

House Foreign Affairs Committee  
Tom Lantos Human Rights Commission

Hearing  
on

## **The Rights of Indigenous Peoples in the Americas**

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### STATEMENT SUBMITTED FOR THE RECORD

by Cultural Survival

Cultural Survival is an international Indigenous rights organization with a global Indigenous leadership, and consultative status with ECOSOC since 2005. Based in Cambridge, MA, Cultural Survival is registered as a 501(c)(3) non-profit organization since 1972. Cultural Survival monitors the protection of Indigenous Peoples' rights in countries throughout the world and publishes its findings in its magazine, the Cultural Survival Quarterly, and on its website: [www.cs.org](http://www.cs.org).

## **Without a Secured Right to Freedom of Expression of Indigenous Peoples, There Is No Democracy**

### **I. Introduction**

The right to freedom of expression makes up the foundation of any well functioning democracy. Progress around the world in terms of access to media, information, and connectivity has helped to not only amplify Indigenous voices and increase participation in decision-making, but has also strengthened the use of Indigenous languages and worldviews.

Yet today, many Indigenous Peoples in the Americas share a common experience, history, and reality that their freedom of expression and the right to communication are not respected and guaranteed within their countries. Indigenous media is threatened by antagonistic attitudes by both government agents and commercial media. In many countries, mainstream media is only available in dominant languages and with commercial contents only, making it inaccessible to many Indigenous Peoples and hampering Indigenous Peoples' rights to access to information in their languages and contexts. This issue contributes to the marginalization and loss of Indigenous languages and traditional knowledge. In many cases, Indigenous media practitioners and communicators have had to work under threats, intimidation, and regularly experience violence perpetrated by government agents. Many Indigenous journalists either are forced to go silent, or risk their lives and live in fear of violence, intimidation, and criminalization simply for exercising their right to freedom of expression, especially when reporting on divisive issues related to environmental protection, land rights, social movements, human rights, and local politics.

Indigenous Peoples have been excluded from accessing media for many reasons, including their geographic location, languages, legal barriers, and discrimination as well as gender bias. Indigenous Peoples living in isolated areas have little physical access to urban-based centered media. Similarly, a lack of awareness of human rights, especially the right to freedom of expression, and the right to access information on State and municipal services further contributes to obstacles. Indigenous journalists work in difficult conditions in remote areas, and are often the only mediums informing their communities on rights violations and cultural, environmental, and social issues, which would otherwise be ignored by other media sources. Although all journalists face similar threats, it is often Indigenous journalists and communicators who are most impacted, as in most cases they work in informal settings in rural areas that are inaccessible to the mainstream media and even to government officials. They often lack access to protection mechanisms and justice. Indigenous journalists are generally not formally recognized as journalists because they do not have formal university training or they are not affiliated with a major press or news agency. This additional safety risk often goes unreported and is overlooked by both government and international agencies. Indigenous journalists and community radio operators, despite physical threats, state persecution, and even risk of death, continue to exercise their rights in order to serve their communities.

It is clear that Indigenous community radio is an extremely important tool for Indigenous Peoples. It can help sustain Indigenous cultures and languages. And when radio stations are operated by the community and for the community, it promotes participatory democracy. Governments must demonstrate their respect for the right to freedom of expression by facilitating meaningful access for Indigenous Peoples to all forms of media without censorship, as stipulated in the UN Declaration on the Rights of Indigenous Peoples, especially Article 16. In continuation, we summarize the state of implementation of this important right in three countries within the Americas, Guatemala, Honduras, and Mexico due to space limitations.

## **II. Guatemala**

The Peace Accords that ended Guatemala's 36-year civil war set provisions to democratize the media in favor of Indigenous Peoples' freedom of expression. The Accord of Identity and Cultural Rights, signed by the state in 1995 established, among other things, that media monopolies should be eliminated through reforms to the telecommunications law and the adoption of a more egalitarian process for the delegation of radio frequencies. Later, the Peace Accords were signed in 1996, which called for the promotion of local radio stations that would allow for grassroots development of Indigenous communities.

Despite this, the General Telecommunications Law, enacted 11 years later in 2004, only includes two broadcasting models: private, given in auctions, and public, which received the frequencies reserved by the State for public institutions. Guatemalan law does not consider community radio stations in the allocation of radio frequencies. Because radio frequencies are either reserved for

government use or auctioned to the highest bidder, Indigenous communities must compete directly with commercial radio stations. In addition, in recent years, community radio stations have been the targets of police raids, criminal investigations, and station volunteers have been unlawfully imprisoned. From July 2006 to June 2016 the Public Ministry raided 12 non-profit community radio stations that were operated by Indigenous communities. During the raids, police (and sometimes soldiers) seized radio equipment, which led radio stations to shut down indefinitely or for an extended period of time. In four instances, Indigenous Guatemalans that were operating the community radio stations were arrested. The continued Government raids of Indigenous community radio stations by police and soldiers constitutes a serious and urgent situation that is causing irreparable harm to the exercise of the right to freedom of expression by the Indigenous communities served by those stations. The detention of community radio broadcasters represents an illegitimate application of the Guatemalan penal code, as no crime exists for which an individual can be charged for broadcasting without a license. The charges put forward are variable and have not held up in courts, meaning those that have been detained are being held arbitrarily.

The Community Radio Movement of Guatemala brought a case to the Constitutional Court arguing that this practice is discriminatory against Indigenous Peoples. In March 2012, the court exhorted the congress to legislate in favor of Indigenous community radio stations, allowing them access to radio frequencies. Since then, Bill 4087, which seeks to legalize and regulate community radio, has been introduced to the Guatemalan Congress, but it has not been ratified into law. As a consequence, the further concentration of Guatemala's media has prevented the exercise of real democracy by barring the broadcast of varied sources of information and opinions, and has contributed to a loss of Indigenous cultures and values.

The concentration of ownership of media is also a violation of Article 130 of the Guatemalan Constitution, which prohibits media monopolies. "The concentration of media due to political candidates asking for airtime...these are structures of power that are coordinated around traffic of influence and corruption. We call on the Commission to raise the profile of this situation and put conditions in place where Indigenous Peoples and others can utilize the radio spectrum," says community leader Alma Temaj Morales. "Radio frequencies are a strategic resource. We are seeing a greater concentration of media outlets, and concern is strong when greater concentration of media is in few hands. These outlets have undermined standards of democracy. Young democracies are at the mercy of serious structural gaps that threaten the progress of their political systems," noted Anselmo Xunic, founder of community radio station Radio Ixchel.

On April 3, 2020, Inter-American Commission on Human Rights (IACHR) referred [case](#) 13.608, *Maya Kaqchikel Indigenous Peoples of Sumpango and others vs. Guatemala*, dealing with Indigenous Peoples' right to freedom of expression via community radio in Guatemala, to the Inter-American Court of Human Rights. The Commission stated in their [recent report](#) that they referred the case to the Court because, "...the State of Guatemala violated the rights recognized

in Articles 13 (freedom of thought and expression); 24 (equality before the law) and 26 (cultural rights) of the American Convention, in relation to articles 1.1 (obligation to respect rights) and 2 (duty to adopt domestic law) of said instrument, to the detriment of the Maya Kaqchikel Indigenous Peoples of Sumpango, in Sacatepequez; Maya Achí from San Miguel Chicaj, in Baja Verapaz; Maya Mam de Cajolá, in Quetzaltenango; and Maya of Todos Santos de Cuchumatán, in Huehuetenango.” A positive ruling from the Court would help to improve the situation of freedom of expression and access to information, both in Guatemala and across the Americas. The Commission stated in its report that the structural problems, such as social exclusion, discrimination against Indigenous Peoples, absence of legal recognition of community radio stations, lack in adopting processes that allow Indigenous Peoples accessing licenses in equal conditions, and more protection to commercial media; created a situation that has not been formally recognized, neither reverted by the State.

Community radio is a crucial tool for Indigenous communities to access information, participate in democracy, revitalize language and culture, advance community development, education, and respond to natural disasters and other local emergencies: “Freedom of expression in Guatemala has been continuously violated by politicians, businessmen and others. Community media represents people's voices, however, they have been persecuted and raided. In the context of Hurricane Eta, we, the community radio stations, are informing [listeners] and contributing with food for those who have been affected. This is something that we would not be able to do through commercial media,” stated Lorenzo Mateo, director at community radio station Radio Jolom Konob.

#### **We recommend the following to the State of Guatemala:**

1. Conduct a radio frequency audit to know what is the current availability for Indigenous community radio use.
2. Amend the Telecommunications Law to allow one nonprofit community radio license per Indigenous municipality and its self-sustainability.
3. Immediately halt raids of Indigenous community radio stations and any efforts to criminalize community radio.
4. Protect the safety of Indigenous community journalists by complying with Human Rights Council Resolution 33/2 on the safety of journalists and make special accommodations for rural community communicators.

### **III. Honduras**

In Honduras, community journalists and Indigenous human rights defenders commonly experience violence, death threats, and criminalization.

Most recently, four Garífuna men were abducted from their homes on July 19, 2020. Among the missing include Alberth Snider Centeno Thomas (27 years old), a youth community leader who

is president of the board of the town of Triunfo de la Cruz, on the north coast of Honduras, along with Milton Joel Martínez Álvarez (39), Suami Aparicio Mejía (29), and Junior Rafael Juarez Mejia (33). Witnesses report that their community members were abducted by armed men wearing police uniforms and balaclavas that concealed their faces. The armed men forced the abducted men from their respective homes at gunpoint and ushered them into an unmarked vehicle before speeding away.

Four months have passed since the incident, there is still no sign of the Garífuna community members, with little to no substantial response from authorities. While prosecutors say that the motive for the attack is unclear, Garífuna leaders contend that the abductions are indicative of ongoing state persecution. The region has undergone long-standing conflict as Indigenous community members defend their lands against tourism developers, extractive palm oil industries, and drug trafficking. Alberth Snider Centeno Thomas is the first youth leader elected to the position he holds as president of the 'patronato' or community governance board for close to two years. Just prior to his kidnapping, he had successfully spearheaded an initiative to re-establish the Garifuna community radio station Faluma Bimetu, a radio station that has been reprimanded several times under the watch of CONATEL, the National Telecommunications Commission.

Since 2015, Law of Protection for Human Rights Defenders, Journalists, Social Communicators and Justice Operators (Protection Law) has been in force. At the beginning of 2017, it began to operate with funding from the US. Unfortunately, to date, despite the existence of such a mechanism, these murders, threats, and different forms of violence and oppression against defenders, journalists and communicators are ongoing. Communicators who belong to community radio stations are often harassed, criminalized, and radio stations are threatened with closure. These threats against Indigenous freedom of expression and communication in Honduras are often linked to activism against extractive projects.

In 2013, Resolution NR009 / 13 issued by the National Telecommunications Commission (CONATEL) allowed Indigenous and Afro-descendant organizations the possibility to apply for frequencies to operate radio and television to broadcast topics related to culture, education, health, and community development. However, as of October 2019, more than 12 radios from 4 Indigenous Peoples (Lencas, Tolupanas, Ch'orti ', Miskitos and Tawahka) are waiting for a frequency and none have been granted a license, forcing them to operate in free frequency with the anxiety of being raided and their equipment confiscated. Five stations run by Indigenous organization COPINH share two low-power frequencies granted by CONATEL, but they have reported threats and violence, especially when they use the radios as a means of reporting and informing the most isolated communities. Community radio stations receive threats from the State, drug trafficking, and corporations where they operate in regions with a high level of socio-environmental conflict, especially where Indigenous communities and leaders protect their territory and community resources.

## **We recommend the following to the State of Honduras:**

1. Ensure sufficient funding for the implementation of the Law for the Protection of Human Rights Defenders, Journalists, Social Communicators and Justice Operators (DECRETO No. 34-2015) and ensure that this law is applicable to Indigenous Human Rights Defenders.
2. Ensure that CONATEL facilitates the licensing of community radio frequencies to Indigenous Peoples.
3. Respect and protect the right of freedom of expression and physical integrity of Indigenous and afro descendent human rights defenders and take steps to reduce impunity in these cases.

## **IV. Mexico**

Mexico has the largest Indigenous population in Latin America, with over 16 million people representing 15% of the total population. There are 68 Indigenous languages and 364 dialects spoken in Mexico. Indigenous Peoples face violence for practicing their right to free speech in Mexico. Journalists and activists in particular have faced violent retaliation in the countryside from cartels, paramilitaries, and police. Rates of violence against journalists have been increasing over the last two decades. 188 journalists have been murdered between 2000- mid 2019. 90% of the murders of journalists go unpunished, according to the Mexican National Commission for Human Rights, which also reports that the most affected areas in Mexico are Chihuahua, Puebla, Guerrero, Morelos, Veracruz, and Oaxaca, home to a majority of the country's Indigenous population. Many of these journalists were reporting on human rights violations, including Indigenous rights and women's rights. For example, Candido Rios Vasquez, murdered in August of 2017, had a successful career advocating, particularly in Indigenous areas, for women, farmworkers, and migrants. Not reflected in these numbers are attacks on Indigenous community communicators who lack formal training as journalists but who operate at community radio stations. These advocates for Indigenous rights are frequently targets of censorship and attacks- for example, Samir Flores Soberanes, Indigenous rights and environmental defender from the Nahua community in Morelos, Mexico, was shot four times in the head on February 20, 2019. The murder occurred just one day before a community referendum on a government backed thermal-electric project. Soberanes was a deeply respected leader in his community, where he had co-founded the community radio station "Amiltzinko" in 2014. Through his platform at the radio station Samir was a high-profile organizer for land rights and autonomy of the Nahuatl community.

In 2012 the Federal Mechanism of Protection for Human Rights Defenders and Journalists was established. A total of 6 Indigenous community communicators have been murdered since 2000, yet only one has been recognized by the State under the 2012 Law for the Protection of Human Rights Defenders and Journalists. This law can grant extraordinary measures of protection when

a journalist's life is at risk. The most popular measure is the Panic Button, which tracks one's location so that if there is danger, the person can activate the button to send for the authorities. In 2013, after one year of the Mechanism's existence, the rate of murders of journalists dipped to 2004 levels. However, since then, the rate of murders has continued to steadily climb. Although the law notes that it is inclusive of providing protection to informally trained community media practitioners in addition to professional journalists, devices like the "Panic Button" often leave Indigenous Peoples or those reporting in rural, hard-to-access areas outside of quick access to help. Although the law strives to be inclusive, and in fact meets international standards, it is still insufficient as it continues to systematically exclude certain communities.

**We recommend the following to the State of Mexico:**

1. Ensure that services provided by the Federal Mechanism for the Protection of Human Rights Defenders and Journalists are inclusive of and accessible by Indigenous journalists and community media practitioners in rural areas.
2. Increase funding for the Federal Mechanism for the Protection of Human Rights Defenders and Journalists
3. Decrease levels of impunity for crimes against human rights defenders and journalists.

**V. General Recommendations on implementing Freedom of Expression for Indigenous Peoples in the Americas:**

Cultural Survival recommends that Tom Lantos Human Rights Commission encourage States to:

1. Take steps to implement Article 16 of the UN Declaration on the Rights of Indigenous Peoples.
2. Respect the rights of Indigenous Peoples to Free, Prior and Informed Consent on any legislative or administrative measure that may affect them.
3. Protect the safety of Indigenous community journalists by complying with Human Rights Council Resolution 33/2 on the safety of journalists and make special accommodations for alternative and Indigenous media, not just licensed journalists.
4. Respect and protect the right of freedom of expression and physical integrity of Indigenous and afro descendent human rights defenders and take steps to reduce impunity in these cases.