



FOCUS

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LAND RIGHTS UNDER THREAT



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Since being founded by the Jesuits in 1988, the MIGUEL AGUSTÍN PRO JUÁREZ HUMAN RIGHTS CENTER (Center Prodh) has worked to defend, promote and increase respect for human rights in Mexico, with a focus on social groups that find themselves in situations of vulnerability such as indigenous populations, women, migrants and victims of social repression.

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Photo: Centro Prodh

TODAY, MEN AND WOMEN FROM ALL OVER MEXICO are organizing to use their knowledge and the law to defend their land against destruction by so-called mega-development projects, including the extraction of mineral resources foreseen in Mexico's energy reform.

As land takeovers tear the social fabric of Mexico's communities, the violation of the right to land is without doubt an extremely alarming aspect of the country's human rights crisis.

In particular, the defense of the land has become a fundamental mission for indigenous and non-indigenous communities besieged by public policies and business practices that prioritize extraction of resources above any other use of the territory.

Although human rights law recognizes both economic, social, cultural and environmental rights (ESC rights) and the collective rights of indigenous communities, our country lacks mechanisms to provide for the defense and justiciability of these rights.

The Inter-American Court of Human Rights and some decisions adopted by Mexico's Supreme Court have established precedents that recognize that the right of indigenous peoples to their land must be respected above the ambitions of business projects that seek to extract natural resources. Yet even when communities achieve legal victories, these decisions often fail to lead to compliance. Powerful economic interests in collusion with authorities who ignore court judgments and organized crime continue to threaten the communities.

One of the key lessons learned through these experiences is that prevention is a better strategy than waiting until a threat materializes. Strengthening community organizational networks and ensuring the active participation of women in these processes are two essential pillars for the successful, prevention-based defense of the land.

In this edition of *Focus*, which highlights the challenges facing the defense of land in Mexico, we analyze the experiences of communities and organizations who battle each day to retain their autonomy, their rights, and their land.



Protection of land rights in International law

The deep relationship between thousands of communities and the land they traditionally inhabit has led International law to recognize and protect land rights, especially in the case of indigenous peoples.

ONE OF THE PRINCIPAL INSTRUMENTS that protects land rights is International Labor Organization (ILO) Convention 169, ratified by Mexico in 1990. Article 14 of the Convention recognizes the right of indigenous communities to the possession of their traditional lands. The Convention also establishes that States have the obligation to guarantee the participation of indigenous communities in decisions that may affect their territory.

In the inter-American human rights system¹, diverse communities from throughout Latin America have won important victories. The Inter-American Court has defined indigenous land rights as a type of collective property that does not depend on formal land titles, but rather on the traditional possession or use of the lands or resources in question. The Court has mandated that prior to granting concessions related to mega-development or resource-extraction plans in indigenous territories,

the State concerned must guarantee the participation of the indigenous people in the decision, according to their own decision-making structures, as well as providing independent environmental and social impact evaluations, among other requirements.

Further, when the planned intervention will significantly affect the territory, the State may only permit the development project with the free, prior, and informed consent of the indigenous community.

In June 2016, the Organization of American States (OAS) approved the American Declaration on the Rights of Indigenous Peoples, based on the recognition of the right to self-identification.

At a global level, the UN Human Rights Council has convened a working group to prepare a Declaration on the rights of peasants and others who work in rural areas.²

Indigenous peoples have the right to procedures that guarantee the protection of their territory and the exercise of their land rights, with full respect for due process and for the unique characteristics of the peoples involved.

1. Some of the judgments in which the Inter-American Court has analyzed indigenous peoples' land rights include: *Sawhoyamaya Indigenous Community v. Paraguay* (2006), *Yakye Axa Indigenous Community v. Paraguay* (2005), *Saramaka People v. Suriname* (2008), *Xákmok Kásek Indigenous Community v. Paraguay* (2010), *Indigenous Communities Kuna of Madungandí and Emberá of Bayano & its Members v. Panama* (2014).

2. In October 2015, the Council extended the Group's mandate for two more years.



ILDEFONSO ZAMORA:

Attacks and imprisonment for defending the forests

The case of Ildefonso Zamora, *tlahuica* indigenous leader, defender of the forests, and prisoner of conscience, exemplifies the dedication of Mexico's environmental defenders, but also the violence and criminalization that they face every day.

ILDEFONSO COMES FROM THE COMMUNITY of San Juan Atzingo. For the past 18 years he has struggled against the clandestine loggers who are devastating Mexico's Great Water Forest. This activism already cost him the life of his son Aldo, murdered by loggers in 2007. His other son, Misael, was wounded in the same attack.

Since 2004, Greenpeace has collaborated with Ildefonso, who also received a national environmental prize in 2007. Both the President of Mexico at that time, Felipe Calderón, and then-Mexico State governor (now President) Enrique Peña Nieto promised justice for Aldo's murder.

Yet on November 20, 2015, one injustice was added to another: Ildefonso was arbitrarily detained by judicial police and taken to a jail in Tenancingo. He was accused of a house robbery that he could

not have committed (there are witnesses and documents that prove he was in a different town the day of the robbery). The trial against him is characterized by irregularities such as identical fabricated testimonies.

Amnesty International has declared Ildefonso Prisoner of Conscience and a judge has recognized that there is no evidence against him, yet he remains in prison.

The Zamora family has denounced from the beginning that the true interests behind Ildefonso's detention are those of authorities tied to illegal loggers.

Center Prodh and Greenpeace Mexico have called on Mexico State's governor and attorney general to withdraw all charges against Ildefonso, and on the President of the state Supreme Court to guarantee his human rights.



ENERGY REFORM:

the battle between economic interest groups
and the rights of indigenous peoples

Mexico's human rights crisis is not limited to violations of the rights to life and to physical integrity; these occur in parallel to the invasion and destruction of indigenous and peasant communities' land. The country's recent "energy reform" is a key factor in this process.

TOUTED AS A ROUTE TO DEVELOPMENT, the reform opens Mexico's energy sector to private investment, including exploitation of oil reserves and fracking, a technique used to extract shale gas energy that causes devastating environmental consequences.

During 2014, Mexico's Congress approved the reform by modifying the Constitution, as well as enacting eight new laws and modifying at least twelve secondary norms. Several of the modifications pose a serious threat to the country's environment and indigenous peoples.

For instance, article 96 of the Hydrocarbon Law violates articles 1, 2, and 27 of the Constitution and article 21 of the American Convention on Human Rights by establishing that "exploration and extraction are of public interest and public order, for which reason they will take precedence over any other use of the surface or subsurface of the land," including activities carried out by indigenous peoples on their traditional lands.

Likewise, the procedure designed to achieve agreements between contractors and communities regarding the use of the lands for resource extraction (established in articles 100-109 of the same law) violates the Constitution and articles 6, 13, and 15 of ILO Convention 169, as it does not allow communities to deny permission for their land to be exploited; all they can negotiate is the compensation they will receive.

Article 120 of the law also violates the right to free, prior, and informed consultation. This article

establishes that consultation may take place once the contracts are already signed, with the possible participation of the contractors and the coordination of the Energy Ministry, the government agency that promotes the exploitation of hydrocarbons. These conditions make it impossible to consider the process a "consultation" in the sense understood in international law – as a way for indigenous peoples to defend and exercise their land rights.

Facing the threats posed by the energy reform, communities are challenging the implementing laws as a preventive measure. This is the case of several communities in Veracruz state, who, accompanied by the Northern Hills Human Rights Center, Community Radio Huayacocotla *Voice of the Peasants*, and Center Prodh, have filed some of the first legal actions against the reform.

Mexican civil society organizations also denounced the human rights consequences of the reform before the Inter-American Commission on Human Rights in a public hearing in March 2015.

In addition to these immediate reactions, Mexico's communities are organizing to resist the invasion of their lands, calling upon their centuries of experience in the defense of their territory as well as on international human rights law and Mexico's own historical framework for the protection of collective property. The results of this confrontation between economic interest groups and the community-based human rights movement is yet to be seen.

Allied against FRACKING



English adaptation of an article by the
Mexican Alliance against Fracking

In Mexico's 2013-2017 National Energy Strategy and 2013-2016 National Development Plan, President Enrique Peña Nieto identifies shale gas as a key part of the transition to supposedly "clean and sustainable" energy sources. As discussed in this edition of *Focus*, the exploitation of this type of energy through hydraulic fracturing or "fracking" is one element of the country's recent energy reform.

THE MEXICAN ALLIANCE AGAINST FRACKING came into being in 2013 in light of the urgent need for action and investigation regarding fracking. Today, 41 organizations belong to the Alliance and call for the prohibition of this practice in Mexico.

Fracking includes the vertical perforation and drilling of the land at depths of up to five kilometers. Then, a mix of water and toxic chemicals is injected into the resulting well at high pressure in order to release the shale gas and other hydrocarbons. The consequences of this technique include depleting the supply of fresh water in the area (since up to 26 million liters are injected into the ground), contamination of the environment and water supply, increased seismic activity, and the release of methane gas into the air. Additionally, the inclusion of fracking in the energy reform could mean the invasion of vast areas of indigenous and peasant land.

Mexico's oil company Pemex informed in 2015 that at least 924 fracking wells have been opened in Mexico since 2003. However, the Energy Ministry and the National Hydrocarbon Commission informed in 2010 that in just one area between Veracruz and Puebla states, there were 1,323 fracking wells.

To face this threat, the Alliance works along four lines of action: education, dissemination of information, investigation, and legal action, in the states of Veracruz, Puebla, San Luis Potosí, Nuevo León, Coahuila, Chihuahua, and Mexico City.

The Alliance recognizes that the defense of the land is the backbone of the struggle against the imposition of fracking, and supports the women and men who are fighting to defend their rights and those of future generations.



Legal victories

in defense of the land

In an adverse context such as the one facing Mexico's rural communities, it is important to recognize those advances that have occurred in recent years.

IN NOVEMBER 2015, IN A GROUNDBREAKING verdict in favor of Mayan communities in Campeche and Yucatán states, accompanied by the organizations Colectivo MA OGM, Educe Cooperativa and Indignación, Promoción y Defensa de los Derechos Humanos, Mexico's Supreme Court ordered international company Monsanto to suspend the planting of transgenic soy in the region because the federal government had not consulted the communities when it granted Monsanto permission to plant, violating the right of indigenous peoples to free, prior, and informed consultation.

The Court ordered a process of consultation, not the permanent prohibition of transgenic crops. However, the decision represents a clear step forward in the defense of the land against national and international businesses that seek to take over indigenous peoples' territory. In an ever more difficult climate, it is important to learn from these positive experiences in order to maximize the success of strategies that combine legal actions with community organization.

Another positive example is the work of the *rarámuri* community Bosque San Elías Repechique, accompanied by the organization CONTEC (Community Technical Consultants). After a years-long struggle to defend its land, the community filed an amparo constitutional challenge in April of 2014 against the construction of an airport in Chihuahua state. In November 2014, the community won its case, achieving the permanent suspension of construction as well as an order for reparations.

An example of a more preventive strategy is that of nine communities bordering San José del Progreso, Oaxaca –affected by the Cuzcatlán mining company, associated with Canadian parent company Fortuna Silver– who filed a formal declaration in November 2015 declaring their land mine-free, as mentioned in the article "Oaxaca: communities standing up to mining companies" in this edition of *Focus*.

A key aspect of the defense of the land in these and other cases is the participation of women in the process. A clear example is the role of human rights defender Bettina Cruz Velázquez, member of the People's Assembly of the Isthmus in Defense of the Land and the National Network of Women Human Rights Defenders. Despite the threats against her and the past use of the criminal justice system to harass her with unfounded charges, she continues to lead the struggle against the imposition of wind farms without the consent of the affected indigenous peoples. Women have also played a key role in the resistance of the Magdalena Teitipac community in Oaxaca against mining companies (read: "Oaxaca: communities...").

Communities know that the defense of the land is a long and complex process, as the interests of different businesses, organized crime groups, corrupt authorities and other *de facto* power groups evolve over time and move in and around their territory. For this reason, public attention and networking within and beyond Mexico's borders are strategies that help to shield the ongoing struggle of Mexico's indigenous peoples.



Photo: Tlachinollan CDHM and La Sandía Digital

Defending the mountains of Guerrero

San Miguel del Progreso, or *Júba Wajiín*, is a *me'phaa* indigenous community from Malinaltepec, Guerrero state, in the mountainous region.

THE FEDERAL GOVERNMENT HAS BEEN granting mining concessions in the mountainous region for several years, without the free, prior, informed consultation of the affected communities. The Tlachinollan Human Rights Center has documented the existence of roughly 30 concessions affecting a third of the region. San Miguel del Progreso is one of the affected communities.

Given the government's failure to inform the community about the projects, the community requested access to this information. Finally they gained access to information that confirmed the granting of two concessions.

Facing imminent invasion, *Júba Wajiín* and 17 other indigenous communities formally forbid mining in their territory through a decision adopted in the General Assembly of Community Members and registered in the National Agrarian Registry (RAN). Then the community legally challenged the concessions. Accompanied by Tlachinollan, it presented an *amparo* constitutional challenge against not only the concessions but also Mexico's Mining Law for violating the Constitution and international treaties.

A District Judge found in favor of the community, but the federal government filed an appeal and the case was referred to the Supreme Court, which dismissed the appeal. The community and Tlachinollan documented the federal executive branch's efforts to prevent any analysis of the Mining Law, to the extent that the companies holding the concessions gave them up (seeking to render the legal case null and void).

Knowing that legal cases in Mexico follow a long, winding, and uncertain path at best, the *me'phaa* women and men have strengthened their networks with other communities, participating in the Regional Council of Agrarian Authorities in Defense of the Mountains of Guerrero, which unites diverse communities and peoples against the threats posed by mining companies.

Through the unyielding defense of its land, *Júba Wajiín* demonstrates that a combination of litigation and community activism can achieve victories against mega-development projects, showing once again that the dignity of indigenous peoples leads the way in protecting Mexico's land from a destructive "development" model.



Oaxaca:

communities standing up to mining companies

English adaptation of an article by
Colectivo Oaxaqueño en Defensa
de los Territorios

The indigenous peoples of Oaxaca state in the south of Mexico are known for their tireless defense of their land. Close to 75% of the state is collective property, giving Oaxacan communities a source of strength and a focus point for organization in the face of businesses and authorities who seek to impose mega-development projects.

THE CURRENT STATE DEVELOPMENT PLAN includes 13 mega-projects, leading the government to seek to “regularize” (divide and privatize) land ownership and promote “agreements” between investors, organizations, and communities. In the mining sector, between 2002 and 2014 the federal government granted 333 concession titles for 40 projects in 647,000 hectares of land – without consultation.

The first voices to resist this economic model came from the indigenous communities from the coast, the northern hills, and the central valleys of Oaxaca, many of which united in 2009, along with civil society organizations, to form the Oaxacan Collective in Defense of the Land.

At that time, inhabitants of the San José del Progreso community were living through disastrous consequences of the Fortuna Silver mining project “San José,” as 1,200 federal and state police violently broke up a protest at the entrance of the mine. This case is a paradigmatic example of how the imposition of mining projects quickly translates into repression and criminalization of community members who stand up against the destruction and contamination of their territory. In the case of San José, the struggle for land rights took form in the Coordination of United Peoples of the Ocotlán Valley (cpuvo), which suffered the murder of two members,

Bernardo Méndez Vázquez and Bernardo Vázquez Sánchez, as well as the wounding of eight victims and an endless stream of threats.

Yet other indigenous communities in Oaxaca have created strong resistance movements and are achieving results. In 2013, the community of Magdalena Teitipac forced the exit of the Plata Real mining project and reformed its community statute to prohibit mining on its land; the community is now considering challenging the underlying mining concession so as to guarantee that their land will remain intact in the future. Despite provoking arrest warrants, these clear steps have been seconded by Silacayoapilla, Zacatepec, Santa María Zaniza, Ocotes and Vergel, Asunción Ixtaltepec and Ciudad Ixtepec, among other communities. In November 2015, community authorities in Ejutla, Ocotlán, and Tlacolula followed suit and declared their land mine-free.

These communities have recognized and acted on the need to work through internal organizations, community assemblies, and external alliances with other communities, using both legal actions and public pressure. One of the main lessons they have learned is that it is crucial to educate the entire community, including children and adolescents, so that all generations are prepared to care for their land.



Photo: Human Rights Solidarity Network

HUITZONTLA, defending the land against organized crime and government indifference

English adaptation of an article by the
Human Rights Solidarity Network

Located in Chinicuila municipality, in the nahua region of the hills along the coast of Michoacán state, the community of San Juan Huitzontla is fighting a legal battle for the recognition of its rights as an indigenous community.

MICHOACÁN'S SECURITY CRISIS REACHED Huitzontla when an organized crime group appeared during a community assembly to “inform” the residents that it would be exploiting an iron mine on its land. The consequences were devastating: a contaminated river that affected domestic water use, crops, and livestock.

Lacking support from authorities, the community held an assembly and planned a self-defense patrol. They eventually succeeded in driving out the criminal group, because, in the words of one resident, “We were the whole community united, and the organized crime group was only forty people.”

This experience was a turning point for the community, whose inhabitants began to think

more about how to organize themselves to defend their rights. In November 2013, Huitzontla contacted the Human Rights Solidarity Network to request support to disseminate its story, to carry out an environmental assessment, and to gain official recognition as an indigenous community, including its right to its land and autonomy as an indigenous people.

On the path ahead, the community plans to involve the entire population in the defense of its land and to strengthen its internal organization and decision-making mechanisms, knowing that the threat will not go away, but also certain of its decision to reject mining as the way forward.

TILA,

fighting for land rights in (and in spite of) the courts

The *ch'ol* people of Tila, in Chiapas state, continue to defend their land against the invasion attempts of local authorities dating back to 1964. In 2008, the community won amparo constitutional challenge 259/1982, and with it, a court order for the municipal government to give back 130 hectares of land stolen by the government to establish an urban area. However, the authorities simply ignored the judicial order.

TO CHALLENGE THE AUTHORITIES' non-compliance, the community is currently litigating in Mexico's Supreme Court (Non-Compliance case 1302/2010). The Supreme Court postponed its decision on the matter in April 2013, arguing the "complexity" of the case and ordering a series of expert studies to determine whether the restitution of the stolen land would cause serious consequences to any third-party actors.

Faced with yet more delays in their decades-long struggle, on December 16, 2015, during the celebration of the seventh anniversary of the *amparo* verdict, the inhabitants of Tila carried out a protest that ended in their occupying the municipal President's office building.

Since then, authorities have not ceased in their repression of the Tila community. On December 20, 2015, the residents were harassed by the commander and members of the state police. Subsequently, the community denounced the reappearance of the paramilitary group ironically named "Peace and Justice," in collusion with municipal authorities. The residents later found out that more than 20 arrest warrants had been issued against them.

After five years of Supreme Court litigation and more than fifty of legal actions, the Tila community is unwavering in its commitment to the defense of its land.





People from Ejido Tila, Chiapas.
Photo: Ejido Tila

Download our educational materials
on the defense of land rights at
www.centroprodh.org.mx

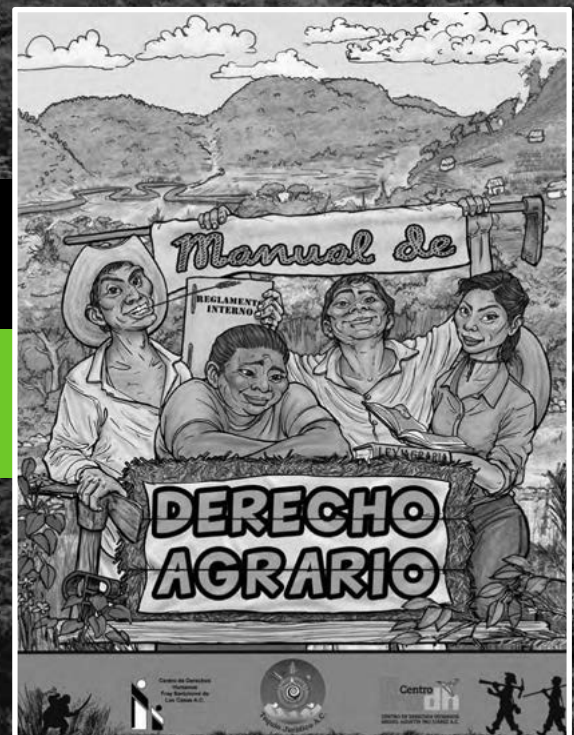


Anti-mining manual: A practical guide for communities fighting against mining projects

<http://bit.ly/17fx0vO>

Agrarian Law manual

<http://bit.ly/17fx0vO>






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