



September 8, 2008

**To :** Office of the High Commissioner for Human Rights (OHCHR), United Nations  
**From :** Interamerican Association for Environmental Defense, Mexican Environmental Law Center (CEMDA), Presencia Ciudadana Mexicana, and Mazahui  
**Re :** Universal Periodic Review for Mexico

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### **Executive Summary**

1. The undersigned organizations, in accordance with the outlines established by the Human Rights Council, respectfully submit these comments regarding the violations of human rights linked to environmental degradation in Mexico, to be taken into account during Mexico's Universal Periodic Review. The threat of the environmental situation, and its corresponding impacts on human rights, is exacerbated by the lack of judicial protection and suitable mechanisms to access of justice, which result in undermining the recognition of the right to a healthy environment and other related human rights.

2. We recommend that the Office of the High Commissioner for Human Rights include this information in the review that it prepares for Mexico, and that the Council take it into account during its evaluation and development of relevant recommendations.

3. The protection of a healthy environment as a human right<sup>1</sup> is crucial to secure an adequate quality of life for individuals, as are other directly related rights, such as health, integrity, and dignity. To not offer effective protection of this right and to allow the situation to worsen over time, undermines its recognition and, moreover, violates the human rights principles of universality, interdependence, and progressiveness. In fact, the environmental degradation in Mexico caused by state activities or the lack of control over private entities' activities has reached a point that threatens the health, the integrity, and even the lives of individuals.

4. In addition, Mexico neglects to uphold its obligation to respect, protect, promote, and guarantee the human right to a healthy environment and other related human rights, by not offering effective options for the defense of these rights through administrative and judicial avenues. It is worth emphasizing that while accessible administrative and judicial actions do exist in Mexico, their flaws and lack of application have rendered them ineffective to uphold human rights.

5. Another fundamental aspect to consider is that competent authorities in charge of protecting these rights and implementing measures when it is necessary, do not know or do not apply the regulations, and are not sufficiently independent or impartial.

6. Additionally, the existing mechanisms available in Mexico allowing access to information and public participation in environmental decisions have been insufficient to uphold the law and contribute to the effective protection of human rights.

7. This has particularly severe impacts for vulnerable communities, such as indigenous peoples, children, women, and the poor, among others. As has already been declared by human rights authorities, including the Committee for the Rights of the Child, it is vital that the State acts to promote the improvement of health and environmental conditions of the most vulnerable populations.<sup>2</sup> Given that circumstances of poverty are more severe in certain parts of country<sup>3</sup> –

aggravating the human rights situation – it is imperative to also take the differences in wealth into account in the solutions that the Mexican State implements.

## Introduction

8. According to the government, the environmental degradation in Mexico has reached an apocalyptic point,<sup>4</sup> and has become a human rights issue that is urgent to deal with. Even though there have been efforts to improve the situation,<sup>5</sup> impacts on the rights to a healthy environment, health, integrity, and quality of life, among other considerations, persist and threaten to get worse. Over the course of the past decade, between 3.5 and 5.5 million hectares of forests have been lost in Mexico, and the first-growth vegetation has been most affected.<sup>6</sup> Furthermore, 41 wildlife species have become extinct: 19 bird species, 11 fish species, 7 mammals and 4 species of plants.<sup>7</sup> The effects on fishing resources is also dire, as 90.4% of the national fisheries have deteriorated or been over-fished.<sup>8</sup> This environmental degradation has important consequences for individuals, given that it affects access to food and health, among other concerns – especially for the communities that directly depend on natural resources for their subsistence and the safeguarding of their customs and traditions. In fact, environmental degradation has uprooted multiple particularly vulnerable communities from their territories in order to search for new means of subsistence. This upheaval exposes them to circumstances of poverty and to the lack of health services, water, and other essentials.<sup>9</sup>

9. Another grave environmental problem is the availability of water and the contamination of water bodies, as 62% of the watersheds in the country have water-availability issues.<sup>10</sup> More than half of the monitored sites of superficial water bodies register concentrations of contamination above the maximum permitted limit.<sup>11</sup> This is due to inadequate management of water resources, and it threatens the quality and the stability of water, with consequent negative effects on ecosystems and public health,<sup>12</sup> besides undermining the rights to a healthy environment and to water.<sup>13</sup>

10. The inadequate disposal of solid and hazardous wastes is also very serious, since adequate infrastructure is absent. Thus, large quantities of wastes are deposited in areas of ecological importance, such as forests and rivers, or in inappropriate places, considerably impacting the public health. Various zones near cities have become great repositories of wastes, and without effective control from the government to prevent environmental contamination,<sup>14</sup> this dumping has grave affects on human health.<sup>15</sup> According to SEMARNAT's statistics for 2004: 52% of municipal solid waste material was deposited in landfills, 11.5% was deposited in land controlled sites, and 32.9% was deposited in open-air dumps.<sup>16</sup> Given the lack of adequate regulations for hazardous wastes, these are disposed of without adequate control, and therefore, in 2004, there were 297 sites identified as contaminated,<sup>17</sup> but no comprehensive data on the illicit dumping of toxic waste was ever released in Mexico.<sup>18</sup>

11. The atmospheric contamination in large cities such as Mexico City, is also a crucial public health problem since it has engendered the increase of carcinogenic diseases and other repository ailments, occasionally resulting in death.<sup>19</sup> This clearly violates the right to a healthy environment, to health, to integrity, and to life.

### I. Lack of effective Judicial Remedies to guarantee the defense and protection of the human right to a healthy environment and related human rights

A. *Procedural and Core Failures of constitutional actions (acción de amparo) makes it inefficient to guarantee the right to a healthy environment*

12. In spite of the constitutional recognition of the right to live in a healthy environment, the lack of regulation and modification of the *Amparo* Law renders it impossible to protect this human right through that legal remedy.<sup>20</sup> There are three fundamental obstacles that we would like to point out:

13. The first obstacle relates to the standing to sue that is an essential element for access to justice. The *acción de amparo* requires a direct and personal legal interest, excluding the option to sue for collective harm.<sup>21</sup> Therefore, if the act or omission of the authority affects the human rights of a group, the judge would have to declare it inadmissible.<sup>22</sup>

14. Second, and directly linked to the above, is the principle of relativity of rulings.<sup>23</sup> In keeping with this principle, the ruling in an *acción de amparo* can only have effects for the individual plaintiff, which ignores the possibility of collective damages occurring. Therefore, “it is necessary to bring into practice the recognition of the ‘diffused legal interest in environmental matters.’”<sup>24</sup>

15. The third most relevant obstacle to *acciones de amparo* that limits access to justice has to do with the large amounts of money demanded of the plaintiff as bonds or fees, when is requested by the plaintiffs, and the judge considers appropriate the suspension of the activities under suit, until judgment is rendered<sup>25</sup> - for example, suspension of activities or operations of industries whose contamination is affecting the health or the life of individuals. This, given that judges when deciding regarding the requested suspension to avoid further damages to human rights, mostly consider the possible damage occasioned to a third party. The social damages or the public interest that the situation is impacting are not considered an essential enough factor to preclude a ‘payment of liability.’ If some exceptions *do* exist, these apply over certain jurisdictions, such as agrarian (*agraria*), not for the totality of cases that require it. The inability to pay the mandated liabilities means that, in many cases, once a ruling has been decided, the harms claimed remain and have remained on-going, making the protection of the right impossible or the decision irrelevant.

16. The limitations described above evidence the technical and material impossibility to claim via *accion de amparo* the violation of the human right to a healthy environment. Therefore, in Mexico there are very few *amparo* suits filed, in spite of the number of violations that arise. It is evident that “the lack of access to environmental justice due to the shortcomings of the jurisdictional protection of environmental rights, violates the fundamental right to a healthy environment.”<sup>26</sup> This makes vital the modification of these legal remedies in order to effectively protect these rights.

#### *B. Ineffectiveness of civil remedies*

17. The Mexican regulations establish special civil actions for environmental damages only for wildlife and their habitat – and authorizes any person to file such suits.<sup>27</sup> On the other hand, only one state, Tabasco, out the 32 states in Mexico, recently adopted the Law of Civil Responsibility for Environmental Damage and Deterioration.<sup>28</sup>

18. For the remaining liability cases for environmental damage, it is necessary to use ordinary actions of civil liability that demand proof of damage to private property or goods. However, no specific regulations exist<sup>29</sup> for such actions in environmental cases, even though it is needed, given the particularities of these damages in comparison with other civil damages. This impedes the defense of the right to a healthy environment.

19. Another problem is that this action is only useful to address individual and direct damages made exclusively to the personal assets of the affected person. Therefore, it is not a viable action when damages are caused not necessarily to personal assets (as in the case of human rights or the

environment) or when the environmental damages impact the common good, for example when a river, the property of the Nation, or the air quality are affected.

20. Due to these shortcomings, “the mechanisms to address damages, granting just indemnities and assuring alternative methods of sustenance and reproduction are practically nonexistent.”<sup>30</sup> In addition, there are no options in the legislation to protect the diffused interests affected by the environmental degradation caused by agents of the state or private entities.

## **II. The existing administrative remedies are insufficient for the protection of the rights**

### *A. Public Participation Measures in Environmental matters*

#### 1. Limitations on Access to Environmental Information and Public Participation

21. The human right to information is also vital in the protection of the right to a healthy environment, not just in individual terms, but also because it directly affects public interest.<sup>31</sup> The right to information has been constitutionally recognized in Mexico since 1977, in environmental matters was regulated in 1996<sup>32</sup> and even in 2008 was regulated in the Constitution in a stronger manner<sup>33</sup>. Further, there is the Federal Transparency and Access to Public Governmental Information Law (henceforth, FTAPGIL) that has permitted the exercise of the right to access to environmental information through specific procedures and specialized departments to handle the requests.<sup>34</sup>

22. Recognizing the advances that there have been in access to environmental information, there are still procedural and core obstacles that have impeded the protection of this right. Among the most important limitations to examine include:<sup>35</sup>

- Lack of effective mechanisms that extend to the rights of large sections of the population, especially to those in circumstances of poverty and lower levels of education. The existing mechanisms are based on the use of the Internet and the ability to go to governmental offices located in the cities, which is not sufficient for those living outside cities.
- Excessive discretion of officials to refuse to divulge information due to a lack of clear regulation.
- Lack of knowledge of law from responsible authorities, who still regard requests as an attack, adopting a defensive attitude that inhibits the filing of motions.
- Impunity of the responsible authorities who inhibit, impede or commit acts of intimidation against petitioners.

23. There also are administrative mechanisms<sup>36</sup> to promote public participation in environmental management including: 1) advising committees under governmental auspices that include representative groups to analyze, evaluate and monitor policies, strategies and management tasks, and to draw up recommendations<sup>37</sup>; 2) public hearings regarding the development or declaration of certain governmental acts such as permits and authorizations – Evaluation of Environmental Impact<sup>38</sup> – the creation of Programs of Ecologic Land Use ('POET')<sup>39</sup>, and Management Programs for Natural Protected Areas<sup>40</sup>, and 3) the possibility of challenging the acts of authorities that harm the population and the environment – these include filing of complaints by the public and 'appeals for review,' which will be explained briefly in the following section.

24. In spite of the existence of these measures, the problems of legitimacy at advising counsels, the lack of recourses, and the insufficient publication of results, among other factors, mean “in practice, the lack of recognition from the state regarding the rights, of individuals or groups, to the defense and protection of the environment.”<sup>41</sup>

25. In Mexico there have arisen various conflicts resulting from the lack of adequate consultation with and participation by communities affected by governmental decisions. Thus the Committee of Economic, Social, and Cultural Rights urged the Mexican State to “duly consult indigenous and local communities” affected by large projects, in order to protect their human rights, particularly the right to information, to land, and to property – as well as their economic, social, and cultural rights<sup>42</sup>. The Special Rapporteur of the United Nations for Adequate Housing (also in relation to a Mexican case), requested that the government suspend the project until the rights were protected, “so that individuals are able to decide if they are in favor or opposed to the Project of La Parota, which would without doubt have a definitive impact on their lives, it is necessary that they have objective and truthful information.”<sup>43</sup>

## *B. Administrative Mechanisms of Defense*

### 1. Citizen Complaints

26. The citizen complaints do not properly constitute a means of protection to human rights, as they do not permit those affected to take a part in the administrative procedures that are initiated by filed complaints. Citizen complaints are a recourse that any person may file with the proper authority if they know of an illegal activity that affects the environment (Procuraduría Federal de Protección al Ambiente, PROFEPA). PROFEPA should then verify the facts and whether the regulations are being followed, and, if applicable, initiate an inspection and surveillance investigation.<sup>44</sup> If the investigation concludes that some actions could be criminal, it should be reported to the Federal Public Ministry, so that an appropriate process of investigation can be initiated and responsibility can be determined. Besides this, the PROFEPA can only make non binding recommendations, the majority of which are not complied with.

27. The flaws of such civil complaints were identified by the OHCHR in México, which affirmed, “filing of complaints by the public is still not an effective strategy to guarantee the right of a healthy environment.”<sup>45</sup> Until now these recommendations to improve the mechanism have not been addressed, although the need persists.

### 2. Appeal for Review

28. Through the exercise of this motion, those affected by a decision or activity are able to file suit against the administrative decision that is causing them harm, to obtain the suspension or remediation of it.<sup>46</sup> Although any person is able to initiate this motion alleging a personal harm or harm to the public interest, appeals for review are constantly denied for lack of grounds, without the violations being investigated. The impossibility of achieving protections in cases of collective harm is evident.

29. When measures such as the suspension of operations or of the contested administrative decisions are needed to avoid the increase of harm to the environment, the authorities impose extremely high economic fees or liabilities, so that it is impossible for the affected peoples to pay.<sup>47</sup> Thus, the measures of suspension are not implemented in practice, rendering it impossible to implement precautionary or preventative measures while existing harms increase the risk to the environment and to the human rights affected by the contested decisions.

### 3. Nullity Judgments

30. Nullity suits are motions filed before the Federal Tribunal of Tax and Administrative Justice<sup>48</sup>, as a second instance of the appeal for review described above. In practice the Federal Tribunal do not follow the rules and timeframes established for this procedure due to the workload and the inefficiency of the courts. The result is that opinions that should have been rendered within

six month are delayed up to two or three years, or even more, during which time the review and the remediation of the acts that cause harm are postponed.<sup>49</sup>

31. As with other legal suits, in practice it is not possible to obtain the suspension of administrative acts via judicial nullity, due to the high economic liabilities and fees that the courts establish to avoid harm to third-parties, and the absence of effective exceptions to this.<sup>50</sup> The former, as we have already mentioned, means that in cases in which liability of the fee cannot be secured and the contested activities are not suspended, the ruling is divested of content that aims to protect rights, so long as the contested activities persist while a final judgment is reached.

#### 4. Criminal Suits for Environmental Damages

32. In spite of establishing criminal provisions in the federal criminal law, in practice, the special prosecutors and PROFEPA have actually impeded the sentencing of those responsible for criminal acts, due to the lack of investigation, and of application of the law. Therefore, there is a disincentive to file claims of environmental crime with the commission, and this contributes the culture of impunity.

33. Until the last Constitutional Amendment (June 18, 2008), the Public Ministry had the discretion to remit to a judge an inquiry regarding the probable commission of a crime. These endless filings resulted in the Public Ministry monopolizing criminal actions, without there being any viable remedy when the Ministry did not take action. Starting on June 19, 2008, the law has to determine the cases where citizens can submit criminal action before the courts.<sup>51</sup>

#### 4. Commissions on Human Rights

34. The National Commission on Human Rights (CNDH)<sup>52</sup> and the State Commissions on Human Rights, which have the duty to promote and protect the human rights, have not been effective against violations linked to cases of environmental degradation either, due to their limited functions. According to internal regulations, the CNDH has oversight of the complaints regarding violations of human rights attributable to public officers from government agencies, in charge of defending the human rights of private citizens.<sup>53</sup> However, complaints related to environmental issues are generally sent to PROFEPA, an entity that is not in charge of human rights. Thus, none of the authorities directly address the reported human rights violations.

35. On the other hand, CNDH has not effectively exercised its role, particularly with respect to prosecuting violations of human rights. These violations include severe environmental degradation that seriously affects public health, to harassment and persecution of environmental defenders. In fact, while in some cases the CNDH has made some kind of recommendation, it does not mandate an investigation before competent authorities, which increases impunity in Mexico.<sup>54</sup>

36. Compounding the above matter: action on the part of the Human Rights Commissions is subject to the political will of its leaders, which represents an obstacle to the protection of human rights. A second obstacle arises when the recommendations declared by the Human Rights Commissions are ignored by public servants. Given the nature of their role as *ombudsman*, there does not exist a judicial post that can force the authorities to comply with a recommendation, leaving it subject only to implied political pressure.

37. In addition to this, the CNDH itself constantly neglects citizens' right to information by not offering complete information when it is sought, and even charging for access to certain documents, obstructing the exercise of the right.<sup>55</sup> This attitude denies not only international standards of access to information, but also national legislation such as the Access to Information Law.

### **III. Institutional and Structural Limitations of the Mexican System impede effective defense of the right to a healthy environment**

#### *A. The judicial system is slow and acts with impunity regarding filed complaints*

38. The lack of compliance of environmental laws in Mexico has been such that its citizens even consider it ‘dead law,’ given the absence of oversight and enforcement from authorities.<sup>56</sup> This adds to the lack of celerity to redress reported cases,<sup>57</sup> a situation that is as grave at the federal level as it is at the state level.<sup>58</sup> It is evident that this situation engenders a culture of impunity in relation to the violation of environmental rights. Even though this has been reported on multiple occasions by organizations and authorities,<sup>59</sup> the State has not implemented measures of improvement.

39. According to the Supreme Court of Justice itself: the fact that statistics on the performance of jurisdictional departments and leaders do not exist, and that mechanisms to evaluate the performance of the judicial branch have not been developed, contribute to the system’s lack of transparency and accountability.<sup>60</sup> In spite of the lack of data, experience indicates that administrative actions like judicial appeals take years to arrive at a final opinion, if this ever happens at all. Even merely admitting a suit can take six months. The lack of a rapid and effective response from the courts to redress cases violates the rights of every person to be protected in an effective and speedy manner by the courts.<sup>61</sup> In addition, the swift character of a ruling contributes to the impartiality of the judge<sup>62</sup> and consequently promotes the struggle against the culture of impunity.<sup>63</sup>

#### *B. Lack of independence and autonomy within the judicial system*

40. The independence of judges and courts is a principle of law<sup>64</sup> so that human rights are respected even when they have been or could be violated.<sup>65</sup> However, this does not always apply to cases of environmental degradation that can violate human rights, given that judges are constantly pressured by political or economic interests that can affect their decisions – and this clearly is contrary to human rights. Even at the constitutional level, even though the independence of judges is recognized as a principle of the judicial system, it is not the case with the principle of impartiality. Thus, the inclusion of this principle at the constitutional level is vital.<sup>66</sup>

41. The lack of independence and impartiality of judges in Mexico is also linked to the fact that judicial posts have not been professionalized.<sup>67</sup> Thus, the electing of judges still “perpetuates informal schemes of recruitment based fundamentally and almost exclusively on personal relations.”<sup>68</sup> This situation applies to the entire judicial system. As such it is also of great relevance in matters of the right to a healthy environment.

42. In many circumstances, a lack of independence is reflected also in administrative decisions, given that the SEMARNAT or PROFEPA authorities are constantly influenced by political and economic pressure by the Federal Executive Power or the State Governments. For example, in the case of large infrastructure projects, the authorization and viability of projects are on many occasions publicly affirmed without the requisite authority having had the opportunity to evaluate them from an environmental viewpoint.<sup>69</sup>

43. Furthermore, PROFEPA, the federal authority in charge of criminal investigations pertaining to the environment, though it may be formally independent, in practice depends politically on SEMARNAT, whose Director names or removes the Prosecutor.<sup>70</sup> Because of this, PROFEPA’s decisions are not completely independent of the Executive Power. This undermines the effectiveness of this entity to protect the right to a healthy environment.

*C. Lack of knowledge and skills on the part of judges and officials in environmental matters*

44. In agreement with the Basic Principles related to the Independence of the Judiciary: “*The individuals selected to occupy judicial posts will be suitable people of integrity and will have the appropriate legal training or qualifications.*”<sup>71</sup> In the case of Mexico, there is a systematic lack of knowledge of environmental law from judges. Thus it is particularly complicated, sometimes practically impossible, for laws to be applied accurately and in turn for them to protect the human rights at stake. Judges at the federal and state level, in diverse jurisdictions, including administrative and criminal, share this condition.

45. Moreover, PROFEPA, which is one of the most important institutions for the procurement of environmental justice, has some agents qualified to fulfill their roles, but its personnel and crew are insufficient to meet existing needs. According to their own evaluations, “PROFEPA confirms that, despite the identification of at-risk areas, the budget only allows it to confront problems in 10% of the affected communities.”<sup>72</sup>

*D. The “precautionary principle” does not apply in Mexican legislation*

46. The Precautionary Principle is one of the fundamental principles for anticipating and avoiding severe and irreversible environmental harm.<sup>73</sup> Given the level of risk of some activities, international environmental law inverts the burden of proof, demanding greater care in the evaluation of the activities to authorize, and offering the possibility of implementing urgent measures – for example, the suspension of activities, in order to avoid grave and irreversible harms to human beings and to the environment. Unfortunately, this possibility does not apply in this country, thus, “it is necessary to emphasize the urgent application of the precautionary principle. For the simple fact that it is included in international conventions that it has signed, Mexico has an obligation to realize it as one of the guiding principles in matters of environmental policy.”<sup>74</sup>

47. The application of this principle is vital also for cases in which environmental degradation severely affects human rights like health, integrity, or life – such as situations of contamination with toxic or dangerous substances in the ground or in water bodies. As with the cases of the Tetlama Dump and the Atoyac River,<sup>75</sup> the contamination of the Santiago River in Jalisco, or the grave contamination of air, water, and ground by oil, smelters, and mining industries, among others.

*E. Lack of effective exceptions for when individuals are not able to access the judicial and administrative systems for economic reasons*

48. High costs and, in particular, the absence of acceptable mechanisms or assistance that would allow people of limited resources access to justice in Mexico, obstruct efficient access to justice. Above we made reference to the fees and deposits often demanded in judicial processes (*accion de amparo*), such as administrative fees, to enforce preventive measures that avoid violations or threats to human rights. Because those exceptions do not exist, and the requirements of such mechanisms are so great that they render them nonviable, *de facto*, it denies the possibility of applying said measures for severe or irreversible harm to the environment.

49. Regarding the right to a healthy environment, in the majority of the situations the individuals whose rights are affected are in a clear situation of vulnerability with respect to those responsible for the violations. Thus it is essential that the State “adopts all those measures that permit the mitigation of the shortcomings that stand in the way of effective protection of the appropriate interests.”<sup>76</sup>

50. According with the Inter-American System of Human Rights jurisprudence: excessive fees in administrative or judicial processes, to the point that they impede access to justice, violate human rights.<sup>77</sup> Thus, “States should remove the legal, social, or economic obstacles that limit the possibility of access to justice.”<sup>78</sup> Requirements have been developed through international avenues for the case of Mexico,<sup>79</sup> without effective mechanisms having been implemented to remedy the situation.

#### **IV. State initiatives to remediate access to justice in environmental matters have not been approved and are still been discussed in Congress**

51. Various initiatives of reform have been presented before the Mexican Congress, aiming to obviate the obstacles to shelter suits that seek the protection of the right to a healthy environment and other human rights, both individual and collective. However, some initiatives submitted, some dating back to 2001, remain in discussion, without any sign of being solved.

52. With respect to the protection of diffused rights, there currently exists a initiative to amend the Constitution before the Senate Commission of Government regarding Collective Actions. This initiative proposes the creation of collective legal actions with the aim of protecting diffused interests, including the right to a healthy environment.<sup>80</sup> The approval of this initiative would permit members of affected groups, non-governmental organizations, the State, and the Public Ministry to sue responsible parties – be it a private citizen, a company, or the state itself – for harms caused to the collective. There would also exist the possibility of obtaining compensation for the damages caused to individuals, as well as the remediation of environmental harm caused to the public interest. This amendment would be an important achievement toward the protection of the right to a healthy environment. Also, it would benefit the standing to sue for affected parties–individually or collectively – for damages for harm caused by agents of the State or by private entities.

53. Furthermore, in relation to environmental responsibility, currently there is an initiative also before the Senate for the Federal Environmental Responsibility Law, which is expected to reform relevant legislation.<sup>81</sup> This will render it possible that administrative authorities and the Judicial Power deal with matters regarding liability for environmental harms. This initiative proposes a special process, which would entail rigorous application of the precautionary principle when the application of measures, i.e. the suspension of operations, is analyzed. This would also include an exception to liabilities that entail a financial guarantee. The progress of this initiative also portends new options for the effective protection of the right to a healthy environment.

#### **V. Conclusions and Recommendations**

54. In order for Mexico to confront and progress in the challenge to improve the right to a healthy environment and access to justice, we recommend that the State:

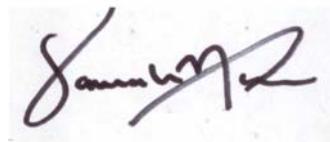
- Address the situation of impunity regarding environmental matters through the establishment of effective investigation and enforcement mechanisms for the responsibility of harms.
- Take into account the recommendations of international human rights organizations, including the ESCR Committee, Committee for the Rights of Children, the Inter-American Court and Commission on Human Rights, and the UN Special Rapporteurs.

- Redress the lack of access to justice in cases of protection of the right to a healthy environment through, among other means, the following measures: 1) necessary constitutional and legal modifications as regards to the *accion de amparo*, or the creation of other effective legal remedies to protect human rights, which would include recognition of diffused legal interest (standing to sue), 2) implement mechanisms that promote the removal of economic and social obstacles to the access of justice, 3) adoption of international standards for the protection of human rights.
- Improve the conditions for access to information and public participation, through effective mechanisms including the adoption of the guidelines and obligations of the Aarhus Convention and similar measures.
- Include the area of environmental law as part of the training programs for officials of the executive, judicial, and legislative powers.
- Promote greater autonomy for intuitions through standards of transparent and objective decision-making processes, lessening abuses of discretion.

Respectfully,



Astrid Puentes Riaño  
Co-Directora, AIDA  
[apuentes@aida-americas.org](mailto:apuentes@aida-americas.org)



Samantha Namnum  
Programa Derechos Humanos y Ambiente, CEMDA  
[snamnum@cemda.org.mx](mailto:snamnum@cemda.org.mx)

Presencia Ciudadana Mexicana, A.C.  
[www.presenciaciudadana.org.mx](http://www.presenciaciudadana.org.mx)

Mazahui A.C.  
[www.mazahui.org.mx](http://www.mazahui.org.mx)

<sup>1</sup> Mexican Constitution, February 5, 1917, art. 4, and Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights "Protocol of San Salvador", November 17, 1988, ratified by Mexico, March 8, 1996, art. 11.

<sup>2</sup> Committee on the Rights of the Child, Consideration of Reports Submitted by States parties under Article 44 of the Convention, CRC/C/MEX/CO/3, Sec. 49.

<sup>3</sup> Office of the United Nations High Commissioner for Human Rights in Mexico (hereinafter OHCHR Report), *Diagnosis on the Situation of Human Rights in Mexico*, 2003. Across the country, poverty affects more rural areas: "In the urban population, 32.3% were in condition of poverty and 6.6% in abject poverty, while for the rural population percentages were 54.7% and 28.5% respectively ", p. 69. The states of Chiapas, Oaxaca and Guerrero are the ones who suffer most from food poverty, Ib. p. 107.

<sup>4</sup> OHCHR Report, p. 119, citing *Program for Environmental Justice 2001-2006*, p. 3.

<sup>5</sup> Special Rapporteur of the United Nations on Adequate Housing, E/CN.4/2003/5/Add.3, Sec. 31: "recommends to further the process of coordination and discussions in order to include the sectors related to housing, particularly water, sanitation, health, environment, indigenous people, women's issues and disability"

<sup>6</sup> Ministry of Environment and Natural Resources (SEMARNAT), *Report of the Environmental Situation in Mexico, Digest of Environmental Statistics*, Mexico, 2005 (hereinafter SEMARNAT, 2005), p. 76.

<sup>7</sup> SEMARNAT, 2005, p. 163 and SEMARNAT, *The Environmental Management in Mexico*, 2006 (hereinafter SEMARNAT, 2006), p. 132.

<sup>8</sup> SEMARNAT, 2005, p. 234.

<sup>9</sup> Granados González, Laura y Poblano Ramos, Fabiola, *Rights of Indigenous Peoples*, DFensor, Human Rights Commission of the Federal District, N° 8, year VI, August 2008, p. 15.

<sup>10</sup> SEMARNAT, 2005 y SEMARNAT, 2006, p.251. In addition, 16% of aquifers in the country are overexploited and about 6% suffer some kind of saline contamination.

<sup>11</sup> SEMARNAT, 2006, p. 245-246.

<sup>12</sup> OHCHR Report, p. 91: "...in the case of diarrhea diseases, where we see a significant upturn since 1995, which shows a high correlation with the lack of bacteriological water quality which still affects 21% of the national population."

<sup>13</sup> The right to water recognized by the Committee on Economic, Social and Cultural Rights, E/C.12/2002/11.

<sup>14</sup> Coordinating Committee for the Preparation of Diagnosis and Human Rights Program of the Federal District, *Human Rights Assessment of the Federal District*, 2008, p. 127 and 128: Only in the Federal District, 12,500 tons of waste are generated daily and there is only one landfill which receives 382 tons, the rest of the solid wastes stays in clandestine dumps, rivers, and streets.

<sup>15</sup> OHCHR Report, p. 123: "There is a crisis in the management of hazardous waste, causing thousands of illnesses such as cancer, genetic malformations, and so on, linked to these substances."

<sup>16</sup> SEMARNAT, 2005, p. 351, y SEMARNAT, 2006, p. 287.

<sup>17</sup> SEMARNAT, 2005, p. 354, y SEMARNAT, 2006, p. 290.

<sup>18</sup> Report of the Special Rapporteur on toxic wastes, E/CN.4/1999/46/Add. 1, Sec. 109: "Even countries like Costa Rica and Mexico aimed not know the existence of specific cases of illicit dumping of toxic waste in their territory, admitted not have reliable data in order to rule out this possibility safely."

<sup>19</sup> Ministry of Health, *National Health Program 2007-2012, For a Healthy Mexico: Building Partnerships for better health*, Mexico, 2007, p. 41: "The suspended particles are associated with lung cancer and cardio-pulmonary diseases; ozone is especially acute for the respiratory tract. At the global level air pollution is responsible for 5% of cases of cancer of the trachea, bronchi and lungs, 2% of mortality and cardio-respiratory 1% of deaths from respiratory infections."

<sup>20</sup> Report on the mission in Mexico by the Special Rapporteur on the Independence of Judges and Lawyers, submitted in accordance with Resolution 2001/39 of the Commission on Human Rights, E/CN.4/2002/72/Add.1, Sec. 145: "The Special Rapporteur was also told that in many cases the amparo rulings are not duly implemented, leading to a continuation of the original violation of the individual's rights."

<sup>21</sup> Congress of the United Mexican States, Ley de Amparo, Official Journal of the Federation, January 10, 1936, (hereinafter Ley de Amparo), art. 4: "The trial of Amparo only can be promoted by the party to whom a harm from a law, treaty, regulation or any other act that is claimed" and art. 166: "The demand for defense must be made in writing, which expressed: I. The name and address of the complainant and who promotes on his behalf."

<sup>22</sup> Ley de Amparo, art. 73 fraction V: "The trial is inadmissible for defense [...] against acts that do not affect the legal interests of the complainant."

<sup>23</sup> Ley de Amparo, art. 76: "The decisions from Amparo actions will only refer to those individuals or private or official entities, that had requested the action. The decision will be limited, if appropriate ,to the special case regarding the legal action, without making a general statement regarding the law or act that motivate it."

<sup>24</sup> OHCHR Report, 2003, p. 121.

<sup>25</sup> Ley de Amparo, art. 125: "In cases where the suspension is appropriate but may cause harm or injury to a third person, shall be granted if the complainant gives assurance enough to repair the damage and to compensate the damages that were caused if favorable judgment in the trial of Amparo is not obtained... When the suspension may affect rights of the third parties, other than estimable in money, the authority has the discretion to fix the value to pay as guarantee."

<sup>26</sup> OHCHR Report, 2003, p. 122.

<sup>27</sup> Congress of the United Mexican States, General Law of Wildlife, Official Journal of the Federation, 2000, art. 107. There is even the Law on Civil Liability for Nuclear Damage, Official Journal of the Federation, on December 31, 1974, there is not registry that the law has ever been used.

<sup>28</sup> Official Journal of the State of Tabasco, on December 29, 2004.

<sup>29</sup> Federal Code of Civil Procedure, Official Journal of the Federation, May 26, July 14, 13 and August 31, 1928, art. 1918.

<sup>30</sup> OHCHR Report, 2003, p. 122.

<sup>31</sup> Inter-American Court of Human Rights, *Case Claude Reyes v. Case Chile*, Series C, No. 151, judgment, September 16, 2006, par. 99.

<sup>32</sup> By reforming the LGEEPA 1996, it was established for the first time the possibility of requesting environmental information to the competent authorities, Art. 159 Bis-3.

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<sup>33</sup> Mexican Constitution, Art. 6: "The right to information is guaranteed by the State" (Reformed by decree published in the Official Journal of the Federation on November 13, 2007).

<sup>34</sup> Congress of the United Mexican States Federal Law of Transparency and Access to Public Government Information, Official Journal of the Federation, June 11, 2002.

<sup>35</sup> Conclusions of the discussion session on "Access to Environmental Information", where 34 representatives of organizations, collectives and government entities participated, organized by the Mexican Center for Environmental Law, June 4, 2008, Mexico City.

<sup>36</sup> Congress of the United Mexican States, Federal Administrative Procedure Law, Official Journal of the Federation, August 4, 1994, and Congress of the United Mexican States, the Federal Code of Civil Procedural, Official Journal of the Federation, February 24, 1943 .

<sup>37</sup> These include the Advisory Councils for Sustainable Development (CCDS), the National Forestry Technical Advisory Council (CONAF), the National Council of Natural Protected Areas (CONANP) and the National Advisory Committee for Standardization (COMARNAT).

<sup>38</sup> LGEEPA, art. 34.

<sup>39</sup> LGEEPA, art. 20 BIS.

<sup>40</sup> LGEEPA Regulations about natural protected areas, Official Journal of the Federation, November 30, 2000.

<sup>41</sup> Report OHCHR, 2003, p. 120..

<sup>42</sup> Committee on Economic Social and Cultural Rights, E/C.12/MEX/CO/4, Sec. 10 and 28.

<sup>43</sup> General Assembly of United Nations, *Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-discrimination in this Context*, Miloon Kothari, Addendum, A/HCR/7/16/Add.1, Sec. 5.

<sup>44</sup> LGEEPA, art. 189 y 190.

<sup>45</sup> OHCHR Report, 2003, p. 120.

<sup>46</sup> LGEEPA, art. 180.

<sup>47</sup> LGEEPA. art. 177.

<sup>48</sup> Congress of the United Mexican States, Federal Law on Administrative Procedure, Official Journal of the Federation, 1 December 2005, art.3.

<sup>49</sup> The duration of these processes is based on the experience of NGOs that litigate environmental and public interest issues in Mexico, particularly CEMDA and FUNDAR. Anecdotic information is used, since there are no official statistics that may determine the average time that these processes require.

<sup>50</sup> Congress of the United Mexican States, Federal Administrative Procedure Act (hereinafter LFPA), Official Journal of the Federation, August 4, 1994, art. 87.

<sup>51</sup> Mexican Constitution, art. 21, second paragraph.

<sup>52</sup> Created by Constitutional Amendment to Article 102, paragraph B, September 13, 1999.

<sup>53</sup> Regulations of the National Commission on Human Rights, Official Journal of the Federation, September 29, 2003, art. 11: "The complaint concerning alleged human rights violations attributed to public servants from agencies with powers to meet complaints and defending the rights of individuals, such as the attorney Agricultural Federal Consumer, Federal Environmental Protection or the Defense Federal Labour, National Commission for Medical Arbitration, National Commission on Banks and Values, National Commission for the Protection and Defense of the Users of Financial Services, National Council to Prevent Discrimination, Federal Institute of Access to Public Information and others that have similar powers, are within the jurisdiction of the National Commission".

<sup>54</sup> As it is the case of the peasant leaders Rodolfo Montiel and Teodoro Cabrera, environmentalists activists in Guerrero. They were illegally detained and tortured by soldiers in 1999. The CNDH uttered a recommendation (CNDH Recommendation 8 / 2000, 14 July 2000), but closed the case without major criminal investigations because of lack of information. Human Rights Watch, *The National Commission on Human Rights in Mexico, a critical assessment*, Volume 20, No. 1 (B), February 2008, p. 56.

<sup>55</sup> Human Rights Watch, *The National Commission on Human Rights in Mexico, a critical assessment*, Volume 20, No. 1 (B), February 2008, p.129, it does not appear online information concerning recommendations to government authorities and "CNDH has asked 93 pesos for each copy of a page containing classified or confidential information", p. 132.

<sup>56</sup> OHCHR Report, 2003, p.124.

<sup>57</sup> Independence of the Judiciary, Administration of Justice, Impunity, Report of the Special Rapporteur Dato'Param Cumaraswamy on the independence of judges and lawyers, E/CN.4/2002/72/Add.1, párr.139: "Although the Constitution sets fixed time limits within which a case must be heard and disposed of by the court in penal matters (four months in case of offences carrying a maximum sentence of two years' imprisonment, and one year for others), these terms are frequently surpassed."

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<sup>58</sup> Coordinating Committee for the Preparation of Diagnosis and Human Rights Program of the Federal District, *Assessment of Human Rights in the Federal District*, Mexico City, 2008, Sec. 2052: "In the Federal District access to justice is hampered by the slow processes."

<sup>59</sup> OHCHR Report, 2003, p. 122.

<sup>60</sup> It is one of the observations of the Judiciary Branch of the Federation, Supreme Court, *White Paper on Judicial Reform, An Agenda for Justice in Mexico*, Mexico 2006, p. 241.

<sup>61</sup> American Convention, art. 8.1: "Everyone has the right to be heard, with due guarantees and within a reasonable time, by a competent court or tribunal".

<sup>62</sup> Human Rights Committee, General Observation No. 32, CCPR/C/CG/32, Sec. 53.

<sup>63</sup> Principle 19 of the Report of the Expert Diane Orentlicher, Set of Principles for the protection and promotion of human rights through action to combat impunity, E/CN.4/2005/102/Add.1, p. 12: "States undertake prompt, thorough, independent and impartial violations of human rights and international humanitarian law and take appropriate measures in respect of the perpetrators, especially in the field of criminal justice, to be processed, duly tried and convicted."

<sup>64</sup> American Convention on Human Rights, Art. 8.1; Universal Declaration of Human Rights, art.10; Basic Principles on the Independence of the Judiciary, Principle 1 and ICCPR, art. 14.

<sup>65</sup> Human Rights Committee, General Comment No. 32, CCPR/C/CG/32, Sec. 2: "It is an essential element for the protection of human rights", for which States must guarantee the independence of judges from any political pressure, Sec. 18 and 19.

<sup>66</sup> Mexican civil society organizations, Proposal for Constitutional Amendment regarding Human Rights, proposed adding the "impartiality" to Article 17 of the Mexican Constitution regarding justice, February 2008, p. 97.

<sup>67</sup> Report of the Special Rapporteur on the independence of judges and lawyers, E/CN.4/2002/72/Add.1, par.. 100: "Federal or State legislation concerning qualification to practice and the organization of the legal profession is non-existent".

<sup>68</sup> Judiciary Branch of the Federation, Supreme Court, *White Paper on Judicial Reform, An Agenda for Justice in Mexico*, Mexico 2006, p. 211.

<sup>69</sup> One example is the construction of Highway Lerma-Three Marias, the Director of SEMARNAT confirmed the viability of the project even though the Environmental Impact Statement was not yet approved. Available at : <http://www.jornada.unam.mx/2008/02/21/index.php?section=sociedad&article=045n2soc>.

<sup>70</sup> Internal Regulations of SEMARNAT, published in the Third Section of the Official Journal the Federation, January 21, 2003, art. 2, 5 and 180.

<sup>71</sup> Principles on the Independence of the Judiciary adopted by the Seventh United Nations Congress on Crime Prevention and Treatment of Offenders, held in Milan from August 26 to September 6, 1985, subject to confirmation by the General Assembly at its Resolution 40/32 of November 29, 1985 and 40/146 of December 13, 1985. Available at: [http://www.unhchr.ch/spanish/html/menu3/b/h\\_comp50\\_sp.htm](http://www.unhchr.ch/spanish/html/menu3/b/h_comp50_sp.htm).

<sup>72</sup> OHCHR Report , 2003, p.122.

<sup>73</sup> Rio Declaration on Environment and Development 1992, A/CONF.151/26 (Vol. I) Top 15: "States should apply the precautionary approach widely according to their capabilities."

<sup>74</sup> OHCHR Report , 2003, p. 124.

<sup>75</sup> Report of Civil Society Organizations on the situation of Economic, Social, Cultural and Environmental Law in Mexico (1997-2006). *Alternative Report to the Fourth Periodic Report of Mexico on the implementation of the ICESCR*, 2007, p. 127: "There have been presented serious illnesses or deaths thrombocytopenia (pre-leukemia, leukemia or other cancers)."

<sup>76</sup> Inter-American Commission on Human Rights, *Access to Justice as the Guarantee of Rights and Economic, Social and Cultural, Studies of the Standards set by the Inter-American Human Rights System*, 2007, par. 20.

<sup>77</sup> IACtHR, Access to Justice Report, 2007, par. 8.

<sup>78</sup> IACtHR, Access to Justice Report, 2007, par. 1. See also Inter-American Court of Human Rights, C.O. 11/90, August 10, 1990.

<sup>79</sup> Report of the Special Rapporteur of the United Nations on Adequate Housing, Addendum, E/CN.4/2003/5/Add.3, p. 3: "Throughout the country there are communities threatened by displacement [forced] and most poor families do not receive legal protection nor has the ability to lodge an appeal court."

<sup>80</sup> This reform initiative proposes to amend Article 17 Constitutional and an addendum to the Federal Code of Civil Procedure, to include collective action in the Mexican legal system. Yet this initiative has not been submitted to the Senate formally.

<sup>81</sup> In particular the LGEEPA, the General Law on Wildlife, the General Law on the Prevention and Integrated Waste Management, General Law of Sustainable Forestry Development Authority and the Law on Biosafety of genetically modified organisms as well as the Federal Criminal Act.