



Mexican indigenous woman with traditional dress. Source: © Bernardo Ramonfari/Unsplash, 2017.



The Violation of of Indigenous rights

in Mexico

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1.1. Legal framework

In the Constitution of Mexico, Indigenous rights are firmly established as central elements of Mexico's constitutional order.⁶ In 2011, Mexico has put in place a constitutional reform that has constituted an important step towards its international commitments and obligations. According to reformed Article 1, Mexico's international human rights obligations are directly applicable and can be invoked in all levels of the federal structure – thus including legislation, public policies and judicial decisions⁷

Article 2 of the Constitution states that “the nation has a multicultural composition, originating in its Indigenous peoples, who are descended from people who lived in the current territory of the country at the beginning of colonisation and who have their own social, economic, cultural, and political institutions or some of these”.

The Mexican Constitution protects not only Indigenous peoples' identity and land rights, stated in Article 27, but has also broadened to include a human rights perspective. In this sense, Mexico's Supreme Court (Suprema Corte de Justicia de la Nación – SCJN) has engaged in topics such as the recognition of the juridical personality of Indigenous peoples and territories.⁸

Moreover, Mexico has played a leading role in the adoption of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) - the most comprehensive instrument detailing the rights of Indigenous peoples in international law and policy, containing minimum standards for the recognition, protection and promotion of these rights.⁹ It supports the advancement of the Indigenous agenda in the international fora, including the support for the Special rapporteur on the rights of Indigenous people. The UNDRIP establishes some of the most relevant rights, such as self-determination, right to lands, territories and resources, economic, social and cultural rights, and collective rights.

Other international legal instruments have also played an important role towards the recognition of Indigenous rights such as the International Convention on the Elimination of All Forms of Racial Discrimination (CERD), the American Convention on Human Rights, and the International Labour Organisation (ILO) Indigenous and Tribal Peoples Convention, No. 169. The ILO Convention No. 169 is particularly relevant because it covers Indigenous peoples' rights to development, customary laws, lands, territories and resources, employment, education and health. Moreover, it signalled, at the time of its adoption in 1989, a greater international responsiveness to Indigenous peoples' demands for greater control over their way of life and institutions.¹⁰

6. Calleros, H. (2021). Mexico's Constitution, Indigenous Rights and the Future: Symposium on 200 years since Latin American States' Independence and Indigenous Peoples, Retrieved April 12 from <https://blog-iacl-aidc.org/2021-posts/2021/10/7/mexicos-constitution-indigenous-rights-and-the-future-19894>

7. UN. (2017). End of Mission Statement by the Special Rapporteur on the rights of indigenous peoples on her mission to Mexico, supra n. 4

8. Calleros, H. (2021). Mexico's Constitution, Indigenous Rights and the Future: Symposium on 200 years since Latin American States' Independence and Indigenous Peoples, supra n. 6

9. OHCHR. (2013). Indigenous Peoples and the United Nations Human Rights system, Fact Sheet No. 9/Rev. 2, Retrieved April 12 from <https://www.ohchr.org/sites/default/files/Documents/Publications/fs9Rev.2.pdf>

10. OHCHR. (2013). Indigenous Peoples and the United Nations Human Rights system, Fact Sheet No. 9/Rev. 2, supra n. 9



Human Rights Violations

Indigenous people around the world, not only Mexico, have traditionally experienced grave forms of human rights violations for centuries. At their most extreme, these violations can involve forms of violence, forced assimilation and abuse, dispossession of land, and marginalisation. They continue to be left behind and suffer disproportionately from climate change, environmental degradation, high levels of poverty, poor access to education, health, and broader human rights violations.

This report will analyse three sets of rights that constitute the basis for indigenous peoples communities, in order to give a picture, even if limited, of how sets of rights that are deemed as given for granted in the largest part of the population can have severe consequences in the day-to-day life of Indigenous communities: the right to land, territories and natural resources, women's health rights and freedom of expression.

2.1. Right to Lands, Territories and Natural Resources

Indigenous peoples' relationship with their traditional lands, territories and natural resources forms an essential part of their identity and spirituality. Even more, this relationship is deeply rooted in their culture and history, and it is closely linked to their economic survival.

After following a normative discourse that was mostly complicit with colonisation practices, through the lens of international human rights law (IHRL) the international instruments that have been created have shifted the way international law addresses Indigenous peoples' claims to lands, territories and resources, making them right-holders and not only victims of human rights violations.¹¹

The Special Rapporteur on the rights of Indigenous peoples, in her last country visit of 2017, has observed several challenges in the exercise of Indigenous peoples' rights to lands, territories and natural resources:

11. Gilbert, J. (2006). *Indigenous Peoples' Land Rights under International Law: From Victims to Actors*, Leiden: Brill Publishers.



1. The agrarian land regime is at odds with international standards. The numerous cases received indicate that the procedures available for the recognition of territorial rights are neither simple nor accessible and may involve lengthy legal processes, which are often a source of inter-community conflicts. Many communities wait for years, even decades, before obtaining recognition for their lands. What is more, limited results are obtained because the lands granted to Indigenous peoples generally do not correspond to their concepts of territory and do not recognise their traditional territorial limits.¹²
2. Another major issue of concern regards the lack of protection and recognition of natural resources. In several protected areas, the state has approved tourism, agro-industrial projects, mining and forestry concessions which have inevitably translated into human rights violations and forced evictions. Indigenous communities throughout the country have reported many cases of restrictions on access to land and the traditional use of natural resources, which hinders the integrity of their lands and the continuity of their cultural practices.¹³
3. Connected to the previous point, in many instances, the right to Free, Prior and Informed Consent (FPIC)– established by the ILO Convention No. 169 – has been violated.¹⁴ Often, authorisations and permits for projects are issued way before consulting Indigenous people and are frequently accompanied by threats, harassment and criminalisation of members of Indigenous peoples during the consultation process, which undermine the free nature of these consultations. The consultations are rarely clear, precise and complete regarding the real nature of the impact of the projects, and they do not take into account the cultural factors of the people involved.¹⁵

12. Human Rights Council. (2018). Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, A/HRC/39/17/Add.2.

13. Ibidem

14. The right to FPIC allows indigenous peoples to be heard in questions that have an impact on their individual and collective rights, on matters such as policy implementations and development of projects that could affect their lands. It is a legal tool that foresees the possibility to open a dialogue, being consulted, being informed with the aim of obtaining a consensus on the decisions made. Source: Herrera, J. L. (2019) Free, prior and informed consent (FPIC) in Mexico: elements for its construction and challenges, *The Age of Human Rights Journal*

15. Human Rights Council. (2018). Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Mexico, *supra* n. 12





Indigenous Mexican woman selling dolls. Source: © Bernardo Ramonfaur/Unsplash, 2017.

2.2. Indigenous Women's Health Rights

Indigenous women in Mexico have traditionally faced coercion and threats of social programme suspension if they did not agree to sterilisation when seeking reproductive care from the state.¹⁶ PROGRESA and PROCAMPO, two State-sponsored initiatives, carried out these projects throughout the 1990s.¹⁷ Considerable challenges remain for Indigenous women seeking State-provided care, particularly in the area of reproductive health. According to the Department of the Interior's Secretariat of the Interior, 27 percent of Indigenous women seeking public health care were sterilised without their consent in 2013.¹⁸

Due to a variety of factors, forced sterilisation is particularly problematic for Indigenous women. These include discrimination, which leads to doctors failing to feel the need to explain the procedure, its risks and benefits, or to ask for the patient's consent; a lack of linguistically appropriate health services for women who only speak their native language; and high rates of illiteracy among Indigenous women in rural areas. Another risk factor is mental or physical disability: women and young girls may be more vulnerable to forced sterilisation following rape, particularly rape related to incest, because the stress of the experience may impair decision-making ability or personal agency. Besides women, also indigenous males have been subjected to forced sterilisation.

16. Estrada, J. (2017). Comunidades indígenas denuncian ante la ONU despojo por proyectos de desarrollo. La Jornada. Retrieved 16 April 2022, from <http://www.jornada.unam.mx/2017/11/13/politica/005n1pol>.

17. United Nations, (2006), United Nations Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).

18. PINA, G., & RODRIGUEZ, A. (2017). Alma, una víctima de esterilización forzada en Guerrero. La Silla Rota. Retrieved 16 April 2022, from <https://lasillarota.com/estados/alma-una-victima-de-esterilizacion-forzada-en-guerrero/171218>.

The National Commission for Human Rights (CNDH) condemned medical professionals in rural clinics who forced Indigenous women to undergo sterilisation treatments in order to continue getting government assistance in 2002. However, as of 2015, 17 Mexican States have not implemented legislation making forced sterilisation of women illegal. Aguascalientes, Baja California, Campeche, Chihuahua, Colima, Guanajuato, Jalisco, Morelos, Nayarit, Nuevo León, Oaxaca, Querétaro, Sinaloa, Sonora, Tamaulipas, and Zacatecas are among them.¹⁹

Unmarried Indigenous women and girls, who frequently recall being abandoned by their relatives and feeling like a disappointment, also face a lack of proper care.²⁰ This is problematic since Indigenous women are more vulnerable to rape, and abortion access is patchy and frequently unavailable. For example, abortion regulation in Mexico differs by State, and abortion eligibility is determined by factors such as the pregnancy's riskiness and foetal deformities.

Indigenous women face several challenges, including a lack of qualifying information and limited access to safe treatments.²¹ Non-governmental shelters, such as San Cristóbal de las Casas' Hogar Comunitario, offer workshops, assistance, and a community psychologist to single Indigenous moms who have been abandoned by their relatives.²²

Indigenous women in Mexico continue to be disproportionately affected by maternal mortality 18 years after the Millennium Development Goals were established.²³ Hospital overcrowding, poverty, a lack of high-quality treatment in remote locations, and prejudice against Indigenous women are all causes.²⁴

The CEDAW General Recommendation 34 on rural women encourages States Parties to ensure that rural women have access to adequate healthcare that is culturally appropriate, and that their health is not jeopardised.

19. En 17 estados del país se puede esterilizar a una mujer por la fuerza sin que sea un delito. Animal Político. (2015). Retrieved 16 April 2022, from <https://www.animalpolitico.com/2015/08/en-17-estados-del-pais-se-puede-esterilizar-a-una-mujer-por-la-fuerza-sin-que-sea-un-delito/>.

20. Alcázar González, A. (2016). Mexican Shelter Supports Young Mothers, Indigenous Culture Rejects Them. Global Press Journal. Retrieved 16 April 2022, from <https://globalpressjournal.com/americas/mexico/mexican-shelter-supports-young-mothers-indigenous-culture-rejects/>.

21. Girls and Women without Justice: Reproductive Rights in Mexico (2015). GIRE. (2015). Retrieved 16 April 2022, from <https://gire.org.mx/en/publicaciones/girls-and-women-without-justice-reproductive-rights-in-mexico-2015/>.

22. Alcázar González, A. (2016). Mexican Shelter Supports Young Mothers, Indigenous Culture Rejects Them. Global Press Journal. Retrieved 16 April 2022, from <https://globalpressjournal.com/americas/mexico/mexican-shelter-supports-young-mothers-indigenous-culture-rejects/>.

23. Bautista Jiménez, E., & López Arellano, O. (2017). Muerte materna en mujeres indígenas de México y racismo de Estado. Dispositivos biopolíticos en salud. *Salud Problema / Segunda Época*, 21. Retrieved 16 April 2022, from https://omm.org.mx/wp-content/uploads/2020/04/Muerte-materna-en-mujeres-ind%C3%ADgenas-de-M%C3%A9xico-y-racismo-de-Estado.-Dispositivos-biopol%C3%ADticos-en-salud_compressed-1.pdf.

24. Portella, A. (2018). Parteras, aliadas de las mujeres indígenas ante mortalidad materna. *Forbes México*. Retrieved 16 April 2022, from <https://www.forbes.com.mx/parteras-aliadas-de-las-mujeres-indigenas-ante-mortalidad-materna/>.



Care information should be extensively distributed through various media in local languages and dialects. Yet, Indigenous women in Mexico who do not know Spanish have a hard time expressing themselves. Symptoms are reported to health care providers, but members of the family who speak English are frequently not allowed to accompany them into the hospital. The dearth of high-quality health care facilities in remote locations, as well as multilingual health care experts and translators, are significant obstacles that prevent Indigenous women from obtaining the treatment they require. An external study with Indigenous women in adjacent Guatemala has found that providing health services in a linguistically and culturally relevant manner is critical for Indigenous women's access to health care.²⁵

2.3. Freedom of Expression

Many journalists suffer additional hazards in their profession because of their gender or ethnicity in the setting of significant violence and instability in general. There is no unified repository of information on attacks against Indigenous journalists. Rapporteurs point out that community journalists and Indigenous journalists are underrepresented in the media. Often, organisations are the only means of disseminating knowledge in their areas, and have the added purpose of informing and drawing attention in their own language to cultural and socioeconomic concerns that may otherwise go unnoticed in their community. Other media outlets have reported the story. They are frequently harassed and stigmatised by others.²⁶

The Special Rapporteurs emphasise the need of taking Indigenous journalists' needs into account at the State and federal levels, notably through the Protection Mechanism and the Law for the Protection of Human Rights Defenders and Journalists.

25. Cerón, A., Ruano, A., Sánchez, S., Chew, A., Díaz, D., Hernández, A., & Flores, W. (2016). Abuse and discrimination towards indigenous people in public health care facilities: experiences from rural Guatemala. *International Journal For Equity In Health*, 15(1). <https://doi.org/10.1186/s12939-016-0367-z>

26. Organization of American States, Inter-American Commission on Human Rights, Special Rapporteur on Freedom of Expression. (2018). *Special Report on the Situation of Freedom of Expression in Mexico*. Organization of American States. Retrieved from https://www.oas.org/en/iachr/expression/docs/2018_06_18_CIDH-UN_FINAL_MX_report_ENG.pdf

27. In Mexico, Indigenous peoples endure violence for exercising their right to free expression. In the countryside, cartels, paramilitaries, police, and politicians have retaliated violently against journalists and activists. According to the Mexican National Commission for Human Rights, 90 percent of killings of journalists in Mexico go unpunished. The most impacted areas in Mexico are Chihuahua, Guerrero, Veracruz, and Oaxaca, which are home to an estimated 3.5 million Indigenous people. Mexico was named the world's most dangerous country for journalists in 2017, despite the fact that it is not actively at war.



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Over the previous two decades, the rate of violence against journalists has risen. From the years 2000 to 2017, 112 journalists were slain as a direct result of their profession. Many of these journalists were covering human rights issues, such as Indigenous and women's rights.²⁸

Those numbers do not reflect attacks on community communicators, such as Indigenous Peoples (in particular Indigenous women), who did not follow the compulsory journalist training but who are operating at community radio stations. Indigenous radio broadcasters that fight for Indigenous rights face censorship and abuse on a regular basis. Marcos Hernández Bautista, a news journalist in Oaxaca who was studying Indigenous radio stations, was fatally shot in the head in 2016.²⁹

While Mexico was a driving force behind the United Nations Declaration on the Rights of Indigenous Peoples, the reality encountered by Indigenous journalists falls short of international promises. Indigenous journalists told the Special Rapporteurs of racial discrimination, which often included physical threats, as well as general inaccessibility to justice owing to distance, a lack of sufficient legal support, language hurdles, and fear of retaliation. Many incidents of violence against indigenous journalists are not reported to the police.³⁰

28. Reporter killed in Mexico was at least 9th journalist slain this year. *Cbsnews.com*. (2017). Retrieved 16 April 2022, from <https://www.cbsnews.com/news/reporter-killed-in-mexico-was-at-least-9th-reporter-killed-this-year/>.

29. Critical reporter shot dead in Oaxaca. *Committee to Protect Journalists*. (2016). Retrieved 16 April 2022, from <https://cpj.org/2016/01/critical-reporter-shot-dead-in-oaxaca-mexico/>.

30. Organization of American States, Inter-American Commission on Human Rights, Special Rapporteur on Freedom of Expression. (2018). *Special Report on the Situation of Freedom of Expression in Mexico*. Organization of American States. Retrieved from https://www.oas.org/en/iachr/expression/docs/2018_06_18_CIDH-UN_FINAL_MX_report_ENG.pdf

Conclusion

Despite being one of the few countries in the world that entails in its own Constitution the recognition of Indigenous people in its national territory, and despite its own contribution to the advancement of their legal protection in international fora, Mexico's compliance with human rights protection is far from being perfect. There seems to be a worrying double standard when it comes to Mexico's international support of Indigenous people and its national disregard.

As witnessed in this report, the right to land, territories and natural resources rights are still threatened by the lack of recognition of Indigenous communities' traditional lands, the government's use of protected areas for its own projects, and the lack of mechanisms and processes to establish a dialogue to obtain FPIC. Indigenous women's health rights are a major point of concern. Widespread forced sterilisation is performed on Indigenous women without prior consent, they struggle to obtain safe health treatments and clear information, often due to linguistic reasons, and they are at risk of rape and cannot safely access abortion facilities. The right to free expression is also severely impaired. Repression of freedom of expression is often connected to violence and brutality.

Mexico has to go a long way to meet not only international standards, but also its own national commitment towards protection, promotion and respect of Indigenous peoples' rights.

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