

HUMAN RIGHTS IN OAXACA 2009-2012

“CITIZEN REPORT: AN UNPAID DEBT”

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i. INTRODUCTION

The Universal Periodic Review (UPR) is a mechanism used by the Human Rights Council for regular oversight of the fulfillment of the obligations and commitments regarding human rights for each of its 193 Member States.

Mexico was examined for the first time at the beginning of 2009 and will be examined once again in October of 2013. As a result of the 2009 evaluation, Mexico received 91 recommendations, accepted 83, and the other 8 were rejected or received no response.

The recommendations given cover various topics: the harmonizing of state and federal laws to international standards, the Rights of Women, Forced Disappearances, Torture and the Penal System, Human Trafficking, Public Safety and Judicial Reform, Aggressions toward Human Rights Defenders and Journalists, Freedom of Expression, Rights of Indigenous Peoples, Rights of Migrants, Poverty, and Economic, Social, and Cultural Rights.

The recommendations that were not accepted have to do with matters regarding the definition of organized crime, the eradication of pre-charge detention known as “arraigo in Spanish, reforms to the Military Justice Code, and the establishment of a judicial body to investigate and punish crimes committed against social and political movements.

In 2011 the implementation of the recommendations made by the United Nations Human Rights Council was evaluated based on reports from Civil Society and State organizations. It is worth noting that, of the 91 recommendations given, only one was evaluated as completely accomplished, with the majority left completely unmet.

Mexico is one of the countries of the world with the highest degree of inequality. The Human Development Index (HDI), which evaluates educational levels, Gross Domestic Product, and access to health, shows deep inequality. The index pertaining to the Northeast of the country is similar to that of European countries, while Chiapas and Oaxaca have HDIs similar to Palestine.

The situation in the State of Oaxaca is particularly worrying in this context. According to data from the Social Development Secretary¹, Oaxaca is thought to be one of the three poorest states in the country, in spite of its great wealth in terms of natural resources. The Marginalization Index (MI) used to evaluate poverty in terms of health, education, housing, and income shows the same level of inequality, placing Oaxaca among the states with the highest

¹Evaluation of INI Social Wellbeing Programs- Final Report of Results from the Representative Field Sample in Oaxaca State, Fernando GuadarramaOlivera, 2003, In: <http://www.sedesol.gob.mx/work/models/SEDESOL/Resource/1709/1/images/BSFinalOaxaca.pdf>

marginalization index.² It is believed that 75% of municipalities in the state exist in a situation of “high” to “very high” marginalization.

This situation is combined with the fact that Oaxaca is the state with the greatest ethnic and linguistic diversity in the country. There are 18 ethnic groups in its territory, out of 65 groups in the entire country.³ Indigenous communities show the most worrying indices of marginalization and human development. This, in spite of the fact that Mexico received three recommendations from the Universal Periodic Review specifically tied to poverty and the rights of indigenous peoples.

The migration of broad sectors of the Oaxacan indigenous population within the country or outside of the country is one of the worst consequences of the situation of extreme poverty these communities face; it disrupts the social fabric and cultural practices of native peoples.⁴

In light of this serious situation of Human Rights violations and structural violence, Oaxacan civil society organizations produced a report in 2008 to demonstrate their concerns to the United Nations Human Rights Council. This report, “Human Rights in Oaxaca, 2009-2012 – Citizen Report: An unpaid debt” was done as a follow-up to the previous report. It covers six areas related to Human Rights: Aggressions Against Human Rights Defenders and Journalists, Rights of Indigenous Peoples, Rights of Girls, Boys, and Adolescents, Femicidal Violence, Criminalization of Social Protest, and Torture, Executions, and Disappearances.

Reports by civil society organizations will serve as a point of reference in the evaluation process for the questions that must be made to representatives of the Mexican State. They also give compelling and accurate recommendations resulting from the UPR.

II. PUBLIC POLICIES REGARDING HUMAN RIGHTS

1. Human rights are intended to be one of the crosscutting matters of governance, as established in the State Development Plan of the current government.⁵ While legislative advances have been seen, these are not reflected in the creation of a public human rights policy reaching across all public administration, as intended by the aforementioned Plan.

2. On April 6, 2011, the State Congress carried out reforms and amendments to the Political Constitution of the Free and Sovereign State of Oaxaca, modifying 30 constitutional articles in total. Still, there are gaps in the harmonization process: examples include language differing from what was approved in federal reforms regarding human rights (June, 2011), failing to include the obligation to prevent, investigate, punish, and repair damages from Human Rights violations made by any authority (not only of autonomous state bodies), and the failure to include human rights in public education provided by the state.

3. Constitutional reform also created the Human Rights Protectorate Court, due to the failure to comply with recommendations made by the Office of the Human Rights Ombudsman for the Oaxacan People (section V, paragraph B, article 106). This court is under the aegis of the Constitutional Audience of the State Supreme Court (TSJE, by its initials in Spanish); currently the Audience has not been physically created, and lacks regulations detailing its

²Report on the State of the Environment in Mexico, SEMARNAT, 2008, In: http://app1.semarnat.gob.mx/dgeia/informe_04/01_poblacion/cap1_2.html

³State Government of Oaxaca, In: http://www.oaxaca.gob.mx/?page_id=32006

⁴Migration and Poverty in Oaxaca, Ana Margarita Alvarado Juárez, In: <http://www.elcotidianoenlinea.com.mx/pdf/14808.pdf>

⁵Establish four crosscutting policies: human rights, gender equity, indigenous peoples, and sustainability. See Oaxacan State Development Plan. State Government of

Oaxaca. In: http://www.planestataldedesarrollo.oaxaca.gob.mx/downloads/Plan_Estatal_de_Desarrollo_Oaxaca_2011_2016.pdf

functions, powers, and procedures. Its lack of existence prevents recommendations given by the Office of the Human Rights Ombudsman for the Oaxacan People from being binding.

4. On January 13, 2012, the local congress took part in a participatory process to approve a law creating the Office of the Human Rights Ombudsman for the Oaxacan People. The election of its director, which did not meet requirements outlined in the law, reinforced the notion held by society that the old system of distributing positions among parties was repeated in this case. The law does not recognize violations of labor rights, representing another absence and lack of harmonization with federal powers recognizing this right.

5. From a perspective of transitional justice, the creation of the Prosecutor's Office for the Investigation of Socially-Significant Crimes (March 9, 2011) is a step forward. Currently, the Prosecutor's Office is primarily tasked with clarifying political crimes, and threats against human rights defenders have also recently been channeled to this office. We regret that their investigations have advanced only in cases where the murdered individuals were foreigners (Brad Will and JyriJaakkola). The most obvious deficiencies of the new office are the lack of staff and specialized experts, of investigation protocols, of victim and witness services, of police personnel trained in and sensitive to human rights, and the lack of a sufficient budget for meeting their assigned task. Without all of the above, the evident result is a high rate of impunity.

6. The demand for reparations for victims of human rights violations in 2006 was approved in an Executive Agreement for creating a Comprehensive Plan for Reparations⁶ (June 2012). A Follow-up Committee was instituted after a series of difficulties and missed deadlines, a group which still lacks rules of operation in even though 8 months have passed since it was created. More than just exhausting, the process has occasionally re-victimized those who have the right to reparations for damages, and in spite of their struggle they are still waiting to be treated with dignity.

7. In the state Executive Branch, the office charged with creating the State Human Rights Program is known as the Coordinator's Office for Attention to Human Rights. Its responsibilities include training, diagnosing, and taking responsibility for coordinating activities of the protection mechanism for defenders and journalists, among others. Sadly, its few personnel, low budget, the interests of political groups within the government, and the level of social conflict in the state leaves it with little move to operate. To this day, it has not been able to establish a crosscutting policy on this matter, beginning with having government officials assume the respect and responsibility to guarantee human rights. It is worth pointing out that the Office of the High Commissioner for Human Rights currently carries out the Diagnostic on human rights in Oaxaca, without a broad participatory process involving civil society.

8. Finally, we would like to point out the lack of clarity in budgetary allocations in this matter. According to the state budget for this fiscal year, 11,333,145,348.29 million pesos were allocated, but the agencies related directly to the matter, including the Office of the Human Rights Ombudsman for the Oaxacan People, altogether received little more than 45 million pesos.⁷

⁶Agreement for the creation of the Comprehensive State Plan for Reparations for Harms against Victims of Human Rights Violations, in pursuance of Recommendation number 15/2007 of the National Human Rights Commission and the Ruling of Study number 1/2007 of the National Supreme Court."In:<http://www.codigodh.org/wp-content/uploads/2013/01/Acuerdo-plan-reparacion-da%C3%B1o.pdf>

⁷Oaxaca State Budget Expenditures for Fiscal Year 2013, In:http://www.finanzasoxaca.gob.mx/pdf/presupuesto/2013/PRESUPUESTO_EGRESOS_2013.pdf

III. AGGRESSIONS AGAINST DEFENDERS AND JOURNALISTS

9. At the national level, the Law to Protect Human Rights Defenders and Journalists went into effect in 2012. It generated a mechanism for protecting defenders and journalists, but sadly this mechanism is characterized by its lack of functionality: it still does not have sufficient budget and the cases that have been brought before it have not received the necessary protection.

10. Oaxaca is first in the country with regard to attacks on defenders. The most frequent form of aggression has been physical aggressions, break-ins to houses and offices, intimidation, death threats, murder, robbery, arbitrary detentions, harassment, defamation and delegitimization campaigns.⁸

11. At the local level, the Office of the Human Rights Ombudsman for the Oaxacan People (DDHPO, by its initials in Spanish) was created as an autonomous and citizen-led agency. Still, the actions of this agency have continued a series of unfavorable practices. In particular, serious deficiencies in the implementation of precautionary measures issued to present defenders under risk. The DDHPO does not have established criteria for issuing precautionary measures. Worse still, the entire process it possesses for soliciting and issuing measures uses State rules. The DDHPO plays the role of silent witness that does not take action regarding discussions between beneficiaries and authorities.

12. There is also a lack of coordination between the agencies involved in the implementation of precautionary measures; this inability to create clear agreements between authorities leads to profound fatigue on the part of beneficiaries. And if this were not enough, it also does not have the budget or the personnel necessary to respond to a protection and security process. The same deficiencies occur with measures issued by national and international bodies.

13. Impunity is a constant in terms of crimes against human rights defenders, in spite of the creation of the Prosecutor's Office for the Investigation of Socially-Significant Crimes, as it does not possess the required budget or personnel trained in the topic. For example, none of the aggressions against women defenders that were denounced in 2012 were punished, in spite of the fact that in some cases the aggressors have been identified.⁹

14. Women defenders suffer specific and particularly serious attacks because of their gender, as attacks are directed at their bodies, at their roles as women or as mothers. In 2012 alone, a dramatic increase in acts of aggression has been documented, with 48 acts of aggression against 20 women defenders in Oaxaca.¹⁰

15. In the case of community activists, there is omission on the part of the state and federal government in regard to flagrant violations against indigenous defenders committed by municipal authorities and local political bosses (known as caciques in Spanish) who have allied themselves with business interests. Indigenous defenders find themselves defenseless in the face of this panorama. Between January and November 2012 alone, 120 violent acts (harassment, threats, and physical aggression) were reported against defenders. At the state

⁸Comité de Defensa Integral de Derechos Humanos Gobixha A.C Report, The State of Human Rights in Oaxaca: Unfinished Business, December 2012, p.22.

In: <http://www.codigodh.org/2012/12/10/conoce-el-informe-la-situacion-de-los-derechos-humanos-en-oaxaca-grandes-pendientes/>

Special Report—Violence and Impunity against Woman Activists and Human Rights Defenders in Oaxaca, December 2012, p.10. In: <http://consorciooaxaca.org.mx>

⁹Special Report—Violence and Impunity against Woman Activists and Human Rights Defenders in Oaxaca, p.10

¹⁰Special Report—Violence and Impunity against Woman Activists and Human Rights Defenders in Oaxaca, p.7. In: <http://consorciooaxaca.org.mx>

level, a defender is not seen as someone who “defends rights.” On the contrary, there is an environment that tends to stigmatize social struggle.¹¹

16. Freedom of Expression in Mexico and particularly in Oaxaca is at risk. The cases of violence against journalists are on the rise. Oaxaca is also among one of the top five locations nationally in acts of aggression against journalists. In 2009, Oaxaca held first place in violence against woman journalists, ahead of the Federal District and Quintana Roo. Aggressions have continued from 2010 to 2012 in spite of political transition, wherein 40 attacks against journalists in the state have been documented.¹²

17. If it is true that between 2009 and 2010, attacks were due to state actions and acquiescence, from 2011 to 2012 the pattern of responsibility is that of omission, negligence, negation, permissiveness, and the lack of a sufficient budget to deal with reality. These factors place the right to defend human rights at greater risk.

IV. RIGHTS OF INDIGENOUS PEOPLES

18. In his June 2011 visit to Mexico, the UN Special Rapporteur on the Right to Food made the following recommendations to the Mexican government with respect to indigenous peoples: a) Reallocate current expenses for the construction of large-scale dams and hydrological infrastructures to promotion of drip-irrigation techniques. b) A moratorium on field trials and on the commercial cultivation of transgenic maize with the aim of protecting corn biodiversity in Mexico.¹³ To date, these recommendations have not been met.

19. Violations of the rights of indigenous peoples in Oaxaca have increased in the past 4 years. These violations are related to the planning and execution of development megaprojects. In the Isthmus of Tehuantepec, there are 14 operating wind farms and 6 more under construction or development. These farms make up approximately 60 thousand hectares of collective property.¹⁴ Moreover, the construction of the Paso de la Reina Hydroelectric Dam has been proposed for the main channel of the Rio Verde on the Oaxacan coast, affecting 97 thousand indigenous people.¹⁵ Likewise, an extension of the Cerro de Oro hydroelectric dam in the Papaloapam region is planned,¹⁶ along with the construction of the Paso Ancho Dam in the Sierra Sur region. In the case of mining, according to data from the Mexican Geological Service, 344 mining concessions were submitted from January 2002 to June 2011. These concessions cover a total surface of 742,791.02 hectares, or 7.78% of total territory in the state.¹⁷ These projects have led to violations of indigenous peoples' rights: violations of the right to self-determination, to free, prior, and informed consent, to food, to health, to access to water, to a healthy environment, and of the right to land and territory.

20. The rights of indigenous peoples and sustainability are two crosscutting matters in the Development Plan and the Oaxaca Government Program.¹⁸ Still, the implementation of the extractivist development model across Oaxacan territory undermines the principles of these

¹¹ EDUCA, Diagnostic—Aggressions Against Community Activists, February 2013. In: http://educaoaxaca.org/images/DIAGNÓSTICO_AGRESIONES_DEFENSORES_COMUNITARIOS.pdf

¹² See Attached

¹³ Report on the Mission to Mexico by the Special UN Rapporteur on the Right to Food Olivier De Schutter. UN-HR-Mexico, 2012.

¹⁴ Business sites, CFE 1 and 2, articles. In: “Cultivos” oaxaqueños cosechan discordias, and [Formalmente, 14 parques eólicos funcionan en el Istmo.](#)

¹⁵ EDUCA, Dams on the Oaxacan Coast. Paso de la Reina Hydroelectric Dam and Ixtayutla Hydroelectric Dam Will affect Oaxacan Indigenous Peoples and Communities. Oaxaca; Mexico, 2012.

¹⁶ HIC-AL, EDLC. *Cerro de Oro Dam: 35 Years Without Justice*, Mexico D.F., September 2010.

¹⁷ Mexican Geological Service (SGM, by its initials in Spanish)-General Office on Mining (CGMINERÍA, by its initials in Spanish) Oaxaca State Mining Panorama. August 2011.

¹⁸ Oaxacan State Development Plan 2011-2016. State Government of Oaxaca. In: http://www.planestataldedesarrollo.oaxaca.gob.mx/downloads/Plan_Estatal_de_Development_Oaxaca_2011_2016.pdf

policies and does not line up with the development that indigenous peoples themselves fight for. These projects violate collective rights, displace populations, and destroy communal property.

21. In Oaxaca, indigenous peoples care for, plant, harvest, and exchange native varieties of maize. Still, contamination from transgenic seeds has been discovered in native maize varieties in the Sierra Norte, Mixteca, Central Valley, Sierra Sur, and Isthmus regions. The “Agreement for Determining the Centers of Origin and Centers of Genetic Diversity of Corn in the National Territory” drawn up by the Undersecretary of Development and Environmental Regulation allows for commercial planting of transgenic corn based on the argument that native varieties do not exist in some regions. Allowing the experimental or commercial planting of transgenic corn would risk the nutritional, cultural, and biological sovereignty of the state, especially that of indigenous peoples and communities.

V. GIRLS, BOYS, AND ADOLESCENTS

22. 38% of the Oaxacan state population is made up of girls, boys, and adolescents. In other words, 1,444,039 are minors, 728,032 male and 716,007 female.

23. The right to education is not guaranteed at any educational level, and neither is educational coverage. According to data from the last census, with regard to overall coverage, only 53% receive pre-school education, 95.9% primary education, 90.4% secondary education, and only 38.3% receive high school and higher education. Added to the above, the use of curricula and study plans which are unrelated to strengthening the languages and cultures of native peoples erodes and weakens the cultural and linguistic wealth of the state and violates the right to education.

24. During the last two months of 2012, the Oaxacan Forum on Childhood consulted with a specific sample of girls, boys, and adolescents in order to determine the degree to which the rights of children and adolescents are being fulfilled in the state. In the survey, nearly 40% of the interviewees declared that the food they receive is insufficient and of poor quality, and 4% of this number reported living in situations of very frequent hunger in their households. Moreover, over 80% of this group consumes junk food, which is low in nutrition and which generates obesity and malnutrition. This situation places the population of girls, boys, and adolescents in situations of hunger, malnutrition, and obesity.

25. Mistreatment of girls, boys, and adolescents, including physical and verbal violence due to age, forms of dress or speaking, or for having a disability was also reported during this consultation. School was most often mentioned regarding violence, followed by family and community. It is important to mention that Oaxaca displays the three characteristics found in the country regarding human trafficking and commercial sexual exploitation: it is a site of transit, destination, and origin, and the population below the age of eighteen is increasingly violated by these crimes. It is significant that during the consultation, over 10% of this sector mentioned having been harassed in their homes.

26. While it is true that the Law Protecting the Rights of Girls, Boys, and Adolescents was approved in the state in 2006, it is a law that does not fully guarantee the human rights of this sector. Since 2011, civil society organizations have pushed for a series of legal reforms that have not been approved. These initiatives seek a law that is a true guarantor of rights, with an assigned budget and responsible participation mechanisms arising from civil society and from girls, boys, and adolescents.

27. This same law mandated the creation of a Rights Council that must also be strengthened and organized as a governing body for human rights policies regarding childhood and adolescence. Until last year, the policies in this sector have been decentralized among a

variety of local, national, and international bodies, with multiple agendas and a more service-oriented approach than one arising from a rights perspective.

28. This is the case, in spite of the fact that the Committee on the Rights of the Child recommended that the Mexican State develop and implement a detailed data-collection, analysis, monitoring, and impact evaluation system for all areas covered by the optional protocol of the convention on the rights of the child.

VI. FEMINICIDAL VIOLENCE IN OAXACA

29. The rate of femicidal violence is increasing: between 2008 and 2012, 9660 cases of domestic violence, sexual violence, feminicides, and female disappearances have been reported. Only 3% of the guilty parties have been sentenced. From 2009 to 2012, a number of citizen reports compiled by feminist organizations have reported 284 total feminicides, which are a symptom of the permissiveness that leads to impunity.¹⁹

30. A study of the factors that produce and reproduce violence against women conducted by the National Commission for the Eradication of Violence against Women (CONAVIM, by its initials in Spanish)²⁰ confirms the continuation of the greatest indices of structural violence toward women in the states of Oaxaca, Guerrero, and Chiapas.

31. While it is true that we have a general State Law for Women's Access to a Life Free from Violence, it contains substantial legal gaps. This is in addition to the continuation of patriarchal power structures that have prevented substantive changes in this matter. We do not possess specific mechanisms regarding the implementation of protection orders and gender alert declarations.

32. Institutional responses to the serious problem of violence against women are minimal, as the State Congress has not met the obligation to harmonize legislation that would at least develop a legal framework. On the other hand, the Executive Branch has assumed a core commitment to generate a crosscutting policy regarding gender, promising institutional reforms, training of officials and budget increases.²¹ Still, this has not translated into tangible changes, and instead of assuming that the mainstreaming of gender perspectives should be a State task, it has been reduced to being the sole responsibility of the Oaxacan Women's Institute (IMO, by its initials in Spanish), impacting the current serious situation. Moreover, the allocated budget is minimal; for example, the budget directed to the IMO for the 2013 year is fifteen million pesos, while in order to generate sufficient mainstreaming actions, at least 1% of the annual state budget is necessary.

33. The change from a specialized prosecutor to an Office of the Deputy Prosecutor for Gender-Based Crimes against Women has not improved access to justice nor eradicated the impunity surrounding crimes against women. This is because the office does not have sufficient personnel or budget, or protocols for investigating crimes within its jurisdiction.

34. While the State Law for Women's Access to a Life Free from Violence mandates the

¹⁹Citizen Report 2008-2009, Femicide in Oaxaca, Impunity and State Crime against Women. In: <http://consorciooaxaca.org.mx>

Citizen Count, Violence Against Women- An Open Wound in Oaxaca, 371 Femicides and Where is the Justice? 2004-2011. In: <http://consorciooaxaca.org.mx>

Citizen Report- Justice Now! Femicide and Violence Against Women in Oaxaca – Two Years of Government Alternation, 2011-2012. In: <http://consorciooaxaca.org.mx>

²⁰National Study of Sources, Origins, and Factors Leading to Violence Against Women, CONAVIM, 2012. In: http://www.conavim.gob.mx/work/models/CONAVIM/Resource/103/1/images/1PresentacionResultadosEstudioNacion_alsobreLasFuentesOrigenes.pdf

²¹Oaxacan State Development Plan 2011-2016. State Government of Oaxaca, pp.52-53.

In: http://www.planestataldedesarrollo.oaxaca.gob.mx/downloads/Plan_Estatal_de_Desarrollo_Oaxaca_2011_2016.pdf

creation of reeducation centers for male perpetrators, a state shelter for women survivors of violence and a State Database, these still do not exist.

35. Another outstanding State obligation relates to the prevention of femicidal violence to eradicate practices that are discriminatory and that reproduce and worsen the phenomenon. There are no public programs or policies for training and coordinating agencies with educational organizations in order to eradicate stereotypes in the education of girls, boys, and adolescents.

36. Oaxaca is one of 16 states that reformed their constitution in order to “protect” the right to life;²² this denies women the right to determine the direction of their lives and over their bodies, and leads to the imposition of unwanted pregnancies. To date, the state has not generated supportive conditions regarding health and child support for those born from these unwanted pregnancies. The negative impact of this reform is that state justice agencies delay or deny access to abortion, even in cases of rape.

37. Abortion is a punishable offense in the state of Oaxaca, and there are only 4 situations which do not lead to punishment. According to Oaxacan Health Services (SSO, by its initials in Spanish), 950 Legal Terminations of Pregnancy (LTP) were performed in 2009, while there were just 650 in 2010. Still, figures among different agencies differ: the State Prosecutor’s Office only authorized 4 terminations of pregnancy as a result of rape. While abortions in cases of rape are regulated, mechanisms allowing real access to this right have not been clarified, marking an outstanding obligation within the law enforcement and health services systems.

VII. CRIMINALIZATION OF SOCIAL PROTEST

38. Oaxaca is experiencing a social and political crisis that sharpened in 2006 and which it has yet to overcome. The Oaxacan government presents itself as a defender of human rights and appears to condemn crimes committed by previous governments, but in fact criminalizes those who protest.

39. The powerful social mobilization that is part of daily life in Oaxaca has led the current government to take repressive action against various municipal and agrarian conflicts, as well as efforts against megaprojects, community radio, and mobilizations such as #YoSoy132. This is done in order to justify repression, disrupt the fabric that supports organizations in resistance, promote rejection of mobilized sectors, use the media to discredit political opposition, create confusion via rumors, permit abuse within police forces, and the political use of the institutions and the justice process leading to weak investigations which generate greater impunity.

40. It is worth noting the situation currently faced by those opposing mining megaprojects such as those in San José del Progreso, and wind projects in communities in the Isthmus of Tehuantepec such as Unión Hidalgo, San Dionisio del Mar and the town of Álvaro Obregón in the Juchitán Municipality, among other communities affected by the construction of wind farms without free, prior, and informed consultation.

41. There is a tendency over the past several years toward worsening allegations against human rights defenders and social activists. An example of this is the case of Bettina Cruz Velásquez, who was detained under the nonexistent criminal classification “attacks against national assets,” and who currently faces criminal proceedings. Others have been charged with attacks or damages against public roads, some have been murdered and others

²²Approved State Constitution Reforms Protecting Life from the Point of Conception/Fertilization, 2008-2011. In: http://www.gire.org.mx/publica2/ReformasAbortoConstitucion_Enero10_2011.pdf

disappeared.

42. Torture continues to be used as a punishment mechanism against political opposition. In 2012, the news archives system in the State of Oaxaca registered 37 possible cases of torture and cruel, inhuman, and degrading treatment. In their majority, these facts were committed against social activists by different police forces, and reaffirm the tendency toward criminalizing social protest. Of particular importance is the arbitrary detention of 24 youth members of the “Yo Soy 132” Movement (July 22, 2012) after their meeting in the main square in Oaxaca City. A number of them were tortured while detained in the Oaxacan municipal police holding facility. They were later described by municipal and police authorities as “troublemakers,” inciting discrimination and stigmatization due to their age and political ideology, curtailing their rights to free expression, opinion, and gathering.²³

43. The government promotes this criminalization policy, as demonstrated by declarations of state officials. The Governor Gabino Cué declared that those opposing the wind farm in San Dionisio del Mar are “little groups that spend their time drinking, ready to attack the police and prevent the socially-responsible projects of Mareña Renovables.”²⁴ This statement minimizes the struggle against megaprojects, discredits it in the realm of public opinion, and also falsifies the facts.

44. In addition to the above, the criminalization of social protest is clearly seen in mass media, which plays an important role in creating discourse against indigenous peoples or communities in resistance, unions, students, human rights groups, and the social movement as a whole. The goal is to legitimize repression, using a discourse of the rule of law and the imposition of order, in spite of the right to protest and free open demonstration remaining in effect.

VIII. TORTURE, EXECUTIONS, AND DISAPPEARANCES

45. It is impossible to know exact figures for the practice of torture. There are a number of reasons for this, from underreporting to the lack of complaints due to fear of reprisals, impunity and protection within the judicial process for perpetrators of torture and cruel, inhuman, and degrading practices. Torture persists in Oaxaca, as in the rest of the country, as a method in investigating crimes and as a punishment for creating fear in society. In many cases, this involves a type of torture that does not leave physical traces but which deprives individuals of their personality and leaves terrible psychological consequences that are difficult to overcome.²⁵

46. According to data from the General State Prosecutor’s Office, from 2009 until 2012, 22 preliminary investigations into the crime of torture were initiated. Nevertheless, only one has been administered to date,²⁶ although not for the reported crime, but rather for “aggravated injury.” That is, the crime was reclassified in the sentencing process, which speaks to the degree of impunity seen in these cases, and the lack of recognition of torture. On the other hand, the Office of the Human Rights Ombudsman for the Oaxacan People (DDHPO, by its initials in Spanish) has reported 19 torture complaints for the 2011 to 2012 period. These complaints charge municipal authorities in 7 cases, personnel of the National Prosecutor’s

²³See report titled “Youth and Criminalization” Human Rights Violations Against Yo Soy 132 Movement Sympathizers. September, 2012.

²⁴Opposition to wind farm by “groups that spend their time drinking,” according to Cué. In: <http://www.jornada.unam.mx/2013/02/07/estados/036n2est>

²⁵Comité de Defensa Integral de Derechos Humanos Gobixha A.C Report, The State of Human Rights in Oaxaca: Unfinished Business, December 2012, p.22. In: <http://www.codigodh.org/2012/12/10/conoce-el-informe-la-situacion-de-los-derechos-humanos-en-oaxaca-grandes-pendientes/>

²⁶Memo Number PGJE/FCIE/394/2013 Signed by the Prosecutor for Internal Review and Evaluation of the State Prosecutor’s Office. Dated February 11, 2013.

Office in 7 cases, and personnel of the Public Security Ministry in 5 cases. A recommendation was issued in 2012.

47. While Oaxaca possesses a “State Law for the Prevention of Torture in Oaxaca State,” its definition of torture is not set to international standards, and there is an urgent need to harmonize them. There must also be a state-level response to recommendations given by the Committee for the Prevention of Torture (CPT) to the Mexican State,²⁷ including the strengthening of legal safeguards for detainees, swift and efficient investigations of any complaint of torture, and the prosecution of those responsible.

48. Regarding investigations, these are generally not effective due to the aforementioned factors, as well as because of the lack of impartiality on the part of the investigating body, the lack of or inexistence of the application of the Istanbul Protocol, the lack of trained personnel, the lack of evidential value given to independent experts, including those of the CNDH (National Human Rights Commission, by its initials in Spanish). There is also a lack of sensitiveness and empathy for the victims, who, rather than feel confident in giving their testimony, are judged and repeatedly victimized as the Prosecutor’s Office places the entire burden of proof and responsibility for bringing arguments upon them.

49. In Oaxaca as well as in the rest of the country, executions of people belonging to diverse sectors have been committed. As a result of the 2006 conflict, there were 17 executions documented by a number of civil society and human rights organizations, which still remain unsolved.²⁸ It is also worth mentioning that in recent years we have witnessed the execution of human rights defenders, journalists, and social leaders, including Alberta Cariño, Jyry Jakkola, Teresa Bautista, Felicitas Martínez; Bernardo Méndez Vásquez and Bernardo Vásquez. These last two had precautionary measures issued by the state of Oaxaca. The inability to offer them security, and in other cases the lack of attention given to conflicts, has led to this loss of life. We warn that impunity fosters scenarios in which these acts may repeat themselves.

50. In the cases of disappearances and/or forced disappearances, we report that the lack of a clear definition of this crime leads to a greater degree of impunity. The forced disappearance cases of Edmundo Reyes Amaya and Gabriel Alberto Cruz Sánchez; Virginia Ortiz, Daniela Ortiz, Lauro Juárez and Carlos Rene Romándo do not appear in official justice department statistics, which continue to deny the existence of these crimes. According to the State Prosecutor’s Office of Oaxaca, there are no reports of this crime from 2011 to 2012, and in 2012 it reports 115 cases of “disappeared persons.”²⁹ We conclude, therefore, that authorities define disappearances under other criminal categories, such as illegal deprivation of liberty. This leads to ineffective investigations and to the extreme case of falsifying evidence and guilty parties which leads to greater impunity.

IX. RECOMMENDATIONS

51. Address the deficiencies and legal gaps regarding Human Rights, Indigenous Peoples, and Human Rights of Women and of Girls, Boys, and Adolescents, and call for legislative harmonization with federal laws and international treaties.

52. The Oaxacan State Congress should earmark sufficient budget for Human Rights,

²⁷Amnesty International. “Mexico Must Urgently Comply with Recommendations Issued by the Committee for the Prevention of Torture.” In <http://amnistia.org.mx/nuevo/2012/11/23/mexico-debe-cumplir-con-urgencia-las-recomendaciones-emitidas-por-el-comite-contra-la-tortura/>

²⁸In 2007 and 2008 two police officers were also executed while on duty: Alejandro Barrita and Aristeo Martínez, related to repression against the 2006 social movement, and also unsolved.

²⁹Statistics from the Deputy Prosecutor for High Impact Crimes (SADAI, by its initials in Spanish). In: <http://www.pgjoaxaca.gob.mx/images/estadisticas/pdfs/sadai.pdf>

Indigenous Peoples, and Human Rights of Women and of Girls, Boys, and Adolescents.

53. Create transparency and accountability in assigning resources among state agencies, decentralized bodies, and autonomous entities in order for them to carry out their functions regarding Human Rights, Indigenous Peoples, and Human Rights of Women and of Girls, Boys, and Adolescents.

54. Train public officials in order for them to assume their responsibility for guaranteeing and respecting Human Rights, Indigenous Peoples, and Human Rights of Women and of Girls, Boys, and Adolescents.

55. The State Government should generate mechanisms for coordinating, monitoring, and evaluating public policy regarding Human Rights, Indigenous Peoples, and Human Rights of Women and of Girls, Boys, and Adolescents.

56. The State of Oaxaca should hold public actions recognizing the efforts of Human Rights Defenders and Journalists.

57. The State of Oaxaca must generate an effective internal coordination mechanism for providing measures in favour of Human Rights Defenders and Journalists.

58. The Office of the Human Rights Ombudsman for the Oaxacan People (DDHPO, by its initials in Spanish) must create a mechanism allowing for effective defense and protection of Human Rights Defenders and Journalists, including indicators for gender and multiculturalism.

59. Immediately and quickly investigate cases of attacks, violence, and threats against Human Rights Defenders and Journalists with the goal of sending those culpable to jail.

60. Guarantee the right to consultation and the right to territory of indigenous peoples and communities in the face of large-scale projects.

61. Respect the collective rights of indigenous communities and peoples recognized in Convention 169 and in the United Nations Declaration on the Rights of Indigenous Peoples.

62. Declare Mexican territory as the place of origin of corn, and stop the experimental and pilot planting of corn, which represent a first step in the commercial production of transgenic corn in Mexican territory.

63. Strengthen the practice of many farmers which includes storing, replanting, and exchanging seeds that contribute to agricultural biodiversity, without limiting these practices as proposed in the Monsanto Law and in the state laws approved in Tlaxcala and Michoacán.

64. Strengthen the State Council on the Rights of Girls, Boys and Adolescents by allocating a larger budget for developing its work as a coordinating body and policy-generating entity regarding the rights of childhood and adolescence.

65. Generate reeducation spaces for male perpetrators, a State Shelter for woman survivors of violence, and a State Database.

66. Revise the legal framework regarding protective orders such that they guarantee the lives and physical integrity of women, girls, and adolescents.

67. Immediately investigate and punish femicide and gender violence against women, in accordance with international standards.

68. Guarantee the right to defend human rights of free and open demonstration without the use of public force, and prioritizing dialogue for resolving conflicts.

69. Eradicate the practice of using criminal investigation and justice systems for criminalizing social protest.

70. Guarantee due processes for activists, defenders, and social activists.
71. Harmonize the State Law on Torture and the definition of forced disappearance with international standards.
72. Immediately investigate and punish the practices of forced disappearance, extrajudicial executions, and torture in accordance with international standards.
73. Provide personnel specialized in prevention, eradication, and punishment of torture, extrajudicial executions, and forced disappearances to justice and public security systems.