



TLapa de Comonfort, Guerrero, Mexico, June 2012

Re: Submission of information for shadow report to the combined seventh and eighth Periodic Report of the Mexican State for the Committee on the Elimination of All Forms of Discrimination against Women.

Distinguished Members of the Committee on the Elimination of All Forms of Discrimination against Women:

Regards from the Human Rights Centre “Tlachinollan”; the following report aims to provide parallel information to the 7th and 8th Periodic Report of the Mexican State, to be reviewed by this distinguished Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) in its upcoming 52th Session, in New York.

The Human Rights Centre Tlachinollan is a human rights organisation working since 1993 in the southern Mexican state of Guerrero, accompanying the Naua, Na’Savi (Mixteco), Me’phaa (Tlapaneco), Ñaancue Ñomndaa (Amuzgo) and mestizo peoples in their struggles for the full respect of their human rights.

I. GENERAL CONTEXT IN GUERRERO

Historically, the state of Guerrero has lived in a state abandon and social deficiencies. Its population is approximately 3,388,768 inhabitants; of those, 1,743,207 are women and 1,645,561 are men, as confirmed in the last census completed in 2010. Out of this total population, 30% is indigenous, who belong to one of the four following groups: *nauas* or *nahualts*; *na’savi* or *mixtecos*; *me’phaa* or *tlapanecos*; *ñaancue ñomndaa* or *amuzgos*¹. The indigenous population is concentrated mainly in the Montaña and Costa Chica regions of the state.

The state of Guerrero, since the year 2000, is one of the three states in the country considered to have “very high levels of social exclusion” according to the National Council of Social Policy (CONEVAL).² Despite a reduction in this indicator between 2008 and 2010, 67.4% of inhabitants live surrounded by scarcities. Most noteworthy is that 26.6% of the inhabitants of Guerrero live in extreme poverty, that is, in conditions that even when utilizing all their income, the families don’t have sufficient resources to buy a basic food basket³.

¹ The indigenous population of Guerrero represents the 13% of the total indigenous population in the country.

² Guerrero is the second state with the highest percentage of persons living in multidimensional poverty (similar to Oaxaca). As established by the Population and Housing Census of 2010, in Guerrero, of the 810,338 households counted, 19.25% have no toilet or bathroom facilities (more than 162,000 houses); while 37.74% do not have piped water from the public network, that is to say, more than 303,000 households. The tally of disadvantages continues: according to the National Council of Social Policy (CONEVAL), 22.5% of housing has no drainage (181,550 houses) while 70,000 do not have any of the commodities asked for in the census (washer, refrigerator, automobile, television, radio and computer). See: INEGI. 2010. Censo de Población y Vivienda 2010. Available at: <http://www.censo2010.org.mx/> (Hereinafter, INEGI 2010). See also: National Council of Social Policy (CONEVAL). 2010. Información de pobreza y rezago social 2010 del estado de Guerrero. Available at: <http://web.coneval.gob.mx/coordinacion/entidades/Paginas/Guerrero/principal.aspx> (Hereinafter: CONEVAL 2010)

³ In absolute terms, this means that a million people live with hunger. Another 1.5 million live in moderate multidimensional poverty in the entity, meaning, they cannot cover all their basic necessities of food, health, education, housing and transportation even when dedicating all their income. In addition, it is important to recall the fact that only 7.4% of the population of Guerrero, 250,000 people, were tallied by CONEVAL as being within the margin of adequate welfare for themselves and their families. Consequently, in 2010, Guerrero had a total of 300,050 inhabitants that

The critical situation of the state is even more concerning in the mainly indigenous municipalities of the Montaña region of Guerrero. Just as in the rest of the country, poverty is especially harmful to indigenous population in Guerrero. The numbers of the latest national census in 2010 confirm the 19 municipalities of the Montaña region are in the lowest levels in all indicators relevant for defining human development indicator. An example of this situation is that on average in the Montaña region, there is only one medical facility for every 1,706 inhabitants and the total number of medical personnel is 437, meaning 1 for every 827 inhabitants⁴. A main concern is that there is barely non-existent segregated gender information on the conditions of women and men in the region and their access to basic services.

The level of marginalisation increases in the case of indigenous women who have the highest levels of illiteracy and of monolingual population, and whose health conditions are among the worst in the country. Furthermore, the Montaña region occupies first place for the highest maternal mortality rate.

The critical situation in the Montaña in Guerrero has been highlighted by the UN Found for Children, which has noticed on the rate on children mortality in municipalities such as Cochoapa El Grande, Metlatónoc, Alcozauca, Tlapa and Chilapa, which is around 89 children out of 1000 newborns alive; while in Mexico is around 28 and 6 on industrialised countries. In particular Cochoapa El Grande, according to the United Nations Development Programme, is the poorest municipality in Mexico, with the highest indicators on misery, malnutrition, lack of access to health and illiteracy, with levels compared to populations in the Sub-Saharan Africa.

This context of extreme marginality has become more complex on recent years due to unforeseen regional dynamics where the extension of the violence associated with drug-trafficking and militarisation, discrimination, the absence of an effective and fair justice system, and exclusion is affecting indigenous communities in the Montaña, and in a significant manner to the women.

In the following sections, further information on some of the issues raised by the CEDAW in different occasions to Mexico will be approached; first with special emphasis on the situation of women in a context of militarisation and institutionalised violence in the State of Guerrero, and secondly, regarding the conditions of discrimination and exclusion faced by indigenous women in Guerrero as a paradigmatic situation, especially after the State does not mention the women of this region in its Report. Finally, we would like to respectfully bring your attention to some proposals for recommendations to the Mexican State, to be consider by the Committee while examining the State report and drawing up its Concluding Observations.

suffered at least one social deprivation. To put into perspective what is happening in the state, it is sufficient to note the state average indicators in comparison to national averages. For example, concerning illiteracy, even though the national average of those older than 15 years that do not know how to read or write is 6.88%, in the state of Guerrero the number is 16.7%, the worst average in the country. In another instance, as to the percentage of children 6 to 14 years of age without the opportunity to attend school, Guerrero occupies is the third in the national ranking with 6.5%. Only Chiapas and Michoacán have worse indicators. In regards to the indicator concerning the percentage of the population older than 15 years that in 2010 had not completed their basic education, Guerrero, with Michoacán are at the second national place with 53.7%. The only state with a lower indicator is Chiapas. Regarding the percentage of the population without access to health services in 2010, Guerrero was allocated the second worse place in the country; 45.75% of the state's population was without medical services, compared the national indicator of 38.8%. Likewise, it is noteworthy that Guerrero has the highest percentage of unliveable housing. See. CONEVAL, 2010.

⁴In addition, in the Montaña Region on housing, 51.98% of the houses do not have access to potable water, 13.43% do not have access to electricity, 53.61% do not have sewer, 25.36% do not have concrete floor and 38.73% do not have toilet facilities. The numbers on education are not very different: the media on years of attendance to school for the Montaña region is of 4.89 years, which is around fourth year, while in Guerrero is around 7.3 years and the national level is 8.6. INEGI.2010

II. LIST OF ISSUES AND RECOMMENDATIONS BY THE CEDAW

A. Violence against women

The Committee on its Concluding Observations during the latest review to Mexico expressed:

“[C]oncern about the general environment of discrimination and insecurity that prevails in communities, workplaces [...] and territories with a military presence such as the northern and southern border areas, which might put women at constant risk of becoming victims of violence, abuse and sexual harassment. [...] [T]he Committee is concerned about the persistence of the widespread and systematic violence against women, including homicides and disappearances”⁵. In addition, in its List of Issues call the State to “provide information on how the persistent climate of impunity and insecurity in the State party has impacted women on the enjoyment of their rights”⁶.

The upcoming sections will approach three main issues related to this context of violence against women, first we will provide information on the context of militarisation and violence in Guerrero; secondly, we will address the obstacles and lack of access to justice for women in the state; finally we will focus on the situation of women human rights defenders.

- **Militarisation and the context of violence in Guerrero**

In the context of deprivation previously mentioned, militarisation has played as a painful and strategic factor in the story of Guerrero and of its indigenous population.⁷ In 2010 the government of Guerrero and the Inter-American Court conceded that in Guerrero, women face daily “Institutional violence by the Military”⁸, which means, as the Secretariat for Women’s Affairs in the state of Guerrero admitted it, that “[i]ndigenous women continue to suffer the consequences of a patriarchal structure that is blind to gender equity, particularly within institutions such as the Armed Forces or police, whose members are trained to defend the nation, and to combat or attack criminals, but who are not sensitive to the human rights of the community and of women.”⁹

Today, in Guerrero, additionally to the persisting poverty and marginalisation as excruciating problems, the current situation is marked by the increasing violence, which places the state as one of the most violent states in Mexico. During the latest state administration, which ended in 2011, according to data from the Guerrero state Commission on Human Rights (Coddehum), there have been 5,000 manslaughters, at least 202 kidnappings and more than 107 events which allegedly could constitute enforced disappearance. The complexity in this situation could be understood if it is

⁵ Committee on the Elimination of Discrimination against Women. Thirty-sixth session. Concluding comments of the Committee on the Elimination of Discrimination against Women: Mexico. 25 August 2006. UN Doc. CEDAW/C/MEX/CO/6. pa. 14 and 15.

⁶ Committee on the Elimination of Discrimination against Women. Fifty-second session. List of issues and questions with regard to the consideration of periodic reports: Mexico. 1st November 2011. UN Doc. CEDAW/C/MEX/Q/7-8. pa. 6

⁷ The army has played a preponderant role in state life since the 60s when it was deployed to contain political dissent. Since this time, the armed forces continue to have an obvious permanent presence in the territory of Guerrero, involving itself since the 90s in activities related to counteract drug trafficking. The historic military deployment into Guerrero has not only not decreased drug-trafficking activities; it has also implied an increase in violence, where the military presence serves equally for social and drug containment.

⁸ IACtHR. *Case of Fernández-Ortega et al. v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, par.79. and, IACtHR. *Case of Rosendo-Cantú and other v. Mexico*. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 71.

⁹ IACtHR. *Rosendo-Cantú and other v. Mexico*. pa.71

considered that Guerrero is also the state in Mexico with the highest production of puppy in the country, according with the Ministry of Defence.

In this breath, Guerrero is the third state in Mexico with the highest homicide rate. According to official data from INEGI, in 2000, Guerrero, along with the state of Mexico, and Oaxaca were the states with the highest murders of women, during that year, in Guerrero there were 4.78 women's homicides for each 100,000 women. The national average was 2.57 per 100,000 women. During 2010, Chihuahua, Durango and Nayarit had highest rates of women's homicides than Guerrero; however, this still had a high rate, just as these states and Tamaulipas, Sinaloa and Baja California. In that year, there were 6.94 women's homicides per each 100,000 women in Guerrero, while the national average increased to 4.20¹⁰.

The response to violence in Guerrero has always been the same: increasing militarisation of the daily life. As an example, the current Federal and Guerrero state's administrations, decided in 2011 to counteract the increasing violence generated in the first part of 2011 in the state, within the context of the "war against organised crime" launched by President Calderon's administration, with the deployment of the Mix Operation "*Guerrero Seguro*"¹¹, which includes coordination of elements from the Army, Navy, Federal Police, Attorney General's Office (PGR), and state police. This operation entails the repetition of a strategy which has proved to be inefficient to abate violence and which increments the risk for new human rights violations to occur¹².

In this context of increasing militarisation of public life in Mexico, the cases of Valentina Rosendo Cantú and Inés Fernández Ortega, are paradigmatic cases of discrimination and violence against indigenous women in a militarised environment of indigenous communities¹³. Information in relation to the cases and clarifications to the asseverations in the State report are included in Addendum I.

- **Access to Justice**

Several studies on the access of indigenous women to justice have explained the manner in which the sex-gender discriminatory ideologies and the lack of cultural understanding on behalf of those imparting justice have negatively framed the relation between this sector of the population and the national justice system. These studies have raised the issue of the triple discrimination that indigenous women suffer as a result of their ethnic identity, gender, and their economic marginalisation that manifests itself in the re-victimisation that is suffered when attempting to access State justice¹⁴.

¹⁰ See Reforma. "Se dispara narcoviencia en contra de las mujeres." 20 June 2012. Available at: <http://gruporeforma.reforma.com/graficoanimado/nacional/narcoviolenciamujeres/>

¹¹ On 6 October 2011, the Mix-Operation "*Guerrero Seguro*" (Safe Guerrero) was publicly presented, in an attempt to respond to the critical security crisis the entity is undergoing. According to the limited public available information, this new mix-operation implied in its beginning the deployment of 2,000 security elements in the entity: 1,000 members of the Army, 300 from the Navy, 650 from the Federal Police, and 50 elements from the Attorney General's Office (PGR), in addition to 1,000 state police force and 500 more who were incorporated during the year. From that date the Operation has extended to different municipalities within the State and increased its elements numbers.

¹² In 2007 it was presented and implemented "Mix – Operation Guerrero", a considering large operation and very similar to the one recently implemented. In the aftermath, it was demonstrated the causal effect between the operations and the increasing homicides rate in the state of Guerrero: the pre – 2007 mix operation homicide rate in Guerrero increased during the subsequent months of its launch.

¹³ On 1st October 2010, the Inter-American Court of Human Rights (IACtHR) published two sentences against the Mexican State in the cases of Inés Fernández Ortega and Valentina Rosendo Cantú. The rulings determined that during 2002 -under different circumstances, at the age of 25 and 17 years old respectively- both women were raped and tortured by elements of the Mexican armed forces in the state of Guerrero, Mexico.

¹⁴ Hernández , Aída and Ortiz Elizondo Héctor. Anthropological Experts' report for the Inter-American Court of Human Rights in the case of *Inés Fernández Ortega and others vs. Mexico*. April 2010. p.13

The lack of implementation of legal framework - including the new Constitutional reform to Article 1, which raises to constitutional norms all international norms and international treaties on human rights to which Mexico is a party, recognising all human rights as Constitutional rights¹⁵ – deepens the structural problem of discrimination and exclusion in a context where, indigenous rights are considered officially protected by these norms, but the institutions replicate historic discrimination patterns.

For example, the “*Law on Linguistic Rights of Indigenous Peoples under which indigenous persons are entitled to use interpreters in the administration of justice*” establishes that indigenous persons are entitled to use interpreters in the administration of justice; however these laws remain rather symbolic and have not been properly implemented. “While the law requires that translation services from Spanish to indigenous languages be available for the accused at all stages of the criminal process, this is generally not done in practice.”¹⁶ Even the Mexican authorities accept that “the lack of funds to procure translators undermined the justice system’s ability to implement the legislation and has continued to exacerbate the indigenous communities’ lack of faith in the criminal justice system”.¹⁷ Moreover, in its report for the 2009 UPR the Mexican State has acknowledge that “Mexico still faces the difficult task of effectively providing counsel and qualified translators and interpreters for all trials and procedures in which indigenous language-speakers are a party.”¹⁸

The indigenous population face particular obstacles while accessing justice organism; they “are defenceless because they do not speak Spanish and do not have any interpreter, because of the absence of financial resources to hire a lawyer, to travel to health care centres or to the justice organism, and because they are often victims of abusive practices or practices that violate due process [...] [T]hey distrust the institutions or they fear reprisals; in the case of indigenous women, the situation is even worse, because filing complaints concerning certain acts has become a challenge that requires them to overcome many obstacles, such as rejection from their community and other “harmful traditional practices.”¹⁹

The ignorance of indigenous languages from personnel of the justice system and the high level of illiteracy and monolingual female indigenous population exacerbates their lack of access to justice. However, it is important to note that the lack of access to justice is not only caused by the lack of trained personnel inhibiting indigenous to access it; this is coupled with a racist and denigrating treatment by public officials that in many respects has reproduced the racial hierarchies that permeate the entirety Mexican society. In the case of indigenous women, this structural racism, produced within the institutions of the State, is deepened by gender discrimination and often re-victimises them during cases, primarily of a sexual or domestic violence nature²⁰.

¹⁵ Contrary to what the State refers in its responses to the List of Issues, the newly reformed “*juicio de amparo*” has not been regulated by secondary legislation, even though this had to be passed by October 2011. Without this second legislation the reforms cannot be fully implemented by the Judicial authorities. See. Committee on the Elimination of Discrimination against Women. Fifty-second session. Responses to the list of issues and questions with regard to the consideration of the combined seventh and eighth periodic report: Mexico. 14 March 2012. UN Doc. CEDAW/C/MEX/Q/7-8/Add.1 pa. 2.

¹⁶ Bar Human Rights Committee of England and Wales. Recalling the Rule of Law: Report of the lawyers’ delegation to Mexico A report on the protection of human rights defenders and the rule of law in the states of Guerrero and Oaxaca, Mexico, July 2010 p. 22.

¹⁷ *Ibid.* Interview with the Town Mayor of Tlapa, Guerrero.

¹⁸ Human Rights Council. National report submitted in accordance with paragraph 15(A) of the annex to Human Rights Council resolution 5/1, 10 November 2008. UN Doc. A/HRC/WG.6/4/MEX/1 pa. 120.

¹⁹ IACtHR. *Rosendo-Cantú and other v. Mexico*. pa.71

²⁰ Hernández and Ortiz Elizondo. April 2010. p. 14

In this sense, the right to a dignified treatment and access to justice have a strict relationship; the lack of the first could provoke rejection and reluctance from the victim to cooperate with the justice institutions. Dignified treatment requires in cases related to indigenous people “respect in the acts of the authorities to cultural differences and the duty to take into account customs and the indigenous customary law, in order to facilitate the participation of the victim in the process as a mean of proof and as subject of rights.”²¹

Moreover, to evaluate if the State is complying with its duties in regard to access to justice, other factors which damage an individual’s rights shall be evaluated. The attention services for victims, access to translators, medical services, psychological aid - all of these collaborating to the work of those authorities in charge to provide access to justice to a victim - shall have operative capacity and training, which permit them to aboard cultural differences. However, deficiencies in the justice systems, especially in regions with indigenous population, tend to oversee the wellbeing of the victim, re-victimising them and certainly not contributing to promote confidence in the justice institutions. Failure to provide an specialised attention with ethnic, cultural and gender perspective to those who recognise themselves as indigenous, prevent them to access real justice in a Mexican multicultural society, which could recognise, value and respect them as part of a their reality²².

In a context like Guerrero, there is lack of judicial guarantees to protect the dignity, security and privacy of indigenous women during all the judicial process; those women who dare to denounce are afraid of the authorities, public exposition or mistreatment; in addition to the lack security for their witnesses, the economic implication of a judicial processes, which are not accessible, including transport, housing, food, and other paper-work costs which have to be taken into account to denounce and follow-up a formal complaint, which regularly are just impossible to cover for indigenous women. Most of times, the location of the judicial institutions are difficult to access, most especially if they do not have the support of their family, in addition to the lack of information available for those victims on how to access judicial protection institutions²³. All these conditions construct an environment of defencelessness and subordination for indigenous women which aggravates with the lack of adequate response from those entities in charge to provide services and support them.²⁴

The case of Bertha Félix Díaz, a single 30 year old nua indigenous woman, who did not finish primary education, is an example of the entire obstacle faced by an indigenous woman who attempts to access justice in serious conditions of vulnerability. In 2007, Bertha Félix approached the Alpoyecá Major's office to request the opportunity of a better job, to be able to support her and her mother. In this occasion, she was able to enter the Direction of Public Security in Alpoyecá municipality, in the Montaña of Guerrero, as an element of the municipal police, despite she did not have any training nor have finished any formal education; for Bertha this was the only opportunity to have a stable income for her and her family. Bertha was the only policewoman in this corporation.

On 15 May 2007, thirteen days after she started to work as a policewoman, the Director of Public Security, during a visit to Tlapa de Comonfort with Bertha took her to a hotel and under threats to fire her if she refused or commented anything, forced her

²¹ Perlin, Jan Esq. Expert's report on the situation of access to justice for indigenous people, for the Inter-American Court of Human Rights in the case of *Inés Fernández Ortega and others vs. Mexico*. March 2010.p. 4

²² *Ibid.* p.9.

²³ Inter-American Commission of Human Rights. *Access to Justice for Women Victims of Sexual Violence in the Americas*. . OEA/Ser.L/V/II.Doc.68. 20 January 2007, pa. 172.

²⁴ Bonfil Sánchez, Paloma. Expert's report on discriminatory acts against indigenous women for the Inter-American Court of Human Rights in the case of *Inés Fernández Ortega and others vs. Mexico*. March 2010.p.18

to have sexual relations with him. From that day on, the Director continued to harass Bertha, constantly abusing of his power position, forcing her to have intercourse with him for at least 3 times, with the same pattern of threats. Two months later, the Director fired Bertha when she could not read correctly a document on the radio.

Bertha, accompanied by Tlachinollan, presented a complaint before the Coddehum, which granted precautionary measures requesting the Mayor of Acatepec to guarantee her integrity, given the concern for reprisals after denouncing the abuse. The measures were never implemented. A week later, on 12 July, Bertha presented a formal complaint before the Public Prosecutor of Huamuxtitlan. After this, Bertha received threats by phone for a week; she was even visited in her house by a legal advisor of the Alpoyecá Municipality with an element of the Investigative police from Huamuxtitlan, who was in charge of the investigation and had already called her to intimidate her, in order to force her to negotiate an agreement or desist on her demands.

In addition, the Public Prosecutor from Huamuxtitlan requested that Bertha shall go through a gynaecological exam to check if they could find traces of sperm in her body, which was completely absurd as the lawsuit presented by Bertha was not for rape but for sexual harassment and abuse of power. The elements of these crimes do not need to be proved by this test and the lines of investigation shall not be leaded in that direction.

In the case of Bertha, none responsible has been punished. Most importantly, her physical and psychological integrity was threatened by the abuse of power of the authorities, not only her superior at work, but the other authorities involved in her lawsuit, which shall have protected her and not the aggressor. Furthermore, it illustrates the re-victimisation generated and imposed to victims by authorities, which promote intimidation and fear from the victims, guided by discriminating patterns.

- **Women Human Rights Defenders in Guerrero**

On the matter of the security of women human rights defenders, the Committee has shown special concern to their situation, requesting the State to *“provide information on measures taken to protect women, including human rights defenders and journalists, from violence.”*²⁵

Firstly, it is important to highlight that in Mexico, as a generality, the security of human rights defenders community is at stake in an environment of generalised violence which increases their security risks. The UN Office of the High Commissioner for Human Rights in Mexico (OHCHR) identified in its report *“Defending human rights: between commitment and risk. Report on the situation of human rights defenders in Mexico in 2009”* the entities where the highest number of denounces are Chihuahua, Chiapas, Oaxaca and Guerrero, remarking the dreadful impunity rate of 98% in cases of attacks and aggressions against human rights defenders.

In this context, the women human rights defenders face daily different obstacles and risks, working on a traditionally male environment; women human rights defenders are more vulnerable to gender violence, from verbal attacks to sexual violence and abuse²⁶. This situation is more aggravated in the state of Guerrero, where women human rights defenders are, mainly, indigenous, monolingual and poor, living on isolated communities.

²⁵ UN Doc. CEDAW/C/MEX/Q/7-8. pa. 6

²⁶ United Nations Office of the High Commissioner for Human Rights in Mexico. 2010. *Defender los derechos humanos: entre el compromiso y el riesgo. Informe sobre la situación de las y los Defensores de Derechos Humanos en México.*

In the state of Guerrero, indigenous women human rights defenders are, in general, women who along with the men have organised themselves, in order to open spaces to demand the State to respect their basic human rights. In parallel, within the context of the human rights violations registered in Guerrero, there are women who have vindicate themselves as human rights defenders, consequence of being direct victims of violations of their human rights, such as the cases of Valentina Rosendo Cantú and Inés Fernández Ortega.

In either case the Mexican State response has been the same; lack of implementation of the protection measures and lack of guarantees to safely continue with their work. In addition, the State has not succeeded in clarifying the events, to identify those responsible, and punish them in compliance with the law.

Impunity is one of the biggest concerns as it reigns in cases of harassment, threats and attacks against human rights defenders. The lack of investigation, and access to justice, has positioned human rights defenders on an increasingly vulnerable situation; added to the lack of a clear, coordinated and efficient policy for the integral implementation of protection measures for human rights defenders. Despite the publicised announcement of new instruments, such as the mechanism of protection of human rights published on July 2011 and of a federal law on this matter, which was passed on April 2012, and promulgated by President Calderón on recent days, the harassment and attacks against activists continue to accumulate, leaving some with the only option to leave the country given the lack of effective security measures implemented by state and federal government.

Moreover, despite the statement by the State on the 29.5 million pesos appointed to the mechanisms to protect journalists and human rights defender, to date, the protection mechanism does not exist in practice. It is essential to put it in place with the participation of senior representatives of the Federal government, in order to guarantee the design and implementation of agreed security measures ensuring its effectiveness in the local entities, where human rights defenders face the most significant risks.

Guerrero is representative of this situation, where the climate of adversity for human rights defenders has been increasing in recent years, and affecting diversely to women human rights defenders. The Addendum II presents emblematic cases of indigenous women human rights defenders which have had faced continuous death threats, harassment, persecution and impunity, while demanding basic rights for their communities and struggling to access justice.

These documented cases of aggressions against women human rights defenders are not isolated cases, only related to a high profile case in relation to access to justice; on the contrary, recent cases like the disappearance of Eva Alarcón and Marcial Bautista, from the Ecologist Peasant Organisation from Petatlán (OCESP)²⁷ in December 2011 and the killing of Fabiola Osorio from Guerreros Verdes in May 2012²⁸, are proof of the continuous risk for human rights defenders in the state, which remain in impunity, aggravating the risk situation for all other defenders.

²⁷ The OCESP emerged in the nineties as a rural organisation focused on the preservation of forests. Touching on strong economic interests, they were cruelly persecuted for years. See for example. IACTHR. Case of Cabrera García and Montiel Flores. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of November 26, 2010. Series C No.220.

²⁸ See, for more information. Inter-American Commission on Human Rights. IACHR Condemns Killing of Human Rights Defender in Mexico. 14 June 2012. Available at: http://www.oas.org/en/iachr/media_center/PReleases/2012/066.asp

In the case of the disappearance of Eva Alarcón and Marcial Bautista; their youth daughters, Coral Rojas y Victoria Bautista, are those taking the lead demanding the authorities to investigate their disappearance and to return them alive. They have constantly informed they have received death threats for their actions to find their parents.

B. Disadvantage groups of women: indigenous women

The Committee has continuously expressed its concern:

“[A]bout the higher levels of poverty and illiteracy and multiple forms of discrimination experienced by indigenous and rural women”²⁹. In addition, it has pointed out the concerning “large disparities between them and women in urban areas and from non-indigenous groups in access to basic social services, including education and health, and participation in decision-making processes”³⁰. In addition it has urged the State to ensure that all poverty eradication policies and programmes explicitly address the structural nature and various dimensions of poverty and discrimination that indigenous and rural women face”³¹. In this context it requested the State to provide “detailed information on specific measures to address discrimination against indigenous women in their access to education, health and employment”³².

The rights of indigenous women have a primary framework of vulnerability as a condition of the generalised disadvantage experienced by their communities. Poverty, aggravated by dispossession, racism, exclusion, marginalisation and harassment, impedes the generation of opportunities to exercise rights by indigenous population. In this sense, the first condition for compliance of specific rights of indigenous women is to comply with the rights of their communities³³.

In general terms, indigenous women carry on activities of reproduction in their families and communities which are not considered as work, and which regularly replace those lacks of services which affect indigenous populations, without any recognition or protection from the State. Thus, indigenous women are not only vulnerable to discrimination because they are members of marginalised social groups, but because they are subordinated in all social spheres, within and outside of their communities.

In addition, discrimination against indigenous women is reproduced in their relationship with the State: lack of access to education; to health services; to work and income; justice, among other spaces. In this crossroad between gender, class and ethnicity, exclusion is produced, reducing available resources for the indigenous women to access equality of opportunities and to conditions to overcome discrimination, violence and racism to which they are subject to, such as lack of time, voice, information, recognition and autonomy, which are indispensable to overcome the unequal and abusive relationships which mark their position before the State and society through their institutions³⁴.

Therefore, the lack of public policies addressing structural causes of extreme poverty which create a truth welfare and development policy and not mere governmental aid, remains being a main obstacle to suppress marginalisation and discrimination. In the

²⁹ UN Doc. CEDAW/C/MEX/CO/6 pa. 34

³⁰ *Ibid*

³¹ *Ibid.* pa. 35

³² UN Doc. CEDAW/C/MEX/Q/7-8/ pa. 20

³³ Bonfil Sánchez, Paloma. March 2010. p.9.

³⁴ *Ibid.*

upcoming sections we will refer to the need to address structural discrimination in the context of education, employment and health for indigenous women, following up the continuous reference of the Committee to these relevant issues.

- **Education**

The Committee continues to be concerned on the illiteracy rate for women in indigenous communities³⁵.

According with the INEGI, in 2010, 16.7% of the population of 15 years old and older do not know how to read in Mexico, six out of them are women. In the Montaña region, the numbers on education are highly concerning: the media on years of attendance to school for the region is of 4.89 years, which is around fourth year, while in Guerrero is around 7.3 years and the national level is 8.6. Basic education does not have universal cover and access to secondary school in Guerrero is very limited. Just as the right to health, education is not guaranteed in the Montaña Region.

The lack of public information on indigenous women's human rights and the limited access to education condemn indigenous women to be increasingly vulnerable. Many communities do not have teachers or schools. In other cases, conflicts between different teachers' unions decreased quality and deteriorate the learning processes for children, giving that schools shut down because the conflict parties stop working to oblige the authorities to resolve their cases. This situation can extend for more than months. In other communities, teachers are absent of the schools at their charge, without any notice and without any authority to intervene or to apply the appropriate normative. In addition, there are cases in which the teachers appointed for the schools do not speak the native language of the children. Tlachinollan during 2011 – 2012 have documented more than ten complaints from different communities such as Yucunduta, and Yozo Chum, in Metlatónoc Municipality; Santa Rosa, in Acatepec Municipality; Cacalotepec and Buena Vista, in Atlixác Municipality; and Zaragoza in Alcozauca Municipality. The most concerning issue is that there is no segregated data of how many girls and boys do not have access to education in this marginalised region.

- **Health**

The Committee has shown concern on about the level of maternal mortality rates, particularly those of indigenous women, which are a consequence of the insufficient coverage of, and access to health services, including sexual and reproductive health care³⁶.

Indigenous women face the worst conditions of health in the country. Most of this problem is related with the lack of access and bad quality of health services for indigenous people, including lack of access because of the distance, the time it takes to access the facilities or the costs. The fact that the main causes of death among general indigenous population are infectious diseases, which are not only curable but preventable, is a proof of the deficiencies of the State to protect this population. In addition, the highest rates of maternal mortality are disproportionally present among the women indigenous population, which has an expectancy of life between 5 and 14 years less than the national average, according to different situations³⁷.

³⁵ UN. Doc. CEDAW/C/MEX/Q/7-8/ pa. 14

³⁶ UN. Doc. CEDAW/C/MEX/CO/6 pa. 32

³⁷ Bonfil Sánchez, Paloma. March 2010. p.10

For example, in the Montaña region, on average, there is only one medical facility for every 1,706 inhabitants. The total number of medical personnel is 437, meaning 1 for every 827 inhabitants³⁸. These high levels of marginalisation place Guerrero as the state with the highest rate on maternal mortality: 126.7 women out of 100,000 newborns, twice the number than the national level, which is still very far from accomplished the Millennium Development Goals. Maternal mortality has been constantly associated to marginalisation, poverty, and deficiencies in sexual and reproductive health policies; caused mainly because of obstetric complications.

Indigenous women face continuous institutional violence and discrimination not only when access to health services are denied, but also because of lack of medicines, lack of sufficient and specialised personnel in hospitals, clinics and health centres to assist indigenous population; because of lack of sensibility from health personnel who are assisting them as a culturally diverse population; lack of translators; conditionality of free services or wrongful charges for services; mistreatments while being assisted and in general when they are not given complete information. Thus, the health clinics become for the indigenous women, places where discrimination not only attempts against their dignity and rights, but also against their own life³⁹.

In this framework, discrimination against indigenous women in access to health results from cultural moral precepts which misinform women in their homes and families and made them arrive to institutionalise services with an additional fear or distrust; in addition to the mistreatment to which they are subject as user of those services. Both are factors which limits their access to health services outside of their communities in hospitals or health facilities. The case of Juana Espinoza Salgado, detailed in Addendum III, a Me'phaa indigenous woman from Tlacochochapa, Atlixác Municipality, in Guerrero, is representative of the discrimination faced by women in marginalised regions such as the Montaña, when they approach to medical facilities and the roughly inexistence of these facilities within communities. This case exemplifies the daily omissions of the State to protect and respect basic rights such as the right to life, non-discrimination, and not to be subject to ill-treatment. The conditions that women have to face to access health services in indigenous communities and the challenges that the institutions have in front to combat deep-rooted institutional discrimination in all their levels are a reality; which contrast with numbers and figures the State present, moreover, it demonstrate the lack of implementation of all normative against discrimination and violence against women, in the most marginalised and isolated context.

- **Employment**

Women agricultural migrant workers from Guerrero

A large number of indigenous population from states like Guerrero, Chiapas, Oaxaca and Veracruz, leave their communities every year to work as seasonal agricultural workers, constituting a large number of the internal migration within Mexico, mostly devoted to the harvest of tomatoes and apples, among other crops, in the northern states of Sinaloa, Sonora, Coahuila, and others. These internal migrants, whose number is estimated at up to 3.5 million people, mainly indigenous peoples, live on ranches or agricultural fields for several months at a time and rotate according to the needs of each season under deplorable working conditions, health standards, housing, transport and education that have been registered as inferior to all international right

³⁸ INEGI 2010.

³⁹ Bonfil Sánchez, Paloma. March 2010. p.22

standards⁴⁰. The human rights situation of indigenous agricultural from these regions is serious and mainly ignored, moreover, the violations of their rights do not happen exclusively in the agricultural fields, but emerge from their places of origin, continuing during the journeys to reach the fields, and carry on in the working areas and on their way back.

Guerrero has the first rank nationwide of internal migration; over the past 13 years, 388,000 agricultural workers from rural and indigenous areas have migrated, mainly to the north-western states like Sinaloa, Sonora, Baja California, Baja California and Chihuahua⁴¹. There are more than 500 indigenous communities expelling yearly large contingents of agricultural workers⁴². The first explanation for this phenomenon has to do with the high rate of exclusion prevailing in the state; according to the National Commission for the Development of Indigenous Peoples (CDI), 73.9% of municipalities with indigenous population are not capable of providing alternative employment for its population, mostly in naua, na'savi and me'phaa, just as described in the case of Bertha Félix whose best option for her and her family was to be recruited by the police. In a context of "high marginalisation", indigenous families are perceived as highly profitable labour-force being the cheapest in the rural labour market.

The extreme poverty conditions in which indigenous people force entire villages to make the decision to migrate: survival is the main reason. Thus, entire communities of indigenous people have to leave their homeland to go and look for a job in agricultural fields not only once a year, but even three times per year, in order to be able to feed their families. This choice has become a way of life, which triggers a series of human rights violations during the entire migration cycle, which show structural faults and deep-rooted discrimination and racism against indigenous people, as well as the failure of the State to take the necessary measures to ensure respect their for human rights, in addition to the lack of corporate responsibility to comply with offering labour conditions and benefits as provided by law.

In this context, the situation of women has been evolving, previously, women used to migrate as companions of their family, to stay home and carry on with household duties; today, the situation has changed, women - and children - migrate as part of the labour force. Their progressive inclusion in this labour market responds to the needs of the indigenous women to collaborate with the family income, giving that these activities do not need special training nor education, in addition to the increasing need of cheap and flexible labour force in the fields; furthermore, for the employers, women can guarantee that the facilities where the agricultural workers live are maintained in order and the needs of children and men are covered.

Since 2006, Tlachinollan, based on records of the Council of Agricultural Workers of the Montaña, has documented the migration of more than 32 thousand agricultural migrant workers from the Montaña region. Only during the 2010-2011 High Season of Migration, which goes from September to January, a total of 7,358 migrant agricultural workers were registered, out of which 3,858 were men and 3,500 women; out of the total 3,309 were younger than 15 years old and 459 were children from zero to one year old.

⁴⁰ Report of the Special Rapporteur on the human rights of migrants, Mr. Jorge Bustamante. Mission to México. UN. Doc. A/HRC/11/7/Add.2 24 March 2009.

⁴¹ Minister of Social Development, 2009. Comprehensive Diagnosis on agricultural seasonal workers and their families.

⁴² Tlachinollan has identified that out of the 19 municipalities in the Montaña region, at least 8 (Metlatónoc, Cochoapa el Grande, Tlapa de Comonfort, Copanatoyac, Atlixac, Xalpatláhuac, Alcozauca and Atlamajalcingo del Monte) expulse a large number of migrant workers.

Tlachinollan has documented in a detailed report⁴³ multitude of abuses against agricultural migrant workers, such as unfair dismissals; withholding of wage and documents; excessively long working hours; abuse and discrimination as these population is seen as abundant and cheap labour-force; 90% of the agricultural seasonal workers do not have a formal employment contract⁴⁴, forcing them to accept living under poor feeding, housing and health condition. This has been constantly pointed out by, different mechanisms for the protection of human rights mechanisms, which have remarked the seriousness of the situation; for example the Committee on Economic, Social and Cultural Rights has expressed concern over poor working conditions of indigenous workers, with emphasis on the situation of women, who are ill-paid, or working deprived of social security benefits or paid vacations, often with contracts as members of a family or completely unpaid⁴⁵.

Women working in agricultural fields spend their day working without recognition; they have been included in the labour force of the agricultural field but their conditions within the family have not change; thus, they continue to carry mainly with all household activities within their homes. Their journey initiates around 4 am, to prepare breakfast and supper to take with them to the fields, then the work at the fields extends until 6pm, or more if they are paid by shores, a common situation. Women return to the shelter or improvised houses to continue with all house related shores, mainly in very precarious conditions, without sewer system, running water, electricity or gas stoves.

For women, every step through their path to the fields and within them, are more difficult, including the possibility of being target for sexual abuse or harassment, through the journey to the fields and back to their communities or in the fields. They have to travel with their children and not a short number of them travel pregnant. Given that they do not have contracts, they are not subject to receive social security; thus, they work until they cannot do it anymore before they give birth; furthermore, there are not benefits for women who are breastfeeding their newborns; all of these in contempt with the current Labour Law.

The situation of women gets more critical when the woman becomes the head of the family, for any giving situation; her indigenous, migrant, illiterate, non-trained, and gender condition are factors which sum in an environment already discriminatory. In this breath, illiterate or monolingual women become dependent of other individuals, since they leave their communities, including the *enganchador*, who is a community leader who contact the agricultural field personnel to bring labour force from the community. Women are always in a more vulnerable situation than their male relatives in this context.

The Mexican State has been negligent in implementing administrative, legislative and public policy to prevent these abuses against women and in general, violations of the rights of indigenous migrants. Despite the a series of efforts, the Minister of Labour and Social Protection (STPS) has taken in recent years, establishing an inter-institutional coordination mechanism to address the issues raised by the situation of seasonal agricultural workers, the inspection services for labour conditions do not have enough staff and lack capacity⁴⁶. In his latest visit to Mexico, the Special Rapporteur on the Right to Food recommended that inspections of labour conditions should be

⁴³ See, Tlachinollan, *Migrar o Morir* [Migrate or Die]: <http://www.tlachinollan.org/Archivos/Migrar%20o%20morir.pdf>

⁴⁴ Special Rapporteur on the Right to Food, Mr. Olivier De Schutter. Mission to Mexico, 13 -20 June 2011, Final Declaration during the mission.

⁴⁵ Concluding Observations of the Committee on Economic, Social and Cultural Rights. 9 June 2006. UN. Doc. E/C.12/MEX/CO/4. par. 13-14

⁴⁶ There are only 376 inspectors working in the whole country and the number of registered workers has increased significantly since the new strategy was launched.

strengthened and existing legal restrictions which forbid unannounced visits to the fields should be abolished immediately⁴⁷.

Despite these recommendations⁴⁸, actions have gone against the waves. A worrying factor is the fact that even though the number of migrant agricultural workers from Guerrero increases, authorities at the state and federal levels have dropped their support, to have restructured their institutions and limited staff dedicated to the care of migrants.

Despite the creation of programmes, for Tlacinollan the main deficiencies is that these do not address the root problems, which will imply to target the structural issues, which lead to the expulsion of indigenous people to become indigenous migrant workers; in addition these programme disregard the situation of women, as these do not include positive actions which can guarantee the enjoyment of their rights, being part of the planning and construction of development actions and policies to be implemented. An immediate priority is to legislate, as the State has mentioned in its report, aiming to achieve a comprehensive labour reform; this shall include the protection of agricultural seasonal workers, to improve their lives and labour conditions; however, most importantly, it is to respect and enforce the laws that already count with detailed regulations. It is not just a unique question of reforming laws, rather than making a priority the implementation of public policies aiming to combat root-caused discrimination.

III. CONCLUSIONS

The binomial indigenous - poverty in Mexico is the result of a complex historical process in which fundamental human rights of indigenous peoples have been violated for centuries. The former Special Rapporteur on the Situation of Human Rights and fundamental freedoms of indigenous people, noted that discrimination in Mexico against indigenous people is manifested in low levels of human and social development, extreme poverty, inadequate social services, the manner in which research and production projects are implemented, and the great unequal distribution of wealth and income between indigenous and non-indigenous⁴⁹.

It is in this context of extreme poverty, where the indigenous in Mexico face deep-rooted institutional and structural discrimination. Indigenous women confront especially acute conditions of exclusion and obstruction in their ability to exercise their rights inside and outside their normative indigenous systems. This exclusion and obstruction result from being members of a subordinated and culturally differentiated community; as well as, by virtue of their poverty and marginalisation, and gender-based biases.

The Mexican State has signed and ratified all universal and regional human rights treaties and even though it has a relatively progressive and inclusive internal normative, there are social, economic, political and cultural synergies and conditions of discrimination, exclusion, impunity and corruption, which prevent the full enjoyment of these rights to all the communities. This generates an "implementation gap", between the formulation of norms and laws for the protection of human rights and the effective

⁴⁷In addition, the Special Rapporteur added that agricultural seasonal workers and unions in the agricultural sector should be informed of their right to report abuses anonymously to the STPS, as well as to provide an incentive to report such abuse, the employer is in violation of its obligation to register and pay wages to all workers must be subject to fines. See. Special Rapporteur on the Right to Food, Mr. Olivier De Schutter. Mission to Mexico, 13 -20 June 2011, Final Declaration during the mission.

⁴⁸ Since 2002, this Committee already urged the State to prioritise women in their strategy to eradicate poverty, with special attention to women in rural and indigenous areas.

⁴⁹ Report of the Special Rapporteur on the situation of human rights and individual freedoms of indigenous people, Mr. Rodolfo Stavenhagen. Mission to Mexico. 3 December 2003 UN Doc. E/CN.4/2004/80/Add.2

conditions for its compliance. This is even more visible when it refers to indigenous peoples, and to women; in this context, indigenous women continuous to be a sector with their basic guarantees in special vulnerability, for historic, cultural, economic, social and political reasons explaining their disproportional condition of subordination before, indigenous men, non-indigenous women, society as a whole, and State institutions.⁵⁰ Guerrero is a perfect example of how non-compliance of the State to protect human rights, can be translated on generalised institutional violence against indigenous people, and especially against indigenous women.

Discrimination against indigenous population is reflected in all the indicators on marginalisation and exclusion: extreme poverty, lack of basic services, impossibility to cover basic needs, inequality in distribution of wealth and income between indigenous and non-indigenous populations. Despite it is logical that the Mexican State does not have the capacity to fulfil the basic rights at all time for all its population, the situation of indigenous women shall be a priority in public policy if it attempts to comply with its international obligations; the strategy to diminished the implementation gap between international treaties and internal normative and reality, shall be lead by concrete actions which prioritise vulnerable groups, such as indigenous women, with a real cultural, ethnic and gender perspective, with an inclusive decision making process.

IV. PROPOSED RECOMMENDATIONS

Finally, we would like to respectfully bring your attention to some proposals for recommendations to the Mexican State, to be consider by the Committee while examining the State report and drawing up its Concluding Observations. The critical situation faced by indigenous women is not privative of the state of Guerrero; rather it is present in other states with large indigenous population such as Oaxaca, Chiapas or Veracruz, among others. Despite the clearly visible grave situation, the Mexican State continuous to diminished this situation before the Committee in its periodic reports. Thus, we consider essential that the Committee addresses in its Concluding Observations issues related to the following recommendations:

a) General recommendations:

- Urge the Mexican State to present in its upcoming reports to the Committee disaggregated data on the situation of indigenous women, especially in respect to those living in the highly impoverished states, with high levels of marginalisation and lack of access to basic services, such as Guerrero, Oaxaca and Chiapas.

- Express concern on the grave situation of structural violence and discrimination faced by indigenous women in the state of Guerrero.

b) Militarisation

- Exhort the Mexican State not to use the Armed Forces as the centre of its security policy against the organised crime, giving the plenty documentation related to the increasing risks to human rights, especially women's human rights, in the context of the militarisation of public security in Mexico.

- Call the Mexican State to sanction in compliance to the law, the elements of the armed forces responsible of the rape and torture of Mrs. Valentina Rosendo Cantú and Mrs. Inés Fernández Ortega, paradigmatic cases of gross violations of human rights committed by the Armed Forces against indigenous women.

⁵⁰ Bonfil Sánchez, Paloma. March 2010. p.5

c) Access to Justice

- Call on the Mexican State to adopt all necessary protocols of investigations on sexual violence against women, with adequate gender and ethnic perspective.
- Express its concern on the lack of concrete results from the FEVIMTRA in terms of sanctioning those responsible of the crimes it investigates, especially in high public-impact paradigmatic cases.
- Request specific information on programmes on gender violence prevention which includes cultural and ethnic appropriate perspective, to be implemented on indigenous regions.

d) Women Human Rights Defenders

- Urge the Mexican State to guarantee the security of women human rights defenders, especially those who carry on these relevant activities in rural or indigenous regions, in isolated places from the centre of the country.

e) Structural Discrimination

- Exhort the Mexican State to present concrete and disaggregated data on the situation of access to health and education faced by indigenous women, and to adopt concrete and effective programmes to address these issues in states such as Guerrero, Oaxaca, and Chiapas.
- Request specific information on maternal mortality rates in indigenous regions in the country; calling for expedite and impartial investigation in the emblematic case of Juana Espinoza.
- Express its concern for the structural discrimination against indigenous woman who work as agricultural workers.

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ADDENDUM I

The paradigmatic cases of Inés Fernández Ortega and Valentina Rosendo Cantú

On 1st October 2010, the Inter-American Court of Human Rights (IACtHR) published two sentences against the Mexican State in the cases of Valentina Rosendo Cantú⁵¹ and Inés Fernández Ortega⁵². The rulings determined that during 2002 -under different circumstances, at the age of 25 and 17 years old respectively- both women were raped and tortured by elements of the Mexican armed forces in the state of Guerrero, Mexico, in a context marked by poverty, discrimination, and what the Tribunal called “institutional military violence”⁵³.

Despite the attacks were committed in 2002, both sentences highlighted the current problematic in the country: It show the lack of access to justice for women victims of violence; the lack of access to health for indigenous women; the urgency to guarantee that victims of human rights violations committed by the Mexican Army are investigated in the ordinary jurisdiction; and documented the institutional discrimination against indigenous people, and specially against women.

- **A long path struggling for justice**

After they were raped and tortured, Valentina and Inés had to undertake difficult paths, characterised by negligence, cover-ups and discrimination. The investigations of their cases under the ordinary jurisdiction were biased and lacked due diligence.

On 8 March 2002, Valentina Rosendo Cantú went with her husband and a visitor from Guerrero State Commission of Human Rights (Coddehum) to the Office of the Public Prosecutor in Ayutla de los Libres, Guerrero –located at 8 hours-walk from her then community – in order to file a lawsuit for the events. The public prosecutor initially refused to file the lawsuit, adducing the armed forces were involved; when he finally accepted to file the testimony of Valentina, he did not assign any translator, even though he verified she was not fluent in Spanish. From that moment, it was requested that a female forensic doctor should examine Valentina; however, it was not until 19 March 2002, a month after the rape and eleven days after filing the lawsuit, when the examination took place.

⁵¹ Valentina Rosendo Cantú is a Me'phaa indigenous woman who used to live in Barranca Bejuco; when she was attacked she did not speak Spanish, but did understand it. Valentina was only 17 years old, and her daughter 3 months old when, on 16 February 2002, she was raped and tortured by elements of the armed forces at a stream where she was washing clothes. The violence and discrimination against Valentina, as an indigenous woman, continued after she was raped. During the first attempt of Valentina of accessing health services because of the attack, she had to walk two hours to reach the Health Clinic, where she was denied access to the service when she denounced the events. When she was rejected the service in there, she went to the Civil Hospital of Ayutla – for which she had to walk 8 more hours – where she did not receive medical attention, because she was told she needed to make an appointment, even though she informed them about the attack. On the next day, after asking for an appointment, a doctor only examined her abdomen, without being able to proceed with the following exams, as there were no female doctors. Valentina had to walk back to her community without receiving the sufficient medical, physical and psychological assistance. It was only after 5 months that she could access adequate medical assistance, in Chilpancingo, at a private clinic.

⁵² Inés Fernández Ortega is an active member of the Organisation of Me'phaa Indigenous People (OPIM); her mother tongue is Me'phaa and she difficultly understands Spanish. Only twenty-nine days after the attacks against Valentina, on 22 March 2002, Inés Fernández Ortega, at the time 25 years old, was raped and tortured by elements of the armed forces, who entered into in her kitchen, while she was preparing fruit drinks, and her four children were playing in the adjoining room. Inés suffered many obstacles in her struggle for justice and access to health. When she opposed a gynaecological examination by a male forensic doctor, the same doctor told her: “those who raped you were not women, they were men. Why don't you allow me to examine you?”

⁵³ IACtHR. Case of Fernández-Ortega et al. v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 30, 2010. Series C No. 215, par.79. And, IACtHR. Case of Rosendo-Cantú and other v. Mexico. Preliminary Objection, Merits, Reparations, and Costs. Judgment of August 31, 2010. Series C No. 216, par. 71.

The situation of Inés was not dissimilar. On 24 March 2002, Inés Fernández Ortega, along with her husband Fortunato Prisciliano, Otilia Eugenio Manuel, president of the Organisation of Me'phaa Indigenous People (OPIM), and the visitor from Coddehum filed a lawsuit at the Office of the Public Prosecutor of the Judicial District of Allende in Ayutla de los Libres. After a seven hour walk from her home, she faced the rejection of the Public Prosecutor, who refused to file the lawsuit, when he was informed it was against members of the armed forces. The medical examination did not proceed adequately; it was carried out by a general female doctor, not a forensic doctor. Moreover, important samples of sperm and central pieces of evidence obtained from the medical examination were negligently destroyed; therefore, it was impossible to complete additional examinations.

The lack of due diligence under the civilian jurisdiction was followed by the lack of impartiality of the military justice system, where the investigations were sent, as consequence of the interpretation of Article 57 of the Mexican Military Justice Code – against Constitutional and international standards – allowing the Office of the Military Prosecutor to investigate human rights violations by members of the armed forces.

The investigation of the case of Valentina was sent under military jurisdiction on 16 May 2002 and in the case of Inés, on 17 May of the same year. Notwithstanding, the victims efforts to reverse these decisions, through an *amparo*, a legal mechanism for denouncing the violation of individual guarantees, these did not succeed.

The process in front of the Military Prosecutor proved itself to be biased and lacking independence, when members of the armed forces investigate the human rights violations executed by other members of the army; placing the burden of proof on the victims and allowing impunity to benefit those who are responsible.

On 26 February 2004 the case of Valentina was ordered to be close because it could not be accredited that members of the armed forces raped her. Four years later, on 15 May 2008, the case was reopened on ordinary jurisdiction as a result of the process in front of the Inter-American System of Human Rights. On 14 August 2009, Valentina reiterated her positive identification of the soldiers who raped her. This led to the state of Guerrero Attorney's Office (PGJE) deciding, one more time, to submit the case to the Military jurisdiction on 30 October 2009; notwithstanding, the IACtHR was hearing the case. In the case of Inés, after three attempts to close the investigation, on 28 March 2006, the Military Prosecutor ordered the transfer of the investigation to the PGJE, in order for the PGJE to investigate, against the will of the victim, if a civilian was responsible of raping Inés Fernández Ortega. Thus, on 3 January 2007, the investigation under the ordinary jurisdiction was reopened, but on 14 August 2009 Inés reiterated her positive identification of the soldiers who raped and tortured her and, on 30 October 2009, the PGJE – just as in the case of Valentina – declined its competence over the case and referred the investigation to the Military Attorney's Office (PGJM).

The investigations of the rape and torture of Inés and Valentina continued under military jurisdiction for almost a year after the IACtHR notified its sentences, prolonging procedures that attempt to question the testimony of the victims, and openly defying the verdict of the Regional Tribunal.

- **Impossible Justice**

The rulings dictated by the Inter-American Court of Human Rights in favour Inés Fernández Ortega and Valentina Rosendo Cantú included 16 and 17 resolutions,

respectively, which include reparations at individual, collective, and structural levels,⁵⁴ thus, the rulings in the cases of Mrs. Fernández Ortega and Mrs. Rosendo Cantú not only requires justice for the two women, but also provides for specific non-repetition actions. In this sense, the Inter-American Tribunal ordered for each case: an effective investigation in the ordinary jurisdiction which leads to sanction those responsible; a public Act of Acknowledgment of State's International Responsibility; a legislative reform on military jurisdiction; compensation; guarantee access to education and health to the victims; trainings; and community and public policy reparations⁵⁵.

For Valentina Rosendo Cantú and Inés Fernández Ortega, the punishment of the soldiers who attacked them, in different circumstances, has always been the most important part of their search for justice. The Court ruled that the Mexican State must conduct effective investigations to determine, within a reasonable timeframe, the corresponding criminal responsibilities and to apply the appropriate sanctions and consequences provided by law. Furthermore, the IACtHR established that the investigations must be carried out by a federal civilian jurisdiction, with appropriate gender and ethnicity approach, and with all security conditions necessary as to permit adequate participation of the victims.

To this end, on April 7, 2011, Inés and Valentina formally requested the Secretariat of Governance to form a workgroup to address the resolutions of the rulings regarding Justice. Unfortunately the Federal Executive allowed the General Attorney of Military Justice to maintain jurisdiction over the files, and the Attorney General failed to request the investigation be transferred in contempt with what was ordered by the Court.

It was until 12 August 2011 that the General Attorney of Military Justice notified both Me'phaa women that the investigation was transferred to the Attorney General's Office, only after both women formally informed the military and civilian authorities that they will present and *amparo*, to claim the transfer of the files to civilian jurisdiction, based on the determination of the Superior Court of Justice Office (SCJN) on the issue *Varios 912/2010*, on the case of Rosendo Radilla⁵⁶. The news of these actions was received as a triumph of the victims. Almost one month later, the 15th of September 2011, Mrs. Rosendo Cantú and Mrs. Fernández Ortega were officially notified that the Attorney General's office had turned over their files to the Special Prosecution Office for Violent Crimes against Women and Human Trafficking (FEVIMTRA); a federal agency specialized in criminally prosecuting gendered violence.

⁵⁴ In its rulings, the Inter-American Court determined that the Mexican State was international responsible for the violations of the rights to a life free from violence; not to be tortured; to personal integrity of the relatives of the victims; to the protection of dignity and private life; and to due process and judicial guarantees. Moreover, it determined that Mexico did not comply with its obligations to adequate its national judicial framework with the international standards. Finally, the Tribunal recognised the risks faced by both women while struggling for justice, those which motivated the Court to grant them provisional measures during the process.

⁵⁵ On 25 October 2010, Mrs. Rosendo Cantú and Mrs. Fernández Ortega presented to the Ministry of Interior a work plan, in order to guide the implementation of the rulings dictated by the IACtHR. The work plan sought to create workgroups around 7 main areas: Education and Health; Indemnity; Legislative Reform; Public Policy and Community Reparations; Justice, Recognition of Responsibility; and Training. The plan was endorsed by representatives of the Mexican State on 15 March 2011 to guide the actions and work of the implementation of both rulings, in coordination with the victims and their representatives.

⁵⁶ The National Supreme Court of Justice analyzed, in a separate case, its obligations to rulings of the Inter-American Court, establishing that rulings of the Inter-American Court are obligatory for the whole State, and therefore Mexican judges must interpret military jurisdiction in a restrictive manner. In its report, Mexico makes reference to this July 2011 unanimous vote of the SCJN in which it stated that the sentences handed down by the IACTHR are binding on the federal judiciary. However, in other cases related to the extension of the military jurisdiction, the decision of the SCJN has been diminished to mere "oriental decision" by the Ministry of Defence, or even as "illegal", as in the case of Bonfilio Rubio. In the case of Bonfilio Rubio, a naua indigenous man arbitrarily executed in a check point in Guerrero by elements of the armed forces, the Ministry of Defence has appealed a historical judgement in which the family of Bonfilio Rubio Villegas, obtained the protection of federal justice in a trial where the extension of military jurisdiction over the investigation and prosecution of the extrajudicial execution was challenge. In its appeal, the Ministry of Defence considers the decision of the Supreme Court of Justice (SCJN) "not only lacks any binding force but is even illegal".

As Mrs. Fernandez Ortega y Mrs. Rosendo Cantu discovered the most recent actions under military jurisdiction, they spoke out against the military authorities' open defiance of the Ministry of Interior and their workgroups, and more generally, the resistance of military leadership to the orders of the Inter-American Court. For example, before remitting the investigations to civil authorities, the Agent of the Military Police sustained once again that she was competent to conduct the investigation, given that the charges against the soldiers were committed while in active service, in addition, she began an official analysis of existing evidence in order to discredit the original accusation by Valentina Rosendo Cantú, concluding, "there was no conduct, neither in action nor omission, perpetrated by military personnel related to the crimes reported by Valentina Rosendo Cantú", despite the fact that the files include both the solid testimony and an identification of the soldiers responsible by Mrs. Rosendo Cantú.

To date the only verified advances in the investigations are some diligences ordered to rectify negligence from the military prosecutor, which do not sum up to the investigations to punish those responsible. It is important to highlight that some actions taken have complied with the ethnic and gender criteria as ordered by the Court and as continuously demanded by Mrs. Fernández Ortega and Mrs. Rosendo Cantú, such as anthropological, ethnographic and social work experts' work.

However, up to this moment, FEVIMTRA has not bring before the federal judicial authorities the files, despite there are sufficient proofs to do it; paradoxically, after ten years of the sexual violence attacks by the militaries against Inés and Valentina, and almost two years of being notified the rulings, the facts that were brought before the Inter-American System have not change: military impunity continuous to reign.

In regard with the conduct and rejection by the Public Prosecutor to receive the complaints by Mrs. Fernández Ortega and Mrs. Rosendo Cantú in 2002, there are no achievements in the investigations. The State expressed in April 2011, that it opened a preliminary investigation against Cencepción Barragán and Jorge Luis Astudillo Ponce for these events. However, to date there is no step forward on these investigations; moreover, in the case of Mrs. Rosendo Cantú, the Court ordered an investigation on the physician who did not comply with legally inform the authorities after being informed of the facts, however, there is no information on whether there is an administrative file opened against him.

In this context, although, it is important to remark the importance of both Acts of Acknowledgement of International Responsibility, planned and executed jointly with both women, and the importance of the investigations of both cases sent to ordinary jurisdiction, which is a triumph of the victims, those responsible of the rape and torture of both women have not been processed nor punished in compliance with the law.

In addition, almost 2 years after the ruling of the sentence, there has not been full compliances with reparations regarding health and education for both women and their families, nor in the highly important non-repetition community reparations, including the creation of a community centre for Me'phaa women and a shelter for girls from Me'phaa communities who leave their communities to go to study to Ayutla city, despite the appointment of 33.5 million pesos at the 2012 federal budget, for enforcing judgements and friendly settlements issued by the Inter-American Commission and/or Court and the CNDH for reparations, which are mentioned by the State in its responses to the Committee⁵⁷.

⁵⁷ UN. Doc CEDAW/C/MEX/Q/7-8/Add.1 pa. 49

ADDENDUM II

Indigenous women human rights defenders

The cases of indigenous women human rights defenders in the region of Ayutla de los Libres are emblematic cases of the highly risky situation faced by women activists, who sometimes are monolingual and live in isolated, rural communities, facing continuous death threats, harassment, persecution and impunity, while demanding basic rights for their communities and struggling to access justice. For example, Otilia Eugenio Manuel, President of the Me'phaa Indigenous People's Organisation (OPIM), an organisation working for defending and promoting human rights in the Me'phaa communities of the region of Ayutla de los Libres in Guerrero, has been subject to permanent threats since 2002, since she started to accompany both Inés Fernández Ortega and Valentina Rosendo Cantú. While directing the OPIM, Otilia has accompanied those who have been brave and have denounced abuses perpetrated by state authorities, army members and non-state actors, accomplices of governmental authorities.

The threats, harassment and attacks against Otilia Eugenio are proved on at least 6 formal complaints before the public prosecutor, the latest presented in 2011. Due to the highly risky situation, the Inter-American Commission of Human Rights (IACHR) granted precautionary measures MC-6-05 in favour to Otilia Eugenio Manuel and her family.

In the middle of an intimidation campaign in 2009, Otilia was followed in different times, recognising in one occasion some supporters of the local *cacique*. In March 2009, she received three death threats through text messages, where someone communicated her that she had been constantly watched and threatened with disappearing her. Due to the increasing aggressions, in the framework of the case of *Mrs. Fernández Ortega* before the Inter-American System of Human Rights, on 9 April 2009, the Inter-American Court of Human Rights (IACtHR) ordered provisional measures for her, her husband, their children, and a number of the OPIM members and other partner organisations, including Tlachinollan. Otilia and her family had to leave Guerrero for security reasons during 2009; up to date, she cannot return to Guerrero and live carry on with her defender activities in her region of origin because her security is not guaranteed. Notwithstanding, none of the open investigations on any of the events she has denounced have had any advance in identify those responsible.

The cases of Inés Fernández Ortega and Valentina Rosendo Cantú are very similar to Otilia's. Inés Fernández and her family are beneficiaries of provisional measures ordered by the IACtHR since April 2009; in parallel, Valentina Rosendo Cantú and her daughter are beneficiaries since December 2009. In December 2009, after a series of death threats, incursions in her community of origin, and harassment, and an attempt of kidnapping her daughter, Valentina Rosendo had to leave Guerrero, to secure her integrity. To date, even after the condemnatory decision for the Mexican State of the IACtHR in her case, she has not been able to return to the her community of origin. Valentina has vindicated herself as women's human rights defender, participating in different forums and condemning rape all over the world.

ADDENDUM III

Access to Health: The case of Juana Espinoza

Juana Espinoza was only 24 years old and mother of 3 children when by negligence of personnel of Health Ministry in Guerrero died after childbirth. Juana along with their family were agricultural seasonal workers, who during their journey to return to Guerrero on 28 May 2011 suffered a transit accident in the state of Mexico, in which only her husband was gravely injured and hospitalised. By 12 June 2011, the costs of the medical attention were too high and Juana, who was already eight months pregnant, and her family decided to go to Tlacoxochapa in Guerrero, to be helped by her family while taking care of her children and husband.

On 14 June 2011, after arriving to Tlacoxochapa, Juana went to the community Health Clinic in the community to have a check-up as she was very close to her due date. The Doctor told her he was too busy and to come back later; as she did not have any discomfort she did not insist. By 20 June, Juana started with labour pains very early; by 7am, assisted by a midwife, Juana gave birth to a girl in her home. At that time, the responsible Doctor was not at the Health Clinic. During the day of the childbirth, the family took the girl to the Clinic, to receive all necessary vaccinations and check-ups; at that moment, they communicated the Doctor that Juana was at home and requested him to go and check her. The physician answered it was not needed and instructed the family to inform him if she had any bleeding.

Around 10 pm, Juana started with serious head and stomach-aches; her family went to the Health Clinic, but it was closed; thus, they went to look for the Doctor at his house but there was no answer. By 1am, Juana was in unbearable pain and her father went to look for the Doctor at his house, who answered him that it was normal, and that she was fine unless she was bleeding. At 4 am, Juana started seizure and bleed through her mouth, after that she lost her senses. The family went to the Doctor's house but they were not received. It was until 6 am, when the physician went with a nurse to revise Juana, and after this, he informed the family she was very delicate and she needed to be hospitalized in a Health Clinic, in Acatepec, an hour distance from the town.

The family could not find any car to move Juana to the hospital immediately, as the roads were damaged because of the rainy season. When they finally arrived to the Health Clinic in Acatepec, the Doctor who received her told them her state was very bad and she needed to be in a more advanced Health Centre, so she was transferred to the Health Centre in Tlapa, three hours away. The personnel at Acatepec Clinic told them they will be waiting for them. This time Juana went by ambulance with two nurses. At 11 am, on 22 June, Juana entered the Hospital "*La Madre y el niño Guerrerense*" in Tlapa, she was there all day long; the family did not receive any information on her situation, despite their constant questions to the hospital personnel.

By 10 pm, the Doctors told the family her situation was even worst and Juana had to be sent to Acapulco, Guerrero. Juana and her father went to Acapulco by ambulance with a doctor and a nurse. By 4am, the ambulance arrived to the General Hospital in Acapulco, where the Doctor on-call told them there was no available bed; despite the personnel in Tlapa assured they have informed the hospital in advance. Therefore, Juana was sent to another Health Centre in Acapulco, where they were informed there was no bed too. By that time, her father was informed that her situation was very critical. At 6am, in the ambulance parked in front of the Health Centre, Juana died. They took her body back in the ambulance to Tlapa; during the journey, her father was accused of not having taken her on time to get medical assistance. The official cause

of death was natural death caused by *hellp syndrome*, *preeclampsia*, and *pathologic puerperium*.

The family of Juana presented a complaint before the Guerrero state Commission of Human Rights against the Ministry of Health of the state of Guerrero, in response they have been threatened to be removed from the list of beneficiaries of the money transfer programme of *Oportunidades*, and even to withdraw the programme from the community; therefore, their neighbours have requested them to desist with their complaint. The complaint is still on process. This case exemplifies the daily omissions of the State to protect and respect basic rights such as the right to life, non-discrimination, and not to be subject to ill-treatment. The conditions that women have to face to access health services in indigenous communities and the challenges that the institutions have in front to combat deep-rooted institutional discrimination in all their levels are a reality; which contrast with numbers and figures the State present, moreover, it demonstrate the lack of implementation of all normative against discrimination and violence against women, in the most marginalised and isolated context.