systems to regulate and resolve internal conflicts, including to hear and rule on cases of violence against women.*
- *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 a 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.*

## 1.2 Indigenous Women's Access to *State Justice*

Pursuant to article 5, sub-section a) of the CERD Convention, the State has the obligation to guarantee indigenous women's access, in equal terms, to *state* justice systems.

### 1.2.1 Access to Information

In order to guarantee effective access to justice, the State must first guarantee that people know their rights and the institutions that are meant to uphold these rights. To date, this is still not guaranteed for indigenous women.

For example, interviews conducted by EQUIS with 160 Mayan women from five municipalities in the state of Yucatán as part of the “Mayan Promoters of Justice” project showed that the widespread perception is that information on individual human rights is scarce and hard to access in indigenous communities, particularly when it comes to access to justice for women.<sup>10</sup> Of the 160 women interviewed, for example, none were aware that they could seek support from the Women's Justice Centers or the Public Defender's Office when they experience violence, and just one woman was familiar with the judiciary and its functions.<sup>11</sup>

A study conducted by the RAI in Oaxaca<sup>12</sup> also found that the lack of adequate legal information in indigenous communities is one of the primary obstacles preventing indigenous women from accessing state justice systems. This study found that 48% of the indigenous women interviewed were unaware of the existence of state authorities, and that this was the primary reason they did not access state justice systems.

*Recommendation:*

- *Coordinate with organizations of indigenous women and their communities to create strategic training and dissemination programs on women's rights and the state resources that are meant to protect them. These materials should be available in indigenous languages and accessible formats and should incorporate an intercultural, intersectional, and human rights perspective.*

### 1.2.2 The Right to Legal Counsel and Interpreting Services

In order to guarantee effective access to justice and equality under the law, the State must guarantee that indigenous women have access to interpreters and legal counsel that understand their language and culture during all hearings and procedures. This, however, is still not fully guaranteed.

For example, there are approximately 1,649 interpreters accredited by the National Institute of Indigenous Languages in *all of Mexico*.<sup>13</sup> Additionally, according to the most recent Report of the Special Rapporteur on the rights of indigenous peoples following her visit to Mexico,<sup>14</sup> there are only 25 bilingual public defenders in Mexico.

It is important to remember that this lack of translators and defenders makes indigenous women more vulnerable to institutional violence, which is expressed in actions and omissions such as extended waiting periods, denying these women access to public justice services, and forcing them to testify in Spanish, all of which eventually lead to indigenous women being held responsible for the violence that has victimized them. According to the RAI and EQUIS, fear of experiencing

institutional violence is one of the primary reasons why indigenous women do not seek access to state justice systems.<sup>15</sup>

*Recommendation:*

- *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.*

### **1.2.3 Effective Access to Institutions**

The State must guarantee effective access to the *institutions* responsible for the administration of justice and assist victims of violence. However, various obstacles currently exist that limit indigenous women's ability to fully access these institutions.

The first obstacle is related to institutional coverage and the physical distance of the institutions. In the state of Oaxaca, for example, the RAI found that on average, one out of every five indigenous women is unable to access these institutions because they do not have the resources necessary to travel to them.<sup>16</sup>

The second obstacle is related to the weakness of these institutions. Mexican institutions do not have the human, financial, or technological resources necessary to effectively fulfill their purpose. Even worse: the austerity policies put in place by the new administration have impacted a variety of already under-resourced institutions, including healthcare institutions. In fact, the cuts made to the Mexican Social Security Institute were so severe that the Director at the time, Germán Martínez, resigned in protest.<sup>17</sup> These cuts have the potential to have a disproportionate impact on indigenous women, as they are the group that is most likely to seek assistance from *public* healthcare institutions should they experience domestic violence.<sup>18</sup>

The regressive nature of these cutbacks is worrying, considering that the progressive realization of human rights should be the norm, rather than the exception. Austerity should not be used as an excuse to limit indigenous women's access to justice, including access to services that they are entitled to as victims of violence.

*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.*<sup>19</sup>
- *Guarantee the resources necessary so that public healthcare institutions are able to adequately and appropriately provide services, including services for indigenous women that have experienced violence, in full compliance with the progressive realization and non-regression of human rights.*

#### 1.2.4 Lack of Judicial Transparency

In May 2009, Adela García Carrizosa, an indigenous woman, was sexually assaulted by her brother-in-law, Artemio Rosas. In front of her three-year-old daughter and newborn baby, Artemio threatened Adela with a pistol and pushed her towards the bed in an effort to sexually abuse her. During the attack, Germán Rosas, Adela's husband and Artemio's brother, arrived home, where he attacked Artemio with a machete and killed him. Both Germán and Adela were arrested and imprisoned. Following a legal process marred by human rights violations (including the violation of the principle of presumption of innocence, the right to legal counsel in the language of the defendant, and the right to be tried within a reasonable time), Germán was found guilty of homicide and Adela was found guilty of being an accessory to the crime.<sup>20</sup>

How many cases like Adela's are there in Mexico? It is impossible to know due to the simple fact that the overwhelming majority of Mexican courts *do not* publish their rulings.

EQUIS has been documenting judicial opacity since 2015. At that time, the majority of courts in Mexico did not publish their decisions or rulings, despite having a legal obligation to do so.<sup>21</sup> This situation was aggravated in that same year with the approval of the General Transparency and Access to Information Act. This Act, which is still in force, establishes that courts are only required to publish rulings that are of "public interest," but does not define what "public interest" means.

As documented by EQUIS,<sup>22</sup> many states used this Act as a basis to modify local legislation and remove the requirement that courts publish *all* of their rulings. As a result, the majority of courts still do not publish their rulings.<sup>23</sup> To put this lack of transparency into perspective, in 2017, just one court—out of a total 32—published *all* of its rulings.

Additionally, EQUIS has found that 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.<sup>24</sup> For example: in the few cases in which some courts publish some of their rulings, the rulings are not available in indigenous languages, nor is there an effort made for these rulings to reach communities.

Access to court rulings is necessary in order to detect and address racial and gender discrimination in access to justice.

#### *Recommendations:*

- *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.*<sup>25</sup>
- *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.*

### 1.2.5 Civil Society Organizations

As recognized by the Committee in different Recommendations, civil society organizations play a crucial role in guaranteeing human rights and fighting racial discrimination. In Mexico, civil society organizations are an important resource for indigenous women.

According to a study conducted by the National Commission to Prevent and Eradicate Violence Against Women (CONAVIM), 35% of indigenous women surveyed responded that they would seek support from a civil society organization when they experience violence.<sup>26</sup> According to the National Survey on the Dynamics of Household Relationships (ENDIREH), this is not just hypothetical: indigenous women that experience domestic violence do go to civil society organizations for help.<sup>27</sup>

However, instead of strengthening civil society organizations, the current administration is taking actions that weaken them, such as cutting off their financial resources. The decision to stop transferring government funds to civil society organizations, which was made on February 14, 2019, has already had serious consequences for two programs that are fundamental for protecting indigenous women's rights: women's shelters and the PROEQUIDAD Fund.

In Mexico, 60% of shelters are operated by non-governmental organizations, and 90% of these receive financial support from the State.<sup>28</sup> This year, however, 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.<sup>29</sup>

In 2018, the RNR 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.

Launched in 2002, the PROEQUIDAD Fund is a program that provides government funds exclusively to women's organizations for the execution of projects that improve women's access to justice and other rights.

Between 2013 and 2017 alone, these projects benefited 382,426 people, approximately 20% of whom belonged to indigenous communities (53,242 women and 21,885 men).<sup>30</sup> The states of Oaxaca and Chiapas had the second and fourth highest number of projects supported by this program, respectively. And, most importantly, many of the organizations that received support from the PROEQUIDAD Fund were founded and lead *by indigenous women*.

This year, however, the government decided to make changes to the PROEQUIDAD Fund—instead of providing funds directly to women's organizations, the funds will now be allocated to local government women's institutes. The impact that this decision will have on indigenous women's organizations and, in turn, on the indigenous women who rely on them for support and guidance, is worrisome.

*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 indigenous women by reinstating the PROEQUIDAD Fund exactly as it previously operated.*

## **2. Criminalization of Indigenous Women**

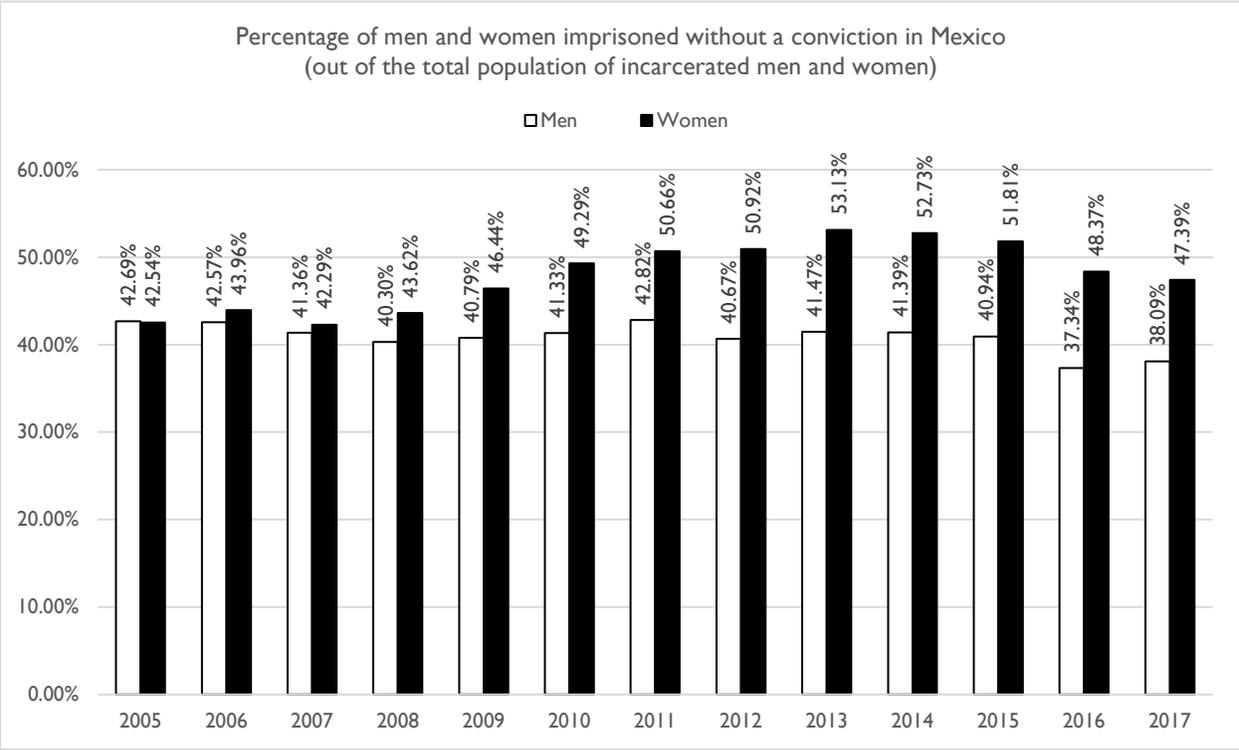
Mexico has at least three punitive policies in place that contribute to exacerbating the racial and gender discrimination faced by indigenous women: mandatory pretrial detention, drug policy focused on prohibition, and the militarization of public security. Although these three policies are related, as they are all key components of the so-called “war on drugs,” it is important to recognize that these policies exist and operate independently, particularly considering the recent declaration from Mexican President Andrés Manuel López Obrador that “the war [on drugs] is over.” However, simply declaring an end to this “war” is not enough. The punitive system that for years has facilitated the criminalization of various traditionally vulnerable groups, including indigenous women, must be dismantled.

### **2.1 Mandatory Pretrial Detention**

In 2008, the Mexican Constitution was reformed to radically change the criminal justice system. The purpose of this reform was to center the human rights of both victims and defendants within the system. At the same time, however, certain “exceptions” to this rights-based system were established in the Constitution, including *mandatory* pretrial detention.

Mandatory pretrial detention is applicable once individuals are accused of committing *certain* crimes. As soon as this occurs, the judge is *required* to automatically order pretrial detention, without any opportunity to evaluate the necessity, appropriateness, and proportionality of the measure on a case-by-case basis. As a result, mandatory pretrial detention is an *arbitrary* deprivation of freedom, as recognized by different international human rights organizations.<sup>31</sup>

Although the abuse of pretrial detention has occurred throughout the history of Mexico, the percentage of unsentenced women in custody has grown significantly since 2008, exceeding the percentage of men in the same situation. In other words, pretrial detention has a disproportionate impact on women.<sup>32</sup>



Source: Cuaderno mensual de información estadística penitenciaria of the Órgano Administrativo Desconcentrado de Prevención y Readaptación Social. The information corresponds to the data reported for the month of December of each year. The number indicates the percentage of women and men who are in prison without a conviction, out of the total population of incarcerated men and women.

Furthermore, the National Survey of Population Deprived of Liberty (ENPOL) reveals that pretrial detention disproportionately affects indigenous women. For example, 42.2% of the women imprisoned in 2016 who spoke an indigenous language still had not been convicted. This figure is higher for these women than for men, both for men who spoke an indigenous language (26.9%) and those who did not (26.6%).

Legal status	Men		Women	
	Speaks an indigenous language	Does not speak an indigenous language	Speaks an indigenous language	Does not speak an indigenous language
Awaiting sentence	26.9%	26.6%	42.2%	39.8%
Convicted	71.1%	70.7%	54.8%	57.8%

Source: Encuesta Nacional de Población Privada de la Libertad (ENPOL 2016).

However, instead of abolishing mandatory pretrial detention, the incoming administration approved a constitutional reform to expand the type of crimes that require pretrial detention. The “war on drugs” may be over, but the tool to imprison people without a fair trial continues to gain strength.

*Recommendations:*

- *Repeal the constitutional provisions that provide for mandatory pretrial detention for certain crimes.*<sup>33</sup>
- *In accordance with human rights standards, ensure that pretrial detention is only implemented as a last resort and for the shortest possible time, pursuing alternatives measures when appropriate.*<sup>34</sup>

## **2.2 Drug Policy**

Although the criminalization of drug possession and trafficking in Mexico is nothing new, prosecution of these crimes has increased since the “war on drugs” was first launched in 2006.<sup>35</sup> According to the Census of the Indigenous Population Deprived of Liberty (CPIPL), drug-related crimes are the fifth most common reason why indigenous persons are imprisoned.<sup>36</sup>

EQUIS has monitored the impact that this prosecution has had on women and found that it has also affected indigenous women.<sup>37</sup> This can be seen in the case of Gloria, who speaks Zoque and Spanish and who sold wood and tortillas and washed clothes in the state of Oaxaca. She was arrested by the army following an “anonymous tip” and then imprisoned without a hearing. Or Lorena, a homemaker from Chiapas, who has a child with cerebral palsy. She was sentenced to 10 years in prison for transporting marijuana from her village to Mexico City. Or Lucilda, who was arrested at a checkpoint and was forced to sign her “confession” at the Public Prosecutor’s Office, where she was reminded that “Indians” “have a reputation for being involved with drugs.”

These cases illustrate a variety of problems within the Mexican criminal justice system: the injustice of pretrial detention (which is mandatory for drug offenses); arbitrary arrests by Mexican authorities without a prior investigation (according to the ENPOL, only 9.5% of women and 13.3% of men imprisoned in 2016 had been arrested by an authority with a warrant); the violence exercised by the authorities during questioning (33.5% of women and 23.9% of men imprisoned in 2016 who pleaded guilty did so because they were threatened by the authorities); and disproportionate sentencing, to mention a few.

All of these problems, which are endemic to the system, must be remedied, regardless of the crime in question. However, drug policy focused on prohibition must also be rejected. Not only has prohibition failed to achieve its stated goal of “a drug-free world,”<sup>38</sup> it has also generated a series of injustices that must be addressed and, more importantly, never repeated.

*Recommendations:*

- *Reform current drug policy to move away from prohibition, which violates human rights, to a model based on respecting human rights and promoting public health and harm reduction in which the use, possession, and sale of drugs is not criminalized.*
- *Implement a mechanism to release people who have been victims of unjust, prohibition-based drug policies, including indigenous women.*
- *Implement public policies based on a respect for human rights that incorporate a gender and intercultural perspective to ensure the comprehensive social reintegration of people imprisoned for drug-related crimes.*

## 2.3 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. Examples include the cases of Valentina Rosendo Cantú and Inés Fernández Ortega, two indigenous women who bravely reported being raped by army personnel in 2002. Thanks to their courage, in 2010, the Inter-American Court of Human Rights found the Mexican government guilty in relation to several cases of sexual assault associated with militarization.<sup>39</sup>

The reality, however, is that ever since the “war on drugs” was launched at the end of 2006, the participation of the armed forces in public security matters has only increased.<sup>40</sup> And while it has been difficult to evaluate their performance due to the lack of transparency of the operations of the armed forces, their deployment has clearly had disastrous consequences for the country. Rather than reducing violence, the militarization of public security has triggered an increase in homicides, disappearances, human rights violations, and forced displacement. For example, in 2017 alone, it is estimated that 12,323 indigenous persons were forced out of their communities because of violence.<sup>41</sup>

Despite evidence of the violence that results from militarization, the current administration has decided to maintain and even strengthen military deployments.

On the one hand, the government managed to reform the Constitution to *formally* authorize the *armed forces* to carry out public security efforts for the next five years—which was previously prohibited by the Constitution. Although this authorization was supposed to go with a series of controls, in practice, these controls are weak or nonexistent. The opacity of the armed forces remains the norm. For example, the recently approved National Detention Record Act exempts the armed forces from having to record arrests when performing public security functions.<sup>42</sup> The information available regarding the number of armed forces personnel that have been deployed, as well as when and where they are/were deployed, varies significantly depending on the source, making it impossible to know with certainty where the armed forces are operating.<sup>43</sup> Furthermore, since 2014, the Ministry of Defense (SEDENA) stopped publishing the numbers of civilians wounded and killed during operations, despite the fact that this information was previously publicly available.<sup>44</sup> The lack of controls and transparency facilitates arbitrariness and, with it, the perpetuation of racial discrimination.

On the other hand, the Constitution was reformed so that the National Guard is able to undertake public security efforts. Pursuant to article 21 of the Constitution, the National Guard must be a *civic* institution. However, despite this constitutional mandate, the administration is turning the National Guard into a *de facto* military institution. For example, most of the members of the National Guard will be soldiers and marines (without a clear understanding of how they will be formally separated from the armed forces); its “professionalization” training can occur at military and naval schools;<sup>45</sup> and the requirements to become a commander effectively guarantee that soldiers and marines will be in charge.<sup>46</sup> In fact, the National Guard's inauguration was even held at Campo Deportivo Militar Marte, a SEDENA facility.

Additionally, the National Guard has been granted powers that are cause for significant concern due to their potential impact on racial discrimination. For example, it has been granted the

power to inspect the “travel documents of foreign persons,”<sup>47</sup> and existing legislation does not establish any criteria or limits in terms of exercising this authority. It is, therefore, a discretionary power that lends itself to authorities questioning a person based on nothing more than racist prejudices.

The impact on indigenous and immigrant communities is especially concerning, as the government recently announced that the National Guard will be deployed along Mexico’s southern border to combat the “immigration problem.”

Although the current political discourse maintains that the “war on drugs” is over, in practice, the apparatus that has perpetrated this war is still active and is now being focused on populations that have historically suffered discrimination, violence, and persecution, namely indigenous and migrant groups.

*Recommendations:*

- *Ensure that public security functions are carried out by civilian authorities, not military ones.*<sup>48</sup>
- *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 articulated 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.*<sup>49</sup>

### **3. Right to Consultation of Indigenous Women and Communities**

*[...] [the government] has already made it clear that they're going to complete the big, capitalist megaprojects. From their Mayan Train to their plan for the Isthmus of Tehuantepec to their commercial tree farms for wood and fruit. They've also said that mining companies and agroindustry companies will be allowed in. On top of that, the agrarian plan is the nail in the coffin of indigenous communities, as it turns our land into commodities. [...] The truth is that [the government] is completely against the native peoples, against their communities, their land, their mountains and their rivers, their animals, their plants, all the way down to their stones. They don't just stand against us as Zapatista women, but against all women that they consider indigenous.*

*Zapatista Women*<sup>50</sup>

Pursuant to article 5 of the Convention and General Recommendation No. 34 of the Committee, the State is required to promote, protect, respect, and guarantee the right of women and indigenous communities to free, prior, and informed consultation when it intends to carry out projects that impact indigenous land and territories.

In Mexico, this right is repeatedly violated in different ways, especially when it comes to the implementation of megaprojects (mining, energy, tourism, real estate, and agriculture).

For example, the government of President López Obrador recently announced the construction of the "Mayan Train." Specifically, he hosted a press conference where he announced the areas the train will pass through, as well as the start dates for the work, without any prior consultation with the 82 indigenous communities that will be affected by the project.<sup>51</sup> This violates the right to consultation, as it does not comply with the principle that consultations must take place *prior* to the development of a project. Even worse, the government has used false indigenous authorities to show supposed support for the project, such as the self-appointed "Indigenous Supreme Leader" Filberto Kú Chan, who, without any recognition or legitimacy from indigenous authorities, has spoken in favor of the "Mayan Train" on behalf of all Mayans.<sup>52</sup>

The right to consultation is also violated when consultations are not conducted freely, but within a context of violence where indigenous communities are threatened with death, attacked, and even murdered. According to the report *At What Cost?* published by Global Witness, Mexico has become a dangerous place for land and territory defenders. In 2017 alone, at least 15 land defenders were killed in the country, and almost 75% of those killed were indigenous.<sup>53</sup>

Likewise, the freedom of consultation is undermined by the marginalization of and discrimination against indigenous peoples, which is then exploited by businesses. Currently:

there are more than 500 environmental conflicts across the country, precisely because of this model...government or business representatives arrive with plans to start a project, offering money to the communal land holders one by one. Some of them resist, but others accept due to severe economic hardship, and this breaks down the social fabric of the community and the *ejido* communal land system.<sup>54</sup>

Consultations are not informed, as even in cases when communities are consulted, they are not guaranteed access to clear, accurate, complete, and culturally accessible information that incorporates a gender and intercultural perspective regarding the impacts that the project(s) may have if carried out.

Additionally, there is concern about who is actually consulted as part of the process. For example, in some cases the consultation is limited to landowners, as in the case of the *ejidatario* land holders.<sup>55</sup> This criterion is exclusionary for several reasons. In the case of the "Mayan Train," for example, not all *ejidatario* land holders belong to the Mayan people, nor are all Mayan persons *ejidatario* land holders. Moreover, the fact that the consultation targets *ejidatario* land holders disproportionately excludes women, considering that Mayan women generally do not hold land titles, precisely because of discrimination. That is why in this report we refer not only to the right

of indigenous *communities* to consultation, but also to the right of *indigenous women* to consultation and to equal participation in discussions.

*Recommendations:*

- *Respect native peoples' right to self-determination and development with cultural identity 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.*
- *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 indigenous consultations directly and only through legitimate indigenous institutions and authorities that are authorized to manage the process, not through false leaders.*
- *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.<sup>56</sup> An inventory of possible impacts should be created in coordination with indigenous communities, along with measures to mitigate them.<sup>57</sup>*
- *Create an interdisciplinary group of independent experts, indigenous communities, human rights defenders, and international organizations to generate culturally appropriate information on projects and observe and monitor the State's compliance with its obligations.*
- *Compensate indigenous peoples for projects that have caused damage to their lands, customs, and livelihoods; led to the commercialization of their traditions, knowledge, and art; and resulted in the outsourcing and increased instability of local jobs, increased drug trafficking and consumption, and the destruction of entire ecosystems.*

#### **4. Data on Justice and Racial Discrimination**

General Recommendation No. 31 issued by this Committee establishes a number of indicators that the State must implement "to better gauge the existence and extent of racial discrimination in the administration and functioning of the criminal justice system."<sup>58</sup> However, the information produced and published by the Mexican State on both the criminal justice system and the broader justice system is still not sufficient to fulfil the purpose of the Recommendation: to detect—in order to eliminate—racial discrimination in access to justice.

##### **4.1 Data Collection Process**

The first problem with the existing statistical instruments on victimization and access to justice has to do with how data is collected. For example, the National Survey on the Dynamics of Household Relationships (ENDIREH) is currently the most important tool used to measure violence experienced by women over the age of 15 in Mexico. However, if the woman interviewed does not speak Spanish, the interview is noted as "concluded" without recording her testimony. This is common practice for most surveys on violence and access to justice. This results in the

disproportionate exclusion of indigenous *women* from these instruments, considering that 15% of women who speak an indigenous language are monolingual, compared to 9% of men.<sup>59</sup>

*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.*<sup>60</sup>
- *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.*

#### **4.2 Variables Used to Measure Racial Discrimination**

The second problem with the existing statistical instruments on victimization and access to justice is that they exclude crucial variables that would more effectively measure racial discrimination. For example, the majority of existing instruments include whether or not a person speaks an indigenous language as a variable. But instruments that include variables such as “skin color” and the option to self-identify as indigenous *and* Afro-descendant remain the exception rather than the rule.<sup>61</sup>

There are also surveys that do not include *any* of these variables, such as the National Survey on Victimization and Perception of Public Security (ENVIPE). This is the most important survey in terms of measuring victimization among Mexican adults and the unofficial, unrecorded crime rate, and it is the only survey that has been conducted annually since 2011. Many of the indicators required by General Recommendation No. 31 could be met if variables to measure racial discrimination were included in the ENVIPE.

*Recommendation:*

- *Incorporate indicators on skin color, self-identification as indigenous and self-identification as Afro-descendant into all surveys, censuses, and administrative records related to violence and access to justice, starting with the National Survey on Victimization and Perception of Public Security.*

#### **4.3 Effectiveness of Official Data Collection Efforts**

The third issue with the existing statistical instruments concerns the authorities’ inability to effectively collect data. This is clearly shown through an assessment of the statistical instruments, which shows that although certain variables—such as language—are included in these instruments, this data is rarely actually collected.<sup>62</sup>

Indicators used to measure racial discrimination in Mexico: Victimization and access to justice									
Database	Used to measure	Indigenous language		Self-identity as indigenous		Self-identity as Afro-descendant		Skin color	
		Included?	Used?	Included?	Used?	Included?	Used?	Included?	Used?
SINAIS	Homicides	Yes	Sometimes	No	-	No	-	No	-
ENVIPE	Crime rates and victimization of adult population	No	-	No	-	No	-	No	-
ECOPRED	Violence against young people between the ages of 12 and 29	No	-	No	-	No	-	No	-
ENDIREH	Violence against women over the age of 15	Yes	Yes	Yes	Yes	No	-	No	-
SESNSP	Open criminal investigations by crime by state	No	-	No	-	No	-	No	-
CNPJE	Pursuit of justice at the state level	Yes	Sometimes	No	-	No	-	No	-
CNPJF	Pursuit of justice at the federal level	No	-	No	-	No	-	No	-
CNIJE	Administration of justice (criminal and non-criminal) at the state level	Yes	Sometimes	No	-	No	-	No	-
CNIJF	Administration of justice (criminal and non-criminal) at the federal level	Yes	Sometimes	No	-	No	-	No	-
IJMP	Administration of criminal justice at the state level	Yes	Sometimes	No	-	No	-	No	-
CNGSPSPE	Information on the state prison system	Yes	Sometimes	No	-	No	-	No	-
CNSPenF	Information on the federal prison system	Yes	Sometimes	No	-	No	-	No	-
CNSPubF	Information on the federal police	No	-	No	-	No	-	No	-
CMIEPN	Information on the incarcerated population	No	-	No	-	No	-	No	-
ENPOL	Survey for the incarcerated population	Yes	Yes	No	-	No	-	No	-
RLJL	Labor matters presented to conciliation and arbitration boards	No	-	No	-	No	-	No	-

Source: Archive descriptions of the *Registros de Defunciones por Homicidio del INEGI* (SINAIS); the *Encuesta Nacional sobre Victimización y Percepción sobre Seguridad Pública* (ENVIPE); the *Encuesta de Cohesión Social para la Prevención de la Violencia y la Delincuencia* (ECOPRED); the *Encuesta Nacional sobre la Dinámica de las Relaciones en los Hogares* (ENDIREH); *datos de Incidencia delictiva del Secretariado Ejecutivo del Sistema Nacional de Seguridad Pública* (SESNSP); *Censo Nacional de Procuración de Justicia Estatal* (CNPJE) and the *Censo Nacional de Procuración de Justicia Federal* (CNPJF); *Censo Nacional de Impartición de Justicia Estatal* (CNIJE) and the *Censo Nacional de Impartición de Justicia Federal* (CNIJF); *registros administrativos de Impartición de Justicia en Materia Penal* (IJMP); *Censo Nacional de Gobierno, Seguridad Pública y Sistema Penitenciario Estatal* (CNGSPSPE); *Censo Nacional de Sistema Penitenciario Federal* (CNSPenF); *Censo Nacional de Seguridad Pública Federal* (CNSPubF); *Cuaderno Mensual de Información Estadística Penitenciaria Nacional* (CMIEPN); *Encuesta Nacional de Población Privada de la Libertad* (ENPOL) and the *base de Relaciones Laborales de Jurisdicción Local* (RLJL).

For example, in 2012 a variable was finally included in the Homicide Records (SINAIS) published by the National Institute of Statistics and Geography (INEGI) to identify whether the homicide victim spoke an indigenous language. However, between 2012 and 2017, this information was not recorded for 41.9% of the total number of recorded female homicide victims.<sup>63</sup> As a result, even if language is considered the only indicator of people's ethnic origin, it is still impossible to know for certain how many indigenous women have been murdered in Mexico.

Distribution of homicide victims in Mexico based on whether or not they spoke an indigenous language														
Did the victim speak an indigenous language?	Women							Men						
	2012	2013	2014	2015	2016	2017	Total	2012	2013	2014	2015	2016	2017	Total
Not available	55.2%	44.3%	40.3%	35.7%	36.0%	39.5%	41.9%	56.8%	47.1%	42.5%	39.2%	37.5%	40.6%	44.0%
No	42.1%	52.2%	55.1%	59.8%	59.9%	56.8%	54.3%	40.8%	49.9%	54.0%	56.9%	59.4%	56.4%	52.9%
Yes	2.7%	3.6%	4.7%	4.5%	4.1%	3.6%	3.8%	2.4%	3.0%	3.5%	3.9%	3.1%	3.0%	3.1%

Source: Registros de Defunciones por homicidio del INEGI, 2012-2017.

On top of these shortcomings, in January of this year, INEGI<sup>64</sup> 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 the arbitrary actions, violence, and discrimination experienced by detained and incarcerated persons.

The regressive nature of this decision is concerning. In this matter, as well as others, progressiveness should be the rule, and not the exception.

#### Recommendations:

- *Ensure that the authorities, particularly those working within the institutions responsible for pursuing and administering justice, have the technical capabilities and the human, technological, and financial resources to effectively gather the information necessary to detect racial violence and discrimination in terms of access to justice.*
- *Guarantee the principle of progressiveness and non-regression in statistical instruments and implement surveys with an intercultural and gender perspective.*
- *Guarantee the periodic implementation of the ENPOL and the publication of the results.*<sup>65</sup>

#### 4.4 Non-Criminal Matters and Inadequate Data

Although General Recommendation No. 31 is focused on the *criminal* system, the Committee requirements established in the document can also be applied to the entire justice system. However, an analysis of the broader justice system shows that the statistical data on *non-criminal* cases is even *more* inadequate than the data available for criminal cases: not only is there *no* data available to measure racial discrimination, but the statistics that are available lack even basic data on the cases or how they are resolved by the courts. For example, the statistics on criminal cases are

generally disaggregated by type of crime. Non-criminal cases, however, are generally just sorted by “subject.” With the information available, it is impossible to know how many cases are related to alimony or child support payments, how many domestic violence cases are being heard by civil courts, or how many sexual harassment cases are being heard 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%).<sup>66</sup>

*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.*

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<sup>1</sup> *EQUIS: Justicia para las Mujeres* is a feminist organization based in Mexico City that works to transform institutions, laws, and public policies to improve access to justice for all women.

<sup>2</sup> The *Red Nacional de Abogadas Indígenas* (RAI) is a national organization of indigenous lawyers that work towards the construction of an intercultural State that respects the rights of indigenous peoples. The RAI is integrated exclusively by women that belong to a variety of indigenous groups from Mexico (*Wixarika, Mazahua, P'urhépecha, Odami, Maya, Zapoteca, Mixteca, Ayuujk, triqui, Nahuatl, Chinanteca*) and has a presence in eight states of the Mexican republic.

<sup>3</sup> *Intersecta* is a feminist research and advocacy organization committed to ending discrimination and human rights violations in Mexico, through the promotion of intersectional and evidence-based policy solutions.

<sup>4</sup> The *Red Nacional de Refugios* (RNR) is 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.

<sup>5</sup> The *Centro Profesional Indígena de Asesoría, Defensa y Traducción, A.C.* (CEPIADET) is 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.

<sup>6</sup> Red Nacional de Abogadas Indígenas (RAI), “Mujeres indígenas frente a la justicia penal y la justicia comunitaria: incidencia y buenas prácticas”, *por publicarse*, p. 16.

<sup>7</sup> *EQUIS Justicia para las Mujeres, Diagnóstico sobre la justicia comunitaria: su funcionamiento ante situaciones de violencia contra las mujeres mayas, forthcoming.*

<sup>8</sup> Article 420 of the National Code of Criminal Procedures states that in the cases of crimes that affect an indigenous community or people or one of its members, and both the accused and the victim –or their relatives– accept the way in which the community solves its internal conflicts, the criminal action will be extinguished (meaning, the Prosecutor can no longer accuse someone of committing a crime). The exceptions to this are cases in which “the solution does not consider a gender perspective, affects the dignity of persons, the child’s best interest or the right of a woman to a life free from violence.”

<sup>9</sup> “Indigenous justice systems, including indigenous courts, community police forces and other means of prevention, protection and conflict resolution, should receive greater recognition and support in the form of appropriate resources. Mechanisms should be developed to ensure harmonization and coordination between indigenous and ordinary courts at the national level.” Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, June 28, 2018, A/HRC/39/17/Add.2., par. 116.

<sup>10</sup> *EQUIS Justicia para las Mujeres, Promotoras Mayas de Justicia: Resultados y Aprendizajes*, 2018, p. 28, available at: <http://equis.org.mx/project/promotoras-mayas-de-justicia-resultados-y-aprendizajes/>

<sup>11</sup> *Ibid.*, p. 26.

<sup>12</sup> Red Nacional de Abogadas Indígenas (RAI), “Mujeres indígenas frente a la justicia penal y la justicia comunitaria: incidencia y buenas prácticas”, *forthcoming*, p. 16.

<sup>13</sup> Morena Press release, “Aumentar traductores indígenas garantiza acceso a justicia de los pueblos, asegura Casimiro Méndez”, November 6, 2018, available at: <https://morena.senado.gob.mx/2018/11/06/aumentar-traductores-indigenas-garantiza-acceso-a-justicia-de-los-pueblos-asegura-casimiro-mendez/>

<sup>14</sup> Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, June 28, 2018, A/HRC/39/17/Add.2., par. 65.

<sup>15</sup> RAI, *supra*, note 6, p. 16.

<sup>16</sup> *Ibidem.*

<sup>17</sup> See Redacción, “Germán Martínez Renuncia al IMSS por ‘injerencia’ de Hacienda en la operación del instituto”, *Animal Político*, May 21, 2019, available at: <https://www.animalpolitico.com/2019/05/german-martinez-renuncia-imss-hacienda/>

<sup>18</sup> According to the National Survey on the Dynamics of the Relationships in the Home (ENDIREH), out of the women who suffered physical violence in their relationship, 10.87% of those who speak an indigenous language went to *public* health institutions to receive support, as opposed to 6.4% of those who do *not* speak an indigenous language. In contrast, only 0.67% of those who speak an indigenous language went to *private* health institutions, in contrast to 6.3% of those who do *not* speak an indigenous language.

<sup>19</sup> This recommendation was already made by the CEDAW Committee to Mexico. See Committee on the Elimination of Discrimination Against Women, *Concluding Observations on the ninth periodic report of Mexico*, CEDAW/C/MEX/CO/9, July 20, 2018, par. 14, c).

<sup>20</sup> Criminal Case No. 30/2009, related to the murder committed by Germán Rosas and Adela García, issued by the Judge in Huautla de Jiménez, Oaxaca, 2016.

<sup>21</sup> EQUIS Justicia para las Mujeres, *Verificación de la obligación de transparentar sentencias judiciales. Diagnóstico de la situación*, 2015.

<sup>22</sup> EQUIS Justicia para las Mujeres, *Transparencia en la publicación de sentencias. ¿Retrosos a partir de la Ley General de Transparencia y Acceso a la Información Pública?*, 2017.

<sup>23</sup> EQUIS Justicia para las Mujeres, *(In)justicia abierta. Ranking de opacidad judicial en México*, 2019.

<sup>24</sup> *Ibidem*.

<sup>25</sup> Article 73, fraction II of the General of Transparency and Access to Information Act states that the federal and state judiciaries must update and make available to the public “the public versions of the rulings that are of public interest”.

<sup>26</sup> Comisión Nacional para Prevenir y Erradicar la Violencia contra las Mujeres, *Violencia de género contra mujeres en zonas indígenas en México*, 2017, p. 236, available at: [https://www.gob.mx/cms/uploads/attachment/file/348121/Violencia\\_de\\_G\\_nero\\_Contra\\_Mujeres\\_en\\_Zonas\\_Indigenas\\_en\\_M\\_xico.pdf](https://www.gob.mx/cms/uploads/attachment/file/348121/Violencia_de_G_nero_Contra_Mujeres_en_Zonas_Indigenas_en_M_xico.pdf)

<sup>27</sup> According to ENDIREH (2016), 4.17% of indigenous women who lived physical violence in their relationship actually went to non-governmental organizations for support.

<sup>28</sup> Instituto Nacional de las Mujeres, *Refugios para mujeres, sus hijas e hijos en situación de violencia: un diagnóstico a partir de los datos del Censo de Alojamiento de Asistencia Social*, 2015, 2017, p. 6.

<sup>29</sup> Estos “refugios salvan la vida de las mujeres, sus hijas e hijos; brindan seguridad y atención integral de calidad para las mujeres provenientes de todas las etnias indígenas del estado, donde puedan tener las condiciones necesarias para poder tener una vida digna, reconstruir su autoestima, y encontrar mecanismos que las ayuden a independizarse.” Natalia Sicarú Torres González, Grupo de Mujeres 8 de Marzo A. C. que atienden el Refugio Regional de Mujeres Indígenas “China Yodo”.

<sup>30</sup> Instituto Nacional de las Mujeres, *Libro blanco. PROEQUIDAD 2014-2018*, 2018, p. 59, available at: [http://cedoc.inmujeres.gob.mx/documentos\\_download/LB/LB\\_PROEQUIDAD.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/LB/LB_PROEQUIDAD.pdf)

<sup>31</sup> Human Rights Committee, *General Observation No. 35*, 2014, par. 38; Working Group on Arbitrary Detention, Opinion No. 1/2018 (México), 2018, par. 64; Interamerican Commission of Human Rights, *Informe sobre el uso de la prisión preventiva en las Américas*, 2013, par. 137; Interamerican Court of Human Rights, Caso Mujeres víctimas de tortura sexual en Atenco vs. México, 2018, par. 251.

<sup>32</sup> Estefanía Vela Barba, “¿El feminicidio no es delito grave?”, *Animal Político*, January 22, 2019, available at: <https://www.animalpolitico.com/columna-invitada/el-feminicidio-no-es-delito-grave/>.

<sup>33</sup> This has been one of the concluding observations of the Committee Against Torture for Mexico. Committee Against Torture, *Concluding Observations for Mexico’s Seventh Periodic Report*, 2019, par. 34.

<sup>34</sup> *Ibid.*, par. 36.

<sup>35</sup> Catalina Pérez Correa, Fernanda Alonso Aranda, Alejandro Madrazo Lajous, and Ernesto Zedillo Ponce de León, *La política de drogas en México: causa de una tragedia nacional. Una propuesta radical, e indispensable, para remediarla*, 2018, available at: <http://consejomexicano.org/?s=contenido&id=3770>

<sup>36</sup> Censo de Población Indígena Privada de la Libertad, 2017, available at: [https://www.gob.mx/cms/uploads/attachment/file/417660/cdi-censo-poblacion-id\\_gena-privada-libertad-2017.pdf](https://www.gob.mx/cms/uploads/attachment/file/417660/cdi-censo-poblacion-id_gena-privada-libertad-2017.pdf). In the shadow report we submitted to the CERD Committee, we mistakenly affirmed drug-related crimes were the fourth most common crimes for which indigenous people were in prison. We have corrected that in this version.

<sup>37</sup> EQUIS Justicia para las Mujeres, *Propuestas de reforma en casos de mujeres encarceladas por delitos de drogas en México*, 2015, available at: [http://equis.org.mx/wp-content/uploads/2018/02/Propuesta\\_de\\_Reforma\\_Politicas\\_Drogas.pdf](http://equis.org.mx/wp-content/uploads/2018/02/Propuesta_de_Reforma_Politicas_Drogas.pdf); EQUIS Justicia para las Mujeres, *Políticas de drogas, género y encarcelamiento en México: una guía para las políticas públicas*, 2017, available at: <http://equis.org.mx/project/politicas-de-drogas-genero-y-encarcelamiento-en-mexico-una-guia-para-politicas-publicas-incluyentes/>

<sup>38</sup> Joanne Csete *et al.*, “Public health and international drug policy”, *The Lancet*, March 24, 2016, available at: [http://dx.doi.org/10.1016/S0140-6736\(16\)00619-X](http://dx.doi.org/10.1016/S0140-6736(16)00619-X)

<sup>39</sup> Interamerican Court of Human Rights, Caso Fernández Ortega y otros vs. México, ruling of August 30, 2010; Interamerican Court of Human Rights, Caso Rosendo Cantú y otra vs. México, ruling of August 31, 2010.

<sup>40</sup> For an analysis of the arrests made by the army and the marines, according to the ENPOL, see Carolina Torreblanca & Estefanía Vela Barba, “¿Qué podemos esperar de la Guardia Nacional?”, *Animal Político*, January 16, 2019.

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<sup>41</sup> Comisión Mexicana de Defensa y Promoción de los Derechos Humanos, *Episodios de desplazamiento interno forzado masivo. Informe 2017*, 2018, available at: <http://www.cmdpdh.org/publicaciones-pdf/cmdpdh-informe-de-desplazamiento-interno-masivo-en-mexico-2017.pdf>

<sup>42</sup> Specifically, the fifth transitory article of the National Act for Detention Registries exempts the “armed forces” from complying with the obligations established in article 19 of the Law (that is, from registering their detentions in the same way that other authorities do).

<sup>43</sup> There are two studies that show how difficult it is to know where and when the army has been deployed: Laura Atuesta, “Militarización de la lucha contra el narcotráfico. Los operativos militares como estrategia para el combate del crimen organizado”, *Las violencias. En busca de la política pública detrás de la guerra contra las drogas*, Laura Atuesta & Alejandro Madrazo Lajous (coords.), CIDE, 2018, pp. 102-118; and Programa de Seguridad Ciudadana de la Universidad Iberoamericana, *Seguridad pública enfocada en el uso de la fuerza e intervención militar: la evidencia en México 2006-2018*, 2019, p. 74.

<sup>44</sup> To understand the military’s opacity, see the following: Javier Treviño Rangel, “El Ejército y su guerra: rendición de cuentas y cuentos”, *Nexos*, March 28, 2019; Laura Atuesta, “Militarización de la lucha contra el narcotráfico. Los operativos militares como estrategia para el combate del crimen organizado”, *Las violencias. En busca de la política pública detrás de la guerra contra las drogas*, Laura Atuesta & Alejandro Madrazo Lajous (coords.), CIDE, 2018; Catalina Pérez Correa, Carlos Silva Forné & Rodrigo Gutiérrez Rivas, “Índice de letalidad. Menos enfrentamientos, más opacidad”, *Nexos*, July 1, 2015; Catalina Pérez Correa, “Guardia Nacional militar”, *El Universal*, April 16, 2019; Arturo Ángel, “Cambió el gobierno, pero SEDENA insiste en ocultar cifras de civiles muertos en operativos”, *Animal Político*, March 14, 2019; Artículo 19, “INAI revoca respuesta de la SEDENA que declaraba ‘inexistencia’ de informes sobre uso de la fuerza”, April 10, 2019.

<sup>45</sup> See article 39, fraction III of the National Guard Act, which allows the National Guard members to be trained in “institutions of military and naval education”.

<sup>46</sup> See article 14, section V of the National Guard Act, which establishes that the Commander of the National Guard must have at least *twenty* years of experience in security to be able to hold the position. This effectively excludes most police officers from commanding the National Guard.

<sup>47</sup> See article 9, section XXXV of the National Guard Act.

<sup>48</sup> This has been one of the concluding observations of the Committee Against Torture for Mexico. Committee Against Torture, Concluding Observations for Mexico’s Seventh Periodic Report, 2019, par. 34.

<sup>49</sup> *Ibid.*, par. 32.

<sup>50</sup> Las Mujeres Zapatistas, “Carta de las mujeres zapatistas a las mujeres que luchan en el mundo”, February 2019, available at: <http://enlacezapatista.ezln.org.mx/2019/02/11/carta-de-las-zapatistas-a-las-mujeres-que-luchan-en-el-mundo/>

<sup>51</sup> Claudia Ramos, “Se debe consultar y pedir permiso para construir Tren Maya primero a pueblos indígenas: comunidades”, *Animal Político*, December 17, 2018, available at: <https://www.animalpolitico.com/2018/12/consultas-permisos-tren-maya-indigenas/>

<sup>52</sup> Colectivo: Úuchben Ch’i’ibal Túumben T’aan, March 7, 2019, available at: <http://www.nuestravoz.maayakaaj.org/>

<sup>53</sup> Global Witness, *¿A qué precio?*, 2018, available at: <https://www.globalwitness.org/en/campaigns/environmental-activists/a-qu%C3%A9-precio/>

<sup>54</sup> Raúl Benet, “Advierten que Tren Maya afectará a comunidades: Expertos y ejidatarios señalan que el proyecto impactará a comunidades en lo ambiental y social; advierten por despojo de tierras”, *Reforma*, February 28, 2019, available at: [https://www.iis.unam.mx/blog/wp-content/uploads/2019/05/140\\_140chico2.pdf](https://www.iis.unam.mx/blog/wp-content/uploads/2019/05/140_140chico2.pdf)

<sup>55</sup> “Comunidades y ejidatarios ya fueron consultados, y aceptan el Tren Maya, asegura AMLO”, *Animal Político*, September 9, 2018, available at: <https://www.animalpolitico.com/2018/09/tren-maya-amlo-apoyo-comunidades/>; Jesús Vázquez, “Fibra, la mejor opción para ejidatarios en Tren Maya”, *El Economista*, May 19, 2019, available at: <https://www.economista.com.mx/estados/Fibra-la-mejor-opcion-para-ejidatarios-en-Tren-Maya-20190519-0096.html>

<sup>56</sup> Article 7.3 of the International Labor Organization 169 Convention.

<sup>57</sup> This includes pollution problems; health problems; the gentrification, deterioration, or destruction of sacred grounds; confrontations between communities and businesses and companies; an increase in violence within the communities and especially against women; a loss of identity; an increase in addictions; the disintegration of the community ties; unequal distribution of wealth; community jobs with insipient economic benefits;

<sup>58</sup> CERD Committee, General Recommendation No. 31, on the prevention of racial discrimination in the administration and functioning of the criminal justice system, par. 1.

<sup>59</sup> Inmujeres, News release, year 4, no. 12, December 2018, available at: [http://cedoc.inmujeres.gob.mx/documentos\\_download/BoletinN12\\_2018.pdf](http://cedoc.inmujeres.gob.mx/documentos_download/BoletinN12_2018.pdf); Comisión Nacional para el Desarrollo

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de los Pueblos Indígenas, *Indicadores socioeconómicos de los pueblos indígenas de México*, 2015, available at: <https://www.gob.mx/cms/uploads/attachment/file/239921/01-presentacion-indicadores-socioeconomicos-2015.pdf>

<sup>60</sup> Roberto Castro, “Violencia contra mujeres en México: qué sabemos y qué necesitamos saber”, *La mujer y la salud en México*, Teresa Corona Vázquez *et al.* (eds.), CONACYT-Intersistemas, 2014, p. 102.

<sup>61</sup> According to the 2015 Census of the National Institute of Statistics and Geography (INEGI), almost 25.7 million people in Mexico (21.5% of the national population) identify as indigenous. Of them, 12.5 are men and 13.2 are women. Of the almost 25.7 million people that identify as indigenous, only 27.6% (7.2 million people, who represent 6% of the country’s population) speak an indigenous language. According to the 2015 Census, almost 1.38 million people identify as afrodescendants (or afro-mexican). 49% are men and 51% are women. According to another study, 9.6% of afrodescendant men and 9.9% of afrodescendant women speak an indigenous language. Additionally, 63.8% of afrodescendant men and 66% of afrodescendant women identify as indigenous. See CONAPRED, CNDH, INEGI, *Perfil sociodemográfico de la población afrodescendiente*, 2015, available at: <http://www.cndh.org.mx/docs/Afrodescendientes.pdf>; CONAPRED, *Ficha temática. Pueblos indígenas*, 2017, available at: [https://www.conapred.org.mx/userfiles/files/Ficha%20Pindigenas\(1\).pdf](https://www.conapred.org.mx/userfiles/files/Ficha%20Pindigenas(1).pdf)

<sup>62</sup> Annex I is a table that compares the statistical instruments that exist in Mexico as regards to their ability to detect racial discrimination in victimization and Access to justice.

<sup>63</sup> Annex II is a table that compares the distribution of people processed before courts, depending on whether or not they speak an indigenous language.

<sup>64</sup> El Inegi cancela o suspende 14 encuestas al no obtener los recursos que pidió para 2019”, *Animal Político*, January 24, 2019 available at: <https://www.animalpolitico.com/2019/01/recorte-presupuesto-inegi-cancela-proyectos/>

<sup>65</sup> This has been one of the concluding observations of the Committee Against Torture for Mexico. Committee Against Torture, Concluding Observations for Mexico’s Seventh Periodic Report, 2019.

<sup>66</sup> According to the National Census of State Justice (CNIJE 2018), in 2017, approximately 2 million cases entered state courts. Of these, criminal cases represented 6.9%, while family cases represented 40.9%; civil cases represented 30.2%; and commercial cases represented 20.9%. According to the National Census of Federal Justice (CNIJF 2018), approximately 1 million cases entered federal circuit and district courts. Of these, criminal cases represented 22.5% of the cases, while administrative cases represented 32.4%, labor cases represented 20.9% and civil cases represented 20.3%. INEGI, Censo Nacional de Impartición de Justicia Estatal 2018. Presentación de resultados generales, October 26, 2018, available at: [https://www.inegi.org.mx/contenidos/programas/cnije/2018/doc/cnije\\_2018\\_resultados.pdf](https://www.inegi.org.mx/contenidos/programas/cnije/2018/doc/cnije_2018_resultados.pdf); INEGI, Censo Nacional de Impartición de Justicia Federal 2018. Presentación de resultados generales, July 6, 2018, available at: [https://www.inegi.org.mx/contenidos/programas/cnijf/2018/doc/resultado\\_2018.pdf](https://www.inegi.org.mx/contenidos/programas/cnijf/2018/doc/resultado_2018.pdf); INEGI, Resultados de estadísticas laborales, Comunicado de prensa núm. 282/18, June 29, 2018, available at: [https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2018/OtrTemEcon/EstLabJucionLocal2018\\_06.pdf](https://www.inegi.org.mx/contenidos/saladeprensa/boletines/2018/OtrTemEcon/EstLabJucionLocal2018_06.pdf)



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