

**MEXICO: LAND AND
FREEDOM?**

**CRIMINALIZATION OF
DEFENDERS OF THE LAND,
TERRITORY AND
ENVIRONMENT**

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1 EXECUTIVE SUMMARY

Peaceful protest is a right protected by international human rights law; it is also a way to demand other human rights and to denounce their violation. Protest is often inconvenient for governments and people in power as it highlights the dissatisfaction of those who raise their voices to express dissent or demand accountability from their authorities. One of the main threats to the exercise of this right is the criminalization of protest, understood as the punitive use of the criminal justice system to deter, punish and prevent people from exercising their right to protest peacefully.

In Mexico, the criminalization of protest is also part of a broader strategy of discouraging and undermining the defence of rights related to the land, territory and environment. Defenders of the land, territory and environment work in a hostile context, which includes constant stigmatization, harassment, attacks, attempts on their lives, forced displacement, disappearances and killings.

In its research for this report, Amnesty International documented four cases where the criminal justice system was used against people who protested to defend the land, territory and environment, and whose judicial proceedings were pending at the time the research was carried out:¹ the cases of Colonia Maya in San Cristóbal de las Casas, Chiapas, made up of a diverse group of people who united to protest against the construction of a residential subdivision in a protected area that would cause environmental damage; the case of Zacatepec in which Miguel and Alejandro, Nahua communicators and defenders who protested against the construction of a sewer in Ciudad Industrial Huejotzingo, Puebla, which would flow into the Metlapanapa River, contaminating it; the case of Chilón, where César and José Luis, Tzeltal defenders, were criminalized for opposing the construction of National Guard barracks on their territory; and the case of Jesús Ariel, Arturo and Juan Diego, members of the Sitalpech Maya Indigenous people, who oppose a mega pig farm on their territory that has already caused pollution, impacted the water supply and resulted in health problems. In all these protests, the Mexican state has responded by criminalizing protesters, initiating criminal proceedings at the state level against defenders who protested peacefully.

The right to protest has been exercised by defenders of the land, territory and environment to demand respect for their rights, including self-determination; free, prior and informed consent in the cases involving Indigenous peoples; a healthy environment; and information about and participation in projects which could have an impact on the environment, among others. Additionally, it has been a fundamental avenue when other institutional mechanisms have failed or are not accessible to those who protest.

In the cases studied by Amnesty International, criminal proceedings were used against defenders, with the aim of limiting the right to peaceful protest without complying with the principles of legality, necessity and proportionality. In no case were the contexts in which the protests occurred, the causes that sparked them, or their defence for the rights to the land, territory and environment taken into account. Nor were less restrictive means sought to resolve the concerns of protesters.

¹ The cases began in the following years: Colonia Maya, 2017; Zacatepec, 2019; Chilón 2020; and Sitalpech, 2023.

The criminalization of protests defending the land, territory and environment has been made possible by the use of vague or ambiguous definitions of crimes such as “riot”, “obstruction of public works” and variations of the crime of “attacks on roadways”. In addition, there have been efforts to categorize events that occur during protests according to other criminal offences through broad interpretations of definitions of crimes and statements that distort the facts.

The accusations are mainly fabricated using statements by public officials and people who work for the companies directly linked to the issues highlighted by the communities. In no case is there conclusive evidence indicating that any crime may have been committed. In all the cases documented, false or distorted facts have been used that could result in aggravated criminal charges and that are not compellingly supported by the evidence presented. For example, Miguel and Alejandro, from Zacatepec, are accused of torching a van with petrol bombs, which was never proven; César and José Luis, from Chilón, are accused of throwing stones at police officers without more evidence than the testimonies of the police officers allegedly affected; and the members of the board of directors of the Colonia Maya are accused of kidnapping a worker when his freedom was never restricted.

Amnesty International found that the criminalization of protest to defend the land, territory and environment has some common characteristics in the cases studied that are of concern. The complaints filed are mostly aimed at people who are considered leaders or the most visible members of protest movements and their criminal prosecutions cited all possible aggravating factors, thus seeking the heaviest penalties and ones that can result in their being deprived of their liberty. This resulted in the preventive detention of Miguel (Zacatepec) and César and José Luis (Chilón). Subsequently, people are released and required to present themselves to the authorities and sign in periodically, in some cases, making it impossible for them to leave their states.

Proceedings are often prolonged for various reasons, creating a chilling effect that leads to the intimidation of other people defending the same causes. Additionally, there is a constant threat that proceedings will be resumed or new crimes fabricated. Three of the cases studied remain open or there is a possibility that they will be reopened, which has a chilling effect, both on those on trial and on those who support the defence of the rights to land, territory and environment, since there is a constant fear of being deprived of one's freedom or of reprisals.

Criminalization processes are often accompanied by the stigmatization of defenders and serious risks to their safety and physical integrity. Their legal representatives and the people who provide them with ongoing support are also targeted. In the three cases concerning Indigenous peoples documented, there was also excessive use of force by the authorities.

In the context of the protests about the land, territory and environment studied, there were various human rights violations against protesters that have remained in absolute impunity. The main one is the use of the criminal justice system for dissenting or speaking out against projects in which local governments and companies have an interest. In addition, violations that occur in the context of protests have also not been investigated, such as defamation, threats to protesters' safety and excessive use of force. This situation increases the chilling effect that prevents people from exercising their right to protest in defence of the territory or the environment.

The criminalization of protest has both individual and collective impacts, which must not be ignored. Among the impacts most frequently cited to Amnesty International at the individual level are physical and psychological ones, such as illnesses, physical pain as a result of blows sustained, fear, anxiety,

sleep difficulties, stress, impotence, feelings of injustice about what happened to them and the effects on their human rights work. In addition, there are impacts on the family because of the fear and concern families experience caused by threats and even the internal displacement of some family members to avoid attacks.

Judicial processes also have economic impacts that have significant consequences, such as periodic journeys to go to sign in and the expenses incurred by trials, even when the people being criminalized have free legal representation. Another significant economic aspect is that as a result of the process of criminalization some people have lost their employment and others have seen their ability to get jobs affected due to the negative stigma associated with criminal proceedings against them.

The criminalization of protest also has collective impacts or consequences. The principal impact is the intimidatory effect of deterring people from demanding their rights and the protection of the land, territory and environment. Criminal proceedings against people who advocate for the same causes often instil fear when they see that their legitimate demands can result in criminal proceedings, stigmatization, repression and in threats to their life and security, among other harms. This causes many people to decide to abandon pursuing efforts to demand their rights are respected. In other cases, criminalization has had a destabilizing effect on community dynamics because of the distrust generated among other people in the community who learn that criminal proceedings are being brought against them.

Finally, it is important to note that the criminalization of protest diverts attention away from the demands of defenders of the land, territory and environment regarding the root causes of the challenges they face. In addressing the right to protest it is important to recognize that responding to social conflict with a punitive approach generally intensifies problems and does not resolve the substantive issues. The demands of defenders must be properly heard and examined and their right to protest guaranteed.

Amnesty International is setting out a series of recommendations that seek to address the issue of the criminalization of protest in defence of the land, territory and environment in a comprehensive manner. These general recommendations seek to encourage the authorities to recognize the valuable work carried out by these people and to refrain from stigmatizing them through discourses that discredit them. They also urge the authorities to comply with their prior obligations regarding obtaining free and informed consent and environmental impact assessments and guaranteeing the participation of defenders of the land, territory and environment in the matters that concern them.

In relation to the continuing attacks and the hostile environment in which the defenders are working, Amnesty International urges the authorities to carry out educational campaigns, highlighting the important work carried out by defenders, as well as strengthening the Ministry of the Interior's Protection Mechanism for Human Rights Defenders and Journalists so that the measures they grant are effective for the protection of this type of defence and timely. For the above, it is essential to have specific statistics on attacks against defenders of the land, territory and environment to enable efficient preventive and reactive planning. In addition, preventing and addressing the impunity prevailing regarding attacks on defenders of the land, territory and environment is essential and a priority.

Amnesty International also recommends that the authorities refrain from using militarized security forces, such as the National Guard, to police protests and that the National Law on the Use of Force

be amended to bring it into line with international standards. Specifically in relation to the criminalization of protest, Amnesty International recommends reviewing the definitions of crimes used in the cases documented and bringing them into line with international standards to ensure that they are not used against the work of defenders. It also recommends reviewing the precautionary measures granted to prevent them from interfering with defenders' work, as well as providing training to Prosecutor's Offices so that they can promptly identify unfounded or criminalizing complaints and act accordingly.

Finally, Amnesty International sets out a series of specific recommendations regarding the documented cases which form the basis and heart of this report. These include a call to the state to immediately end the criminalization of protest to defend the land, territory and environment. In addition, the instances of human rights violations reported in each case must be investigated and comprehensive reparation for defenders must be ensured.

2 METHODOLOGY

Amnesty International documented four cases involving 12 people who were criminalized for protesting peacefully in the context of defending the land, territory and environment in Mexico and against whom judicial proceedings remained open at the time of the research was carried out. A review of existing literature on the right to protest, the criminalization of protest and protests relating to defence of the land and territory was conducted. Requests for information were also made through national and state transparency tools related to protocols for actions carried out during protests, resources used in protests and accountability mechanisms on processes carried out during protests.

Amnesty International conducted a review of court records, including transcripts of witness interviews, arrest warrants and rulings from human rights bodies. A total of 12 interviews were conducted with the people being criminalized who consented to be included in this report, as well as four interviews with people who advise and provide legal support in these cases. In addition, four focus groups were held with rights holders and people who participated in the protests in each of the cases. Interviews and focus groups were conducted in person or via video call between December 2022 and April 2023. Cases were up to date as of 8 June 2023.

This report focuses mainly on the analysis of the four cases indicated above, so the interviews and the analysis of the files constitute the main sources of information. The conclusions are based on an analysis of what has been observed in the light of international human rights law. Although the cases have in common the criminalization and defence of rights related to the protection of the land, territory and environment, they are not related to each other, so each case represents only the position of that particular case and does not necessarily reflect or represent that of the other cases.

The central theme of the report is the criminalization of protest, however, other human rights issues are addressed, such as the rights of Indigenous peoples and the right to a healthy environment. This cross-cutting analysis is not intended to be exhaustive or to delve into the probable violation of these rights, but to provide elements related to criminalization and the effect they have on it.

The documentation process began by identifying cases of criminalization of the protest in Mexico, whatever the focus of the protest. However, during this process, a worrying trend was detected of the

stigmatization, repression and criminalization of protests to defend the land, territory and environment. Therefore, this report details cases of defenders who have been criminalized for their work defending and participating in organizing protests to defend environmental rights, resist dispossession of their lands and oppose the destruction of their territory.

Amnesty International would like to thank all those who shared their stories with us to make this report possible. It is also grateful for the invaluable information provided by the following organizations: Centro de Derechos Humanos Fray Bartolomé de las Casas, Centro de Derechos Humanos Miguel Agustín Pro Juárez (Centro Prodh), Centro de Justicia, Democracia e Igualdad (CEJUDI), Centro de Derechos Humanos Zeferino Ladrillero, Centro Mexicano de Defensa Ambiental (CEMDA), Comisión Mexicana de Defensa y Promoción de Derechos Humanos (CMDPDH), Frente por la Libertad de Expresión y la Protesta Social (FLEPS), Fundación para la Justicia y el Estado Democrático de Derecho (FJEDD) and Kanan Derechos Humanos. The organization would also like to thank the Ibero-American University of Puebla, academic Daniel Vázquez and the students at the Clínica Internacional de Derechos Humanos (CAVAC AC)

3 PROTESTS BY DEFENDERS OF THE LAND, TERRITORY AND ENVIRONMENT

3.1 IMPORTANCE OF THE RIGHT TO PROTEST

Protest is closely linked to activities to defend human rights.² It is through protests that rights have been recognized and included and guaranteed at the national and state levels. Various rights, such as freedom of expression, peaceful assembly, freedom of association, political rights and the right to information are exercised through protest. The right to protest allows people to exercise their autonomy and express their demands,³ while at the same time enabling people to highlight human rights abuses and violations and to ensure recognition of other rights,⁴ including the protection of the land, territory and environment.

Throughout Mexican history, various collectives and groups have had to take action to defend access to land and to protect territory and the environment, as well as to demand other human rights. Conflicts to defend territory in rural and urban areas from factors such as urbanization and resource extraction have provoked social resistance because of the absence of free, prior and informed consent, forced relocations, as well as the loss of ways of life and quality of life. Rural communities and Indigenous peoples have had to defend their territories and autonomy in order to maintain spaces to support their socio-economic, political and cultural practices, as well as to protect their

² Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 3.

³ UN Human Rights Committee, General Comment No. 37, Article 21: Right to peaceful assembly, 17 September 2020, CCPR/C/GC/37, para. 2.

⁴ UN Human Rights Committee, General Comment No. 37, 17 September 2020, CCPR/C/GC/37, para. 2.

built heritage and the spaces where they carry out their productive work.⁵ Environmental degradation has also sparked social conflicts, resulting mobilizations against pollution and extractive, energy and infrastructure construction projects.

“Protest has become a right and an obligation. I see protest as a fundamental right that we have to develop, improve and in partnership deploy all our resources, all our art, all our intelligence, like a little seed that spreads everywhere.”⁶

Peaceful protests, mainly on public highways, have been a fundamental method used by people worldwide to express opposition and to expose the risks posed by various megaprojects, as well as to claim their rights to self-determination; to free, prior and informed consent; to the land, territory and environment.⁷ In many cases, protest has been the only channel possible for people in vulnerable situations or who have faced difficulties and obstacles in accessing other institutional routes or the public domain to raise their concerns.⁸

Protest is, therefore, an invaluable mechanism for conveying messages to and demanding rights from power structures; it is “an avenue to express grievances and demands in the public domain, especially at times when existing political, social, economic or cultural systems preclude or systematically ignore those demands”.⁹

3.2 THE STATE’S RESPONSE TO DEFENCE OF THE LAND, TERRITORY AND ENVIRONMENT

3.2.1 A HEALTHY ENVIRONMENT, LAND AND TERRITORY AND THEIR DEFENDERS

The human right to a healthy environment¹⁰ has been understood as a right that has individual connotations, with direct or indirect repercussions on people because of its impact on rights such as the right to health, physical integrity and life; and collective connotations, because it is of universal significance for both present and future generations.¹¹ Additionally, as an autonomous right, it protects components of the environment, such as forests, rivers and seas, among others, with legal standing in themselves, even where there is a lack of certainty or evidence about the risk to natural entities.¹² The human right to a clean, healthy and sustainable environment is a right that has been universally recognized following the adoption of resolutions by the Human Rights Council in 2021¹³

⁵ M.F. Paz Salinas, *Luchas en defensa del territorio. Reflexiones desde los conflictos socio ambientales en México [Struggles in defence of territory. Thoughts on socio-environmental conflicts in Mexico]*, *Acta Sociológica*, 2017, pp. 197-219.

⁶ In-person interview with Martín López, Colonia Maya, San Cristóbal de las Casas, Chiapas, 12 February 2023.

⁷ IACHR, *Norte de Centroamérica, Personas defensoras del medio ambiente*, 16 December 2022, OEA/Ser.LN/II https://www.oas.org/es/cidh/informes/pdfs/2023/NorteCentroamerica_MedioAmbiente_ES.pdf para. 49.

⁸ Roberto Gargarella, *Carta abierta protesta*, p. 32 and DPLF, *Criminalización de los defensores de derechos humanos y de la protesta social en México*, dplf.org/sites/default/files/1279728364.pdf p. 16.

⁹ Amnesty International, *Protect the Protest*, 2022 [amnesty.org/en/documents/act30/5856/2022/en/](https://www.amnesty.org/en/documents/act30/5856/2022/en/) (viewed 17 July 2023).

¹⁰ Additional Protocol to the American Convention on Economic, Social and Cultural Rights (Protocol of San Salvador), Article 11, American Convention on Human Rights, Article 26 and Political Constitution of the United Mexican States (CPEUM), Article 4.

¹¹ Inter-American Court, Advisory Opinion OC-23/17: The Environment and Human Rights, 15 November 2017, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf para. 59.

¹² Inter-American Court, OC-23/17, 15 November 2017, https://www.corteidh.or.cr/docs/opiniones/seriea_23_ing.pdf para. 62.

¹³ Human Rights Council, Resolution: The human right to a clean, healthy and sustainable environment, 18 October 2021, A/HRC/RES/48/13.

and the General Assembly on Human Rights in 2022.¹⁴

Defenders of the environment play a crucial role in the fight against the triple global crisis of climate change, pollution and loss of biodiversity.¹⁵ They do so, for example, by opposing fossil fuel extraction or deforestation projects, by demanding more ambitious action on climate and by opposing climate mitigation and adaptation projects adopted in violation of human rights norms and standards.¹⁶

The right to conserve and protect the environment is set out in article 29 of the UN Declaration on the Rights of Indigenous Peoples. This right has a special relationship with the defence of land and territory. Article 25 of the Declaration recognizes Indigenous peoples' spiritual relationship with the land, territories, waters, coastal waters and other resources which they have traditionally possessed or otherwise occupied and used and the responsibilities that they bear to future generations as a result. The Inter-American Court of Human Rights (Inter-American Court) has ruled that the concepts of land and territory are part of the social, ancestral and spiritual essence of Indigenous peoples and are a necessary source for the continuation of their life and cultural identity.¹⁷

Specifically, International Labour Organization Convention (ILO) 169 defines territories as "the total environment of the areas which the peoples concerned occupy or otherwise use."¹⁸ The Inter-American Court has noted that territory goes well beyond the siting of specific villages, settlements and agricultural plots and includes lands that are used for agriculture, hunting, fishing, gathering, transport, culture and other purposes.¹⁹ In relation to land, ILO Convention 169 states that their rights of ownership and possession over the lands they traditionally occupy must be recognized, as well as their right to use lands that are not exclusively occupied by them, but to which they have traditionally had access for their traditional and subsistence activities.²⁰

This report documents the criminalization of defenders who in their personal or professional capacities, individually or collectively, and in a peaceful manner, strive to protect and promote human rights relating to the environment, including protection against the adverse effects of pollution, environmental degradation and the excessive and/or illegal extraction of natural resources.²¹ This defence is closely related to the defence of Indigenous peoples and/or Afro-descendants, their territories and natural resources.²² According to the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement),²³ states must guarantee a safe and enabling

¹⁴ United Nations General Assembly, Resolution: The human right to a clean, healthy and sustainable environment, 1 August 2022, A/RES/76/300.

¹⁵ United Nations, Climate change, What is the Triple Planetary Crisis?, 13 April 2022, [What is the Triple Planetary Crisis? | UNFCCC](#) (accessed 17 July 2023).

¹⁶ Amnesty International, *Stop burning our rights! What governments and corporations must do to protect humanity from the climate crisis*, (Index: POL 30/3476/2021), June 2021, p. 106.

¹⁷ Inter-American Court, *Case of the Saramaka People v. Suriname*, 28 November 2007, Series C No. 172, https://www.corteidh.or.cr/docs/casos/articulos/seriec_172_ing.pdf para. 82.

¹⁸ ILO Convention 169, Article 13.2.

¹⁹ IACHR, Indigenous and Tribal People's Rights Over Their Ancestral Lands and Natural Resources, 30 December 2009, OEA/Ser.L/V/II, [oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf](https://www.oas.org/en/iachr/indigenous/docs/pdf/ancestrallands.pdf), para 40.

²⁰ ILO Convention 169, Article 14.

²¹ IACHR, *Norte de Centroamérica, Personas defensoras del medio ambiente*, 16 December 2022, OEA/Ser.L/V/II https://www.oas.org/es/cidh/informes/pdfs/2023/NorteCentroamerica_MedioAmbiente_ES.pdf paras 31 and 32.

²² IACHR, *Norte de Centroamérica, Personas defensoras del medio ambiente*, 16 December 2022, OEA/Ser.L/V/II https://www.oas.org/es/cidh/informes/pdfs/2023/NorteCentroamerica_MedioAmbiente_ES.pdf

²³ Ratified by Mexico on 5 November 2020.

environment for environmental defenders to act without threats, restrictions and insecurity.²⁴

3.2.2 DEFENDING THE LAND, TERRITORY AND ENVIRONMENT IN THE MEXICAN CONTEXT

In Mexico, the Atlas for Environmental Justice currently describes 206 cases of environmental conflict, including conflicts over water management, extraction of minerals and construction materials, gas pipelines and fossil fuels, among others.²⁵ In this context of social conflict, the exercise of civic participation and collective action through protest has been fundamental to resistance and the defence of environmental and territorial rights, both individual and collective. However, defenders of the land, territory and environment have experienced systematic violations, facing an alarming situation of violence, stigmatization, repression and criminalization. In recent years, various civil society organizations have highlighted a worrying increase in attacks against defenders in Mexico, particularly against defenders of the land and environment.²⁶

The defence of the land, territory and environment is taking place in a context of vilification and stigmatization, originating from the Mexican presidency; in his daily morning press conferences President Andrés Manuel López Obrador has referred to defenders as “bogus environmentalists”²⁷ and “phoneys”,²⁸ stressing that they use “the banner of the environment”²⁹ to oppose his projects, including the Tren Maya. Among the attacks are unfounded accusations that defenders are pursuing their economic advantage through protests and that there were no demonstrations about environmental causes before he came to power.³⁰

According to Global Witness, in 2021 Mexico was the country with the highest number of recorded killings of land and environmental defenders, with an alarming total of 54 killings; more than 40% of the victims were Indigenous people and more than a third involved enforced disappearances.³¹ In its 2022 report Frontline Defenders stated that there were 45 killings of human rights defenders in Mexico, making it the country with the third highest number of such killings in the world, after Colombia and Ukraine.³²

The Mexican Centre for Environmental Defence (Centro Mexicano de Defensa Ambiental, CEMDA) recorded 197 attacks against individuals and communities defending environmental rights, including 24 killings, seven enforced disappearances, seven extrajudicial executions, 148 cases of intimidation, 116 cases of harassment, 64 cases of threats, 61 cases of physical aggression, 20 cases of stigmatization and two cases of spying, which are highly worrying on account of the possible use of the state apparatus as a surveillance mechanism.³³ Various levels of government were

²⁴ Escazú Agreement, Article 9.

²⁵ Environmental Justice Atlas, <https://ejatlas.org/country/mexico> (viewed 17 July 2023)

²⁶ Among them: CEMDA, Frontline Defenders and Witness Now in their respective reports.

²⁷ Mañanera, 23 March 2022, gob.mx/presidencia/articulos/version-estenografica-conferencia-de-prensa-del-presidente-andres-manuel-lopez-obrador-del-23-de-marzo-de-2022?

²⁸ Mañanera, 3 May 2022, gob.mx/presidencia/articulos/version-estenografica-conferencia-de-prensa-del-presidente-andres-manuel-lopez-obrador-del-3-de-mayo-de-2022?

²⁹ Mañanera, 1 May 2023, <https://www.gob.mx/presidencia/es/articulos/version-estenografica-conferencia-de-prensa-del-presidente-andres-manuel-lopez-obrador-del-1-de-mayo-de-2023>

³⁰ Infobae, “AMLO acusó a grupos ambientalistas de recibir dinero a cambio de no manifestarse”, [AMLO accused environmentalist groups of receiving money in exchange for not protesting], 9 May 2023, <https://www.infobae.com/mexico/2023/05/09/amlo-acuso-a-grupos-ambientalistas-de-recibir-dinero-a-cambio-de-no-manifestarse/>

³¹ Global Witness, *A Decade of Resistance: Ten years reporting on land and environmental activism around the world, 2022*, <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/>

³² Frontline Defenders, *Global Analysis 2022, Global Analysis 2022 | Front Line Defenders* p. 5.

³³ CEMDA, *Informe 2022: sobre la situación de las personas y comunidades defensoras de los derechos humanos ambientales en México*, [2022 Report: On the situation of individuals and communities defending environmental human rights in Mexico], cemda.org.mx/informe-2022/, p. 9.

responsible for at least 45% of the attacks.³⁴ In the context of protests, CEMDA recorded three cases of repression involving excessive use of force by state officials.³⁵

It is in this context of aggression and hostility that defenders of the land, territory and environment have resorted to social protest to demand their rights. In response, both the authorities and the companies involved in projects used of the criminal justice system to criminalize the defence of territory. This pattern has been detailed by the Inter-American Commission on Human Rights (IACHR) which has stated that it is in the context of defence of the land, territory and environment that cases of criminalization and misuse of criminal law are most frequently found.³⁶

Similarly, the Mexican NGO Serapaz has stated in relation to Mexico that the criminalization of social protest is mainly associated with forms of territorial control for the defence of national and transnational private initiative interests and is strategically directed towards movements and communities fighting for the defence of their land, environment and culture in opposition to infrastructure megaprojects and/or the overexploitation of natural resources such as dams, roads, wind farms, mines and airports.³⁷

³⁴ CEMDA, *Informe 2022: sobre la situación de las personas y comunidades defensoras de los derechos humanos ambientales en México*, cemda.org.mx/informe-2022/ p. 9.

³⁵ CEMDA, *Informe 2022: sobre la situación de las personas y comunidades defensoras de los derechos humanos ambientales en México*, cemda.org.mx/informe-2022/ p. 9.

³⁶ IACHR, Criminalization of Human Rights Defenders, 31 December 2015, OEA/Ser.L/V/II, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> paras 5 and 48.

³⁷ Serapaz, *Criminalización de la protesta social*, p. 23. In: DPLF, *Criminalización de los defensores de derechos humanos y de la protesta social en México*, dplf.org/sites/default/files/1279728364.pdf

4 CASES OF CRIMINALIZATION OF PROTESTS OVER THE RIGHT TO THE LAND, TERRITORY AND ENVIRONMENT

This report is based primarily on the study of four cases of criminalization of protests over the land, territory and environment; two were in the state of Chiapas, one in Puebla and one in Yucatán. The details of each of the cases are presented below, with an emphasis on the legal proceedings resulting in criminalization; a detailed analysis of the trends and similarities common to all the cases is set out in the subsequent chapter.

4.1 “WE ARE MAYA!”: CRIMINALIZATION OF URBAN ENVIRONMENTAL STRUGGLE IN SAN CRISTÓBAL DE LAS CASAS, CHIAPAS.

4.1.1 THE CAMPAIGN: COLONIA MAYA’S EDUCATIONAL AND REBELLIOUS PROTEST

Elizabeth del Carmen Suárez Díaz, Eustacio Hernández Vazquez, Lucero Aguilar Pérez, Martín López López and Miguel Ángel López Martínez were members of Colonia Maya’s management committee when they started to defend the land and environment from the construction of a housing development by the property company Bienes Raíces la Moraleja in the ecological conservation area³⁸ of Carmen Guadalupe, a rural site located in Colonia Maya, in the municipality of San Cristóbal de las Casas, Chiapas.³⁹ They objected because in order to carry out the construction, approximately 100 trees were cut,⁴⁰ causing significant environmental imbalance as rainwater was no longer held back by the trees, causing flooding and damage to Colonia Maya. In addition, construction began without any environmental and social impact assessments being undertaken.⁴¹

In October 2014, Colonia Maya requested that the municipal council act to prevent possible damage from construction in the ecological conservation area. The property company built a perimeter fence and rainwater drainage as preventive measures, but in 2015 this collapsed flooding more than 20 houses, the José Vasconcelos Calderón primary school and the Guadalupe Victoria kindergarten. Then, on 5 June 2016, deluge flooded different areas of Colonia Maya.

“My house was the first house to be affected, the water reached up to my bed, I almost lost everything. The greatest harm was psychological. When it rained, the children would grab their

³⁸ On 7 September 2012, the change of land use from “ecological conservation” to “medium density residential H1” was authorized. However, the 2006-2020 Urban Charter, which determines the status of land, requires environmental and social impact studies and these were not carried out.

³⁹ In-person group interview with members of Colonia Maya, Chiapas, 12 February 2023.

⁴⁰ According to the calculations by the members of Colonia Maya, Elizabeth del Carmen Suárez, *La organización social y los rituales de defensa del agua en la Colonia Maya, San Cristóbal de las Casas, Chiapas*, [Social organization and the rituals of the defence of water in Colonia Maya, San Cristóbal de las Casas, Chiapas], September 2022, https://biblio.colsan.edu.mx/tesis/MAS_ElizabethSuarez.pdf

⁴¹ In-person group interview with members of Colonia Maya, Chiapas, 12 February 2023.

*things and put them higher up.*⁴²

Colonia Maya's resistance is the result of collective solidarity, managing to bring together a diverse group of people – including mothers, members of Tzotzil and Tseltal communities, children and young people – to raise awareness of their environmental rights. Maya people have used a variety of tools to create forms of resistance that represent Maya identities. Using educational materials, they teach people about the consequences of environmental destruction. One example is the “Marcha de las bancas” (March of the Benches), when children, teachers and supporters marched carrying school benches to another location, highlighting how it was impossible for classes to take place because of the flooding. They have also given performances describing Colonia Maya's struggle and created video documentaries. Protest and forms of citizen action developed collectively have enabled members of the Maya to interact with government, institutions and companies linked to their lands in ways that they consider dignified and that allow them to defend the wellbeing of the community and their territory.

*“These actions provide an opportunity to get to know the other side, to talk, to say what is going on ... going, feeling, living, opened my heart to saying ‘I think that this is something more people need to see.’ You don't defend what you don't know and you don't defend what you don't love”.*⁴³

4.1.2 THE PROTEST: MAYA PEOPLE PREVENT THE CONSTRUCTION OF THE HOUSING ESTATE

Despite the closure of the Federal Attorney's Office for Environmental Protection in Chiapas, Colonia Maya became aware of the construction company's non-compliance in terms of a change of land use from forest land, a lack of authorizations from SEMARNAT⁴⁴ and a failure to comply with the recommendations of the Civil Protection Department,⁴⁵ as trucks carrying construction materials continued to enter the area,⁴⁶ which is why they decided to hold a peaceful protest.

On the morning of 7 April 2017, supporters appeared with banners on Palenque Street – next to the construction site – and placed a cordon across one of the entrances, blocking the entry of construction vehicles for 20 hours, during which time there was no material damage resulting from this blockade. The cordon was symbolic because the site was large, there were other possible entrances to the property and construction company workers could leave the site without hindrance.

The protesters prevented a backhoe loader (tractor excavator) hired for the construction from leaving the site. The worker operating the machine contacted his employer to let him know what was happening and acted as an intermediary with the members of the community.⁴⁷ They reached an agreement that the backhoe loader would be allowed to leave once the worker had dug an infiltration trench. The purpose of the trench was to hold water and stop it running down during the rainy season as the water was no longer held back by the trees because they had been felled for

⁴² In-person interview with Miguel Ángel, Colonia Maya, Chiapas, 12 February 2023.

⁴³ In-person interview with Martín López, Colonia Maya, San Cristóbal de las Casas, Chiapas, 12 February 2023.

⁴⁴ PROFEPA, “Clausura Profepa Clausura Profepa construcción de fraccionamiento “La Moraleja” en San Cristobal de las Casas, Chiapas”, [Profepa Closure Profepa closure construction of the “La Moraleja” housing estate in San Cristobal de las Casas, Chiapas], 9 July 2016, <https://www.gob.mx/profepa/prensa/clausura-profepa-construccion-de-fraccionamiento-la-moraleja-en-san-cristobal-de-las-casas-chiapas>

⁴⁵ Instituto para la Gestión Integral de Riesgos de Desastres del estado de Chiapas [Institute for the Comprehensive Management of Disaster Risks in the state of Chiapas], *Oficio No. SPC/DG/DIAR/1463/2016*, 27 September 2016.

⁴⁶ In-person group interview with members of Colonia Maya, Chiapas, 12 February 2023.

⁴⁷ In-person group interview with members of Colonia Maya, Chiapas, 12 February 2023.

construction and the damage resulting from the environmental destruction in the area.⁴⁸ Once the agreed work was completed, the operator left the site with the backhoe loader.⁴⁹

4.1.3 CRIMINALIZATION: USE OF THE CRIMINAL JUSTICE SYSTEM AGAINST COMMUNITY RESISTANCE

Despite the peaceful nature of the protest, on 23 May 2017 the representative of the developer filed a complaint against the Colonia Maya management committee accusing them of criminal conspiracy committed by gangs, criminal association, attacks on public highways, damage to property and organized crime, among others.⁵⁰ Subsequently, the workers operating the backhoe loader, who worked for the owner of the housing development, reported them for the crime of illegal deprivation of liberty in the form of abduction.⁵¹

The Altos District Prosecutor's Office examined the accusation and requested three arrest warrants against Lucero and Martín, solely for the crime of abduction,⁵² which were rejected by the arraignment judge.⁵³ However, at the fourth attempt the Prosecutor called for a witness statement from the machine operator who engaged in negotiation (the operator), and two other witnesses who also worked for the company, and on 16 August 2018 an arrest warrant was issued against Elizabeth, Eustacio, Miguel, Lucero and Martín and Miguel Ángel, members of the management committee, for the crime of deprivation of liberty,⁵⁴ aggravated by the fact it was committed by more than two people.⁵⁵

The arrest warrant was issued in the absence of any evidence to implicate the involvement of members of the Colonia Maya management committee. It is based mainly on the account of the machine operator, who stated that he was forced to carry out excavation work to prevent access to the property in question and that he was threatened with being burned with petrol if he opposed the protesters' demands.⁵⁶

In addition to this testimony, there are two other statements from other company workers, both of whom stated that they saw how people were blocking access to the property, that some people had sticks and stones and that the operator was being held. One of the workers even stated that the people from the Colonia Maya told him "not to try to approach or do anything because they would tie

⁴⁸ Excavation made in the ground to create temporary subsurface storage of stormwater runoff, thereby enhancing the natural capacity of the ground to store and drain water and contain the water that comes down from the mountain in the rainy season and, as a result of the felling of trees, is not stopped and floods the territory of Colonia Maya.

⁴⁹ In-person group interview with members of Colonia Maya, Chiapas, 12 February 2023.

⁵⁰ Accusation, *Investigation file 00867-078-0301-2017*, 23 May 2017.

⁵¹ Operator's statement, *Investigation file 00867-078-0301-2017*, appearance 8 December 2017.

⁵² Fiscal del Ministerio Público Investigator adscrito a la Unidad Integral de Investigación Criminal de la Fiscalía de Distrito Altos, dependiente de la Fiscalía General del estado, *Carpeta de investigación* [Director of the Public Prosecutor's Office, investigator attached to the Combined Criminal Investigation Unit of the Prosecutor's Office of Altos District, subsidiary of the National State Prosecutor's Office, *Investigation file*] *00867-078-0301-2017*, 13 April 2018, 30 April 2018 and 14 May 2018.

⁵³ Juez de Control Garantía y Juicio Oral del Juzgado de Control y Tribunales de Enjuiciamiento de los Distritos Judiciales de San Cristóbal y Bochil, *Causa Penal* [Supervisory Judge and Oral ruling by the Supervisory Judge and the Courts of the Judicial Districts of San Cristóbal and Bochil, *Criminal Case*] *31/2018*, 16 April 2018, 3 May 2018 and 16 May 2018.

⁵⁴ Mexico, General law on the prevention and punishment of crimes of abduction, Article 9.I.A: Anyone who deprives another of his liberty shall be subject to: I. Forty to eighty years' imprisonment and a fine equivalent to one to four thousand days, if the deprivation of liberty is carried out for the purpose of: Amended paragraph DOF 03-06-2014 a) Obtaining ransom or any benefit for oneself or a third party.

⁵⁵ Mexico, General law on the prevention and punishment of crimes of incarceration, Article 10.I.B: The penalties mentioned in Article 9 of this law will be increased: I. From fifty to ninety years' imprisonment and a fine equivalent to four to eight thousand days, if the deprivation of liberty involves one or more of the following circumstances: b) Those who carry it out act in a group of two or more persons.

⁵⁶ Operator's statement, appearance 8 December 2017.

me up and set me on fire”.⁵⁷ Apart from the above, there is no other evidence to establish that any crime was committed, much less the crime of holding the operator captive.

On 26 June 2019, the First District Court for Appeals and Federal Trials in the State of Chiapas granted protection against the arrest warrant for Eustacio, Miguel and Elizabeth because there were insufficient grounds to prove their involvement in the incidents; however, this did not apply to Martín and Lucero.⁵⁸ Subsequently, following a review of the protection order, a Collegiate Court granted protection to Martín and Lucero on the grounds of “the absence of justification for the need for interim measures”, because the arrest warrant had been issued without any objective information having been considered to suggest that Lucero and Martín would not voluntarily present themselves if they were summonsed.⁵⁹

In compliance with the protection ruling, the investigation file was returned to the Prosecutor’s Office. This situation means that the Prosecutor can issue a new arrest warrant if there are adequate grounds and cause. Because the crime of abduction cannot be set aside, the investigation file can be revived at any time, which is why it is essential for Colonia Maya that the criminal proceedings be ruled inadmissible, in view of the lack of evidence to establish the crime of abduction and the context of the protest in which the incidents occurred.

4.2 NAHUA COMMUNICATORS AND DEFENDERS CRIMINALIZED FOR DEFENDING WATER

4.2.1 THE CAMPAIGN: ZACATEPEC VILLAGERS’ DEFENCE OF THE WATER AND TERRITORY AGAINST INDUSTRIALIZATION

Miguel López Vega and Alejandro Torres Chocolatl are communicators at Radio Zacatepec and Nahua defenders from the community of Santa María Zacatepec in the municipality of Juan C. Bonilla, Puebla. They have taken part in many struggles with various collectives⁶⁰ against megaprojects⁶¹ on their territory and for recognition of self-determination as an Indigenous people.⁶² The criminalization of Miguel and Alejandro occurred in the context of the fight against pollution of the Metlapanapa River, which was at risk due to the construction of a wastewater discharge drainage system for the Ciudad Textil Huejotzingo Industrial Park.

“They have an oxygenation tank with a membrane where they dump their water, which is of every colour, blue, black, etc.; that is what they were going to dump in the river. But this tank does not have the membrane nor does it comply with Mexican standards, it is open to the air, and seeps their toxic water directly into the subsoil. It’s not just the river but the health of the people who live along the riverbank.”⁶³

On 14 August 2019, in the presence of the President of the Municipality, councillors, deputy

⁵⁷ Interview of witness - worker at La Moraleja - in investigation report C.R.Z.A/15132017 and appearance on 17 January 2017; Interview with supervisor witness at the La Moraleja company - investigation report C.R.Z.A./1513/2017.

⁵⁸ First District Court of Protection and Federal Cases in the State of Chiapas, protection order 1523/2018, ruling of 26 June 2019.

⁵⁹ Second Collegiate Court of Criminal Cases, *amparo review 303/2019*, ruling of 5 March 2020, pp. 100-113.

⁶⁰ Frente de Pueblos en Defensa de la Tierra y el Agua de Puebla, Morelos y Tlaxcala, Pueblos Unidos, Guardianas del Río Metlapanapa [People’s Front for Defence of the Land and Water of Puebla, Morelos and Tlaxcala, United Peoples, Guardians of the River Metlapanapa].

⁶¹ These include the Morelos Integral Project (PIM) and massive water extraction.

⁶² In-person interview with Alejandro Torres, Santa María Zacatepec, Puebla, 13 March 2023.

⁶³ In-person interview with Alejandro Torres, Santa María Zacatepec, Puebla, 13 March 2023.

presidents and construction engineers, the municipal assembly signed an order agreeing that the discharge of toxic waste into the Metlapanapa River would not be permitted.⁶⁴ Despite this, on 24 September 2019 machinery arrived to begin construction work on drainage, guarded by members of the federal police and the National Guard. On 27 September, the workers returned to try to start construction work, but the people blocked the Mexico-Puebla federal highway for five hours, requesting that President of the Municipality attend to clarify the situation.⁶⁵

4.2.2 PROTEST FOR LIFE AND WATER AND ITS REPRESSION

After several attempts by the people of Zacatepec to get a response from the authorities and to have their rights to self-determination and consultation respected, on 30 October 2019 more than 100 people from the community protested peacefully demanding a halt to the construction.⁶⁶ The state response was repression when the National Guard and state police, who were guarding the construction site, set up barricades on the Puebla-Mexico highway and immediately threw tear gas at the demonstrators and began to beat them, injuring women and elderly people. Following the repression, the demonstrators decided to retreat and leave the area.⁶⁷ Miguel and Alejandro took part in the demonstration as communicators and supporters, Alejandro even posted a live feed on Facebook to record what was happening and took photos. The protest and repression took place over a period of a total of two hours.⁶⁸

*"We are protesting because we believe that we are not being heard, that our human rights are being violated, because there is a lot of injustice and the only way to be heard is to protest."*⁶⁹

4.2.3 CRIMINALIZATION: USE OF THE CRIMINAL JUSTICE SYSTEM AGAINST DEFENDERS MIGUEL AND ALEJANDRO

On 24 January 2020, Miguel was arrested by Puebla State Public Prosecutor's Office officials at around 14:30 as he was leaving a meeting at the Puebla State Government Office. The officials put him in a van with tinted windows and took him to the State Public Prosecutor's Office and subsequently to the San Bernardino Tlaxcalancingo Courthouse.⁷⁰ He was then accused of the crimes of opposing the construction of public works⁷¹ and attacks on general roadways⁷² and means

⁶⁴ RED TDT, "Acción Urgente | Policía local y Guardia Nacional reprime a pobladores que protestaban por descargas tóxicas en el río Metlapanapa" [Urgent action: local police and National Guard repress villagers protesting toxic discharges in the Metlapanapa River], 4 November 2019, <https://redtdt.org.mx/archivos/14528>

⁶⁵ RED TDT, "Acción Urgente | Policía local y Guardia Nacional reprime a pobladores que protestaban por descargas tóxicas en el río Metlapanapa", 4 November 2019, <https://redtdt.org.mx/archivos/14528>

⁶⁶ In-person interviews with Alejandro Torres and Miguel López, Santa María Zacatepec, Puebla, 13 March 2023.

⁶⁷ In-person interviews with Alejandro Torres and Miguel López, Santa María Zacatepec, Puebla, 13 March 2023.

⁶⁸ Alejandro Torres Choloatl, Repression in Zacatepec, Facebook live, 30 October 2019, <https://www.facebook.com/watch/?v=431767984207654> (viewed 17 July 2023).

⁶⁹ In-person interview with Alejandro Torres, Santa María Zacatepec, Puebla, 13 March 2023.

⁷⁰ Frontline Defenders, "Land and water rights defender Miguel López Vega detained", <https://www.frontlinedefenders.org/en/case/land-and-water-rights-defender-miguel-lopez-vega-detained>

⁷¹ Mexico, Penal Code of Puebla, Articles 202 and 203: Anyone who attempts through material acts to impede the construction of public works or works ordered to be done by the Authority or with its authorization, shall be sentenced to one to three months' imprisonment. When the offence established in the previous Article is committed by two or more persons acting in concert, the penalty shall be three months to one year's imprisonment, if only simple material opposition is made without violence to persons. In the event of violence, the penalty shall be up to two years' imprisonment, without prejudice to the application of the rules of accumulation if another offence is committed.

⁷² Mexico, Penal Code of Puebla, Article 188: A prison sentence of three days to four years and a fine of three to thirty Measurement and Updating Units shall be imposed on: II. Anyone who by any means destroys, impairs or obstructs the aforementioned means of communication, without prejudice to the penalties that may apply if another crime is thereby committed.

of transport.⁷³

The arrest warrant was based on three statements by officials of the State of Puebla Water and Sanitation Commission (Comisión estatal de agua y saneamiento del estado de Puebla, CEASPUE), who stated that Miguel and Alejandro took part in the demonstration, that they were community leaders and that they incited people to attack the authorities.⁷⁴ They stated that the villagers set fire to a truck owned by CEASPUE.⁷⁵ It was not until two months later, when the statements of the two officials were extended, that they directly accused Miguel and Alejandro of having Molotov cocktails (petrol bombs), as well as a stone, with which they set fire to the truck.⁷⁶ In addition, an inspection of the scene of the events and an inspection of the vehicle that was carried out in the depot were attached as evidence.⁷⁷

It is important to note that, from the evidence presented and reviewed by Amnesty International, it is not clear that Miguel and Alejandro are responsible for any of the crimes. Both were exercising their right to protest on a public highway, demanding an end to the environmental damage that was occurring and the violation of their right to self-determination and to free, prior and informed consent. In addition, there are no photos, videos or any hard evidence linking them to the burning of the van or the use of Molotov cocktails.

Because of the crimes of which he was accused, Miguel was ordered to be remanded in custody,⁷⁸ and remained in jail for 6 days until he was released on 29 January 2020 after a hearing at the Court House in Cholula, Puebla, where it was decided not to prosecute him for the crimes of attacks on the safety of vehicles or opposition to the construction of public works or works, although he was prosecuted for the crime of attacks on general roadways. He was also ordered to report to sign in every 15 days as an interim measure.⁷⁹

"Because of the criminalization, I have stopped doing things that are dear to my heart, that I like. For example, when they put me in clink [jail], you're not with your family".⁸⁰

On 1 December 2022, the First Unitary Criminal Chamber of the state's Higher Court of Justice ruled on an appeal filed by CEASPUE against the failure to prosecute for the two crimes for which Miguel had not been prosecuted. CEASPUE argued that it had not been notified of the trial and therefore had not been able to present its evidence. Thus, three years later, Miguel's trial could start again from scratch. At a hearing on 29 March 2023, CEASPUE withdrew its appeal and agreed to a pardon for these two offences.⁸¹ However, the Prosecutor's Office did not accept the pardon and a new hearing was held on 26 April 2023, in which it was finally ruled that the crimes of attacks on the security of means of transport and opposition to the construction of any works or public works

⁷³ Mexico, Penal Code of Puebla, Article 189: A prison sentence of three days to four years and a fine of three to thirty Measurement and Updating Units shall be imposed on: II. Anyone who destroys, damages or impairs a vehicle.

⁷⁴ Investigation file 18824/2019/ZC, *Interview of two witnesses*, CAESPUE workers 8/11/2019.

⁷⁵ Investigation file 18824/2019/ZC, *Interview of two witnesses*, CAESPUE workers 8/11/2019.

⁷⁶ Investigation file 18824/2019/ZC, *Extended witness statement*, 3 December 2019.

⁷⁷ Juzgado de Oralidad Penal y Ejecución Región Judicial Centro Poniente del estado de Puebla, *Orden de aprehensión*, 11 December 2019.

⁷⁸ Juzgado de Oralidad Penal y Ejecución Región Judicial Centro Poniente del estado de Puebla, *Orden de aprehensión*, 11 December 2019.

⁷⁹ Supervisory Judge of the Centre-West Judicial District, Cholula, *Case 26/2019*, order not to prosecute.

⁸⁰ In-person interview with Miguel López Vega, Santa María Zacatepec, Puebla, 13 March 2023.

⁸¹ In-person interview with Juan Carlos Flores, legal representative of Alejandro and Miguel, Cholula, Puebla, 14 March 2023.

would not be pursued.

Likewise, a conditional suspension of the trial was granted for the crime of attacks on roadways, with the condition that Miguel sign in monthly for a period of six months and then finally be acquitted. This had previously been requested by the defence on four occasions,⁸² but had been denied on various grounds, from lack of compliance with requirements, such as presenting the original public deed of the property in which he lived, to considering him a risk to society because “knowing that he knows how to distinguish between good and bad, he decided to engage in conduct classified as a crime, causing harm to society, giving rise to a source of instability, insecurity and violence in society.”⁸³ Miguel’s defence filed a complaint with the Puebla Human Rights Commission because the person in charge of the interim measures mentioned to him that the risk assessment needed for conditional suspension “was going to be negative because there were orders from above” and that if they presented “the request a thousand times we were going to reject it.”⁸⁴

Currently, Miguel must continue to sign in for six months until he is fully acquitted of the charges. For his part, Alejandro Torres Chocolatl has an active arrest warrant against him, which could be served at any time.

4.3 TSELTAL INDIGENOUS DEFENDERS CRIMINALIZED FOR PROTESTING AGAINST THE MILITARIZATION OF THEIR TERRITORY

4.3.1 THE CAMPAIGN: THE CONSTRUCTION OF A NATIONAL GUARD BARRACKS ON TSELTAL TERRITORY

César Hernández Feliciano and José Luis Gutiérrez Hernández are Tselstal community defenders from the Chilón region, a region noted for its defence of the land against megaprojects and the militarization of the territory. The criminalization of César’s and José Luis’s protest took place in the context the intense militarization of the state of Chiapas with the likely building of 24 National Guard barracks,⁸⁵ including one on their territory, that of San Sebastián Bachajón.

This construction work was carried out without obtaining the free, prior and informed consent of the Tselstal people who would be affected, who have the right to self-determination and the right not to have military activities carried out on their lands.⁸⁶ Opposition to the barracks goes back to their historical struggle against militarization since the Zapatista uprising in 1994 and their previous experience of the presence of a military base in 1995, which brought with it cases of sexual harassment, rape, attacks, insecurity and dispossession.⁸⁷

“We have had experience since 1994 when they loaned the site here for the military barracks... There were many massacres, unlawful shootings, it was a terrible nightmare. Because of this experience, we will not allow any more barracks or militarization on Tselstal territory.”⁸⁸

⁸² In-person interview with Juan Carlos Flores, legal representative of Alejandro and Miguel, Cholula, Puebla, 14 March 2023.

⁸³ Assessor of Procedural Risks in the Department of Interim Measures and State Police Procedures in the Centre-West Judicial District, 25 October 2021.

⁸⁴ Human Rights Commission for the State of Puebla, *submission of complaint*, 20 October 2021.

⁸⁵ Chiapas Paralelo, *Para 22, Guardia Nacional tendrá 24 cuarteles en Chiapas*, [National Guard will have 24 barracks in Chiapas], 9 June 2020, <https://www.chiapasparalelo.com/noticias/chiapas/2020/06/para-2022-guardia-nacional-tendra-24-cuarteles-en-chiapas/>

⁸⁶ United Nations Declaration on the Rights of Indigenous Peoples, Article 30 and American Declaration on the Rights of Indigenous Peoples, Article XXX.V.

⁸⁷ Amnesty International, *Indigenous Women and Military Injustice, 2004* (Index: AI: AMR 41/033/2004).

⁸⁸ In-person interview with César Hernández, Chilón, Chiapas, 13 February 2023.

“We the Indigenous Tseltal peoples will fight until the government recognizes the honour and right of Indigenous people and their wishes.”⁸⁹

4.3.2 REPRESSION OF THE PROTEST AND UNLAWFUL DEPRIVATION OF CÉSAR’S AND JOSÉ LUIS’ LIBERTY

On the morning of 15 October 2020, the people of Chilón peacefully demonstrated against the construction of the National Guard barracks on their territory. In response, the government sent approximately 300 members of the municipal, Chiapas state and National Guard police who repressed the protest at the Temó crossroads on the Ocosingo-Palenque highway.⁹⁰ The authorities violently removed the demonstrators’ banners and began to attack them with sticks and stones.

As a result of this state repression, at least 11 people were injured and César and José Luis were arrested.⁹¹ The municipal police beat both of them when they were arrested; César received a blow to the head with a stick that caused him to lose consciousness,⁹² while José Luis sustained a 4-centimetre gash to the head.⁹³ The certified police report of their detention stated that “they injured themselves”.⁹⁴ In addition, they did not receive adequate medical or psychological assistance while in detention.⁹⁵

“They detained me just because I was there. Now there are more of us in the struggle, although the beatings and mistreatment we experienced makes us frightened about what might happen in the future.”⁹⁶

After two and a half hours in detention, they were presented before an Ocosingo Public Prosecutor’s official and charged with the crime of riot⁹⁷ to disturb the peace. In the early hours of 17 October, they were transferred to Social Reinsertion Centre for Sentenced Prisoners No. 14, El Amate, because supporters “had threatened to take over the court” to demand their release.⁹⁸ The transfer was made without notifying the defence, the Fray Bartolomé de las Casas Human Rights Centre (Frayba).⁹⁹ Their detention was declared legal on that day and they were placed in pre-trial detention on the grounds that they were charged with a serious offence under article 19 of the Political

⁸⁹ In-person interview with César Hernández, Chilón, Chiapas, 13 February 2023.

⁹⁰ Frayba, “César y José Luis, Defensores comunitarios criminalizados por defender el territorio y caminar la paz” [Community defenders criminalized for defending their territory and for the Walk of Peace], <https://www.frayba.org.mx/tema-prioritario/cesar-y-jose-luis-defensores-comunitarios>

⁹¹ Frayba, “César y José Luis, Defensores comunitarios criminalizados por defender el territorio y caminar La Paz”, [frayba.org.mx/tema-prioritario/cesar-y-jose-luis-defensores-comunitarios](https://www.frayba.org.mx/tema-prioritario/cesar-y-jose-luis-defensores-comunitarios)

⁹² Medical expert, Expert opinion 9384/2020, 16 October 2020. The expert established that he had injuries from a blunt instrument to his left thigh and arm. Additionally, César shared in an interview about his loss of consciousness following a blow.

⁹³ Medical expert, expert opinion 9383/2020, 16 October 2020.

⁹⁴ *Approved Police Report*, 15 October 2002.

⁹⁵ César and José Luis in an in-person interview with Amnesty International, Chilón, Chiapas, 13 February 2023.

⁹⁶ In-person interview with José Luis Gutiérrez, Chilón, Chiapas, 13 February 2023.

⁹⁷ Mexico, Penal Code of Chiapas, Article 353: The crime of riot is committed by those who, in order to make use of a right or under the pretext of exercising it, or to avoid compliance with a law, or to intimidate or force the authority to make a decision: I.- Gather in tumult and disturb public order by using violence against persons or things; III.- Obstruct land, rainwater or air roadways. Rioting shall be punishable with two to nine years’ imprisonment and a fine equivalent to fifty to five hundred days’ imprisonment. If other crimes have been committed in addition to the crime of riot, the rules of concurrence shall apply. Organizers who direct, carry out, incite, compel or financially sponsor others to commit the crime of riot shall be sentenced to four to 12 years’ imprisonment and a fine equivalent to 100 to 1,000 days.

⁹⁸ Juzgado de Control y Tribunal de Enjuiciamiento, Región Tres del Distrito Judicial de Ocosingo y Yajalón, *Formulación de Imputación y vinculación a proceso [Supervisory and Trial Court, Region Three of the Judicial District of Ocosingo and Yajalón, Charging and binding over for trial]*.

⁹⁹ Frayba, César and José Luis, “Defensores comunitarios criminalizados por defender el territorio y caminar la paz” [Community defenders criminalized for defending the territory and the Walk of Peace], [frayba.org.mx/tema-prioritario/cesar-and-jose-luis-defensores-comunitarios](https://www.frayba.org.mx/tema-prioritario/cesar-and-jose-luis-defensores-comunitarios)

Constitution of the United Mexican States.¹⁰⁰ On 22 October 2020, the initial arraignment hearing was held which ruled that they were to stand trial for the crime of riot.¹⁰¹

Subsequently, at a hearing on 1 November, the interim measures were amended so that they could be released on bail, having to report to the court regularly every 15 days to sign in and being restricted to stay within the municipalities of Chilón and Ocosingo.¹⁰² The only evidence against them was the testimony of six municipal police officers who claimed that stones were thrown at them, causing injuries to two police officers. In addition, there are two field criminology and medical expert reports confirming bruises on the wounded policemen.¹⁰³ Frayba has disputed the police officers' version and stated that there is no evidence to prove that César and José Luis were involved in violent acts, such as having been the ones who threw stones that caused injuries to the police officers. In addition, they have requested the opening of an investigation into torture and cruel, inhuman and degrading treatment, which to date has not made any progress.¹⁰⁴

4.3.3 CRIMINALIZATION: FREE BUT CONVICTED

According to Frayba, during the oral hearing it was proved that there was no substantial evidence on which to convict them. The three witnesses who were present failed to prove that they belonged to the municipal police, as well as that they were present on the day of the protest. It was also not substantiated that the individuals were criminology experts and experts in their field.¹⁰⁵ In spite of this, César and José Luis were sentenced to two years in prison for the crime of riot in a verdict dated 3 May 2023.¹⁰⁶ After the sentence was passed, the judge ruled that they could go free by paying a fine of just over 6,000 Mexican pesos. Although they were released, both defenders now have criminal records.

The National Guard barracks have now been completed. Nevertheless, its operations are suspended pending the resolution of an amparo petition filed by the Fray Bartolomé de las Casas Human Rights Centre (Frayba) and the Miguel Agustín Pro Juárez A.C. Human Rights Centre (Centro Prodh).¹⁰⁷ For its part, the community has been strengthened and continues its struggle despite the criminalization.

4.4 CRIMINALIZATION OF INDIGENOUS MAYAN PEOPLE OF SITILPECH FOR PROTESTING TO PROTECT THE WATER, HEALTH AND ENVIRONMENT FROM A MEGA PIG FARM

4.4.1 THE CAMPAIGN: FIGHT AGAINST THE MEGA FARM TO DEFEND THE WATER, HEALTH AND ENVIRONMENT

Juan Diego Valencia Chan, Arturo Albornoz May, Jesús Ariel Uc Ortega are Mayan villagers from Sitilpech, Yucatán, who have been fighting against the negative impact that a mega farm,

¹⁰⁰ Mexico, Political Constitution of the United Mexican States (CPEUM), Article 19. This is explained in more detail in the section on precautionary measures.

¹⁰¹ Control Judge Manuel Martín Antonio Álvarez, Control Courts and Trial Courts Region One, 17 October 2020.

¹⁰² C.I.0031-031-1006-2020, Letter *Order Booklet 28/2022*, p. 7.

¹⁰³ C.I.0031-031-1006-2020, *Indictment of the Office of the Prosecutor for Indigenous Justice*, 12 January 2021, pp. 135-144.

¹⁰⁴ In-person interview with Jorge Luis López of Frayba, San Cristóbal, Chiapas, 14 February 2023.

¹⁰⁵ Frayba, "Se dicta sentencia condenatoria en el proceso penal en contra de José Luis y César por defender su territorio de la militarización" [Guilty verdict in the criminal proceedings against José Luis y César for defending their territory against militarization], 3 May 2023, frayba.org.mx/se-dicta-sentencia-condenatoria-en-el-proceso-penal-en-contra-de-jose-luis-y-cesar-por-defender-su

¹⁰⁶ Judge Agustín López Martínez, Trial Judge of Region Three of the Judicial District of Ocosingo, judgment of 3 May 2023.

¹⁰⁷ Fourth Court of the Twentieth Circuit, Amparo Indirecto 717/2020.

established in 2013, called Kancabchén II which the capacity to hold around 48,000 pigs, in the village of Sitalpech in Izamal, Yucatán.¹⁰⁸ Since January 2021, Juan Diego, Arturo and Jesús Ariel, together with the group “La Esperanza de Sitalpech” (The Hope of Sitalpech) have initiated legal proceedings against the harm that the farm is causing to the environment, health and territory, as well as the violation of the Indigenous Mayan people’s rights to free, prior and informed consent and self-determination.¹⁰⁹

“We are fighting for water, which is vital for us. In Yucatan and Sitalpech we are rich in cenotes. The protest is against this farm that has affected the aquifer of the water we drink.”¹¹⁰

The inhabitants of Sitalpech point out that the farm has created an unbearable stench of faeces, which pollutes the environment, and that it does not have the necessary means to prevent the faecal matter from seeping into the subsoil, contaminating the water table¹¹¹ and, in turn, the water and air. They also complain that this causes the death of vegetation, deforestation, displacement of species and environmental damage.¹¹² As evidence, they presented a sample of water and laboratory analysis of the water from two wells adjacent to the farm – Rancho Moo¹¹³ and Yakuzonot¹¹⁴ – in the locality of Sitalpech, revealing the presence of 370 CFU (colony forming units) and 290 CFU respectively of faecal coliforms in the water (bacteria that can cause acute gastroenteritis and that come from faeces).

Approximately 140 people belonging to Sitalpech filed an amparo petition¹¹⁵ regarding the failure of various authorities to exercise their functions of inspecting, supervising, monitoring and sanctioning the farm’s operations. This petition resulted in the suspension of the farm’s activities.¹¹⁶ The company filed a complaint against acceptance of the petition, so on 20 July the inhabitants of Sitalpech together with the Kanan DDHH and Greenpeace organizations delivered more than 700 signatures from the community (1,900 people in all) to the National Supreme Court of Justice (SCJN) requesting that it take up the case¹¹⁷ so that the highest court would be the one to resolve it.¹¹⁸

The SCJN decided not to exercise its power to consider the case and the complaint was referred back to the Collegiate Court, which dismissed the petition and left the suspension without effect on

¹⁰⁸ The company markets pigs to 14 countries: Japan, the USA, Canada, South Korea, China, Hong Kong, Singapore, Chile, Liberia, Angola, Cuba, Vietnam, Ivory Coast and, most recently, Haiti. See: Kekén: “La presencia de Yucatán a nivel mundial”, [Yucatán’s global presence] 9 March 2023, kekensustentable.com/keken-la-presencia-de-yucatan-a-nivel-mundial/ (viewed 17 July 2023).

¹⁰⁹ Juzgado Primero de Distrito en materia mixta en Mérida, Yucatán, demanda de amparo indirecto, [First District General Court in Mérida, Yucatán, petition for indirect protection], 25 May 2021.

¹¹⁰ In-person interview with Arturo Albornoz May, Sitalpech, Yucatán, 18 April 2023.

¹¹¹ These are the layers of water that accumulate in the soil or at a certain depth. They are essential because plants are nourished by them and they are important sources of water for human beings. Rotoplas Centro América, rotoplascentroamerica.com/como-avitar-la-contaminacion-de-mantos-freaticos/

¹¹² Juzgado Primero de Distrito en materia mixta en Mérida, Yucatán, Demanda de amparo indirecto, [First District General Court in Mérida, Yucatán, petition for indirect protection], 25 May 2021 and in-person interview with the villagers of Sitalpech, Yucatán, 18 April 2023.

¹¹³ Accredited water analysis laboratory Q.F.B. Manuel A. Comas Bolio, Test report, 6 May 2021.

¹¹⁴ Accredited water analysis laboratory Q.F.B. Manuel A. Comas Bolio, Test report, 6 May 2021.

¹¹⁵ First District Court of Yucatan, number 887/2021.

¹¹⁶ Tribunal Colegiado Penal y Administrativo en Yucatán, Suspension granted, 27 April 2022.

¹¹⁷ The request for the exercise its authority to assert jurisdiction is a petition formulated to the SCJN because it considers that its intervention is necessary for the resolution of a case due to its special interest or importance. This case was the authority to assert jurisdiction 436/2022.

¹¹⁸ DPLF, “México: Habitantes de Sitalpech llaman a la SCJN a atraer caso de mega-granja porcícola industrial ilegal”, 20 July 2020, <https://www.dplf.org/es/news/mexico-habitantes-de-sitalpech-llaman-la-scjn-atraer-caso-de-mega-granja-porcicola-industrial>

the grounds that “it had been filed out of time”, which allowed the farm to restart operations.¹¹⁹ This argument does not take into account the fact that the acts complained of are omissions in environmental matters, which in terms of the amparo petition are “ongoing acts”. This means that the lack of action by the authorities is continuing to affect people and that the period of 15 working days for filing the petition has therefore not been observed with since the effects have not ended.

4.4.2 PROTEST AT LOSING THE LEGAL BATTLE FOR INDIGENOUS PEOPLE TO BE HEARD

Juan Diego, Arturo and Jesús Ariel joined an encampment at the entrance to the megafarm on 10 February 2023 to prevent trucks with pigs and feed from entering and leaving. This started with a transporter (“nodriza”) truck carrying around 500 small pigs, which warned five other trucks that they should try other access routes, but were also unsuccessful because of the protest.¹²⁰

The camp remained in place for eight days, until the early morning of 18 February when approximately 100 riot police arrived. On that day there were 15 women, six men and a 12-year-old boy in the camp. The police beat the people there, including the child.¹²¹ One woman who was filming what was happening had her fingernails ripped out in an effort to force her to hand over her mobile phone, another woman held on to the truck in protest, when the police beat her, pulled her off and dragged her away. She required hospital treatment for a severe blow to the head.¹²² In addition, according to the statements of villagers, the police stole 16,000 Mexican pesos that the villagers had collected in support of their cause, and also took chairs, tables and other objects that were in the encampment.¹²³ They also took away their mobile phones, preventing them from communicating and recording and documenting the events.¹²⁴ The police never returned these items to the villagers.¹²⁵

On 22 February 2023, the people of Sitalpech organized a press conference presenting the “Sitalpech Declaration on a Town Free of Mega Pig Farms” in which they set out ways to engage in dialogue if conditions for this were in place.¹²⁶ That day they agreed that the villagers would stop the protest and let in food and fuel so that the animals would not die, in exchange for the pigs being removed eight days later and a dialogue being initiated.

On 1 March 2023, the villagers of Sitalpech, through a press release, rejected an invitation from the company to talks that they received through Kanan DDHH because the company had not fulfilled its promise to remove the pigs.¹²⁷ On 3 March the police arrived again with approximately 70 officers escorting the company’s trucks, burned the surrounding hills and forcibly removed the Sitalpech villagers’ encampment.¹²⁸ To avoid repression, the group of people decided to leave before they

¹¹⁹ Tribunal Colegiado en Materias Penal y Administrativa del Décimo Circuito, *Recurso de queja 246/2022*, [Tenth Circuit Criminal and Administrative Collegiate Court, Appeal 246/2022], 8 December 2022.

¹²⁰ Interview with villagers in Sitalpech, Yucatán, 18 April 2023.

¹²¹ Interview with villagers in Sitalpech, Yucatán, 18 April 2023.

¹²² Interview with villagers in Sitalpech, Yucatán, 18 April 2023.

¹²³ Interview with villagers in Sitalpech, Yucatán, 18 April 2023.

¹²⁴ Tweet, Kanan DDHH, 18 February 2023, twitter.com/kanan_ddhh/status/1626884941895155712?s=20. Interview with villagers from Sitalpech, Yucatán, 18 April 2023.

¹²⁵ Interview with villagers in Sitalpech, Yucatán, 18 April 2023.

¹²⁶ Strong Communities, Living Territories, “La Esperanza de Sitalpech” [The Hope of Sitalpech], 25 February 2023, www.ccmss.org.mx/la-esperanza-de-sitalpech/

¹²⁷ Avispa, “Comunidad maya rechaza ‘mesa de diálogo’ convocada por mega-granja porcícola” [“Mayan community rejects invitation to ‘round table talks’ from the mega pig farm”], 1 March 2023, avispa.org/comunidad-maya-rechaza-mesa-de-dialogo-convocada-por-mega-granja-porcicola/

¹²⁸ Footnote, “Sitalpech hace temblar a Kekén”, [Sitalpech frightens Kekén] 28 March 2023, piedepagina.mx/sitalpech-hace-temblar-a-keken/, Interview with Sitalpech villagers, 18 April 2023.

entered the village.

4.4.3 CRIMINALIZATION: WE ARE NOT EIGHT, WE ARE NOT 10, WE ARE THE PEOPLE OF SITILPECH!

The Highways Infrastructure Institute of Yucatan (INCAY) filed a complaint about the obstruction of and/or blockade on the road that prevented people and vehicles from circulating,¹²⁹ “endangering the safety of passers-by, as they can cause serious accidents on the road”. For its part, the pig company¹³⁰ denounced Juan Diego, Arturo and Jesús Ariel, who were identified as the main “provocateurs” for the harm caused by the road closure.¹³¹

The investigation was based on five statements from company workers¹³² who claimed that Juan Diego and Arturo took part in a road blockade using sticks, stones and burning tyres, preventing the passage of the farm’s trucks transporting pigs and feed. They also stated that on 18 February gunshots were heard, as a result of which the farm lost power.¹³³ The Yucatan Public Prosecutor’s Office brought criminal proceedings against Arturo and Juan Diego for the crime of obstruction of roadways¹³⁴ by gangs.¹³⁵ The Supervisory Judge of Kanasín, Yucatán, issued an indictment for the same offence.¹³⁶ Although the Public Prosecutor’s Office requested preventive detention as a precautionary measure, the judge considered this to be excessive, granting the men their freedom on the condition that they sign in every month and not leave the state of Yucatan.¹³⁷

There is nothing in particular that links Juan Diego, Arturo or Jesús Ariel to violent acts; the statements only mention the fact that they were together with the other people who carried out the protest. Up to now the criminal proceedings against them have ignored the context in which the protest took place, that it was carried out within their territory as Indigenous Mayan people with the right to self-determination and with the intention of stopping the environmental damage taking place.

TEXTBOX: Activists demonstrating in solidarity with Sitalpech’s struggle arrested

On World Water Day on 22 March 2023 a peaceful protest was held in solidarity with the people of Sitalpech. After the march ended, Sofia and Sebastian, who are activists; Muñeca, a transfeminist activist; and Andreu, an LGBT+ defender; were detained by plainclothes Special Investigation Police officials who did not carry IDs and put them in vehicles that were also unmarked. According to Kanan DDHH and the Centre for Justice, Democracy and Equality (Centro por la Justicia, Democracia e Igualdad, CEJUDI), three of the people sustained injuries, bruises and scratches, and

¹²⁹ INCAY, *Denuncia and/or querrela en contra de quien o quienes resulten responsables por la comisión de hechos posiblemente delictuosos*, [Accusation and/or charge against anyone responsible for committing possibly criminal acts], 22 February 2023, pp.1 to 6 of investigation folder F7-F7/019/2023.

¹³⁰ Livestock products for public consumption from rural production limited liability company with variable capital (PPC).

¹³¹ PPC, *Denuncia y querrela*, [Accusation and charge], 14 February 2023, pp. 44-65.

¹³² Witness interview records, *investigation file F7-F7/019/2023*, 23 February 2023, pp. 147-209.

¹³³ Witness interview records, *investigation file F7-F7/019/2023*, 23 February 2023, pp. 147-209.

¹³⁴ Mexico, Penal Code of the state of Yucatan, Article 168: A prison term of one to five years and a fine equivalent to forty to five hundred days shall be imposed on anyone who, by any means, inside or outside of towns, obstructs, damages, adversely affects or destroys any means of communication or its accessory installations, holds up transport vehicles or interrupts their service.

¹³⁵ Mexico, Penal Code of the state of Yucatan, Article 165: When one or more crimes are committed by a gang, those involved in their commission shall be subject to up to one half of the penalties applying to them for the offence or offences committed. For the purposes of this provision, a gang is understood to be the habitual, occasional or transitory gathering of three or more persons who, without being organized for criminal purposes, jointly commit a crime.

¹³⁶ Supervisory Judge of the Fourth Mixed Court of Kanasín, hearing of 22 March 2023.

¹³⁷ Supervisory Judge of the Fourth Mixed Court of Kanasín, hearing of 22 March 2023.

the four were handed over to the Public Prosecutor's Office.¹³⁸ The Public Prosecutor's Office argued that the arrests of Sofía and Sebastián were due to the fact that they were fighting and when the police came down to see what was going on, they attacked them with a conch shell; in the case of Muñeca and Andreu, they argued that they were carrying aerosol cans and intended to set fire to buildings and businesses, as well as inciting violence. However, there is no evidence of any aggression, nor was any graffiti or damage to nearby establishments found.¹³⁹

After simultaneous hearings on 25 March, the four detainees were released; in the case of Sofía and Sebastián, their detention was declared unlawful,¹⁴⁰ but in the case of Muñeca and Andreu, the deprivation of liberty was declared lawful,¹⁴¹ and they were granted interim measures so that they could be released pending trial.¹⁴² On 30 March the Supervisory Judge of the first judicial district criminal justice system ruled that Muñeca and Andreu would not be charged for the crimes of dangerous attacks against public officials and disobedience and resistance by private individuals. This decision was appealed by the Prosecutor's Office. In addition, Andreu was charged with possession of prohibited weapons and tools for allegedly possessing a knife.

¹³⁸ Kanan DDHH, *CEJUDI, Comunicado importante sobre las 4 personas detenidas arbitrariamente en la marcha de solidaridad con Sitilpech*, 24 March, [facebook.com/photo?fbid=779481266939701&set=pcb.779481723606322](https://www.facebook.com/photo?fbid=779481266939701&set=pcb.779481723606322).

¹³⁹ Dissident, "Fiscalía de Yucatán 'omisa': Absuelven de cargos a Muñeca y Andreu, personas detenidas luego de una marcha en solidaridad con Sitilpech" [Yucatán Prosecutor 'silent': Charges dropped against Muñeca and Andreu, people detained in connection with a march in solidarity with Sitilpech], 30 March 2023.

¹⁴⁰ Judge Santos May Tinal.

¹⁴¹ Judge Diana Yadira Garrido Colonia.

¹⁴² Lilia Balam, Sin embargo, *Juez declara ilegales las detenciones de dos jóvenes que se manifestaron en Yucatán*, [Judge declares detention of two young persons demonstrating in Yucatan unlawful], 28 April 2023, sinembargo.mx/28-03-2023/4342580

5 CHARACTERISTICS OF THE CRIMINALIZATION OF PROTEST BY DEFENDERS OF THE LAND, TERRITORY AND ENVIRONMENT

The criminalization of protest has been defined as “the use of the punitive power of the State to deter, punish, or prevent the exercise of the right to protest, and in some cases, to social and political participation more broadly, through the arbitrary, disproportionate, or repeated use of the criminal justice system against demonstrators, activists, and social or political leaders for participating in or allegedly organizing a social protest, or for being part of the organizing or convening group or entity.”¹⁴³

It has been noted that one of the most common scenarios as regards the persecution of defenders through the courts in the Americas occurs precisely when there is a protest or after a protest and that those who promote or lead them are the hardest hit.¹⁴⁴ The criminalization of protest is a serious restriction of rights that has far-reaching consequences for freedom of expression and other rights, such as the right to freedom of assembly and association and political participation.¹⁴⁵ The following details Amnesty International’s findings regarding the criminalization of protest in the four documented cases.

5.1 CONCERNS PRIOR TO CRIMINALIZATION

In the case of protests in defence of the land, territory and environment, there are prior violations of rights that are closely linked to the reasons why people are protesting. Thus, defence of the territory is often linked to violations of the rights to a healthy environment, to information and participation, as well as, in the case of Indigenous Peoples, the right to self-determination and to free, prior and informed consent. In the cases documented, Amnesty International also observed that individuals had made use of other institutional measures that were ineffective in achieving the defence of the land, territory and environment they were seeking.

5.1.1 RIGHT TO SELF-DETERMINATION AND LACK OF FREE, PRIOR AND INFORMED CONSENT ON PROJECTS AFFECTING INDIGENOUS PEOPLES

The right to self-determination or free determination is the right of a people to decide its own forms

¹⁴³ Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.LV/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 188.

¹⁴⁴ Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.LV/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 190.

¹⁴⁵ Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.LV/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 185.

of government; to pursue its economic, social and cultural development; and to structure itself freely without external interference. It also implies the right to define one's own laws or standards of life, written or oral.¹⁴⁶ This right can be expressed through various actions, such as self-government, consultation; respect for free, prior and informed consent; and the full and effective participation of Indigenous Peoples.¹⁴⁷

Article 32.2 of the UN Declaration on the Rights of Indigenous Peoples establishes that “States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free and informed consent prior to the approval of any project affecting their lands or territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources.” In addition, the Inter-American Court of Human Rights has recognized the special bond that Indigenous peoples have with the land and territory, which “must be recognized and understood as the fundamental basis of their cultures, their spiritual life, their integrity and their economic survival”¹⁴⁸ States have an obligation, among others, to guarantee the rights to self-determination, consent and prior environmental and social impact assessment.¹⁴⁹

The right to consent is obtained through prior consultation, conducted in good faith, with the aim of reaching agreement and therefore also includes the right to say no, which must be adequate, accessible and informed. This should be done from the earliest stages of the plan and information should be provided about the project and its risks, including environmental and health risks. Procedures should be culturally appropriate, taking account of people's customs and traditions and their traditional methods of decision-making.¹⁵⁰ Only by following these guidelines can free consent be obtained.

In three of the cases documented, the criminalization of protest took place in the context of demands for the rights of Indigenous peoples: (i) in Chilón, Tseltal people were demonstrating against the construction of the National Guard barracks on their territory; (ii) in Zacatepec, the Nahua people were demonstrating against the construction of a drainage system that would pollute the Metlapanapa River, Puebla; and (iii) in Sitalpech, Mayan people were demonstrating against a mega pig farm on their territory. In none of these cases was there ever a consultation process, violating their rights as Indigenous peoples.

In addition, the people of Chilón have the right not to have military activities carried out on their lands¹⁵¹ to the right to effective consultation before their territories are used for such activities. In this respect, it is important to remember that the National Guard is a militarized body. In the protection lawsuit filed by Centro Prodh against the barracks, the National Guard's Legal Affairs and Transparency Unit confirmed that the deployment and construction of the National Guard barracks were ordered directly by the Ministry of National Defence (SEDENA) with the object of “combating”

¹⁴⁶ International Covenant on Economic, Social and Cultural Rights, Article 1; International Covenant on Civil and Political Rights, Article 3, Declaration on the Rights of Indigenous Peoples, Article 4, American Declaration on the Rights of Indigenous Peoples, Article III; CPEUM, Article 2.

¹⁴⁷ OHCHR, UNDG *Guidelines on Indigenous Peoples' Issues*, 1 April 2009, https://www.ohchr.org/sites/default/files/Documents/Publications/UNDG_training_16EN.pdf

¹⁴⁸ Inter-American Court, *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, 31 August 2001, para. 149.

¹⁴⁹ Inter-American Court, *Case of the Garifuna Community of Punta Piedra and its Members v. Honduras*, 8 October 2015, para. 215.

¹⁵⁰ Inter-American Court, *Case of the Saramaka People. Vs. Suriname*, 28 November 2007, para. 133.

¹⁵¹ Declaration on the Rights of Indigenous Peoples, Article 30 and American Declaration on the Rights of Indigenous Peoples, Article XXX.

organized crime, based on public security.¹⁵²

The UN Working Group on Indigenous Peoples has warned of the link between militarization of Indigenous territories and colonization.¹⁵³ It has also stated that the construction of military bases on Indigenous territories is a threat to the rights of Indigenous peoples, including the rights to life and physical integrity, as well as their physical and cultural survival;¹⁵⁴ dispossession; the impairment of economic, social and cultural rights;¹⁵⁵ as well as the risk of sexual violence, such as attacks and rape.¹⁵⁶

States should not therefore engage in military activities on Indigenous peoples' lands or territories unless it is justified by the public interest or unless agreed with the peoples or requested by them,¹⁵⁷ and after free, prior and informed consent has been obtained in cases where militarization may have a significant impact.¹⁵⁸ Thus, the Working Group concluded that, in accordance with Articles 19 and 30 of the UN Declaration on the Rights of Indigenous Peoples, states must promote the demilitarization of Indigenous peoples' lands, territories and resources and immediately withdraw military bases that have been established without their consent.¹⁵⁹

This situation is of major importance in the state of Chiapas, where, according to a recent Frayba report, a remilitarization process that includes 71 military camps and the construction of 10 National Guard barracks in various municipalities, including Chilón, is under way, with another six barracks scheduled for 2023.¹⁶⁰

5.1.2 LACK OF INFORMATION AND PARTICIPATION REGARDING PROJECTS THAT MAY AFFECT THE RIGHT TO A HEALTHY ENVIRONMENT

The Inter-American Court of Human Rights has stated that the obligation to carry out environmental studies exists in relation to any activity that may cause significant environmental damage,¹⁶¹ regardless of whether the project is carried out by the state or by private individuals.¹⁶² These studies must be carried out before the activity begins; be conducted by independent entities under the supervision of the state; cover the cumulative impact generated by existing and proposed projects; with the participation of the people concerned; respect the traditions and culture of Indigenous peoples; determine the specific content taking into account the nature and magnitude of the project and the possible impact on the environment; and establish a contingency plan and

¹⁵² Centro Prodh, *Poder Militar, la Guardia Nacional y los riesgos del renovado protagonismo castrense*, [Military power, The National Guard and the risk of further military prominence], June 2021, centroprodh.org.mx/wp-content/uploads/2021/06/Informe_Poder_Militar.pdf p. 248 and 249.

¹⁵³ Expert Mechanism on the Rights of Indigenous Peoples (Indigenous Peoples' Expert Mechanism), Impacts of Militarization on the Rights of Indigenous Peoples (Impacts of Militarization), 30 May 2023, A/HRC/EMRIP/2023/2, para. 3.

¹⁵⁴ Expert Mechanism on Indigenous Peoples, Impacts of Militarization, 30 May 2023 A/HRC/EMRIP/2023/2, para. 23.

¹⁵⁵ Expert Mechanism on Indigenous Peoples, Impacts of Militarization, 30 May 2023 A/HRC/EMRIP/2023/2 para. 44.

¹⁵⁶ Expert Mechanism on Indigenous Peoples, Impacts of Militarization, 30 May 2023 A/HRC/EMRIP/2023/2, para. 58.

¹⁵⁷ Expert Mechanism on Indigenous Peoples, Impacts of Militarization: Annex: Opinion No. 16, 30 May 2023, A/HRC/EMRIP/2023/2, para. 3.

¹⁵⁸ Expert Mechanism on Indigenous Peoples, Impacts of Militarization: Annex: Opinion No. 16, 30 May 2023, A/HRC/EMRIP/2023/2, para. 5.

¹⁵⁹ Expert Mechanism on Indigenous Peoples, Impacts of Militarization: Annex: Opinion No. 16, 30 May 2023, A/HRC/EMRIP/2023/2, para. 6.

¹⁶⁰ Frayba, *Chiapas un desastre, entre la violencia criminal y la complicidad del Estado (Chiapas a disaster, between criminal violence and the complicity of the state)*, 2023, frayba.org.mx/informe-frayba-chiapas-un-desastre p. 18.

¹⁶¹ Inter-American Court, *Advisory Opinion OC-23/17*, 15 November 2017 corteidh.or.cr/docs/opiniones/seriea_23_eng.pdf, para. 157.

¹⁶² Inter-American Court, *Advisory Opinion OC-23/17*, 15 November 2017, corteidh.or.cr/docs/opiniones/seriea_23_eng.pdf, para. 160.

provide mitigation in cases where environmental damage occurs.¹⁶³ The Escazú Agreement recognized three fundamental rights relating to environmental issues: the right of access to environmental information,¹⁶⁴ the right to public participation in decision-making processes in environmental matters¹⁶⁵ and the right to access to justice in environmental matters.¹⁶⁶ Despite having ratified the Escazú Agreement, its implementation continues to be a challenge and is a major pending issue in the country.

In Mexico, the General Law on Ecological Balance and Environmental Protection has established the instrument of environmental impact assessment, through which the Ministry of Environment and Natural Resources (SEMARNAT) evaluates the impact that a work or construction will have on the environment. Those responsible for projects must present an environmental impact assessment (EIA). This is a technical-scientific study that indicates the effects that a work or activity may have on the environment and indicates preventive measures to minimize any potential adverse impact. The applicant must publish an abstract in a newspaper with circulation in the state in question.¹⁶⁷ SEMARNAT, for its part, must publish it in the *Ecological Gazette*,¹⁶⁸ evaluate the EIAs and authorize, amend or reject them.¹⁶⁹ Once authorized, the Federal Environmental Protection Agency (PROFEPA) must verify compliance.

This process has several shortcomings, in both its origin and practice, that prevent it from fulfilling international obligations in this area. Among them is the fact that there is no effective access to information for people affected, nor is public information provided to check whether environmental mitigation obligations are being complied with.¹⁷⁰ In addition, the established participation mechanisms of public information gathering¹⁷¹ and public consultation¹⁷² are not binding and are rarely used.¹⁷³ According to the environmental rights organization CEMDA, other problems have to do with the fact that the social impacts of projects are not evaluated; citizens are not granted the right to consultation, only the right to request it; there is no special process when dealing with Indigenous peoples;¹⁷⁴ and determining the competent authority is extremely complex because of the fact that environmental impact cuts across different levels of government.¹⁷⁵

Rights to a healthy environment, to information and to participation were violated in three of the

¹⁶³ Inter-American Court, *Advisory Opinion OC-23/17*, 15 November 2017, corteidh.or.cr/docs/opiniones/seriea_23_eng.pdf, paras 162-173.

¹⁶⁴ Universally recognized as a right to freedom of expression: Universal Declaration of Human Rights (UDHR), Article 19 and International Covenant on Civil and Political Rights (ICCPR), Article 19.

¹⁶⁵ Universally recognized as the right to take part in the government of one's country or to take part in the conduct of public affairs, UDHR, Article 21 and ICCPR, Article 25.

¹⁶⁶ Escazú Agreement, Article 2(a). Universally recognized as a right to an effective remedy: UDHR, article 8 and ICCPR, article 2(3).

¹⁶⁷ Mexico, *Ley General del Equilibrio Ecológico y la Protección al Ambiente*, article 34.

¹⁶⁸ Mexico, *Ley General del Equilibrio Ecológico y la Protección al Ambiente*, Article 34.

¹⁶⁹ Mexico, *Ley General del Equilibrio Ecológico y la Protección al Ambiente*, Article 35.

¹⁷⁰ Civil society organizations and defenders, *Informe sombra de la implementación del Acuerdo de Escazú en México*, 15 April 2023, [Informe sobre de la implementación del Acuerdo de Escazú en México - Artículo 19 \(articulo19.org\)](https://www.articulo19.org/informe-sombra-de-la-implementacion-del-acuerdo-de-escazu-en-mexico-articulo-19), p. 4.

¹⁷¹ Mexico, *Ley General del Equilibrio Ecológico y la Protección al Ambiente*, article 34.III. It explains technical environmental aspects of the work or activities that may generate serious ecological imbalances or damage to public health or ecosystems.

¹⁷² Mexico, *Ley General del Equilibrio Ecológico y la Protección al Ambiente* (General Law on Ecological Equilibrium and Environmental Protection), Article 3.

¹⁷³ Civil society organizations and defenders, *Informe sombra de la implementación del Acuerdo de Escazú en México*, 15 April 2023, [Informe sobre de la implementación del Acuerdo de Escazú en México - Artículo 19 \(articulo19.org\)](https://www.articulo19.org/informe-sombra-de-la-implementacion-del-acuerdo-de-escazu-en-mexico-articulo-19), p. 4.

¹⁷⁴ CEMDA, *Modifications to the EIA procedure*, [cemda.org.mx/modificaciones-al-procedimiento-de-evaluacion-de-impacto-ambiental-eia/](https://www.cemda.org.mx/modificaciones-al-procedimiento-de-evaluacion-de-impacto-ambiental-eia/)

¹⁷⁵ Trujillo Segura Julio, *El principio de concurrencia ambiental en México*, Instituto de Investigaciones Jurídicas de la UNAM, 2011.

cases documented.¹⁷⁶ Despite evidence of how the exponential growth of the pig industry in the region has polluted the water, affected the ecotourism of cenotes, and caused devastation in the Mayan jungle¹⁷⁷ in the case of Sitalpech, people never received any information about the construction of the farm, or its environmental impacts; the Environmental Impact Assessment was not shared with them and they were not allowed to take part in the process, not to mention the failure to take self-determination and the right to free, prior and informed consent into account.

In the case of Colonia Maya, on 9 July 2016 the Federal Attorney's Office for Environmental Protection in Chiapas decided on total temporary suspension of the activities that brought about the change of land use on forest land without environmental impact authorizations for the change of land use being issued by the Ministry of Environment and Natural Resources (SEMARNAT).¹⁷⁸ Members of Colonia Maya inquired about these permits themselves, but never obtained prior information about the project and its possible environmental impact, nor were they able to take part in the process. Finally, drainage of the industrial park in Huejotzingo, Zacatepec, has been suspended because the state Ministry for the Environment, Sustainable Development and Territorial Planning has shut down the drainage works until the impact of the work on the river and the drainage system is evaluated.¹⁷⁹ The Nahua people were not given prior information about the project and were not allowed to take part in the process, thus violating their rights to self-determination and to free, prior and informed consent.

The authorities have failed to comply with international standards and Mexican law in relation to the rights to a healthy environment, to environmental information and to participation in the three cases documented. No information was provided about the development of the projects or the adverse environmental impacts they would entail; neither was access to environmental information facilitated for people in vulnerable situations through processes of care, from the formulation of requests to the delivery of information. Nor was participation by the affected people ensured from the initial stages of the decision-making process and, therefore, their comments were not properly considered. In Zacatepec and Colonia Maya, the projects were indeed shut down due to the lack of adequate environmental impact assessments.

5.1.3 PROTEST AS A RESPONSE TO THE INEFFECTIVENESS OF OTHER INSTITUTIONAL CHANNELS¹⁸⁰

Protection of the right to protest must be strengthened and particular attention must be paid when it is exercised by people in vulnerable situations for whom the more usual or institutional channels have been ineffective. Interestingly, in three of the four cases documented by Amnesty International, the people first went to the relevant authorities, but in the absence of a response they decided to take to the streets and exercise their right to protest against the threat of construction of the

¹⁷⁶ The case of the construction of the National Guard Barracks is left out of the analysis because the absence of an Environmental Impact Assessment is not a matter of controversy in this case.

¹⁷⁷ Greenpeace, *¿Qué hay detrás de la industria porcícola en la península de Yucatán? La carne que está consumiendo al Planeta [The meat the planet is consuming]*, 2020, <https://www.greenpeace.org/mexico/publicacion/8357/que-hay-detras-de-la-industria-porcicola-en-la-peninsula-de-yucatan-la-carne-que-esta-consumiendo-al-planeta/>

¹⁷⁸ PROFEPA, "Clausura PROFEPA construcción de fraccionamiento "La Moraleja" en San Cristobal de las Casas" [PROFEPA's building of the "La Moraleja" housing estate in San Cristobal de las Casas shut down], *Chiapas*, 9 July 2016, gob.mx/profepa/prensa/clausura-profepa-construccion-de-fraccionamiento-la-moraleja-en-san-cristobal-de-las-casas-chiapas

¹⁷⁹ Proceso, "Clausuran drenaje del parque industrial de Huejotzingo" [Drainage of the Huejotzingo industrial estate closed down], 30 January 2020, proceso.com.mx/nacional/estados/2020/1/30/clausuran-drenaje-del-parque-industrial-de-huejotzingo-237900.html.

¹⁸⁰ This section is a narrative about the cases documented by Amnesty International, however, it is important to note that individuals were equally able to choose to exercise their right to protest without the need to exhaust any prior institutional channels.

drainage projects in Zacatepec and the housing development in Colonia Maya. For its part, the justice system rejected Sitalpech's petitions and lifted the suspension of the farm's activities through a ruling by a Collegiate Court, which left people with no option but to protest in order to be heard.

In the case of Chilón, people took to the streets because their rights, including the right to self-determination and consent, had been violated. Following repression of the protest against the National Guard barracks, the Tzeltal people, accompanied by Frayba and Centro Prodh, initiated a legal process by filing an amparo petition against the militarization.¹⁸¹

"The people no longer believe in institutions, because they were created to serve capital and government".¹⁸²

For defenders of the land, territory and environment, the existing institutional channels, both judicial and administrative, have not been effective in stop the violations of their rights in the four cases documented by Amnesty International. As a result, people have decided to protest as a right and a means to demand that the authorities fulfil their rights, including those to a healthy environment, self-determination, non-militarization of their territory, to consent and to environmental impact assessments.

"I am a lawyer and I know the regulations; in many of the cases we are defending there has been no compliance as such with the guidelines and regulations in San Cristóbal".¹⁸³

5.2 CHARACTERISTICS OF THE CRIMINALIZATION OF PROTEST BY DEFENDERS OF THE LAND, TERRITORY AND ENVIRONMENT

In the cases documented by Amnesty International, the following common features that contribute to the effectiveness of the procedures for the criminalization of land, territory and environmental protests have been observed.

5.2.1 USE OF THE CRIMINAL JUSTICE SYSTEM IN CASES OF SOCIAL PROTEST

Many protests involve some level of disruption to ordinary life or to the rights of others, including the right to freedom of movement. However, it has been recognized that these disturbances are a part of pluralist societies where there are diverse interests that require space and channels to express themselves.¹⁸⁴ This is why the IACHR has stated that use of the criminal justice system to deal with the conduct of demonstrators constitutes a serious restriction with far-reaching consequences for the rights exercised through protest, which is why it can only be used "on a very exceptional basis and is subject to a heightened level of scrutiny".¹⁸⁵ When, on the contrary, the criminal justice system is

¹⁸¹ Centro Prodh, *Pueblo maya tseltal del municipio de Chilon emprende batalla legal contra la militarización de su territorio por medio de la imposición de un cuartel de la Guardia Nacional*, [Tzeltal mayan people in the municipality of Chilon are undertaking a legal battle against the militarization of their territory through the imposition of a National Guard barracks], 27 January 2021, <https://centroprodh.org.mx/2021/01/27/chilon-emprende-batalla-legal-contra-la-militarizacion-por-imposicion-de-cuartel-de-la-guardia-nacional/>

¹⁸² In-person interview with Alejandro Torres, Santa María Zacatepec, Puebla, 13 March 2023.

¹⁸³ In-person interview with Lucero Aguilar Pérez, Amnesty International Regional Office, 4 May 2023.

¹⁸⁴ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 23.

¹⁸⁵ Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), *Protest and Human Rights*, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 185.

used to deter, punish or impede the right to protest, this constitutes the criminalization of protest.¹⁸⁶

While the rights to freedom of expression, peaceful assembly, association and participation are not absolute rights, restrictions on these rights must be consistent with the principles of legality, necessity and proportionality in order to safeguard one of the legitimate grounds – national security; public safety; public order; the protection of public health or morals; or the protection of the rights and freedoms of others.¹⁸⁷ The onus is on the authorities to demonstrate that restrictions meet these requirements and that they are not designed to discourage participation in assemblies or have a deterrent effect.¹⁸⁸

With regard to the principle of legality, the penalties provided for by law must be sufficiently precise and clear, and must unambiguously define criminalized conduct that can be distinguished from other conduct.¹⁸⁹ Offences should not be ambiguous or overly broadly defined, nor should they repress conduct protected by international law.¹⁹⁰ Even seemingly neutral laws can result in unlawful restrictions if they are applied without exception to peaceful assemblies, so that exercise of the right is treated as a criminal offence.

For the IACHR, protest can be criminalized in three main ways:¹⁹¹ i) as a result of the application of vague or ambiguous definitions of what constitutes a crime; ii) by directly penalizing conduct that is specific to social protest, for example, when there are criminal sanctions for not requesting prior authorization to exercise this right; and iii) by a formalistic application of definitions of offences, divorcing them from the context of the protest and developing a literal interpretation or unduly extending the scope of application.¹⁹²

In Mexico, civil society organizations have been warning for years about the application of various criminal offences which, because of their ambiguity, have been used to punish people exercising their right to protest. These include the crimes such as “attacks on general roadways” under federal jurisdiction and “attacks on communication and transport routes” under common jurisdiction.¹⁹³ In the cases of Zacatepec and Sitilpech, variations of these offences were used – attacks on general roadways¹⁹⁴ and damage to roadways¹⁹⁵ committed by gangs,¹⁹⁶ respectively.

Similarly, in the Chilón case, the criminal offence of riot was used.¹⁹⁷ This crime is committed when in order to use a right or under the pretext of exercising it, or to avoid compliance with a law, or to

¹⁸⁶ Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 188.

¹⁸⁷ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 41.

¹⁸⁸ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 36.

¹⁸⁹ Inter-American Court, *Case of Norín Catrimán et al. (Leaders, members and activist of the Mapuche Indigenous People) v. Chile*, 29 May 2014.

¹⁹⁰ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 67.

¹⁹¹ Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 195.

¹⁹² Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 195.

¹⁹³ DPLF, *Criminalization of human rights defenders and social protest in Mexico*, [dplf.org/sites/default/files/1279728364.pdf](https://www.dplf.org/sites/default/files/1279728364.pdf), p. 51. Frente por la Libertad de expresión y la protesta social en México, *Audiencia temática ante la CIDH: Human Rights and Social Protest in Mexico*, 30 October 2014, p. 14.

https://www.fundar.org.mx/mexico/pdf/CIDH_Informe_Final_Protesta30Octubre2014.pdf

¹⁹⁴ Mexico, Penal Code of Puebla, Article 188.

¹⁹⁵ Mexico, Penal Code of the State of Yucatan, Article 168.

¹⁹⁶ Mexico, Penal Code of the State of Yucatan, Article 165.

¹⁹⁷ Mexico, Penal Code of Chiapas, Article 353.

intimidate or force the authority to make a decision: i) people gather tumultuously and disturb public order with the use of violence; ii) they threaten the authority; and iii) they obstruct means of communication. It therefore includes the element of obstruction of roadways, but adds other vague conducts such as “threatening or intimidating” the authority. By establishing that the offence is committed “under the pretext of the use of a right”, it allows acts of protest to be included, instead of exempting them from criminal prosecution. In this respect a Collegiate Court compared the criminal offence of riot with that of sedition, explaining that they are criminal definitions that were originally designed to combat rebellion and dissent. As a result of the above, this offence must be reasonably consistent with the criminal standard in relation to the events by those seeking to present the case through careful consideration of each case.¹⁹⁸

Criminal offences that include “obstructing” or “impeding” roadways were used in the Chilón, Sitalpech and Zacatepec cases. Regarding this crime, the IACHR has noted that it is one of the most common offences used to criminalize protest in various countries in the region.¹⁹⁹ This is because the use of public space, including streets and roads, is one of the most common behaviours through which the right to protest is exercised. In this respect the IACHR Rapporteur for Freedom of Expression has established that in principle it is inadmissible to criminalize demonstrations on public roads *per se* when they are made in the context of the right to freedom of expression and the right to assembly.²⁰⁰ For its part, General Comment 37 has specified that disruption of vehicular or pedestrian movement or daily activities do not amount to violence²⁰¹ and that a peaceful assembly may only be dispersed when it causes a major disruption, such as a prolonged blockage of traffic that is severe and sustained.²⁰²

The same argument applies to the crime of “opposition to the carrying out of public works”,²⁰³ as it is a criminal offence that can also be used to criminalize protest. In this sense, the offences used in relation to “obstruction” of public roads, “opposition to the carrying out of public works” and “riot” lack the necessary clarity, as they do not establish fundamental questions such as what is understood by obstruction, opposition or riot; the duration and under what circumstances these acts can be considered a crime; and they do not establish exceptions that allow the right to protest to be adequately guaranteed.

In the case of Colonia Maya, criminalization occurred through the fabrication of crimes that have nothing to do with social protest. This is usually based on false facts for which there is none of the evidence necessary to establish the crime. Thus, the crime of deprivation of liberty²⁰⁴ was used with the aggravating circumstance of being committed by more than two people,²⁰⁵ examining the events of the day of the protest and attempting to fit them to the crime of holding someone captive by making use, according to the people who attended the demonstration, of a peaceful negotiation that the demonstrators had with the operator of the machinery, when the person was free to leave the

¹⁹⁸ Tribunal Colegiado en Materias Penal y Administrativa del Vigésimo Segundo Circuito, Amparo en revisión 133/2017, [Twenty Second Circuit Criminal and Administrative Collegiate Court, Protection order under review], 13 July 2017, Thesis: XXII.P.A.13 P (10a.), [Detalle - Tesis - 2016271 \(scjn.gob.mx\)](#)

¹⁹⁹ IACHR, Annual Report 2005, Chapter V, para. 96.

²⁰⁰ IACHR, Annual Report 2005, Chapter V, para. 96.

²⁰¹ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 15.

²⁰² Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 85.

²⁰³ Mexico, Penal Code of Puebla, Article 203.

²⁰⁴ Mexico, Ley general para prevenir y sancionar los delitos en materia de secuestro [General law to prevent and penalize crimes relating to incarceration], article 9.

²⁰⁵ Mexico, Ley general para prevenir y sancionar los delitos en materia de secuestro [General law to prevent and penalize crimes relating to incarceration], Article 10.I.b.

site, and without presenting sufficient evidence to establish the crime.

In addition to the requirement for legality, for a restriction of the exercise of the right to protest to be valid it must also comply with the principles of necessity and proportionality. With regard to the requirement for necessity, restrictions must be an adequate response to a pressing social need and related to one of the permitted grounds. They must be the least intrusive measure among those that might serve the relevant protective function.²⁰⁶ The principle of proportionality involves weighing the nature and the harmful effect of interference against exercise of the right. If the harm outweighs the benefit, the restriction is disproportionate.²⁰⁷

The IACHR has stated that it is necessary to examine whether the application of criminal sanctions satisfies a necessary imperative public interest. In addition, an assessment must be made as to whether the imposition of criminal sanctions is the least harmful means of restricting freedom of expression.²⁰⁸ In principle, for the IACHR, “criminalization per se of demonstrations in public thoroughfares is inadmissible when they are carried out in exercise of the rights to freedom of expression and to freedom of assembly “.²⁰⁹

In contexts of protest in Mexico, a Collegiate Court has emphasized the need to consider each case in relation to the historical origin and content of the protest or claim, taking into account that the freedom to express opinions and ideas, and even to protest through peaceful civil resistance, are protected in the Mexican legal system.²¹⁰ It pointed out the need to take into account the principle of minimum penal intervention in complex scenarios and to investigate whether or not there were prior efforts by the authorities to engage in dialogue, in terms similar to the right to consultation.²¹¹ On the basis of this argument, people could also be in a hypothetical situation where commission of a crime was ruled out, such as that relating to the exercise of one or more fundamental rights or freedoms.²¹²

None of the four cases documented by Amnesty International were assessed by the authorities in the light of the right to protest, taking into account the context in which people decided to take to the streets to demand their rights. Thus, for example, in the cases of Colonia Maya, Zacatepec and Sitaltepec the fact that people were seeking to put a stop to the environmental damage that was occurring, exercising their defence of land, territory and the environment was not taken into account that. Nor was the short time the protests lasted and their peaceful nature taken into account, in comparison with the possible harm or inconvenience that these actions could have caused to third parties.

²⁰⁶ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 40.

²⁰⁷ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 40.

²⁰⁸ Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para.187.

²⁰⁹ Special Rapporteur for Freedom of Expression and IACHR, Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 187.

²¹⁰ Tribunal Colegiado en Materias Penal y Administrativa del Vigésimo Segundo Circuito, Amparo en revisión [Twenty Second Circuit Criminal and Administrative Collegiate Court, Protection order under review] 133/2017, 13 July 2017, Tesis: XXII.P.A.13 P (10a.), [Detalle - Tesis - 2016271 \(scjn.gob.mx\)](https://www.scf2.scjn.gob.mx/detalle/tesis/2016271)

²¹¹ Tribunal Colegiado en Materias Penal y Administrativa del Vigésimo Segundo Circuito, Amparo en revisión [Twenty Second Circuit Criminal and Administrative Collegiate Court, Protection order under review] 133/2017, 13 July 2017, Tesis XXII.P.A.15 P (10a.), [sjf2.scjn.gob.mx/detalle/tesis/2016270](https://www.sjf2.scjn.gob.mx/detalle/tesis/2016270)

²¹² Tribunal Colegiado en Materias Penal y Administrativa del Vigésimo Segundo Circuito, Amparo en revisión [Twenty Second Circuit Criminal and Administrative Collegiate Court, Protection order under review] 133/2017, 13 July 2017, Tesis XXII.P.A.14 P (10a.), [sjf2.scjn.gob.mx/detalle/tesis/2016269](https://www.sjf2.scjn.gob.mx/detalle/tesis/2016269)

There was no attempt to resort to less harmful means, such as initiating dialogue with people to address their demands, but instead use was made of criminal offences that could lead to the defenders being deprived of their liberty. In the Zacatepec and Sitalpech cases, it is also essential to take into consideration that people were protesting on their ancestral territories, exercising their right to self-determination. Even less consideration was given to the consequences that criminalization could have on other rights, such as freedom of expression, peaceful assembly and association. Thus, the use of the criminal law in the four cases examined failed to comply with the requirements for legality, necessity and proportionality and therefore constituted the criminalization of social protest.

5.2.2 LACK OF EVIDENCE: JUDGMENTS BASED ON STATEMENTS BY PUBLIC OFFICIALS OR COMPANY EMPLOYEES

The four cases of criminalization of protest documented by Amnesty are based on accusations filed by the companies and/or public officials directly involved in the events. Thus, the Chilón and Zacatepec cases are based on testimonies from public officials; the Chilón case is based on the testimony of six municipal police officers;²¹³ while the Zacatepec case is based on three statements from CAESPUE officials.²¹⁴ Colonia Maya and Sitalpech are based on testimonies of company workers; Colonia Maya contains an accusation directly filed by the entrepreneur of the development project and is based on the testimonies of three company workers,²¹⁵ while Sitalpech is based on an accusation filed by the Instituto de Infraestructura Carretera de Yucatán (INCAY),²¹⁶ which makes reference to the company's accusation, based on the testimonies of five company workers.²¹⁷

*"The statement by the man who accuses us of allegedly holding him captive is not reliable, he did not even go to report the crime, the Public Prosecutor's Office summoned him following an accusation by the company's owner. There is a clear work relationship there, there is no way he would say anything different from what his bosses told him."*²¹⁸

The four cases studied are mainly based on these statements, without any other compelling evidence such as physical evidence, photographs, videos, statements from people not linked to the companies or to the accusing entities, among others, that could conclusively link the individuals to the crimes they are accused of. The statements made by company workers and civil servants are completely different from the account of the events given by those who were criminalized. It can be seen how the facts are distorted in order to make stronger accusations and to be able to charge people with crimes that carry heavier penalties and to seek to deprive them of their liberty.

Such is the case in Colonia Maya, where defenders are accused of holding someone captive and it is mentioned that the worker was threatened with being set on fire with petrol and spent 18 hours without having a meal or any food, when the people who were present that day claim that they even bought him dinner and negotiated with him peacefully. In Zacatepec, Miguel and Alejandro were accused of burning a CAESPUE van with a petrol bomb, although these facts could not be proven. In Chilón, César and José Luis were accused of throwing stones at the police and of being among the most violent in the demonstration. In Sitalpech, they were accused of threatening to injure the

²¹³ C.I.0031-031-1006-2020, *Indictment of the Office of the Prosecutor for Indigenous Justice*, 12 January 2021, pp. 135-144.

²¹⁴ Investigation file 18824/2019/ZC, Interview of two witnesses working at CAESPUE 8/11/2019.

²¹⁵ Accusation, *Investigation file 00867-078-0301-2017*, 23 May 2017.

²¹⁶ Investigation file 18824/2019/ZC, Interview of two witnesses working at CAESPUE 8/11/2019.

²¹⁷ Witness interview records, *investigation file F7-F7/019/2023*, 23 February 2023, pages 147 to 209.

²¹⁸ In-person interview with Lucero Aguilar Pérez, Amnesty International Regional Office, 4 May 2023.

workers. In all four cases, those criminalized stated that they protested peacefully and categorically deny that these statements are true.

5.2.3 ACCUSATIONS FILED AGAINST LEADERS AND HIGH-PROFILE MEMBERS OF MOVEMENTS

The demand for rights in the four projects documented involves many people who also demonstrated and were present on the day of the events that are the subject of controversy. However, criminal proceedings have been initiated against those people who are most visible, or who have been or are perceived by the authorities to have been most involved in the defence of the land, territory and environment.

This is particularly relevant in the Zacatepec, Sitilpech and Colonia Maya cases, where the people most affected are the most visible faces of the movements. In the Chilón case, it is striking that César and José Luis do not consider themselves the leaders of any movement, but simply joined the community in demonstrating their opposition to the National Guard barracks. Despite this, both noted that in the interviews that during their detention police constantly referred to them as “leaders”. Likewise, the police officials’ accounts refer to their leadership status, that they organized people and that they were among the most violent.²¹⁹ This indicates that the intention was to arrest the main leaders, even though this was not achieved.

Criminal prosecutions against leading defenders have a major impact on both the individual criminalized, the collective and the cause, as it sends a unequivocal message that seeks to inhibit continuing defence.

5.2.4 LENGTHY PROCEEDINGS AND/OR THE CONSTANT THREAT OF DEPRIVATION OF LIBERTY²²⁰

Delayed trials have a chilling effect on defenders, creating an intimidating effect on other defenders or those who want to speak out and protest.²²¹ The IACHR has stated that it is very common for defenders to linked to proceedings for a long time.²²² This was the case for Miguel, from Zacatepec, and César and José Luis, from Chilón, whose trials began in 2020, but it was not until May 2023 that Miguel was acquitted and granted a conditional suspension of proceedings, and César and José Luis were sentenced to two years in prison.

Regarding Miguel’s trial, it is important to note that the process was delayed due, among other things, to an appeal by CESPUE and the four consecutive denials of suspension of proceedings, in which the defence was warned that “even if they presented the request a thousand times, they were going to be rejected a thousand times”.²²³ For its part, the trial of César and José Luis had many hearing delays that were linked to the Covid-19 pandemic. The oral trial hearing took place after almost three years, and then the defence’s arguments about the evidence were not considered and the defendants were sentenced to two years in prison.

Although Miguel López (Zacatepec) will finally be acquitted of the crimes after six months of presenting himself monthly to sign in, it is important to note that during this time he must not

²¹⁹ C.I.0031-031-1006-2020, *Indictment of the Office of the Prosecutor for Indigenous Justice*, 12 January 2021, pp. 135-144.

²²⁰ This does not analyse Sitilpech’s case because this started in 2023.

²²¹ IACHR, *Criminalization of human rights defenders*, 31 December 2015, OEA/Ser.LV/II., <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 173.

²²² IACHR, *Criminalization of human rights defenders*, 31 December 2015, OEA/Ser.LV/II., <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 173.

²²³ Commission on Human Rights, *filing of complaint*, 20 October 2021.

commit any other offence and, therefore, there is an underlying fear of further criminalization for continuing with his demand for land rights and protection of the territory and the environment, creating a chilling effect on his exercise of the right to peaceful protest. César and José Luis (Chilón) were sentenced, which creates an intimidating and chilling effect on continuation of the struggle not only for them, but also for the community that opposes the National Guard barracks.

For his part, since 2020 Alejandro Torres (Zacatepec) has been the subject of an arrest warrant that has not been cancelled or served, while Colonia Maya is the subject of an investigation file in which no criminal prosecution has been ordered. In both cases, the underlying possibility of reviving criminalization remains and prevents them from carrying out their work as defenders in a normal way because of the threat of facing criminal proceedings at any moment. Thus, defenders of the land, territory and environment carry out their defence work with the constant fear of prosecution by the criminal justice system.

*“The uncertainty is the worst thing now, not knowing how it is going. We know that the file is not closed, it can be reactivated”.*²²⁴

5.2.5 APPLICATION OF PRECAUTIONARY MEASURES

Interim or trial guarantee measures are usually adopted at the start of the criminal proceedings studied; the purpose of these measures under Mexican law is to ensure that people will continue criminal proceedings. In the cases studied, some measures such as informal pre-trial detention and pre-trial detention were used, as well as other less restrictive measures such as presenting oneself to a court periodically to sign in and the prohibition on leaving a state or locality.

Pre-trial detention as a precautionary measure is the most severe measure that can be applied in a trial and, therefore, it should be exceptional and limited by the principles of legality, presumption of innocence, necessity and proportionality. Its application should be ordered only when there is a risk of flight or destruction of evidence.²²⁵ It should also be reviewed periodically and proved to be necessary and proportionate. Article 19 of the Mexican Constitution establishes the concept of “official preventive imprisonment”, which obliges judges to order pre-trial detention for certain types of crimes, as well as for those “committed by violent means” without a prior investigation of the need for precautionary measures in the particular case.

This is contrary to international standards which establish that pre-trial detention should not be applied on a mandatory basis just because a person has been accused of a particular type of crime.²²⁶ In the cases of *Tzompaxtle Tecpile*²²⁷ and *Reyes Alpízar v. Mexico*²²⁸ the Inter-American Court ordered the Mexican state to amend its domestic legislation to make pre-trial detention compatible with inter-American norms and standards.

César and José Luis (Chilón) were placed in pre-trial detention for 18 days. Miguel López Vega (Zacatepec) was remanded in custody for six days. In the case of Sitalpech, the Public Prosecutor’s Office requested at the hearing that they be held in custody, but the judge rejected the request as

²²⁴ Interview with Elizabeth Del Carmen Suárez Díaz, Colonia Maya, San Cristóbal de las Casas, Chiapas, 12 February 2023.

²²⁵ IACHR, Criminalization of human rights defenders, 31 December 2015, OEA/Ser.LV/II., <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 199.

²²⁶ Amnesty International, *False suspicions: Arbitrary detentions by police in Mexico*, 2017, (Index: AMR 41/5340/2017), p. 31.

²²⁷ Inter-American Court, *Case of Tzompaxtle Tecpile et al. v. Mexico*, 7 November 2022, para. 252.8.

²²⁸ Inter-American Court, *Case of García Rodríguez et al. v. Mexico*, 25 January 2023, para. 301.

excessive. Subsequently, these precautionary measures were amended and less restrictive measures were ordered, including requiring people to sign in periodically and, in the case of Chilón and Sitilpech, not to leave the municipality of Chilón and Yucatán, respectively. The fact that they spent time deprived of their liberty has a chilling effect as it is a clear message of what could happen if the demands continue.

*“When you are in prison there is an internal conflict from the community that makes you look like the bad guy.”*²²⁹

*“After the imprisonment, there was a lot of fear, our companions were afraid.”*²³⁰

On the other hand, the other type of less restrictive precautionary measures, such as presenting oneself to sign in periodically or not being able to leave a municipality, can have adverse consequences on the work of defenders. The IACHR has stated that: “Often the imposition of these measures, beyond protecting the aims of process, results in greater restrictions that culminate in interfering with the right of defenders to defend human rights”.²³¹ This is all the more relevant given the fear that people have of being deprived of their liberty, which inhibits their involvement in protests and in their defence of the land, territory and environment.

5.2.6 STIGMATIZATION

Stigmatization is a practice commonly used to distort perceptions about the work of defenders. The use of stigmatization is worrying as it contributes to a climate of hostility against defenders and their work. The UN Special Rapporteur on Human Rights Defenders has noted that stigmatization makes people more vulnerable to attacks and even killings, especially by non-state actors.²³² In addition, unfounded criminal proceedings also generates stigma against the criminalized person and her or his family.²³³

In the case of Miguel and Alejandro, the stigmatization was obvious. Among other worrying actions, a cartoon was circulated entitled “this is the story of the experts in taking over roads, the specialists in defamation and extortion, the protectors of water. They are: the ‘defenders’.” It accuses them of extortion of municipal presidents, of deriving personal and economic profit from their struggle and of “leaving the municipality condemned to underdevelopment”.²³⁴

In the case of the Sitilpech villagers, the media was used to stigmatize them by denouncing them as “bogus environmentalists”²³⁵ and by violently attacking the organization that supports them, Kanan

²²⁹ In-person interview with Miguel López Vega, Santa María Zacatepec, 13 March 2023.

²³⁰ In-person interview with César Hernández, Chilón, Chiapas, 13 February 2023.

²³¹ IACHR, Criminalization of human rights defenders, 31 December 2015, OEA/Ser.LV/II., <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 207.

²³² UN Human Rights Council, Report of Special Rapporteur Mary Lawlor on the situation of human rights defenders, 24 December 2020, A/HRC/46/35, paras 49.

²³³ IACHR, Criminalization of human rights defenders, 31 December 2015, OEA/Ser.LV/II., <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 223.

²³⁴ In-person interview with Juan Carlos Flores, legal representative of Alejandro and Miguel, Cholula, Puebla, 14 March 2023.

²³⁵ See examples of stigmatizing statements: Enfoque Noticias, “Denuncian que presuntos ambientalistas poseen criaderos de puercos en Yucatán [They claim that the so-called environmentalists have pig farms in Yucatan]”, 16 December 2022, enfoquenoticias.com.mx/denuncian-que-presuntos-ambientalistas-poseen-criaderos-de-puercos-en-yucatan/, La chispa de Campeche, “Falsos ambientalistas intentan chantajear a jueces [Bogus environmentalists attempt to blackmail judges]”, 12 January 2023, lachispadecampeche.com.mx/falsos-ambientalistas-intentan-chantajear-a-jueces/, 12 January 2023, lachispadecampeche.com.mx/falsos-ambientalistas-intentan-chantajear-a-jueces/

DDHH, which they called a “pseudo-environmentalist organization”,²³⁶ and which they accused of, among other things, manipulating and dividing the population²³⁷ and calling for rebellion in Sitalpech.²³⁸

“This is a real struggle, there is no question of ideas being imposed on us. It is us, it is the people. I am still in the struggle because of a grown man who said “if my grandson asks: why did my grandfather do nothing if he saw that the water was polluted.””²³⁹

*“It is extremely racist to say that people are incapable of standing up for themselves, that we organizations are inciting them.”*²⁴⁰

The case of Colonia Maya has not been immune to stigmatization either. There are journalists and radio reports against Martín López which have sought to delegitimize Colonia Maya’s demand for rights by giving false information, such as that they work with the city council, that there are political or partisan interests, or even that they are from another country.²⁴¹

*“People who don’t know us are starting to slander and attack us, telling us to go, to get out of town, discrediting the struggle.”*²⁴²

5.2.7 REPRESSION, USE OF FORCE AND MILITARIZATION

Defenders of the land, territory and environment regularly face disproportionate use of force by the authorities towards their peaceful protests,²⁴³ especially when they engage in sit-ins and/or set up camps for several days, which is a common resistance tactic in struggles against development projects or private ventures mainly by Indigenous peoples or *campesino* communities.²⁴⁴

++The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Use of Force Principles) state that: “As everyone is allowed to participate in lawful and peaceful assemblies”²⁴⁵ force and firearms may only be used in two situations: (i) when dispersing unlawful but non-violent assemblies, in which case the use of force shall be avoided or, if this is not

²³⁶ La chispa de Campeche, “Falsos ambientalistas intentan chantajear a jueces [Bogus environmentalists attempt to blackmail judges]”, 12 January 2023, lachimpadecampeche.com.mx/falsos-ambientalistas-intentan-chantajear-a-jueces/

²³⁷ La Chispa de Tabasco, “Ya basta de tantas mentiras y de dañar a Sitalpech, acusan trabajadores a Kanan [Enough of so many lies and harm to Sitalpech, they accuse workers at Kanan]”, 17 February 2023, lachimpadetabasco.com/investigacion/ya-basta-de-tantas-mentiras-y-de-danar-a-sitalpech-acusan-trabajadores-a-kanan/; GdeY, “Con mentiras, revoltosos de Sitalpech convocan a una marcha: callan que un juez frenó sus abusos [With lies the troublemakers of Sitalpech organized a march; they are quiet about a judge putting a brake on their abuses]”, 22 March 2023, grillodeyucatan.com/2023/03/22/con-mentiras-revoltosos-de-sitalpech-convocan-a-una-marcha-callan-que-un-juez-freno-sus-abusos/

²³⁸ La Chispa de Tabasco, “Ya basta de tantas mentiras y de dañar a Sitalpech”, acusan trabajadores a Kanan [Enough of so many lies and harm to sitalpech, they accuse workers at Kanan]”, 17 February 2023, lachimpadetabasco.com/investigacion/ya-basta-de-tantas-mentiras-y-de-danar-a-sitalpech-acusan-trabajadores-a-kanan/; GdeY, “Con mentiras, revoltosos de Sitalpech convocan a una marcha: callan que un juez frenó sus abusos [With lies the troublemakers of Sitalpech organized a march; they are quiet about a judge putting a brake on their abuses]”, 22 March 2023, grillodeyucatan.com/2023/03/22/con-mentiras-revoltosos-de-sitalpech-convocan-a-una-marcha-callan-que-un-juez-freno-sus-abusos/

²³⁹ Interview with inhabitant of Sitalpech, Yucatan, 18 April 2023.

²⁴⁰ In-person interview with Kanan HRD collaborator, 18 April 2023.

²⁴¹ Edgar Rosales Acuña, *La Radio 98.1*, minute 38, 17 May 2022, facebook.com/profile/100071156595141/search/?q=Mart%C3%ADn%20L%C3%B3pez%20colonia%20maya

²⁴² In-person interview with Martín López, Colonia Maya, San Cristóbal de las Casas, Chiapas, 11 February 2023.

²⁴³ Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), *Protest and Human Rights*, 2019, OEA/Ser.LV/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 144.

²⁴⁴ Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), *Protest and Human Rights*, 2019, OEA/Ser.LV/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 143.

²⁴⁵ Use of Force Principles, Principle 12.

practicable, restricted to the minimum extent necessary;²⁴⁶ and (ii) when dispersing violent assemblies, when firearms may be used when other less dangerous means are not practicable and only to the minimum extent necessary.²⁴⁷

General Comment 37 states that the use of force should be subject to the principles of legality, necessity, proportionality, precaution and non-discrimination.²⁴⁸ As far as possible, only officers trained in policing demonstrations should be deployed. It also mentions that firearms are not an appropriate tool for policing assemblies and should never be used simply to disperse an assembly.²⁴⁹

In addition, the Comment states that the military should not be used to police assemblies and that, if in exceptional circumstances and on a temporary basis they are deployed as support, they should have received adequate human rights training and comply with the same norms and standards as law enforcement officials.²⁵⁰

When a decision is taken to disperse a demonstration, the use of force should be avoided. Where this is not possible, only the minimum force necessary may be used, and this should as far as possible be directed against the specific individual or group engaged in or threatening violence. Force that is likely to cause more than negligible injury should not be used against individuals or groups who are passively resisting.²⁵¹

It is essential to apply a differentiated and progressive approach to the use of force, determining the level of cooperation, resistance or aggression from the individual and thereby employing tactics of negotiation, control or use of force, as appropriate.²⁵² Any allegations of unlawful use of force by law enforcement officers at or in connection with an assembly should be investigated effectively, impartially and in a timely manner.²⁵³

It is important to note that Mexico has adopted the National Law on the Use of Force,²⁵⁴ which has been a fundamental step towards the protection of protesters. However, this law contains three fundamental provisions that are contrary to international law: i) Article 27 states that force will not be used if the demonstration is “for legitimate purposes”.²⁵⁵ This wording allows for interpretation by the authorities regarding the legitimacy of protests and when force may be used. In any event, the fact that an assembly is unlawful is not sufficient for force to be used; ii) Article 28 is not sufficiently clear to ensure that force should only be used to restrain violent persons or disperse participants if violence is widespread; and iii) Article 31 only creates a power, not an obligation, to seek to de-escalate tensions by seeking alternatives that avoid the use of force.²⁵⁶ In the following

²⁴⁶ Use of Force Principles, Principle 13.

²⁴⁷ Use of Force Principles, Principle 14.

²⁴⁸ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 78.

²⁴⁹ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 88.

²⁵⁰ Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 80.

²⁵¹ UN Human Rights Committee, General Comment 37, 17 September 2020, CCPR/C/GC/37, para. 86.

²⁵² Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para 106.

²⁵³ Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 106.

²⁵⁴ Mexico, Ley Nacional sobre el Uso de la Fuerza [National Law on the Use of Force], 27 May 2019, diputados.gob.mx/LeyesBiblio/pdf/LNUF.pdf

²⁵⁵ National Law on the Use of Force, Article 27.

²⁵⁶ Amnesty International, *Unconstitutionality Action 64/2019, Amicus curiae*, 2019 (Index: AMR 41/0914/2019), p. 18.

documented cases, force was used without meeting the standards cited.

In the Zacatepec case, on 30 October 2019, the National Guard and state police who were guarding the construction site fired tear gas and began to beat demonstrators, injuring women and elderly people.²⁵⁷ In Chilón, on 15 October 2020, the government deployed approximately 300 members of the municipal, Chiapas state and National Guard police. The police, using excessive force, violently repressed the protesters by removing their banners and attacking them with sticks and stones. Meanwhile, the National Guard reinforced the containment operation and did nothing in the face of the repression. At least 11 people were injured.²⁵⁸ Finally, in Sitalpech, on 18 February 2023, at least 70 state riot police and municipal police from Izamal evicted the camp, which was mostly populated by women and adults. The police did not seek dialogue, blocked telecommunications and beat the people who were there. In a further act of repression, on 3 March, approximately 70 police escorted the farm trucks, burned the surrounding hills and forcibly removed the camp.²⁵⁹

TEXTBOX: In Oaxaca, state police, the National Guard and the Navy violently evicted the “Tierra y libertad” camp where Mixe *campesinos* were peacefully demonstrating against the effects of the Trans-Isthmus Railway on their territory. Following the operation, six people were arrested, including four Mixe women.²⁶⁰

According to the statements regarding these three cases, the protests were peaceful and the security forces dispersed the demonstrators without seeking other solutions or attempting to seek dialogue. Furthermore, dispersal was not justified to stop violent acts to ensure the safety of individuals.

In addition, the National Guard was involved in the Puebla (actively participating in the repression) and Chilón cases (supporting the operation). In this connection press reports indicated that SEDENA spent 726 million Mexican pesos on the purchase of protective equipment for units taking part in internal order and national security tasks, including protests. According to the information available, “the equipment will consist of a protective suit, a riot helmet, a gas mask, as well as a normal shield and baton”.²⁶¹ Use of the National Guard in policing protests can result in violent responses against demonstrators as it is a militarized security force. Inter-American case law establishes that states must ensure “extreme care” is taken when using members of the armed forces to police social protest,²⁶² as defence of the nation is their basis of operations.

²⁵⁷ In-person interviews with Alejandro Torres and Miguel López, Santa María Zacatepec, Puebla, 13 March 2023.

²⁵⁸ Frayba, “César y José Luis, Defensores comunitarios criminalizados por defender el territorio y caminar la paz” [Community defenders criminalized for defence and the Walk of Peace] <https://www.frayba.org.mx/tema-prioritario/cesar-y-jose-luis-defensores-comunitarios>

²⁵⁹ Footnote, “Sitalpech hace temblar a Kekén [Sitalpech frightening Kekén]”, 28 March 2023, piedepagina.mx/sitalpech-hace-temblar-a-keken/, in-person interview with Sitalpech villagers, 18 April 2023.

²⁶⁰ Consorcio Oaxaca, “Denunciamos desalojo violento y seis detenciones en campamento en resistencia por imposición de Tren Transístmico [We denounce the violent break-up and six arrests at the camp resisting imposition of the Trans-Isthmus train]”, 29 April 2023, consorciooaxaca.org/2023/04/denuncian-desalojo-violento-y-detencion-de-seis-personas-en-defensa-de-su-territorio-en-el-istmo-entre-ellas-4-mujeres/.

²⁶¹ Boletín, “Sedena se abastece de equipo-antimotines [Sedena equips itself with anti-riot gear]”, 22 January 2023, boletin.org.mx/Noticia/sedena-se-abastece-de-equipo-antimotines

²⁶² Inter-American Court, *Case of Cabrera García and Montiel Flores v. Mexico*, 26 November 2010, para. 87, ; Inter-American Court, *Case of Zambrano Vélez et al. v. Ecuador*, 4 July 2007, para. 51, https://www.corteidh.or.cr/docs/casos/articulos/seriec_166_ing.pdf

5.3 ABUSIVE USE OF STRATEGIC LAWSUITS AGAINST PUBLIC PARTICIPATION AGAINST PUBLIC PARTICIPATION (SLAPPS)

Three of the four documented cases are based on corporate activity with economic and real estate interests (Colonia Maya), pig farming (Sitilpech) and various industries, mostly textiles, in the Huejotzingo Industrial Park (Zacatepec). This section is not an exhaustive analysis of companies' compliance with their human rights obligations, but is limited to a brief mention of their possible participation in criminalization processes and the use of the criminal justice system against people who oppose their projects.

Strategic lawsuits against public participation (SLAPPs) are used directly by business sectors that use judicial means with the intention of harassing, intimidating, exhausting and/or depleting the resources, both financial and psychological, of those who defend human rights, the territory and the environment.²⁶³ According to a report published by the Centre for Information on Business and Human Rights (Centro de Información sobre Empresas y Derechos Humanos, CIEDH), Latin America is one of the regions most affected by their use.²⁶⁴ The IACHR has established that SLAPPs constitute an abusive use of judicial mechanisms that must be regulated and controlled by states, with the aim of allowing the effective exercise of freedom of expression.²⁶⁵

According to the Business and Human Rights Resource Centre, the characteristics of SLAPPs are: i) the legal action is initiated by a private actor; ii) it aims to prevent acts of public participation related, among others, to human rights and the environment; iii) it is brought after criticism of business activities; iv) the defenders and/or organizations have suffered other forms of attacks against their defence. In addition, there is often great inequality between companies and defendants in terms of economic resources and access to the justice system.²⁶⁶ The aim of these lawsuits is not necessarily to win them, but to intimidate and silence defenders in matters of public interest.²⁶⁷

In both Colonia Maya and Sitilpech, the companies filed direct accusations against conduct carried out during peaceful protests; the case of Colonia Maya is based on an accusation filed directly by the company director of the development project,²⁶⁸ while the Sitilpech case has two accusations, one filed by INCAY²⁶⁹ and the other directly by the pig farm.²⁷⁰ In the Zacatepec case, the Observation Mission confirmed that the Asociación de Empresarios del Parque Industrial Ciudad Textil de Puebla, AC, is directly involved in the project through its financing; however, there is no direct business participation in the lawsuit against Miguel and Alejandro that translates into

²⁶³ Business and Human Rights Information Centre, *SLAPPs in Latin America: Strategic lawsuits against public participation in the context of business and human rights*, February 2022, https://media.business-humanrights.org/media/documents/2022_SLAPPs_in_LatAm_EN_v7.pdf pp. 2-3.

²⁶⁴ Business and Human Rights Information Centre, *SLAPPs in Latin America: Strategic lawsuits against public participation in the context of business and human rights*, February 2022, https://media.business-humanrights.org/media/documents/2022_SLAPPs_in_LatAm_EN_v7.pdf

²⁶⁵ Inter-American Court, *Palacio Urrutia et al. v. Ecuador*, 24 November 2021, para. 95.

²⁶⁶ Inter-American Court, "Judicialization of matters of public interest against persons exercising freedom of expression ("SLAPPs") in the region", 183rd Session, 12 July 2023, <https://www.oas.org/es/cidh/sesiones/audiencias.asp>.

²⁶⁷ Business and Human Rights Information Centre, *SLAPPs in Latin America: Strategic lawsuits against public participation in the context of business and human rights*, February 2022, https://media.business-humanrights.org/media/documents/2022_SLAPPs_in_LatAm_EN_v7.pdf pp. 3 and 4.

²⁶⁸ Accusation, *Investigation file 00867-078-0301-2017*, 23 May 2017.

²⁶⁹ INCAY, *Denuncia and/or querrela en contra de quien o quienes resulten responsables por la comisión de hechos posiblemente delictuosos [Accusation and/or charge against anyone or those responsible for committing possibly criminal acts]*, 22 February 2023, pp. 1 to 6 of investigation folder F7-F7/019/2023.

²⁷⁰ PPC, *Denuncia y querrela [Accusation and/or charge]*, 14 February 2023, pp. 44-65.

accusations or testimonies from workers in these companies.²⁷¹ In addition to their participation in the criminal proceedings, it is important to mention that the companies involved have not made any public statements regarding the excessive use of force in Zacatepec²⁷² and Sitaltepec, nor have they set up any participatory projects to address people's demands.²⁷³

Regarding SLAPPs, the IACHR has stated that these types of cases are difficult to combat and protect individuals because they “ostensibly present a legitimate use of legal tools, but are in fact intended to manipulate public opinion or the justice system itself for private gain”.²⁷⁴ It is essential to ensure an enabling environment for participation in public debate on matters of public interest, and to recognize that the right to a fair trial and an effective remedy cannot be extended to include misuse of the criminal justice system or legislative abuse to strategically frustrate public participation.²⁷⁵ To avoid the above, it is essential that national laws and policies be reviewed and that anti-SLAPP legislation that provides for early dismissal, minimizes harm to victims and imposes dissuasive sanctions on those who resort to SLAPPs should be adopted. The fight against SLAPPs must include a holistic approach that takes into account the raising of awareness and legal education, support mechanisms and free legal aid.²⁷⁶

5.4 LACK OF INVESTIGATIONS INTO MISUSE OF THE CRIMINAL JUSTICE SYSTEM AND OTHER HUMAN RIGHTS VIOLATIONS AND IMPUNITY

The Special Rapporteur on the situation of human rights defenders has expressed concern about the lack of independent and thorough investigations into attacks against environmental defenders, often linked to a lack of resources, corruption and collusion between authorities. He has stated that too often states are quick to punish defenders for exposing corporate abuses, but are unwilling to investigate, prosecute and punish companies for committing serious and often violent attacks against defenders.²⁷⁷

According to Inter-American standards, in contexts where there are indications that the criminal justice system is being misused by public officials, states must initiate investigations into violations of the law that allow for the investigation and/or unfounded conviction of human rights defenders, or disciplinary, administrative or criminal proceedings, as necessary.²⁷⁸ The practice of companies using the criminal justice system to impede the defence of human rights must be made visible and actions must be taken to prevent it, for example, by including this practice as a form of threat and judicial harassment, establishing mechanisms for early cessation and/or establishing dissuasive sanctions against companies that use SLAPPs.²⁷⁹

²⁷¹ International Observation Mission to the Metlapanapa River, Zacatepec, Puebla, *Report*, 14 January 2020, p. 6 and 7.

²⁷² International Observation Mission to the Metlapanapa River, Zacatepec, Puebla, *Report*, 14 January 2020, p. 6 and 7.

²⁷³ International Observation Mission to the Metlapanapa River, Zacatepec, Puebla, *Report*, 14 January 2020, p. 6 and 7.

²⁷⁴ IACHR, *Business and Human Rights: Inter-American Standards*, 1 November 2019,

[oas.org/en/cidh/informes/pdfs/EmpresasDDDDH.pdf](https://www.oas.org/en/cidh/informes/pdfs/EmpresasDDDDH.pdf) para. 325.

²⁷⁵ European Anti-SLAPP Conference, *Anti-SLAPP Declaration and Call to Action*, 20 October 2022, [Microsoft Word - Anti-SLAPP Declaration FINAL.docx \(ecpmf.eu\)](#)

²⁷⁶ European Anti-SLAPP Conference, *Anti-SLAPP Declaration and Call to Action*, 20 October 2022, [Microsoft Word - Anti-SLAPP Declaration FINAL.docx \(ecpmf.eu\)](#)

²⁷⁷ Report of the Special Rapporteur on the situation of human rights defenders, *Situation of human rights defenders*, A/72/170, 19 July 2017, paras 51. and 52.

²⁷⁸ IACHR, *Criminalization of Human Rights Defenders*, 31 December 2015, OEA/Ser.L/V/II,

<http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 273.

²⁷⁹ Business and Human Rights Information Centre, *SLAPPs in Latin America: Strategic lawsuits against public participation*

In the four cases documented by Amnesty International, criminal proceedings were activated in the context of protests, most of them involving people in vulnerable situations who were defending the land, territory and environment in cases of disputes over the legality and appropriateness of projects, and where the criminal law was nevertheless used against people by stretching the interpretation of criminal offences and with the various irregularities that have already been mentioned previously.

These cases expose the impunity that exists for the human rights violations highlighted, from those relating to issues prior to criminalization, such as the failure to consult and obtain consent from Indigenous peoples, the lack of adequate environmental impact assessments and the rights to information and participation, to the excessive use of force and violation of the very right to protest and its criminalization through arbitrary use of the criminal justice system against people exercising their rights. In none of the cases has any investigation been initiated into possible violations of these human rights.

This situation of impunity worryingly aggravates the chilling effect of the criminalization of protest over the land, territory and environment. The misuse and disproportionate use of the criminal justice system to limit the right to peaceful assembly also gives rise to the misuse of resources and intensify social conflict. It is therefore essential that human rights violations be investigated and, where appropriate, punished. It is also essential that those affected receive full reparation for losses.²⁸⁰

in the context of business and human rights, February 2022, https://media.business-humanrights.org/media/documents/2022_SLAPPs_in_LatAm_EN_v7.pdf), p. 13, and European Anti-SLAPP Conference, *Anti-SLAPP Declaration and Call to Action*, 20 October 2022, [Microsoft Word - Anti-SLAPP Declaration FINAL.docx \(ecpmf.eu\)](#).

²⁸⁰ IACHR, *Criminalization of Human Rights Defenders*, 31 December 2015, OEA/Ser.L/V/II, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 265.

6 IMPACTS OF THE CRIMINALIZATION OF PROTEST

6.1 IMPACTS ON INDIVIDUALS

The criminalization of protest has both individual and collective consequences. These impacts are detailed below in the cases documented by Amnesty International during its visits to Chiapas, Puebla and Yucatan.

6.1.1 THREATS TO SECURITY

The Escazú Agreement establishes the obligation to ensure a safe environment so that environmental rights defenders can operate free from threats, restrictions and insecurity. It also establishes the obligation to take appropriate and effective measures to recognize, protect and promote all the human rights of environmental defenders, including the rights to life, physical integrity, freedom of opinion and expression and assembly.²⁸¹

The Mechanism for the Protection of Human Rights Defenders and Journalists does not classify defenders by the type of defence they carry out, so there is no specific data on the number of defenders of the land, territory and environment included. As of 2022, 1,163 defenders were granted protection measures. The main attacks reported against defenders are threats, physical attacks and abduction. The majority of these, 262 cases, involved public officials, while 228 cases involved private individuals and 166 were by unidentified individuals.²⁸²

The cases documented by Amnesty International occurred in the states of Chiapas, Puebla and Yucatan, where CEMDA reported 19, seven and two attacks respectively.²⁸³ The people interviewed by Amnesty International stated that their struggle for the land, territory and environment is conducted in a context of constant attacks, including assaults, threats, harassment, stigmatization and surveillance using drones and spying.

In the case of Alejandro (Zacatepec), he stated that he was attacked twice and on one occasion was almost run over. He has also seen drones coming down to his house around midday and on one occasion he even managed to intercept a drone and find the person who was operating it, who told him that it came from the municipality.²⁸⁴ Miguel (Zacatepec) and his family have also been the targets of threats and intimidation.²⁸⁵ In the case of Chilón, they mentioned being harassed by members of the municipal police.²⁸⁶

²⁸¹ Escazú Agreement, Article 9.

²⁸² Subsecretaría de Derechos Humanos, Población y Migración, *Informe estadístico diciembre 2022*, Mecanismo para la protección de personas defensoras de derechos humanos y periodistas [Subsecretariat for Human Rights, Population and Migration, Statistical report December 2022, Mechanism for the protection of people defending human rights and journalists], www.gob.mx/cms/uploads/attachment/file/813696/Informe_estadistico_diciembre_2022_f.pdf

²⁸³ CEMDA, *Informe 2022: sobre la situación de las personas y comunidades defensoras de los derechos humanos ambientales en México [2022 Report: on the situation of persons and communities defending human and environmental right in Mexico]*, cemda.org.mx/informe-2022/ p. 49.

²⁸⁴ In-person interview with Alejandro Torres, Santa María Zacatepec, Puebla, 13 March 2023.

²⁸⁵ In-person interview with Miguel López, Santa María Zacatepec, Puebla, 13 March 2023.

²⁸⁶ In-person interviews with César Hernández and José Luis Gutiérrez, Chilón, Chiapas, 13 February 2023.

The residents of Sitalpech stated that they are being watched because they see drones hovering in the afternoons and evenings, as well as observing strangers in the community making unusual visits.²⁸⁷ Colonia Maya also experienced several security incidents in which, as a result of the first marches against the development, unidentified people began to arrive in cars with tinted windows and no licence plates, asking people from the Colonia if they knew the people who had taken part in the march and requesting information about where they lived.²⁸⁸

"It's a transformation, it makes you stronger, it gives you more experience, it proves to you what you are made of, you have to take care of yourself and map your conflict and risk, I have learned to be quiet when it's time to, and not always be visible. The security workshops have helped".²⁸⁹

Because of the risks they face, six of the people criminalized whose cases are cited in this report are included in the Mechanism for the Protection of Human Rights Defenders and Journalists, which means that the government grants them security measures that, depending on the case, may be: i) urgent protection measures: to immediately protect the life, physical integrity, liberty and security of individuals; ii) protection measures: to confront the risk and protect the life, physical integrity, liberty and security of individuals; and iii) preventive measures: actions and means benefitting the person to avoid the perpetration of attacks.²⁹⁰ Although most of them mentioned feeling safer with protection measures, especially the panic button, they also think that these measures are not enough to ensure their safety given the level of risk they face.

"Sometimes the threats go up and sometimes they go down, you can't be calm. When Samir Flores was killed, the threats had gone down but they still killed him."²⁹¹

"I feel terrified, very scared, because I have a family. I can't go to Izamal, to Mérida, they watch us, they put drones on us, I can't work as I would like to, I'm afraid, I'm not here for money or any other reason than to defend water for my family."²⁹²

In addition, in two of the cases documented, the people who accompany and legally represent these cases have been subjected to reprisals. Juan Carlos Flores Solís, a lawyer from Zacatepec and a partner in their struggle, has been harassed and threatened for eight years.²⁹³ In 2013 he was imprisoned for 10 months for his defence work against the Integral Morelos Project; he has been the victim of three proceedings in court with arrest warrants and was released in 2018. He has recently been the victim of three break-ins at his home and that of Myriam Vargas Teutle, in which valuables were stolen, his belongings removed and threatening messages left, such as a knife on the bed, which had been left there as evidence but was removed in a second break-in.²⁹⁴ In the Sitalpech

²⁸⁷ In-person interview with villagers in Sitalpech, Yucatán, 18 April 2023.

²⁸⁸ Group in-person interview with Colonia Maya, San Cristóbal de las Casas, Chiapas, 11 February 2023.

²⁸⁹ In-person interview with Alejandro Torres Chocolatl, Santa María Zacatepec, Puebla, 13 March 2023.

²⁹⁰ Ministry of the Interior, Protection Mechanism for Human Rights Defenders and Journalists, gob.mx/segob/acciones-y-programas/mecanismo-de-proteccion-para-personas-defensoras-de-derechos-humanos-y-periodistas-81609 (visited 17 July 2023).

²⁹¹ In-person interview with Miguel López Vega, 13 March 2023.

²⁹² In-person interview with Juan Valencia, Sitalpech, Yucatán, 18 April 2023.

²⁹³ On 5 April 2022, 10 April 2022 and a third that they discovered on 15 April 2022.

²⁹⁴ Front Line Defenders, "Break-in and death threat against the environmental human rights defenders of Juan Carlos Flores Solís and Myriam Vargas Teutle", <https://www.frontlinedefenders.org/en/case/break-and-death-threat-against-environmental-human-rights-defenders-juan-carlos-flores-solis-0> and FIDH, "Mexico: illegal raid on the home of Juan Carlos Flores Solís and Myriam Vargas Teutle", <https://www.fidh.org/en/issues/human-rights-defenders/mexico-illegal-raid-home-juan-carlos-flores-solis-myriam-vargas-teutle>

case, the organization that initiated the legal defence, Kanan DDHH, was the object of stigmatization and threats for defending the case.²⁹⁵

Addressing the risks faced by people who defend the land, territory and environment needs to take various factors into account so that protection measures are appropriate for them and relevant to their situation. In a request for information, the Mechanism provided assurances that a gender perspective is taken into account when applying measures and that the risk assessment study is carried out taking into account the specific characteristics of each person's context, including the environment.²⁹⁶ Despite the above, Amnesty International has highlighted that the fundamental problem with the Mechanism's main approach in issuing protection measures, which is restricted to a set list, often fails to take adequate account of the collective nature of communities, as well as other risk factors, such as gender, ethnicity, rural context, etc. Thus, the Mechanism has failed to identify structural plans and measures that address the causes of violence against defenders.²⁹⁷

6.1.2 PERSONAL HARM AND PHYSICAL AFTEREFFECTS

The right to physical integrity encompasses the absence of physical, psychological and moral harm. This right may be violated when several unfounded criminal cases are accumulated and the harassment caused by this affects the normal conduct of daily life and causes imbalance and confusion in both the person and his or her family.²⁹⁸ In this respect the IACHR has stated that "individual effects may include fear, anxiety, insecurity, frustration, and impotence as well as stress, anxiety, depression, insomnia, isolation, and insecurity of the person subject to trial. These effects are generated not only following the initiation of criminal proceedings, but may also occur following the threat of possible arrest, as even the mere issuance of an arrest warrant, although not executed, generates among defenders fear of being arrested and causes uncertainty and anxiety thereby affecting their physical and emotional health."²⁹⁹

In the cases documented, all 12 people interviewed and criminalized mentioned having been afraid at least at some point during the criminalization process. For most of them, this feeling prevails to this day. Additionally, in the interviews with Amnesty International people admitted that criminalization has caused and continues to cause feelings of powerlessness, anger, sadness, disappointment, stress and worry. Two people mentioned having insomnia and problems with sleeping.

"I'm afraid because they might burn down the place where I live. Sometimes I can't sleep until 12pm."³⁰⁰

In terms of physical sequelae, the blows received by César and José Luis continue to have a significant impact on their lives. For José Luis, it has become very difficult to work, as his back has

²⁹⁵ In-person interview with villagers in Sitalpech, Yucatán, 18 April 2023.

²⁹⁶ Segob Transparency Unit, *Response to request for information*, 25 April 2023.

²⁹⁷ Amnesty International, *Mexico: Caught Between Bullets and Neglect: Lack of Protection for Defenders of the Territory in the Tarahumara Sierra*, p. 12 (Index: AMR 41/9554/2019); Amnesty International Mexico, *Hacia una protección colectiva y comunitaria para personas defensoras de tierra y territorio en México [Towards collective and community protection for people defending land and territory in Mexico]*, <https://amnistia.org.mx/contenido/wp-content/uploads/2020/09/Hacia-una-proteccion-colectiva-y-comunitaria-para-personas-defensoras-de-tierra-y-territorio-en-M%C3%A9xico.pdf>

²⁹⁸ IACHR, *Report No. 43/96, Case 11.430, Meriús, José Francisco Gallardo, Mexico*, 15 October 1996, para. 79.

²⁹⁹ IACHR, *Criminalization of Human Rights Defenders*, 31 December 2015, OEA/Ser.L/V/II, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 214.

³⁰⁰ In-person interview with Jesús Ariel Uc Ortega, Yucatán, 18 April 2023.

been affected and his cornfield has been abandoned; César commented that in cold weather his back and legs hurt, as well as his abdomen when he does heavy work. In addition, he said that his head hurts a lot and that his memory has also been affected, as he has forgotten things. For his part, Miguel has faced weight loss, early facial paralysis and sciatica problems.

“Sometimes I remember, sometimes I don’t remember. Everything has been erased, how I was, how I got here. That’s why my head hurts.”³⁰¹ “

6.1.3 IMPACTS ON FAMILY LIFE

Everyone has a right to be protected against arbitrary or unlawful interference with his or her family.³⁰² Criminalization also has an adverse impact on families as it has a negative effect on people’s interpersonal relationships. In some cases, people are forced to separate from their nuclear family, move within the country or abroad, alter their life plans and abandon their daily work.

Most of the people interviewed by Amnesty International said that the criminalization has also caused concern for and affected their families and in one case the family decided to move within the country for security reasons.

*“I feel a lot of concern for the family, my wife and children. If they get one, they might as well get all six of us”.*³⁰³

In the case of the villagers of Sitalpech, they said that criminalization has also had an impact on the children, as they have been directly mocked by their teachers when defending the cause against the megafarm.

6.1.4 ECONOMIC IMPACTS

Financial costs are a direct consequence of legal proceedings. Even though all the documented cases have had free legal support and representation, there are significant economic costs that affect defenders of the land, territory and environment. Among these, it is important to highlight the need to incur travel costs to attend legal proceedings, increasing transport and food costs. Criminalization can also have the effect of causing loss of employment.

6.2 COLLECTIVE IMPACTS

6.2.1 CHILLING EFFECT

Criminalization not only affects the person being prosecuted, it also has a chilling and paralyzing effect on other protesters who, out of fear of being treated in the same way, refrain from exercising their rights. This situation affects society in general, given that it is through protests that people can demand human rights guarantees and highlight violations of these rights.³⁰⁴

The collective effects of the criminalization of protest exert an intimidating or dissuasive multiplier effect towards other people, which has been referred to as the “chilling effect”, which can lead to

³⁰¹ In-person interview with César Hernández, Chilón, Chiapas, 13 February 2023.

³⁰² IACHR, Criminalization of Human Rights Defenders, 31 December 2015, OEA/Ser.L/V/II, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 219.

³⁰³ In-person interview with Eustacio Hernández, Colonia Maya, San Cristóbal de las Casas, Chiapas, 12 February 2023.

³⁰⁴ IACHR, Criminalization of Human Rights Defenders, 31 December 2015, OEA/Ser.L/V/II, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 178.

the prevention or inhibition of this type of expression,³⁰⁵ in turn affecting the protection and promotion of human rights.³⁰⁶ Likewise criminalization has an impact on the functioning of the organizations, movements and groups to which the individuals charged belong.³⁰⁷

In all the cases examined by Amnesty International, people stated that the criminalization they have experienced has caused fear in others who believe that they could suffer the same fate and face criminal prosecution if they continue to protest, or worse, lose their lives, like so many defenders of the land, territory and environment. As a result, in many cases they have preferred to stop being visible and distance themselves from the movement, leaving the cause fragmented.

“What happened to us generates fear because they beat us, they mistreated us. People feel sorry for us because they have seen what happened.”³⁰⁸ “After the imprisonment, there was a lot of fear, our colleagues were afraid”.³⁰⁹

6.2.2 OTHER COLLECTIVE IMPACTS

The criminalization of human rights defenders, social or community leaders or colleagues in the struggle has adverse consequences for society, as it prevents them from benefiting from the work that those accused were carrying out.³¹⁰ Also, it has been seen that in many cases it can generate division, distrust and insecurity in a community, as well as a climate of fear, threats, accusations and harassment.³¹¹ This stigma and social rejection can also extend to their family members.

This situation has been seen in most of the cases documented by Amnesty International. Criminalization has raised doubts about the conduct of several defenders of the land, territory and environment, both within their communities and from outsiders, who did not know the cause well and who heard negative things about the defenders.

“In every social struggle, criminalization brings about secondary effects, demobilization, fear”, “the state uses it to divide, to silence, to create fear”, “it is a counterinsurgency strategy to impose their projects of death”.³¹²

“You are not a free person, because the finger is pointed at you in both communities and the state, they spy on you, you don't live in peace, they take away your peace, your joy, your happiness.”³¹³

³⁰⁵ Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 191.

³⁰⁶ Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 191.

³⁰⁷ Special Rapporteur for Freedom of Expression and Inter-American Commission on Human Rights (IACHR), Protest and Human Rights, 2019, OEA/Ser.L/V/II, <https://www.oas.org/en/iachr/expression/publications/Protesta/ProtestHumanRights.pdf> para. 193.

³⁰⁸ In person interview with José Luis Gutiérrez, Chilón, Chiapas, 13 February 2023.

³⁰⁹ In-person interview with César Hernández, Chilón, Chiapas, 13 February 2023.

³¹⁰ IACHR, Criminalization of Human Rights Defenders, 31 December 2015, OEA/Ser.L/V/II, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 220.

³¹¹ IACHR, Criminalization of Human Rights Defenders, 31 December 2015, OEA/Ser.L/V/II, <http://www.oas.org/en/iachr/reports/pdfs/criminalization2016.pdf> para. 221.

³¹² In-person interview with Alejandro Torres Chocolatl, Santa María Zacatepec, Puebla, 13 March 2023.

³¹³ In-person interview with Miguel López Vega, Santa María Zacatepec, Puebla, 13 March 2023.

7 CONCLUSIONS AND RECOMMENDATIONS

In the cases examined by Amnesty International in this research, the right to protest of defenders of the land, territory and environment has been violated by authorities who have misused the justice system to criminalize them, thus discouraging collective demands for their rights to the land, territory and environment. Protest has often become the only available channel for people defending the land, territory and environment to demand their rights. Protest of this type has constantly encountered acts of stigmatization from the highest levels of government, through calling them, among other things, “bogus environmentalists”.

Protest often takes place when people's rights have been violated, especially the rights to self-determination, to free, prior and informed consent, as well as to environmental impact assessments. In addition, in demanding their rights people have often sought legal channels before or in parallel, but these have proved ineffective.

Vague criminal offences or the fabrication of crimes by public officials or the companies involved in the projects themselves have been used. Amnesty International has been able to confirm that criminalization processes tend to have as common elements: they are directed towards the most visible people in movements; proceedings are delayed and defenders constantly threatened with being deprived of their liberty; they are based on the use of provisions that are not consistent with the facts; and they are accompanied by stigmatizing and repressive actions and the excessive use of force. What is more, human rights violations committed against defenders and protesters, such as the unlawful use of force to disperse them, often go unpunished. The role of companies in prosecutions for the criminalization of protests in defence of the land, territory and environment also requires further examination.

Finally, Amnesty International has been able to confirm that the criminalization of protest for the land, territory and environment has both individual and collective impacts. Among the individual impacts are the dangers to life and security because of constant threats, both for individuals and their legal representatives; physical and psychological consequences deriving from criminalization; impacts on family life; and economic loss due to having to spend money on trials and because the procedures affect the possibilities of obtaining employment. In addition, the criminalization of protests about the land, territory and environment has adverse collective effects, such as an intimidating and chilling effect on other people who support the cause, and also impacts the way in which the community is organized and the social fabric.

Amnesty International, taking into consideration the views of those criminalized and interviewed, including civil society organizations, as well as the Mexican state's obligations under international law and in line with recommendations issued by other international human rights bodies makes the following recommendations.

7.1 GENERAL RECOMMENDATIONS:

7.1.1 TO THE EXECUTIVE BRANCH:

Publicly recognize the work of defenders of the land, territory and environment and undertake positive communication and educational activities to raise awareness of the importance of the work of defenders. This commitment should be reflected at all levels of the state.

Refrain from making statements that stigmatize and discredit defenders of the land, territory and environment, as well as the organizations that accompany them, solely because of their defence work. Establish a correction mechanism to respond to stigmatizing statements.

Generate spaces for dialogue with defenders of land, territory and the environment and with organizations that accompany them to discuss legislation and public policies on the issue, guaranteeing their right to participate in policies and projects that affect them.

Obtain the free, prior and informed consent of Indigenous peoples in accordance with international standards for activities or projects on their lands and territories.

Refrain from using the National Guard to police protests and provide training on the use of force to civilian security forces policing protests.

Ensure that the use of force during demonstrations complies with international standards, in particular the UN Basic Principles on the Use of Force and Firearms. In particular, ensure that institutions, as well as law enforcement officials, fulfil their obligation to recognize the right to peaceful assembly, facilitate its exercise and be accountable for their actions.

Provide the Protection Mechanism for Human Rights Defenders and Journalists with sufficient resources and adequate staff to meet the demands for protection measures. Guarantee that risk assessments and protection measures are implemented adequately and in a timely manner, with the participation of those affected, and with the application of gender and differentiated ethnic/racial approaches in a joined up way, including collective and community risk analysis, in order to ensure that they are effective. Effective measures must be taken to combat the structural causes that increase the risks and attacks against these individuals, such as impunity, stigmatization and discrimination.

Maintain updated and reliable statistical information on acts of violence against defenders of the land, territory and environment to help establish patterns of violence and develop more efficient public policies for prevention.

Update the official mechanisms for access to environmental information, promote them and make them more accessible and efficient.

Ensure that the opinions and decisions of communities affected by environmental projects are taken into account through participatory processes based on environmental information with a joined up human rights, cultural and gender perspective.

Ensure prior environmental impact assessment with the participation of affected people in

accordance with international environmental standards. Appropriate impact mitigation measures should be applied and a project should not proceed if this is not possible.

SEDENA should immediately remove the National Guard base in Chilón, Chiapas, as it was built without the consent of the Tseltal Indigenous people.

7.1.2 TO THE CONGRESS OF THE UNION AND LOCAL CONGRESSES:

Eliminate the concept of unofficial pre-trial detention from the Constitution and laws, leaving the decision on the adoption of such a precautionary measure to the discretion of judges, which should be based on case-by-case determination and only when other alternative measures are ineffective.

Reform Articles 27, 28 and 31 of the National Law on the Use of Force to ensure that it complies with international standards to clearly establish restrictions on the actions of law enforcement officials.

Adjust criminal offences and ensure compliance with the principle of legality, with a clear definition of punishable conduct, with a view to delimiting the scope of their application so that they are not used to criminalize protest.

Ensure the Escazú Agreement is correctly implemented through review of existing environmental protection regulations and their harmonization.

Introduce an effective procedure that allows judicial authorities to dismiss SLAPPs at an early stage, with the possibility of obtaining dismissal of the charge, an accelerated procedure and a reversal of the burden of proof; sanctions for those who repeatedly resort to SLAPPs or threaten to do so; and a financial and legal support mechanism for their victims.

7.1.3 TO PROSECUTORS' OFFICES:

Refrain from using vague or ambiguous criminal offences to initiate criminal proceedings against persons exercising the right to protest, including defenders of the land and territory and environment.

Guarantee the right to access to justice, complying with the guarantees of due process, avoiding unnecessary delays in proceedings and granting definitive verdicts within a reasonable period of time.

Investigate abusive and unfounded criminal charges by both public officials and companies against defenders of land, territorial and environmental rights.

Conduct impartial, effective, prompt and fair investigations into physical attacks against defenders of the land, territory and environment, acting against impunity and taking into account interests that may have been violated by defence activities.

When issuing interim measures against defenders, consider the adverse effects these could have on their work as defenders and on their other human rights. Avoid pre-trial detention and use it only exceptionally and only when there is a risk of flight or obstruction of justice, subject to the principles of legality, presumption of innocence, necessity and proportionality.

Provide training to prevent and avoid judicial harassment of defenders of land, territory and the environment to prevent unfounded accusations against defenders from succeeding.

7.2 SPECIFIC RECOMMENDATIONS FOR THE DOCUMENTED CASES

7.2.1 CHIAPAS PROSECUTOR'S OFFICE FOR INDIGENOUS JUSTICE:

Initiate relevant legal actions to annul or revoke the convictions against César and José Luis and to remove their criminal records.

Continue an impartial investigation into the allegations of excessive use of force that could qualify as torture or cruel, inhuman or degrading treatment in the case of César and José Luis.

7.2.2 INCAY:

Dismiss the accusation filed against Juan Diego Valencia Chan, Arturo Albornoz May and Jesús Ariel Uc Ortega from the community of Sitalpech, in Yucatán.

7.2.3 YUCATAN PUBLIC PROSECUTOR'S OFFICE:

Order the release of Juan Diego Valencia Chan, Arturo Albornoz May, Jesús Ariel Uc Ortega from Sitalpech, taking into account the context of the protest, their rights to self-determination, consultation and participation in environmental matters, as well as the peaceful nature of their actions.

7.2.4 CHIAPAS PROSECUTOR'S OFFICE, ALTOS DISTRICT PROSECUTOR'S OFFICE COMPREHENSIVE UNIT FOR CRIMINAL INVESTIGATIONS:

Declare that the criminal action against those who were members of the management committee of Colonia Maya for the crime of deprivation of liberty will not be prosecuted, taking into account the lack of evidence and the context of the protest in which the events occurred, as well as archiving the investigation file.

7.2.5 PUEBLA AND CEASPUE PROSECUTOR'S OFFICE:

Order the absolute and unconditional release of Miguel López Vega, as well as withdrawal of the arrest warrant from Alejandro Torres Chocolatl for the crimes of opposition to the execution of a public order, attacks on general means of communication and the safety of means of transport. It should be taken into consideration that they took part in a peaceful protest, that there is no evidence of any violent act on their part and that they were exercising their right to self-determination.

7.2.6 STATE EXECUTIVE COMMITTEES FOR VICTIM SUPPORT:

Provide comprehensive support to the defenders mentioned in this report, including psychological care and adequate reparation for loss.

7.2.7 STATE GOVERNMENTS OF CHIAPAS, YUCATAN AND PUEBLA:

Make a public apology for misuse of the criminal justice system against defenders of the land, territory and environment and ensure non-repetition.