



International Network for Economic, Social & Cultural Rights
Red Internacional para los Derechos Económicos, Sociales y Culturales
Réseau international pour les droits économiques, sociaux et culturels
الشبكة العالمية للحقوق الاقتصادية و الاجتماعية و الثقافية

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CC:

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Erick Bustamante Espinoza
Judge of the Tenth District Court of the State of Sonora

Dr. Emilio Álvarez Icaza
Executive Secretary of the Inter-American Commission on Human Rights

June 29, 2014

The International Network for Economic, Social and Cultural Rights (ESCR-Net) is the largest global network of organizations and activists committed to securing economic, social and environmental justice through human rights. Our membership base comprises 260 organizations and individuals from 70 countries.

We write this letter to express our grave concern regarding the conflict underway between the Yaqui tribe and the “Independence Aqueduct.” Their battle allegedly derives from the initial construction of the aqueduct, and, even more, the continued operation of the project in the State of Sonora from 2010 to present. The Yaqui are a peaceful people who have inhabited their territory and made use of the Yaqui River since time immemorial. Furthermore, throughout their history, the Yaqui have maintained their unity, as well as their will to exist and to self-determination as indigenous people despite the varied means employed to try to render them extinct as a people. ESCR-Net acknowledges the immense value of the Yaqui people’s ongoing work and resistance in an effort to protect their rights as an indigenous people against policies designed to dispossess them of their territory, natural resources and culture.

In recent years, the Yaqui tribe has declared its opposition to the construction and operation of the “Independence Aqueduct” given its adverse effects on the

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environment, their communities and their culture. The aqueduct constitutes a dire threat to Yaqui communities that were never consulted about the project, in clear violation of their right to free, prior and informed consultation and consent. In response, the Yaqui tribe has defended itself by utilizing all legal means conferred to them as an indigenous people according to Mexican law. In May 2013, the First Chamber of the Supreme Court of Justice of the Nation ratified its decision in favor of an injunction (*amparo* action 631/2012 under review) for the Yaqui tribe. With the injunction, the Yaqui gained legal protection of their right to prior consultation and to halt the operation of the aqueduct if it is determined to be causing irreversible damages.

Based on the information we have received, we are deeply concerned about the apparent failure to enforce this decision, the way in which consultations are being carried out, as well as the decision to continue extracting water from the Yaqui River. This situation could cause severe and irreparable environmental, cultural and social harm to the tribe, with grim consequences for the human rights of people living in these communities. On June 10, the Eighth District Court of the State of Sonora once again ruled in favor of suspending the operation of the "Independence Aqueduct." We sincerely hope that the State of Mexico complies with this new court order intended to safeguard the human rights of the Yaqui people.

We find it equally troubling that arrest warrants have been issued for several Yaqui traditional authorities accused of diverse crimes during this conflict. Such reprisals have a negative impact on the work of these indigenous leaders. Furthermore, such reprisals jeopardize the free quality of the Mexican government's consultations with the Yaqui people. For precisely this reason, it is essential that traditional authorities be able to perform their official community functions and freely defend their rights without experiencing harassment or repression. As such, we declare our indignation regarding the decision of the Second Collegiate Tribunal in Criminal and Administrative Matters of the Fifth Circuit in relation to the *amparo* action 93/2014 under review. According to the ruling, the arrest warrant issued on June 14, 2013 for Mario Luna, Secretary for the Yaqui traditional authorities of Vicam in Sonora, Mexico, was deemed valid. Luna is the spokesperson for the Yaqui tribe in this conflict over their ancestral source of water caused by the construction and continued operation of the "Independence Aqueduct", which is endorsed by the Government of the State of Sonora.

We take this opportunity to remind Your Excellency that the United Mexican States have ratified the International Covenant on Civil and Political Rights (ICCPR), and are obligated to respect the rights of its citizens to self-determination, to life, and to the protection of the law. Mexico is also a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and has ratified the "Protocol of San Salvador," which establishes an obligation to respect the rights of its citizens to self-determination, a decent standard of life, health, the benefits of culture, nondiscrimination and a healthy environment. In addition, this covenant establishes that "In no case may a people be deprived of its own means of subsistence."

Mexico must also comply with the rights consecrated in the United Nations Declaration on the Rights of Indigenous Peoples and the International Labor Organization Convention No.169, including the right to free, prior and informed consent. Lastly, the United Nations Declaration on Human Rights Defenders recognizes the right of all people to promote and to strive for the protection and realization of human rights. Specifically, the Declaration provides "protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights" of human rights defenders.

Thus, we urge the Mexican government to fulfill its obligations under international human rights law by committing to the following actions:

1. Ensure the right of indigenous peoples to free, prior and informed consent and conduct consultations in accordance with international standards. This requires a free, prior and informed process conducted in good faith and in a culturally appropriate manner;
2. Avoid any measure that impedes the activities undertaken by civil society organizations to defend their rights;
3. Enable the Yaqui tribe, as well as all indigenous people, villages and communities, to promote, respect and protect the human rights of all people facing development projects that have the potential to negatively affect their fundamental rights; and
4. Strive for the full realization of economic, social and cultural rights in Mexico.

We, the undersigned, express our urgent concern in relation to the situation currently facing Yaqui communities. Our consternation relates to the conflict itself, as well as the diversion of enormous quantities of water, given there is next to no certainty regarding the potential impacts of this project. Hence, we are issuing a collective appeal to the Mexican government to fulfill its human rights obligations in order to resolve this matter.

Finally, we request that you advise us regarding any progress made pertaining to this case.

Sincerely,

A handwritten signature in black ink, appearing to read 'C. Grove', is placed on a light gray rectangular background.

Chris Grove

Director