

Report by the International Observation Mission to Rio Metlapanapa, Zacatepec, Puebla

17 January 2020

On 3 December 2019, an International Observation Mission comprised of Front Line Defenders, the Center for Information on Business and Human Rights (CIEDH), the Human Rights Center "Zeferino Ladrillero" and the National Network of Civil Human Rights Organizations "Todos los Derechos para Todas y Todos" (Red TDT), visited the Nahua community of Santa María Zacatepec (henceforth Zacatepec), in the municipality of Juan C. Bonilla, Puebla, to document human rights violations perpetuated against members of the community in retaliation for their activities defending the Metlapanapa River.

Zacatepec is part of the People's Front in Defence of Land and Water – Morelos, Puebla and Tlaxcala (FPDTA-MPT), comprised of several communities opposing the Morelos Integral Project (Proyecto Integral Morelos – PIM), a project implemented by the state-owned Federal Electricity Commission. Multiple human rights violations have occurred in the context of this project, including police brutality, defamation campaigns and threats, and the assassination of indigenous communicator and land rights defender Samir Flores. In addition to a thermoelectric plant and a gas pipeline, the PIM has initiated a process of industrialization throughout its area of operations.

The organisations participating in the mission received information on the conflict in Zacatepec (and which also affects surrounding communities), which stems from the intention to forcefully implement sanitary sewage systems and storm drainage. This would mean the installation of industrial pipelines across the territory of the community, as well as the discharge of toxic waste into the Metlapanapa River. Even though the community is protected by a writ, the project is moving forward without the necessary permits. Consequently, there has been a series of violations of individual and collective human rights of the Nahua community.

The community has expressed its opposition and mobilised a strong resistance movement demanding respect for its fundamental rights as an indigenous community, such as the right to self-determination. The pivotal point was the repression on 30 October 2019, when State Police of Puebla and the National Guard launched tear gas, fired rubber bullets and beat human rights defenders and community members who were protesting against the construction of the project¹.

The organisations participating in the mission had the opportunity to discuss the situation with HRDs and community members and to visit the area next to the Ciudad Textil Industrial Park, where an industrial waste dump is located. The delegation also visited the site where the pipeline is being installed.

1. Violation of the right to self-determination and autonomy of indigenous peoples

The Nahua community of Zacatepec – and surrounding communities – has determined and expressed its opposition to the construction of the sewage systems because toxic waste will be dumped into the Metlapanapa River. However, as a result of the failure of various government agencies, the construction of a comprehensive sewage system is violating the community's rights as an indigenous people to self-determination and to free, prior and informed consent.

Convention No. 169 of the International Labour Organization, the United Nations Universal Declaration on the Rights of Indigenous Peoples, the International Covenant on Economic, Social and Cultural Rights, and the Political Constitution of the United Mexican States contain several provisions that recognise the right to self-determination. By virtue of this right, indigenous peoples can freely determine their political status and freely pursue their economic, social and cultural development. This right guarantees the participation of indigenous peoples in decision-making regarding projects that may affect them, with the aim of protecting their ethnic and cultural identity.

According to international human rights law, the Mexican State has the obligation to consult indigenous peoples, in view of obtaining their free, prior and informed consent in relation to measures and activities that affect their human rights. Above all, the Mexican State has the obligation to respect the position of indigenous peoples when they oppose such measures and decisions. Thus, the State failed to fulfil its obligation to consult indigenous peoples, and has failed to respect the community's decision to withhold consent to the project following internal meetings in August 2018 and September 2019 and subsequently conveyed to the government.

Any act carried out by the authorities in order to validate the construction must be subjected to a study that prioritises the principle of *pro personae*², so that the compliance with human rights and the rights of indigenous peoples is guaranteed.

2. Criminalisation, attacks and threats against human rights defenders

Through oral testimonies and audiovisual material gathered by members of the community, the participants of the mission learned about the aggressions, harassment, threats, discrimination, judicial harassment and criminalisation perpetrated against human rights defenders by various government officials and members of the security forces.

With regard to the events of 30 October 2019, we are concerned by the testimonies we heard, notably those from women, many of them elderly, who suffered beatings, jerking and direct use of tear gas by the State Police, Federal Police and National Guard. The authorities also used rubber bullets, which are illegal in the state of Puebla³. Among the harassment experienced by members of the community were intimidation by state agents, audio and video recordings and photographs of the defenders and the camp facilities, constant surveillance by state police patrols, intimidation and vehicle chasing, as well as online harassment.

The members of the mission were able to witness this harassment during a tour around the Industrial Park, when a police patrol vehicle with license plate number NJP4024 approached the delegation to take video of the human rights defenders and the members of the mission.

Community members gave testimonies about death threats made by people with links to the municipal president. In this regard, we express our utter disgust at the threats of disappearance and violence against one of the youngest woman human rights defenders in the community, who received intimidating messages when she was still underage. We also received information about public officials threatening community members with legal prosecution; it is especially worrying that many of these threats have been made in person during round-table discussions meant to address the situation.

The mission also learned about the role that the Mayor might have played in acts of criminalisation and harassment.

Zacatepec's Community Radio has been used as a tool for denouncing the violations, organising the community and exercising freedom of expression. We are concerned about threats coming from state officials to request the withdrawal of the community's right to use the Community Radio. We are also concerned that, following these threats, the Federal Institute of Telecommunications (IFT) carried out an inspection at the radio broadcast centre. As an autonomous body, the IFT is mandated to act independently from the interests of the state government and private companies.

Finally, we have observed a generalised environment of criminalisation and public stigmatisation of human rights defenders by authorities,⁴ media⁵ and business actors, all of whom question the community's rights to defend human rights and to freedom of expression. Such actions also provoke social polarisation and break the social fabric of the community.

3. Violations of the principle of legality

According to information received from the lawyers for the community of Zacatepec after the mission, the sanitary sewage and rainwater drainage systems in the industrial zone of Huejotzingo, Puebla are financed by the Government of the State of Puebla and the Industrial Park Ciudad Textil, through a partnership. This is part of the implementation of Recommendation 10/2017 of the National Human Rights Commission on the pollution of the Atoyac River.⁶ Thus, they are part of the Investment Programs and Projects of the State Water and Sanitation Commission of the State of Puebla (CEASPUE). According to this information, in writ number 1766/2019⁷, CEASPUE points out that it does not possess the document of these construction projects, since they belong to the construction companies Ger Construcciones del Centro S.A. de C.V. and Oli Construcciones S.A. de C.V.

The drainage from the construction of the industrial park is intended to flow into the Metlapanapa River; this violates the right of the indigenous communities to self-determination

because the companies do not have the necessary permits, land use rights or construction licenses, and because the indigenous communities have not been consulted. This means that the construction project does not comport with the law. The mission also learned that, according to the writ that protects the community, the state delegation from the National Water Commission insisted that it had not issued

permits for the discharge of water into the Metlapanapa river;⁸ the General Office of Environmental Risk and Impact (SEMARNAT) stated that it had neither received nor authorised an Environmental Impact Assessment and so had not approved the discharge of water into the Metlapanapa River. The Secretariat of Environment, Sustainable Development and Territorial Ordinance of the state of Puebla has reportedly authorised the installation of a pipe, but not the discharge of water into the Metlapanapa River.

During the mission the mission observed that the water that is being discharged into the Metlapanapa River is contaminated and untreated, appearing turbid and with a noxious smell. Additionally, the disposal of this wastewater takes place near a highly travelled road.

The community provided documentary evidence that the construction work is transporting the water without appropriate treatment. This information comes from a study carried out by CEASPUE on the project, (reference OP/LP-003/CEASPUE/2018006).⁹ The study points out that the water has higher levels of contamination in terms of faecal coliform, fats and oils, as well as the presence of colour and heavy metals than is permitted by law.

Finally, we observed that the construction work is deceptively presented as being on private property, therefore it is lacking the actual consent from the real owners of the properties. Such is the case of the property of a resident of Zacatepec, where the community's seedling against the construction work is currently located. They recently obtained a provisional postponement that prevents the land from being used for the project's construction.

The mission is concerned that the contamination of the Metlapanapa River is being justified by the purported compliance with the National Human Rights Commission ruling to preserve the Rio Atoyac. The smaller Metlapanapa River feeds into Rio Atoyac, and so ultimately its contamination will have downriver effects on the Rio Atoyac. In doing so, however, this project violates the human rights of the indigenous community of Santa Maria Zacatepec.

3. Human rights responsibilities of businesses

The mission obtained information on how the companies had failed to prevent negative impacts on the land and health of the residents of Zacatepec and other communities caused by the disposal of toxic waste in the Metlapanapa River.

The community presented documents detailing that the Entrepreneurs Association of the Industrial Park Ciudad Textil of Puebla, A.C. is directly involved in the project through its financing and future use. The documents also show that the involvement of Ger Construcciones del Centro S.A. de C.V. and Oli Construcciones S.A. de C.V. companies in the construction of the pipeline that will emit industrial waste. The mission invited these companies to respond to the above-mentioned accusations and their responsibilities in terms of human rights; at the time of publishing this report, the companies had not responded.

As part of their human rights responsibilities in accordance with the UN Guiding Principles on Business and Human Rights, companies are to undertake rigorous due diligence processes to

prevent any negative consequences that their operations could have on the territory, including a publicly available risk mitigation plan, that includes the participation of affected communities. Additionally, companies are responsible for their entire value chain in this due diligence process, so the use of pipelines is the responsibility of both those who build them and those who operate them.

Investors, states and companies should also direct their resources to projects that comply with international human rights standards, especially the UN Guiding Principles on Business and Human Rights and the International Bill of Human Rights.

Companies have a responsibility to ensure that human rights defenders who oppose their projects have the freedom to speak out safely. In this regard, companies should contribute to creating security conditions for human rights defenders, as well as respect the right of indigenous peoples to self-determination. If there are violations of their rights by local authorities, companies should express their concern and seek peaceful solutions to these conflicts.

To date, the companies have not made any public statement in response to the police repression against the protests that took place on 30 October 2019. The companies should speak out against this repression and implement participatory processes of integral reparation for the victims, whenever they were responsible for human rights violations.

Conclusions

- The threats and attacks documented by the mission reached a peak during the repression of a peaceful protest 30 October 2019. At least eight people have received death threats, disappearance, burning of houses and legal harassment. The attacks of defenders and journalists of Community Radio Zacatepec has been encouraged and facilitated by public officials and businessmen.

- We affirm the fundamental role that the defenders of the territory of Santa María Zacatepec have played in the community and we reject any act of harassment against them, especially against vulnerable members of the community, such as older people and minors.

- After the repression of 30 October 2019 and the subsequent aggressions, the community decided to set up a permanent camp to prevent the construction of a rainwater connector that would allow drainage into the Metlapanapa river. The construction work continues only 150 meters from the camp, putting the community at risk of new human rights violations. The mission will continue to monitor the situation and demand respect for the right to protest and defend human rights.

The lack of consultation makes the construction illegal and illegitimate, as it violates the provisions of Convention No. 169 of the ILO, namely Article 2, paragraph B, section IX; 6 (Right to consultation), 7 (Right to consent and cooperation), 15 (right to natural resources); of the UN Declaration on the Rights of Indigenous Peoples, name Articles 18 (Right to participate in decisions), 19 and 32.2 (Free and informed consent). As well as article 1.1 of the American Convention of human rights. The authorities should avoid affecting the right to consultation and to guarantee the rights of the indigenous people, thus respecting their autonomy and self-determination.

We call upon the Government of the State of Puebla, the State Commission on Water and Sanitation of Puebla, the City Hall of Juan C. Bonilla, the National and State Commission on Human Rights, and the State Prosecutor's Office specialising in crimes committed against journalists to:

- Guarantee respect for the right of indigenous peoples to self-determination, understood as the ability to freely determine their political status, as well as their economic, social and cultural development.
- Investigate in an impartial, prompt and expeditious manner the threats, attacks and excessive use of force against human rights defenders, Community Radio Zacatepec the community of Santa Maria Zacatepec and the municipality of Juan C. Bonilla.
- Cease the harassment and threats against the human rights defenders of the community and of FPDTA-MPT, and that the Mexican State and the companies recognise and respect the work of the human rights defenders of Zacatepec, Puebla.
- Take the necessary measures to guarantee the security of human rights defenders and the community in general.
- The CNDH should make a statement explaining why this construction work is included in the Recommendation 10/2017 and determine that one human rights recommendation cannot be implemented by measures that violate other human rights, in this case the those of the indigenous community of Santa Maria Zacatepec and the pollution of the Metlapanapa River.

We urge the above mentioned companies to:

- Initiate a rigorous due diligence process to prevent any negative consequences of their activities on the territory, including a participatory process that meets international human rights standards.
- Seek sustainable alternatives to the treatment of their water and other wastes and mitigate the damage caused to the environment and the territory of the affected communities.
- Start the reparation processes for the negative impacts to human rights caused by their work, in participation with the affected communities.
- Publicly recognise the role that human rights defenders have in the protection of the environment and the right to territory.

Front Line Defenders

Human Rights Center "Zeferino Ladrillero"

National Network of Civil Human Rights Organizations "Todos los Derechos para Todas y Todos" (Red TDT)

Business and Human Rights Resource Center as an accompanying partner

¹ See: <https://bit.ly/2RCojGT>

² The pro personae principle prohibits any interpretation that suppresses or restricts the enjoyment and

exercise of the rights by individuals.

³ After the extrajudicial execution of the child José Luis Tehuatlie, the Congress of Puebla repealed the law that permitted the use of rubber bullets. See: <https://bit.ly/36oP59x> and <https://bit.ly/36ldvAO>

⁴ On November 5, during a meeting held between the Commission of the People of Zacatepec and the General Direction of Government of the State of Puebla, the Delegate of Government of the 8th District, Edgar Hernandez Hernandez and public official Domingo Pedraza, warned the community members that there were already 3 arrest warrants against people involved in the defence of the Metlapanapa River.

⁵ Local media have disseminated articles promoting the criminalisation of the right to protest and the right to defend human rights. See: "Grupo radical entorpece la conciliación en Juan C Bonilla: Manzanilla", Tribuna Noticias (<https://bit.ly/38zXdWP>) Also, in November, local online media portrayed human rights defenders Miguel López Vega, Alejandro Torres Chocolatl, Israel Mendoza Tepale and Alberto Cirne Sandoval as extortionists.

⁶ Recommendation 10/2017 <https://www.cndh.org.mx/sites/default/files/doc/Recomendaciones/2017/Rec...>

⁷ The community filed this writ on October 18 of 2019, before the First District Court for Civil, Administrative and Labor Protection and Federal Trials in the state of Puebla.

⁸ Frente de Pueblos Morelos Puebla Tlaxcala. See: bit.ly/36DHJiI

⁹ The community presented documents to the members of the mission; the originals of these documents are with CEASPUE.