



For: The Office of the United Nations High Commissioner for Human Rights (OHCHR)

From: *The Inter-American Association for Environmental Defense (AIDA)*: a non-governmental organization promoting environmental law, which since 1998 has worked toward strengthening people's ability to ensure their individual and collective right to a healthy environment through the effective development, adoption and implementation of national and international legislation in the Americas. www.aida-americas.org

The Mexican Environmental Law Center (CEMDA): a not-for-profit organization which since 1994 has worked to defend the right to a healthy environment and environmental protection, and which promotes the effective adoption of legislation, improvement of public policies, stronger legality and the rule of law in Mexico. www.cemda.org.mx

Subject: Universal Periodic Review of Mexico

Date: March 4, 2013

Executive Summary

1. Over the last four years progress has been made in Mexico on protecting the right to a healthy environment, particularly at the legislative level. This has primarily been reflected in amendments to articles 1 and 4 of the Mexican Constitution. However, these reforms have still to be implemented effectively. There also remain substantial legislative voids and State practices that impact negatively on Mexico's ability to guarantee its citizens the right to a healthy environment, affecting this and other human rights of its people, and in particular its vulnerable communities.

2. Despite accepting the UPR Recommendation 77 from 2009, Mexico has yet to fully comply with it. To date, no legislation has been passed to regulate the right of indigenous peoples to free, prior and informed consent. Nor have effective measures been taken to enforce this right. Mexico still does not have effective mechanisms in place to ensure free, prior and informed consent for projects that affect the territory of indigenous communities, such as mining, infrastructure and genetically modified (GM) farming projects.

3. Mexico has also failed to comply with the UPR Recommendations 6 and 49, also from 2009. While progress has been made in establishing legal proceedings to protect the right to a healthy environment, these recommendations have yet to be adequately implemented. Moreover, the current measures of Mexican authorities remain ineffective, and court rulings ordering that

communities be protected from activities that infringe on their rights are not being complied with. Finally, Mexico has failed to ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (ICESCR), a tool that could serve to strengthen access to justice when national legal channels have proved ineffective.

4. Mexico also has failed to implement Recommendations 23, 58, 59 and 60. The evidence is that human rights defenders -- and the environment, in particular -- are facing increased risk to their personal safety. Between January 2009 and December 2012, there were 54 recorded attacks against environmental defenders, including 23 homicides and two cases of disappearances. Those with a connection to the mining industry face the greatest risk, accounting for one third of the total number of victims.

5. Mexico has not fulfilled its human rights obligations, given that it has not effectively controlled or monitored industrial, infrastructural and other activities that can have a major impact on the environment and thus seriously affect human rights such as the rights to health, life and physical integrity. Mexico's environmental policies are proving ineffective and unsustainable. The evidence is apparent from the lack of access to water, the contamination of water supplies and the Mexican authorities' failure to comply with regulations on air quality.

6. Given the circumstances described here, we believe that it is essential that recommendations, including but not limited to the following, should be made to Mexico. The recommendations are that they:

- a. Bring legislation in line with international standards for free, prior and informed consent to safeguard this right for indigenous communities and other communities.
- b. Implement the amendment to Article 107 of the Constitution to ensure effective protection of the right to a healthy environment.
- c. Ratify the Optional Protocol to the ICESCR (International Covenant on Economic, Social and Cultural Rights).
- d. Fully recognize environmental defenders as human rights defenders, and therefore immediately implement the Protection Mechanism for Human Rights Defenders to guarantee the inclusion and protection of environmental defenders.
- e. Include considerations of environmental and social sustainability in all public policy and comply with current regulations on air quality to safeguard the right to a healthy environment and related rights.

I. Introduction

1. In accordance with the guidelines of the Human Rights Council, the Mexican Environmental Law Center (CEMDA) and the Interamerican Association for Environmental Defense (AIDA) respectfully present these comments on the extent of Mexico's compliance with

the recommendations the country accepted as part of the 2009 Universal Periodic Review (UPR). We also present comments on other human rights violations related to environmental issues, which we believe should be taken into consideration during the next Universal Periodic Review set to take place later this year.

2. As this document will demonstrate, progress has been made over the last four years in the protection of the right to a healthy environment, the right to water and human rights, particularly at a legislative level. Specifically, this is reflected in the amendments made to Articles 1 and 4 of the Constitution¹. Now the challenge is to implement these amendments effectively.

3. In addition, the signatory organizations would like to stress that there remain substantial legislative voids and state practices that are impacting negatively on Mexico's ability to guarantee its citizens the right to a healthy environment. This is affecting this and the other human rights of the Mexican population in general and vulnerable communities in particular. We informed the United Nations' Office of the High Commissioner for Human Rights (OHCHR) of the most critical of these issues during the 2009 UPR process.² This report contains new information that we hope will be helpful in carrying out a thorough evaluation of the current situation.

II. Insistence on the need for compliance with UPR recommendations relating to environmental issues

¹ The Political Constitution of the United Mexican States, Article 1. *"In the United Mexican States, all individuals shall be entitled to the human rights recognized by this Constitution and by the international treaties signed by the Mexican State, as well as to the guarantees for the protection of these rights. Such human rights shall not be restricted or suspended, except for the cases and under the conditions established by this Constitution itself.*

The provisions relating to human rights shall be interpreted according to this Constitution and the international treaties on the subject, working in favor of the protection of people at all times.

All authorities, in their areas of competence, are obliged to promote, respect, protect and guarantee the human rights, in accordance with the principles of universality, interdependence, indivisibility and progressiveness. As a consequence, the State must prevent, investigate, penalize and redress violations to the human rights, according to the law.

Article 4, Paragraph 5: *Every person has the right to live in an environment that is suitable for his development and wellbeing. The State shall ensure that this right is respected. Environmental damage and deterioration shall be the legal responsibility of those who cause it, in accordance with the provisions of the law.*

Paragraph 6: *Every person has the right to the access and use of sanitary water for their personal and domestic consumption, in such a way as to be sufficient, safe, acceptable and obtainable. The State shall guarantee this right and the law shall define the bases, aids and methods for the equitable and sustainable access and use of water resources, establishing participation by the Federation, the federal states and local councils, as well as by the citizenry, in the aim of achieving these objectives".*

² Cf. AIDA and CEMDA report to the OHCHR, dated September 8, 2008. See: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/JS4_MEX_UPR_S4_2009_TheInter-AmericanAssociationforEnvironmentalDefense_Etal_ES_JOINT.pdf

a. *Mexico has failed to comply with Recommendation 77, which states that it must safeguard the right of indigenous peoples and other communities to free, prior and informed consent. It is imperative that the importance of complying with this recommendation be stressed to ensure Mexico protects this right.*

4. Mexico accepted Recommendation 77 in regard to adopting legislation in accordance with international standards on the rights of indigenous peoples and taking "necessary measures to ensure the right of indigenous peoples/other marginalized communities affected by planned economic or development projects to be adequately and fairly consulted." This is in conformity with the commitments made by Mexico when it ratified Convention No. 169 of the International Labour Organization (ILO) as well as with the UN Declaration on the Rights of Indigenous Peoples.

5. Despite Mexico's ratification of the ILO's Convention 169 in 1990 and the UN Declaration on the Rights of Indigenous Peoples in 2007³, no legislation has been put in place to regulate indigenous peoples' right to free, prior and informed consent. Nor has Mexico taken measures to ensure this right. As a result, Mexico still does not have effective mechanisms in place to safeguard free, prior and informed consent from any developments and activities affecting its territory. A bill proposing a General Law on the Consultation of Indigenous Peoples and Communities is being considered by Senators. It was brought before the Senate on November 24, 2011. A ruling will have to be made in the upper house before the bill passes to the Chamber of Deputies.⁴ It remains to be seen how long this bill will take to move through the two chambers, and what eventual form the law will take.

6. In the absence of appropriate legislation, the government has been using the environmental public consultation already enshrined in federal law⁵ as part of the Environmental

³ A/RES/61/295**

⁴ See: http://sil.gobernacion.gob.mx/Archivos/Documentos/2011/11/asun_2823536_20111124_1322145344.pdf

⁵ Official Journal of the Federation, January 28, 1988, "General Law on Ecological Balance and Environmental Protection". Article 34 -*On receiving an environmental impact report, and after producing the document referred to in Article 35, the Secretariat shall make the report available to the public so that it may be read by any person.*

The applicants for the work or activity may request that the information included in the document be withheld where the public disclosure of such information could affect industrial property rights and the confidentiality of commercial information provided by the applicant.

At the request of any person from the community concerned, the Secretariat may conduct a public consultation, pursuant to the following:

I.- The Secretariat shall publish information on the environmental impact of the application in its Ecological Gazette. In addition, the applicant shall be obliged to publish at his own expense a summary of the proposed work or activity in a newspaper of wide circulation in the state in question, within five days of the date on which the environmental impact report was presented to the Secretariat;

II.- Within 10 days of the publication under the above terms of this summary, any citizen may request that the Secretariat make the environmental impact report publicly available in the state in question.

III.- Pursuant to the provisions established by this Law, where the works or activities in question have the potential to cause severe ecological imbalance or damage to public health or ecosystems, the Secretariat, in coordination

Impact Assessment (EIA) procedure, as a way of seeking the opinion of indigenous and other communities on projects that could affect them. However, the environmental public consultation is not an adequate measure for ensuring the right to free, prior and informed consent. This is for the following reasons:

- It is up to authorities to hold them or not. Hence, there is no guarantee that indigenous peoples will be consulted and so this does not constitute a right;
- Authorities are not obliged to act on the responses to the consultation, and therefore there is no guarantee that these will be taken into consideration during the decision-making process;
- The governing body on environmental matters considers responses in strictly environmental terms without consideration for the socio-environmental concerns raised by mega-projects;
- Consultations are held under an administrative procedure limited to evaluating the environmental impact of projects and not any other potential impact on communities;
- This type of consultation is only feasible for projects that require an EIA to be carried out and therefore is not used to examine any other activities;
- Consultations are held in Spanish and there is no mechanism for ensuring they are made available in the native language(s) of the communities concerned;
- The communities' traditions and customs are not taken into consideration; and
- The focus of these consultations is not the right to property or other rights of communities. Therefore related topics are not considered.

7. To illustrate Mexico's failure to comply with the UPR Recommendations, we would like to cite the Wirikuta case. It is illustrative of the serious impact that lack of free, prior and informed consent can have on the lands and rights of indigenous peoples. In this case, the state awarded 79 permits to mine the Wixárika people's ancestral lands including the sacred territory and the Natural Protected Area of Wirikuta. The State did this without respecting the community's right to free, prior and informed consent and without even conducting a prior consultation.⁶ This has had a significant impact on the Wixárika people's rights, including their right to cultural identity, given that mining concessions have impeded the community's access to their sacred territory, thus preventing them from performing their ceremonies and customs. It was in this context that the Thirteenth Collegiate Court's ruling on a request for *amparo* (a form of constitutional injunction)⁷ ordered the precautionary suspension of 22 mining permits, thus

with local authorities, may call a public information meeting in which the applicant shall explain the technical environmental aspects of the work or activity concerned;

IV.- Within twenty days of the environmental impact report being made public by the Secretariat under the terms of Section I, any applicant may propose the adoption of additional prevention and mitigation measures as well as any observations they deem pertinent, and

V.- The Secretariat shall incorporate observations made by applicants into the corresponding document and, in the resolution it shall issue, record the process of public consultation conducted and the results of observations and proposals expressed in writing.

⁶ See: http://frenteendefensadewirikuta.org/wirikuta/?page_id=903

⁷ Thirteenth Collegiate Court Resolution on the Wixárika People's application for *amparo*, dated February 3, 2012.

recognizing the Wixárika people's right to Wirikuta, as a place to which they have had access from time immemorial.

8. The absence of any consultation or free, prior and informed consent was recognized by the National Human Rights Commission in Recommendation 56/2012⁸, in which it stated:

*"The fact that federal authorities have awarded mining permits in Wirikuta and continue to process applications for permits outside the mining reserve seriously affects the Wixárika people's access to, use and benefit of their sacred lands. The violation of this collective human right is not only determined by the concession of permits itself, but also by the consequences of this concession. Mining activity across the plateau region of San Luis Potosí invariably affects the quality of land and the environment and, in some cases, destroys sacred sites, preventing the Wixárika people from practicing a historic rite which constitutes their raison d'être."*⁹

9. Furthermore, this case has been the subject of recommendations by the Special Rapporteur on the Rights of Indigenous Peoples¹⁰, which indicated that in accordance with Article 7 of the ILO Convention No. 169, ratified by Mexico in 1990, it is necessary for the state to "ensure that, whenever appropriate, studies are carried out in co-operation with the peoples concerned, to assess the social, spiritual, cultural and environmental impact" of mining permits in the Wirikuta Ecological and Cultural Reserve. The Wirikuta case was also the subject of an inquiry by the UN Committee on the Elimination of Racial Discrimination (CERD)¹¹. In spite of these pronouncements, the problem persists.

10. Another case that reflects the critical nature of the situation faced by indigenous peoples is that of the Yaqui people. In 2010, a bill was passed allowing the construction of the "Independencia Aqueduct", which will carry 75 million cubic meters of water a year from the Yaqui River to the city of Hermosillo in Sonora state. The Yaqui Tribe's original settlements¹² were established along the banks of this river and its waters have traditionally provided for all their needs¹³. The work to construct the aqueduct is having a direct impact on their territory and culture. In spite of this, work on the "Independencia Aqueduct" project has continued in breach of the community's right to be consulted in conformity with international standards. On May 4,

⁸ See: http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2012/REC_2012_056.pdf para. 146.

⁹ See: http://www.cndh.org.mx/sites/all/fuentes/documentos/Recomendaciones/2012/REC_2012_056.pdf para. 146.

¹⁰ See: http://www.ohchr.org/Documents/Issues/IPeoples/SR/A-HRC-18-35-Add-1_en.pdf p.38

¹¹ Cf. 80th Session of the UN Committee for the Elimination of Racial Discrimination (13th February to 9th March, 2012). See: <http://www2.ohchr.org/english/bodies/cerd/cerds80.htm>

¹² The Yaqui stress the intrinsic relationship they have with the river of the same name, which is essential for their economic and cultural survival. They also hold additional rights to it. As far back as 1940, Mexican President Lázaro Cárdenas signed a decree returning ownership of the land to the Yaqui Tribe and granting them the right to 50% of the water in the river. See: <http://www.cemda.org.mx/wp-content/uploads/2013/02/Carta-p%C3%BAblica-yaquis-a-los-ministros-de-la-SCJN-FINAL-1.pdf>

¹³ See: <http://www.cemda.org.mx/01/la-suprema-corte-debe-reconocer-violacion-de-derechos-humanos-en-construccion-del-acueducto-independencia/>

2012, the Fourth Auxiliary District Court of the Fifth Region granted the Yaqui Tribe's request for an *amparo* in view of the government's authorization of the project.¹⁴ However, this judicial decision did not interrupt the construction because the environmental authorities appealed the decision.. Therefore, it is impossible to enforce the decision until the appeal has been resolved. This could cause serious and irreparable damage to the community. Due to the severity and importance of the case, the Supreme Court of Justice of the Nation took up the case in October 2012¹⁵. No verdict has yet been reached.

11. The lack of consultation and free, prior and informed consent also is having a serious impact on the rights of indigenous and other communities affected by authorizations the Mexican government has been granting since 1996 for the cultivation of genetically modified organisms (GMOs) used to grow corn, soybeans and cotton¹⁶. Although the effects of GMOs on the environment, human health¹⁷ and culture¹⁸ have not been scientifically established, there is evidence to suggest that native crops can become contaminated by genetically modified crops¹⁹. This was the case in 2001 when corn cultivated in the states of Puebla and Oaxaca became contaminated²⁰. A moratorium was declared on GMO cultivation between 1999 and March 6, 2009, when it was lifted by presidential decree²¹. Given the environmental risks and the violation of communities' social and cultural rights, the Commission for Environmental Cooperation²² recommended that the moratorium be reinstated. Their recommendations were ignored and contrary to expectations, the Law on the Biosafety of Genetically Modified Organisms²³ was adopted in 2005, aggravating the situation by allowing further GMO cultivation.

¹⁴ Cf. Juicio de Amparo 461/2011 – Cuaderno Auxiliar 106/2012, Judgment delivered May 4, 2012 by the Fourth Auxiliary District Court for the Fifth Region. See: <http://sise.cjf.gob.mx/SiseInternet/Reportes/VerCaptura.aspx?TipoAsunto=1&Expediente=461%2F2011&Buscar=Buscar&Circuito=5&CircuitoName=Quinto+Circuito&Organismo=181&OrgName=Juzgado+D%27E9cimo+de+Distrito+en+el+Estado+de+Sonora&TipoOrganismo=2&Accion=1>

¹⁵ See: <http://www.cemda.org.mx/01/la-suprema-corte-debe-reconocer-violacion-de-derechos-humanos-en-construccion-del-acueducto-independencia/>

¹⁶ To view the various applications authorized, see: http://www.cibiogem.gob.mx/OGMs/Paginas/Solicitudes_Reg_OGMs.aspx and for details on applications put out for consultation, refer to <http://www.senasica.gob.mx/?id=1344>

¹⁷ Acevedo Gasman, F., *et al.* (2009), “La bioseguridad en México y los organismos genéticamente modificados: cómo enfrentar un nuevo desafío”, in *Capital natural de México*, vol. II: *Estado de conservación y tendencias de cambio*, Mexico: CONABIO.

¹⁸ Kato, Takeo Ángel, Mapes, Cristina, Mera, Luz María, Serratos Juan Antonio and Bye, Robert (2009), *Origen y diversificación del maíz: una revisión analítica*. Mexico: UNAM – CONABIO.

¹⁹ Altieri, Miguel (2005), “The myth of coexistence: Why transgenic crops are not compatible with agro-ecologically based system of production”, in *Bulletin of Science, Technology & Society*, vol 24, no. 4, E.U.A.: Sage Publications.

²⁰ Quist, D. and Chapela, I. (2001). *Transgenic DNA introgressed into traditional maize landraces in Oaxaca, Mexico*. *Nature* 414(6863): 541–543

²¹ See: <http://www.grain.org/es/article/entries/1231-la-contaminacion-legal-del-maiz-en-mexico>

²² Secretariat of the Commission for Environmental Cooperation (2004), *Maíz y biodiversidad: Efectos del maíz transgénico en México*, Canada: CEC.

²³ The Federal Law on Seed Production, Certification and Trade was adopted later, in 2007.

12. The introduction of this law has given rise to serious violations of the rights of indigenous and other communities. According to the people of Tamaulipas, San Luis Potosí, Veracruz, Chiapas, Campeche, Yucatán and Quintana Roo²⁴, for example, the cultivation of GM soybeans in these regions by Monsanto, a U.S.-based agricultural biotechnology company, has caused their traditionally produced honey to become contaminated²⁵. This has led the indigenous and peasant communities to mount social and legal opposition²⁶. Given the violations of indigenous peoples' right to free, prior and informed consent, as well as their rights to a biocultural heritage²⁷, a cultural identity, communal property, food, health and a healthy environment, this situation was brought to the attention of the Special Rapporteur on the Right to Food, Olivier De Schutter, who, following his visit to Mexico, also recommended a moratorium on the cultivation of these GM crops²⁸. This recommendation has yet to be implemented.

Recommendations:

13. Legislation should be brought in line with international standards on free, prior and informed consent to effectively safeguard this right for indigenous and other communities. As part of this process, a Law on Prior Consultation should be issued and mechanisms put in place to ensure its effective implementation.

14. Until the Law on Prior Consultation has been approved, Mexico should introduce immediate and effective measures to ensure that the approval and realization of projects or activities that could affect indigenous or other communities do not violate their rights. One option would be to establish a moratorium on industrial or agricultural activities that could affect indigenous and tribal peoples while effective protective mechanisms are being developed.

15. Indigenous peoples' bio-cultural heritage and other rights should be recognized and protected.

²⁴ MON-04032-6. See: http://www.cibiogem.gob.mx/OGMs/Paginas/Solicitudes_Reg_OGMs.aspx

²⁵ Vides Borrel, E. and Vandam, R. (2012), *Reporte Técnico. Pecoreo de abejas Apis mellifera en flores de soya Glycine max*, Mexico: El Colegio de la Frontera Sur.

²⁶ Various associations of beekeepers and civil society organizations filed applications for amparo before the federal courts: Campeche, case numbers 753/2012 and 762/2012, Chiapas, case numbers 971/2012 and 1083/2012, Quintana Roo, case numbers 470/2012 and 471/2012, and Yucatán, case numbers 286/2012 and 880/2012.

²⁷ Boege, E. (2008), *El patrimonio biocultural de los pueblos indígenas de México*, Mexico: INAH and CDI.

²⁸ De Schutter, Oliver (2012), "Declaración final de la misión a México del 13 a 20 de junio de 2011", the United Nations: Office of the High Commissioner for Human Rights. See: http://www.hchr.org.mx/files/comunicados/2011/junio/OLIVIER%20DE%20SCHUTTER%20DECLARACION%20FINAL_2.pdf > (February 13, 2013).

16. An under secretariat dealing with indigenous smallholder farmers and agro-ecology should be created as part of the Secretariat of Agriculture, Livestock, Rural Development, Fisheries and Food (SAGARPA).

b. *Mexico has not yet implemented Recommendations 6 and 49, as seen by the lack of adequate mechanisms in place to fully ensure the human right to a healthy environment.*

17. Mexico has not brought federal and state legislation in line with international human rights instruments designed to ensure their effective implementation and equal protection and guarantees, in accordance with Recommendation 6. Nor has it adequately acted on Recommendation 49, having failed to take sufficient action to improve indigenous peoples' access to justice and to tackle the problem of impunity.

i. Ineffectiveness of administrative actions and weaknesses of collective actions

18. To guarantee access to justice, it is essential to provide effective judicial mechanisms, including those, which are administrative. As we explained in our 2008 report, while the Mexican government is taking measures to protect the right to a healthy environment, their inherent structural deficiencies and inapplicability have rendered them ineffective²⁹.

19. Advances have been made in taking adequate legal action to protect the right to a healthy environment, with Congress passing regulation on class actions³⁰. Among the advances deserving mention, *locus standi* was granted to individuals and NGOs, allowing them to bring cases against those involved in activities that damage the environment. Moreover, it allows parties affected by environmental damage to be included in the verdict of such cases, thus freeing them from the requirement to bring their own case to court. However, deficiencies remain in the

²⁹ While recognizing the progress that has been made in terms of access to environmental information, there remain obstacles in both content and form that so far have prevented the safeguarding of this right. Among the most important obstacles to be overcome are:

- The lack of effective mechanisms which would allow large swathes of the population, particularly those in poverty or with low levels of education, to exercise this right. Mechanisms currently in place require use of the Internet and the ability to travel to government offices located in the city.
- Civil servants are rejecting information requests due to a lack of clear procedures for handling such requests.
- Responsible authorities have shown an ignorance of the law. They continue to view requests for information as an attack on them and react defensively, thus impeding the submission of such requests.
- The impunity enjoyed by responsible authorities who obstruct, impede or intimidate information requesters.

Cf. AIDA and CEMDA report to the OHCHR, dated September 8, 2008, p. 4. See: http://lib.ohchr.org/HRBodies/UPR/Documents/Session4/MX/JS4_MEX_UPR_S4_2009_TheInter-AmericanAssociationforEnvironmentalDefense_Etal_ES_JOINT.pdf

³⁰ Amendments and additions were made to the Federal Code of Civil Procedures, the Federal Civil Code, the Federal Law on Economic Competition, the Federal Law on Consumer Protection, the Organic Law on the Judicial Branch of the Federation, the General Law on Ecological Balance and Environmental Protection and the Law on the Protection and Defense of Users of Financial Services, published in the Official Journal of the Federation on August 30, 2011.

regulation on class actions. It fails to encompass the principles of prevention and precaution, since action can only be brought for damage already caused and not to prevent future damage. What is more, class action is not a suitable method for defending certain rights that nonetheless affect groups of people collectively, such as the right to health.

ii. Non-compliance with court rulings and impunity in environmental matters

20. Mexico's failure to comply with court rulings is another factor that has an impact on human rights. In practice, it has been shown that even when a verdict in favor of environmental preservation is delivered, the appropriate authorities do not respect it. The Zapotillo Dam³¹ affair is a case in point. Despite a ruling by the Deputy First District Judge for Guadalajara, Jalisco state³², ordering the suspension of "the preparatory work and construction order for the Zapotillo Dam", the National Water Commission continued construction work in total disregard of the court's decision.

iii. Absence of regulation of the Law of *Amparo*

21. Mexico's Constitution recognizes the right to live in a healthy environment and establishes the writ of *amparo* as the appropriate mechanism for protecting this right. On June 6, 2011, an amendment was made to Article 107 of the Constitution to recognize the legitimate interest, whether individual or collective, in determining the plaintiff's standing to file an application for *amparo*. This was a real step forward in human rights protection. Nevertheless, there is no regulation allowing such actions to be filed, meaning that in practice this remedy cannot be used as a mechanism to protect the human right to a healthy environment. It should be

³¹ In May 2006, the federal government and the Jalisco state government jointly announced the construction of the El Zapotillo Dam in the region known as Los Altos de Jalisco. The plan was to create a reservoir and divert the Río Verde, a river which flows from Aguascalientes into the Santiago River, to provide drinking water to the cities of León and Guadalajara and various towns in the Los Altos de Jalisco area. This would mean the flooding and eradication of three villages: Temacapulín, Acasico and Palmarejo. This would affect their 1,000 inhabitants directly plus another 15,000 people indirectly with the flooding of more than 4,816 hectares of fertile land on which the lives and culture of these communities depend. The first these communities heard about the plan to construct the dam, relocate them and destroy their villages was through the media, since no authority had given them prior and transparent information about the project. In addition to not providing access to information on the project, there was no consultation process with the communities affected by it. When the "Public Consultation" provided for under Article 34 of the General Law on Ecological Balance and Environmental Protection (LGEEPA) was conducted in 2006, the communities were unaware of the repercussions of the project and were not informed about changes to the design that would cause it to have a different impact. For example, the people of Temacapulín were not considered an "interested party" because the original project for a dam 80 meters tall would not have affected them. After the environmental impact authorization was issued, the National Water Commission (CONAGUA) decided to raise the height of the dam to 105 meters, which would mean flooding all three villages. The project has been under construction since 2008. The case has been the subject of a recommendation by the Jalisco State Human Rights Commission, which recognized it as a violation of the human rights of the inhabitants of Temacapulín, Acasico and Palmarejo. See: <http://www.cedhj.org.mx/recomendaciones/emitidas/2009/rec0935.pdf>

³² Ruling given on the combined *amparo* cases 2245/2008 and 2262/2008 in February 2011.

added that on February 12, 2013, the Chamber of Deputies sent a draft bill for the new Law of Amparo to the Senate³³. It remains unclear when the law could be passed.

iv. Lack of access to international justice in cases of direct violations of economic, social and cultural rights

22. Mexico has not ratified the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)³⁴, which would grant victims and NGOs access to the international justice system for cases in which the state has not fulfilled its obligations with respect to economic, social and cultural rights.

Recommendations:

23. The amendment to Article 107 of the Constitution should be implemented to allow effective action to protect the right to a healthy environment and to recognize the natural diffuse legal interest this right holds.

24. The impunity in environmental affairs should be tackled by introducing effective mechanisms for investigating and establishing responsibility for environmental damage as well as for implementing court rulings.

25. Training programs for civil servants in all branches of government should include environmental rights as human rights.

26. The Optional Protocol to the ICESCR should be ratified.

c. Mexico has failed to comply with Recommendations 23, 58, 59 and 60 concerning human rights defenders by not guaranteeing the rights to life and physical and moral integrity for environmental defenders.

27. Mexico accepted Recommendations 23, 58, 59 and 60, which refer to the need for structural measures to be taken to systematically combat violence against human rights defenders, investigate the attacks and threats made against this group and adopt appropriate measures to promote their safety. But these recommendations have yet to be implemented and, contrary to expectations, the situation for defenders -- environmental defenders, in particular -- has deteriorated.

³³ See: http://sil.gobernacion.gob.mx/Archivos/Documentos/2013/02/asun_2938916_20130214_1360853736.pdf

³⁴ Note: The original text in Spanish contains an error. The original text reads International Covenant on Economic, Social and Cultural Rights (ICESCR) in place of the correct "Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (OP-ICESCR)".

28. The dramatic figures for attacks on environmental defenders reveal the extent of the problem. Between January 2009 and December 2012, 54 attacks on environmental defenders were recorded, including 23 murders and two cases of disappearances³⁵. The attacks were not directed solely at members of NGOs. They were also against government authorities belonging to the Office of the Federal Attorney for Environmental Protection (PROFEPA). For example, in July 2010 three environmental inspectors from PROFEPA and the National Commission of Protected Natural Areas, along with a local resident, were killed while investigating the environmental impact of the "La Guitarra" mine in Albarrán, Temascaltepec in the State of Mexico.³⁶ Those whose work connects them to the mining industry are at the greatest risk, accounting for one third of the victims of all recorded violence³⁷.

29. International entities like the United Nations Human Rights Committee³⁸, the Special Rapporteur on the Independence of Judges and Lawyers³⁹ and the Special Rapporteur on the Rights of Indigenous Peoples⁴⁰ have recommended that Mexico take measures to protect human rights defenders as they continue to suffer a diversity of violent attacks. Their recommendations have yet to be acted on.

30. On June 26, 2012, the Law on the Protection of Journalists and Human Rights Defenders came into force. This created the Federal Mechanism for the Protection of Journalists and Human Rights Defenders, the effectiveness of which remains to be seen. Among the most worrisome failings of the law is that it does not include measures to ensure an adequate investigation and sanction of those responsible for attacking or threatening defenders and journalists. Nor does the mechanism created by this law have a large enough budget for the protection fund. What is more, the Prevention, Monitoring and Analysis Unit, responsible for proposing and implementing practical measures to eliminate the structural causes of this violence, has not yet been established almost a year since the creation of the law.

Recommendations:

31. The Mechanism for the Protection of Journalists and Human Rights Defenders should be effectively and immediately introduced, and environmental defenders placed under its protection.

³⁵ Cf. the Mexican Environmental Law Center (2013), "Investigación sobre ataques a defensores ambientales en México desde enero de 2009 hasta diciembre de 2012", Mexico City: CEMDA, Appendix 1.

³⁶ "Defensoras y Defensores Ambientales en Peligro: La Situación en México y Centro América En el Ámbito de la Industria Minera." This is a report compiled by the Center for International Environmental Law for the General Hearing held October 25, 2010 during the 140th Regular Session of the Inter-American Commission on Human Rights. See: http://www.ciel.org/Publications/IACHR_Oct10.pdf

³⁷ Cf. the Mexican Environmental Law Center (2013), "Investigación sobre ataques a defensores ambientales en México desde enero de 2009 hasta diciembre de 2012", Mexico City: CEMDA, Appendix 1.

³⁸ CCPR/C/MEX/CO/5, 7th April 2010.

³⁹ Special Rapporteur on the Independence of Judges and Lawyers, E/CN.4/2002/72/Add.1, January 24, 2002.

⁴⁰ Special Rapporteur on the Rights of Indigenous Peoples, E/CN.4/2004/80/Add.2, December 23, 2003.

32. Environmental defenders should be fully recognized as human rights defenders and covered by any protective measures adopted.

III. By not effectively controlling or monitoring industrial, infrastructural and other activities that impact the environment and human rights, Mexico is failing to safeguard the human rights to a healthy environment, water, health, physical and moral integrity and life.

33. Ecological destruction, deforestation, soil erosion, desertification, exploitation of natural resources, water contamination and air pollution are realities that are endangering the lives of millions of Mexicans. Worse, Mexico figures among the countries most vulnerable to the negative effects of climate change: 15% of its territory, 68.2% of its population and 71% of its GDP are highly exposed to the risks associated with this phenomenon⁴¹.

34. Despite having constitutional recognition of the right to a healthy environment, a wide number of environmental laws and regulations and environmental policy principles with some instruments for their application, Mexico's environmental policy is often ineffective and unsustainable because it is essentially misguided⁴². Other reasons are a lack of: a) coordination with other sectors and social policies; b) implementation, fulfillment and sanction, and c) the human, technical and financial resources needed for effective environment management. All of this has had a significant impact on human rights such as the rights to health, quality of life and a healthy environment.

a. Poor access to water and contamination of water supplies

35. Although recognized by the Constitution, the human right to access drinking water has not yet been enforced in Mexico. There are still communities without the infrastructure to provide potable water, and water sources are being contaminated with impunity⁴³. In February

⁴¹ "World Bank Global Framework for Disaster Risk Reduction" cited in the *Inter-Ministerial Committee on Climate Change's Special Climate Change Action Plan*, published in the Official Journal of the Federation on August 28, 2009.

⁴² Chief Federal Audit Office Performance Audit: 09-0-16100-07-0148. The Conservation of Mangrove Ecosystems. Secretariat of the Environment and Natural Resources, Mexico City, 2011.

⁴³ National Water Commission (2009), "Situación del Subsector Agua Potable, Alcantarillado y Saneamiento, Edición", Secretariat of the Environment and Natural Resources, p.41. See: <http://www.conagua.gob.mx/Contenido.aspx?id=Publicaciones%20Estad%C3%ADsticas%20y%20Geogr%C3%A1ficas%20%20%20%20%20%20%20%20%20%20%20%20Introducci%C3%B3n|0|60|0|0>.

There are also cases of extreme dereliction of duty in which the government has put economic and political interests before human rights, as happened in the Costa Chica region in the State of Guerrero, where five villages (Mecatepec, Tepintepec, El Guayabo, Barrio Nuevo and El Carrizo) have no access to water after a 97% complete hydraulic engineering project was brought to a halt due to opposition from a group of individuals who wanted to continue profiting from the illegal sale of water rather than allow the towns to be provided with a reliable source of

2012, explicit mention of the human right to water was incorporated into Article 4 of the Constitution⁴⁴, yet no law has been passed to regulate this right. Nor has the current legal framework for this right been reviewed. The principles of Mexico's water policy, set out in the current Law on National Waters, view water as a commodity with economic value. There are no mechanisms in place to equitably and adequately safeguard the right to water. Nor are there measures for ensuring indigenous and rural communities have access to water, leaving them in a grave situation of vulnerability.

36. The government's water policy does not guarantee water supply for the entire urban population. This affects more than 50 million people living in major cities in the center and north of the country. It also puts a large number of people at risk by exposing them to constant flooding, water scarcity, subsidence (up to 40 cm per year) and the cracking of the soil and subsoils. Measures that upset the balance of Mexico's river basins and aquifers have an equally devastating effect on the heritage and even the lives of many people. The situation is serious in the Valley of Mexico, where periodic sewage floods are causing enormous damage to the property of thousands of people⁴⁵.

37. The majority of water bodies in Mexico are polluted. Only 5% of the country's rivers contain water of acceptable quality for all types of use, while almost 95% contain some level of contamination and 29% have become highly contaminated⁴⁶ by chemical substances, volatile organic compounds, the residues of medicines, narcotics, feces, arsenic and other heavy metals⁴⁷.

drinking water. The local council has an authorization to the natural springs needed to provide this public service. To add to the villagers' woes, their drainage system flows into the only river to supply them with water, and the resulting contamination has caused, and continues to cause, outbreaks of skin, gastrointestinal, eye and ear diseases, to the point where it has become a public health problem.

⁴⁴ Political Constitution of the United Mexican States, Article 4. Paragraph 6: "*All persons have the right to the access and use of sanitary water for their personal and domestic consumption in such a way as to be sufficient, safe, acceptable and obtainable. The State shall guarantee this right and the law shall define the bases, aids and methods for the equitable and sustainable access and use of water resources, establishing participation by the Federation, the federal states and local councils, as well as by the citizenry, in the aim of achieving this objective*".

⁴⁵ Information provided by Elena Burns, researcher at the National Autonomous University of Mexico's Center for Sustainability, as part of the Inter-American Commission on Human Rights' Working Meeting on the Environment and Human Rights, held on October 26, 2011.

⁴⁶ National Water Commission (2010), "Estadísticas del Agua en México", Secretariat of the Environment and Natural Resources, pp. 44-50, See: <http://www.conagua.gob.mx/CONAGUA07/Noticias/EAM2010.pdf>

⁴⁷ Cases reported by the press in 2011.

1. Yucatán: The Yucatán peninsula's aquifer system has become contaminated by medicines, narcotics, pesticides and other chemical products, and the chief cause of the contamination is suspected to be the hotel industry. See: <http://www.informador.com.mx/tecnologia/2011/269181/6/estudios-muestran-que-el-acuifero-de-yucatan-esta-contaminado-con-productos-quimicos.htm>

2. Tabasco: An inspection carried out by the Secretariat of Health has revealed that at least 60 rivers and lakes in Tabasco have become contaminated with feces and toxic waste as a consequence of inadequate refuse disposal. See: <http://www.oem.com.mx/elheraldodetabasco/notas/n1947240.htm>

3. León: Four reservoirs - Silva (San Francisco del Rincón), El Tigre (Manuel Doblado), El Palote (León) and the Laguna de Yuriria - are so highly polluted that 4,000 bird deaths have been recorded. See: <http://www.semarnat.gob.mx/informacionambiental/publicaciones/Publicaciones/EGRASCLCH.pdf>

Contributing to this situation is Mexico's failure to enforce the Mexican Official Standard NOM-001-SEMARNAT-1996, a regulatory instrument that sets the upper limits for the disposal of waste products in water but which does not cover many highly polluting substances such as heavy metals and volatile organic compounds.

38. Of note, the contamination of the Atoyac River in Tlaxcala and Puebla is a particularly extreme case. Although evidence has been given and formal complaints made, the situation has yet to be dealt with. On this stretch of the river there are three industrial corridors with more than 400 chemical companies, a Petróleos Mexicanos (PEMEX) petrochemical complex and numerous *maquilas* (manufacturers operating in free trade zones) producing contaminating substances, and various municipalities with at least 280,000 inhabitants. All of them are illegally dumping their wastewater into the river. In June 2011, the Secretariat of Environment and Natural Resources released a statement on the state of the Atoyac River and its tributaries, noting the high level of contaminants present in the water as a result of the wastewater disposal by industrial plants and human settlements⁴⁸. As studies by the National Autonomous University of Mexico have shown⁴⁹, the disposal of wastewater has caused the river to become extremely polluted⁵⁰. This has inflicted serious genotoxic damage on the communities living nearby, attributable to their exposure to toxic substances⁵¹. There have also been reports of various

4. State of Mexico: More than 1,000 natural springs have become polluted or are suffering the effects of deforestation, putting them at risk of disappearing, according to the Secretariat of the Environment's Coordinating Group on Special Projects. See: <http://www.cambiodigital.com.mx/mosno.php?nota=46674&seccion=ecologia>

5. Morelos: For years the water table in Ocotepéc and Tepoztlán has been polluted by septic tanks and, in the case of Tepoztlán, by public sewers. See: http://www.semarnat.gob.mx/informacionambiental/documents/sniarn/pdf/informe_89-90.pdf

6. Coahuila: Traces of arsenic have been found in a number of cases, leading the cities of Torreón, Gómez Palacio and Lerdo in Durango to declare the problem a matter of urgency. To date, levels of arsenic above the limits established by Mexican Official Standards were found in seven of the 40 wells operated by Gómez Palacio's decentralized drinking-water and sewage system. Five slightly exceeded the acceptable level of .025mcg/litre, while two located in the Sacramento area contained extremely high levels of arsenic. See: <http://www.milenio.com/cdb/doc/noticias2011/d9733f1d182257206a2cdeac4fc4f3d6>

7. Veracruz: A acrylonitrile spill in the Acuatempan river in the municipality of Tihuatlán, to the north of Veracruz, poisoned nearly 30 people, killed farm animals, fish and turtles, and even polluted some artesian wells. See: <http://www.jornada.unam.mx/2010/11/13/estados/029n1est>

8. Jalisco: A large quantity of dissolved solids, fats and oils were discovered in the Salto River, and certain stretches were found to have been contaminated by heavy metals such as lead, zinc and mercury. High levels of fecal coliforms, ammonia and phosphates were also found. See: http://limpiemoselsalto.blogspot.mx/2009_09_01_archive.html

⁴⁸ Secretariat of the Environment and Natural Resources, "Declaratoria de clasificación de los ríos Atoyac y Xochiac o Hueyapan, y sus afluentes", published in the Official Journal of the Federation on June 6, 2011.

⁴⁹ Inés Navarro González, "Investigación: Análisis de la Situación del Río Atoyac, Tlaxcala-Puebla", presented to the *Institute of Legal Research – UNAM* on May 6, 2011, Institute of Engineering, National Autonomous University of Mexico.

⁵⁰ García Nieto, Edelmira, *et al.* (2011), "Plomo y arsénico en la subcuenca del Alto Atoyac en Tlaxcala, México" in *Revista Chapingo, serie ciencias forestales y del ambiente*, vol. 17, no. 1, pp. 7-17, Mexico: Chapingo Autonomous University. See: <http://redalyc.uaemex.mx/redalyc/pdf/629/62917370001.pdf>

⁵¹ Montero Regina, Morales, *et al.*, "Health hazard identification in an agricultural-industrial area Part I" and "Lifestyle factors and occupation and Part II" in *Biomonitoring of early biological effect biomarkers*, Mexico: Institute of Biomedical Research-UNAM.

serious and fatal illnesses such as leukemia and renal failure. The contamination is having a still greater impact on minors and young adults, since leukemia is most common among 16 to 22 year olds⁵².

Recommendations:

39. A law should be introduced, passed and implemented to regulate Article 4 of the Constitution to protect the human right to water.

40. In accordance with international standards, NOM-001-SEMARNAT-1996 should be enforced to restrict the disposal of heavy metals and volatile organic compounds.

41. Information relating to the environment should be made available in a timely and transparent manner to prevent and reduce the effects of contaminants on human health, the environment and natural resources.

42. The legislation on activities that can affect human health or the environment should be implemented and activities with the potential to damage health or violate other human rights should be appropriately controlled.

b. Failure to comply with international and national standards on air quality has consequent negative effects on the right to health, particularly for children and vulnerable persons

43. Poor air quality results in at least 14,700 deaths per year in Mexico, according to estimates by the World Health Organization (WHO)⁵³. WHO argues that these deaths are premature, as they are brought on by illnesses associated with poor air quality. The result equates to 40 Mexicans losing their life in this way every day. The situation gets worse every year: WHO's 2007 report referred to 7,200 deaths⁵⁴, its 2009 report spoke of around 9,300 deaths linked to poor air quality⁵⁵. As mentioned earlier, the figure rose to 14,700 in 2011.

⁵² Pérez, Mariana (2010), "Cinco miradas al derecho a la salud. Estudios de caso en México, El Salvador y Nicaragua", Mexico: Fundar, Center of Analysis and Research, pp. 264 – 270.

⁵³ World Health Organization (2011). *Burden of disease associated with urban outdoor air pollution for 2008*. See: http://www.who.int/phe/health_topics/outdoorair/databases/burden_disease/en/index.html

⁵⁴ World Health Organization. *Country Profile of Environmental Burden of Disease, Public Health and the Environment, Geneva, 2007*. See: http://www.who.int/quantifying_ehimpacts/countryprofilesamro.pdf

⁵⁵ World Health Organization (2009), "Country Profile of Environmental Burden of Disease" in *Public Health and the Environment*, Geneva. See: http://www.who.int/quantifying_ehimpacts/national/countryprofile/mexico.pdf

44. A main cause of these deaths is diesel, a fuel that when ignited emits suspended particles⁵⁶ that perforate the lungs, particularly those of children and the elderly. For example, non-communicable chronic respiratory diseases account for 80% of all deaths among 0 to 4 year olds. That equates to 9.9 deaths per 100,000 inhabitants⁵⁷. An improvement in diesel quality could help resolve this problem and lessen the impact on the human rights of the people concerned, children in particular. This was exactly the reason for enacting NOM-086-SEMARNAT-SENER-SCFI-2005⁵⁸, which from 2009 introduced a requirement that all fuels sold in Mexico must contain low levels of sulfur. Petróleos Mexicanos (PEMEX), a state-owned company that has a monopoly over the production and distribution of energy resources, is responsible for guaranteeing the improvements in fuel quality. However, it has taken no action on this. Moreover, despite the obligation to oversee the implementation of NOM-086-SEMARNAT-SENER-SCFI-2005, neither the Office of the Federal Attorney for Environmental Protection nor the Office of the Federal Attorney for Consumer Protection have taken steps to ensure compliance. What is more, a number of Mexican Official Standards (NOMs)⁵⁹ on air quality do not meet current international standards on criteria pollutants⁶⁰, exceeding WHO recommendations⁶¹ by up to 70% and increasing the risk to people's health, life and physical integrity.

Recommendations:

45. Effective mechanisms for meeting standards on air quality should be introduced and, most importantly, requirements to improve the quality of fuels should be enforced. This would make it possible to protect Mexicans' rights to health, life and a healthy environment, particularly for vulnerable groups such as children and the elderly.

⁵⁶ Cifuentes, L., Mehta, S. and Dussailant, J. (2011), *The Health and Social Benefits of Reduced PM2.5 and Ozone concentrations in Brazil, Mexico, and Chilean cities: An analysis of Sao Paulo, Mexico City, and Santiago*. USA: Health Effects Institute. and ProAire (2011), *Programa para mejorar la calidad del aire de la Zona Metropolitana del Valle de México 2011-2020*. Mexico.

⁵⁷ The Mexican Environmental Law Center, "Informe sobre el derecho humano a la calidad de aire", presented as part of the *Working Meeting on "Environmental Policy and Human Rights in Mexico"* during the 143rd session of the Inter-American Commission on Human Rights. See: <http://respiramexico.org.mx/wp-content/uploads/2011/10/Informe-sobre-el-Derecho-Humano-a-la-calidad-de-aire.pdf>.

⁵⁸ See: http://www.paot.org.mx/centro/normas/NOM_086_SEMAR_SENER_SCFI_05_30ENE06.pdf

⁵⁹ For example, the Mexican Official Standards which establish limits on criteria pollutants, such as NOM-020-SSA1-1993, NOM-021-SSA1-1993, NOM-026-SSA1-1993, NOM-025-SSA1-1993, NOM-023-SSA1-1993 and NOM-022-SSA1-1993.

⁶⁰ There are two categories of air contaminants: criteria pollutants and non-criteria pollutants. Criteria pollutants are those identified as being harmful to human health and well-being. They became known as criteria pollutants after being made the subject of studies on air quality in the USA. The aim of those studies was to establish permissible levels of air contaminants not damaging to the environment or people's health and well-being. The term "criteria pollutants" has been adopted in a number of countries, and refers to: 1. Sulphur dioxide (SO₂) 2. Nitrogen dioxide (NO₂) 3. Particulate Matter (PM) 4. Lead (Pb) 5. Carbon monoxide (CO) 6. Ozone (O₃).

⁶¹ The maximum rolling eight-hour average concentration for ozone is 171.2 µg/m³ (0.08 ppm), that is to say 70% higher than the limit recommended by WHO.

46. NOMs that meet the highest international standards on air quality should be adopted to guarantee the protection of the rights to health, life and a healthy environment.

c. The lack of effective participation and reporting on environmental issues continues to pose an obstacle to protecting the right to a healthy environment

47. There are several channels through which civil society can participate on environmental policy, such as the Commission on Government Human Rights Policy's Sub-Commission on Human Rights and the Environment, or the Working Groups for Standard Implementation to the Secretariat of Environment and Natural Resources' Consultative Committee on Standardization (SEMARNAT). However, these channels do not function satisfactorily because of the low profile of their members and their rapid rotation, as well as the length of time it takes for processes to be completed and the long interval between meetings and the incapacity of those attending to make decisions. This would seem to suggest that these channels for participation are used more to legitimize certain decisions made by other government departments, rather than to listen to the proposals of experts from civil society.

Recommendations:

48. Considerations of environmental and social sustainability should be included in all public policy to safeguard the right to a healthy environment and other related rights.

49. Government representatives should be permitted to participate more fully in meetings with civil society to better safeguard the right to a healthy environment. The contributions of experts from civil society should be considered, and mechanisms to evaluate and improve the performance of the channels open to civil society should be introduced.

50. Environmental rights should be included in training programs for civil servants in all branches of government as part of the section on protecting and safeguarding human rights.