

**SUBMISSION TO THE COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION  
BY THE TRADITIONAL AUTHORITIES OF THE RIO YAQUI  
PUEBLOS**

**IN RELATION TO MEXICO'S 16<sup>TH</sup> AND 17<sup>TH</sup> PERIODIC  
REPORTS**

80th Session, 13 February – 9 March 2012

**Submitted January 31, 2012**

**Prepared by:**

James Hopkins, Associate Clinical Professor  
Counsel to the Traditional Authorities of the Rio Yaqui Pueblos, Sonora, Mexico

Rogers College of Law, University of Arizona  
Indigenous Peoples Law and Policy Program  
1201 E Speedway Blvd,  
Tucson, AZ 85721  
Ph: 520-626-7669 Fax: 520-626-1819  
[hopkinsj@email.arizona.edu](mailto:hopkinsj@email.arizona.edu)

## TABLE OF CONTENTS

I.	Introduction and Summary.....	1
II.	Mexico's International Obligations	2
III.	The Rio Yaqui Pueblos: a life and death struggle for survival	4
	(a) Mexico's recognition and removal of of Yaqui land and water rights	4
	(i)    The Cardenas Decree of 1940	4
	(ii)   The Cortines Decree of 1955: Mexico removes Yaqui water rights	5
	<u>Figure 1: Map of the Rio Yaqui Basin</u>	6
	<u>Figure 2: Diagram of the Hydro-electric dams north of the Rio Yaqui territory</u>	7
	(iii)  The 1997 Zedillo Decree: the knife edge	8
	<u>Figure 3: Diagram of the 1997 Knife Edge Removal of Yaqui Pueblo Cocorit and Yaqui Pueblo Bacum</u>	9
IV.	History repeats itself: Acueducto Indpendica 2012.....	10
V.	Conclusion and Recommendations.....	12

## I. Introduction and Summary

This report is submitted on behalf of the Traditional Authorities of the Rio Yaqui Pueblos, Sonora, Mexico in response to Mexico's periodic report of 29 June 2010.<sup>1</sup> The Committee on the Elimination of Racial Discrimination ("CERD") issued its most recent Concluding Observations on Mexico on 4 April 2006.<sup>2</sup> In those observations, the Committee reiterated "that indigenous communities have no legal security with regard to land tenure," and reminded Mexico "to recognize and protect the rights of indigenous peoples to own, develop, control and use their lands and territories."<sup>3</sup> The Committee recommended that Mexico implement a dispute settlement programme to effectively deal "with hot spots" whose conflicts are "caused mainly by disputes over land ownership."<sup>4</sup>

The Committee expressed regret over Mexico's failure to consult with indigenous peoples as part of its follow up with constitutional reforms regarding indigenous rights in 2001; and recommending that Mexico "put into practice the principles set out in the constitutional reform in relation to indigenous matters in close cooperation with the indigenous peoples."<sup>5</sup> CERD reminded Mexico of its previous recommendation to "guarantee in practice the right of the indigenous peoples to participate in government and in the management of public affairs at every level."<sup>6</sup> With regard to the health and welfare of indigenous peoples, CERD reiterated its concern "at the reproductive health situation of indigenous men and women" in connection with forced sterilization reported in Chiapas, Guerrero and Oaxaca,<sup>7</sup> and urged Mexico to take appropriate steps to combat racial prejudice and discrimination in the media and to foster "understanding, tolerance and friendship" including the adoption of "a code of media/journalistic ethics in this field."<sup>8</sup> The Committee recommended that Mexico make its reports public and "published in the indigenous languages" of Mexico.<sup>9</sup>

Mexico submitted comments to the Committee's Concluding Observations on 23 May 2007.<sup>10</sup> On 7 March 2008 the Response by CERD reiterated requests to Mexico concerning the constitution and implementation of indigenous rights and protections. The Commission observed that the description regarding the National Commission for the Development of

---

<sup>1</sup> Mexico submitted its 16<sup>th</sup> and 17<sup>th</sup> periodic reports on 29 June 2010 - the latter being due on 22 March 2008, see CERD/C/MEX/16-17, 29 June 2010.

<sup>2</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *UN Committee on the Elimination of Racial Discrimination: Concluding Observations, Mexico*, 4 April 2006, CERD/C/MEX/CO/15, available at: <http://www.unhcr.org/refworld/docid/4537797d0.html> [hereinafter 2006 Concluding Observations].

<sup>3</sup> *Id.* at para. 15.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at para. 12.

<sup>6</sup> *Id.* at para. 14.

<sup>7</sup> *Id.* at para. 17.

<sup>8</sup> *Id.* at para. 18.

<sup>9</sup> *Id.* at para. 20.

<sup>10</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination : comments by the Government of Mexico to the concluding observations of the Committee on the Elimination of Racial Discrimination*, 29 June 2007, CERD/C/MEX/CO/15/Add.1, available at: <http://www.unhcr.org/refworld/docid/47347c232.html> [hereinafter 2007 State Comments].

Indigenous Peoples (CDI) did not provide sufficient information to determine whether “specific steps have been taken to foster regional development in the indigenous areas and to upgrade their living conditions.”<sup>11</sup> In addition, CERD requested extensive information regarding current family planning and health services to the indigenous population.<sup>12</sup>

Despite these concerns by CERD, Mexico has failed to protect and safeguard the rights of indigenous peoples to land and resources despite its international obligations and in the case of the Rio Yaqui Pueblos, Mexico is actively supporting reckless and destructive economic development projects that have irreparably damaged the Yaqui people and the Yaqui traditional territory. As will be discussed, Mexico has committed these harms with full knowledge of its domestic and international commitments to the Rio Yaqui Pueblos as early as 1937 when a presidential decree recognized the Yaqui territory and guaranteed the Rio Yaqui people a reserve of the surface water in the Rio Yaqui.<sup>13</sup>

Despite Mexico ratifying numerous human rights instruments that are designed to better and safeguard the human rights of indigenous peoples, the treatment by Mexico with regard to the Rio Yaqui Pueblos is an example of Mexico’s omissions and failures to adequately safeguard and protect the life, liberty, and security of indigenous peoples on the one hand, and Mexico’s failure to meet its minimal obligations to protect the rights of indigenous peoples to lands and precious resources on the other. In 2011, the Traditional Authorities filed a petition against Mexico before the Inter-American Commission on Human Rights.<sup>14</sup>

## II. Mexico’s International Obligation

Mexico is a party to the International Convention on the Elimination of Racial Discrimination (“ICERD”) and is committed to protecting the rights under Article 5 including: (a) the right to equal treatment before tribunals and other organs administering justice; (b) the right to security of the person and protection by the State; (c) the right to have equal access to public service; (d)(v) the right to own property alone as well as in association with others; (d)(ix) the right to freedom of peaceful assembly and association; (e) economic, social and cultural rights; (e)(iii) the right to housing; (e)(iv) the right to public health; (e)(v) the right to education; and (e)(vi) the right to equal participation in cultural activities.<sup>15</sup>

The factors contributing to the vulnerability of indigenous populations have been recognized and affirmed by CERD with a particular emphasis on the connection between the loss of indigenous

<sup>11</sup> Ltr. From CERD to Government of Mexico, 7 March 2008 (concerning requests for information to paragraphs 11,12, and 17 of the Concluding Observations), available at

<http://www2.ohchr.org/english/bodies/cerd/docs/followup/Mexico070308.pdf>, . d. at para. 20.

<sup>12</sup> *Id.*

<sup>13</sup> Lázaro Cárdenas, *Resolución que Titula Definitivamente y Precisa la Ubicación de los Terrenos que se Restituyen a la Tribu Yaqui, del Estado de Sonora*, Septiembre 30, 1940, Daily Gazette, October 22, 1940 (“1940 Cárdenas Decree”), English versión attached.

<sup>14</sup> Petition to the Inter-American Commission on Human Rights submitted by the Traditional Authorities, 4 January 2011. The petition is currently before the Inter-American Commission; accordingly, its particulars are confidential. Any reference herein to State conduct is in regard to public documents that have been released or informed by official communications from Mexico.

<sup>15</sup> International Convention on the Elimination of Racial Discrimination, Preamble, Dec. 21, 1965, 660 U.N.T.S. 195 (entered into force Jan. 4, 1969) (“ICERD”).

lands and resources and emerging human rights abuses, conflicts, and violence against indigenous communities.<sup>16</sup>

Mexico endorsed the UN Declaration on the Rights of Indigenous Peoples (“UNDRIP”) which recognizes that indigenous groups like the Rio Yaqui Pueblos have a right pursuant to Article 26 “to the land, territories and resources which they have traditionally owned, occupied or otherwise used or acquired.”<sup>17</sup> This includes a right to “own and control” their lands.<sup>18</sup> Likewise, Article 27 obligates Mexico to establish “a fair, independent, impartial, open, and transparent process” for the recognition and adjudication of indigenous land rights.<sup>19</sup>

In addition to the UNDRIP, Mexico’s obligations to obtain free, prior, and informed consent from indigenous peoples in the context of developing resources on indigenous lands must be assessed in relation to the International Labor Organization Resolution 169.<sup>20</sup> The procedural and substantive aspects enumerated under Article 7 of the ILO oblige Mexico to ensure that indigenous peoples are directly involved in decisions that impact the economic development of their resources.<sup>21</sup> This includes a positive obligation by Mexico to conduct studies and consultation prior to the development of these resources to ensure that the rights of indigenous communities are protected and afforded the appropriate safeguards.<sup>22</sup>

These considerations are relevant as they apply to the Rio Yaqui Pueblos, an indigenous group of approximately 60,000 in the Rio Yaqui Valley, Sonora, Mexico, and whose survival is jeopardized by cumulative and harmful impacts resulting from Mexico’s acquisition of Yaqui land and water within their traditional territory. These impacts include a failure by the State to provide the Yaquis access to safe drinking water, access to water for sustainable and cultural use, an increased incidence of Yaqui infant mortality, and similar negative impacts on other vulnerable sectors of the Yaqui population due to agri-chemical exposure in the air, food, and water within the Yaqui territory, and the continued active engagement by Mexico to develop the natural resources of the traditional territory in conjunction with transnational corporations.

For example, in 2006 the United Nations International POPs Elimination Project Country Situation Report on Mexico designated the Rio Yaqui Valley and a pesticide “hotspot” and concluded that “Mexico lags seriously behind in establishing a National Coordinating Committee for developing Mexico’s National Implementation Plan (NIP) for the Stockholm Convention.”<sup>23</sup> The IPEN Report recommendations on civic participation have not been implemented and Mexico has failed to enact the most basic measure of providing notice to Yaqui elementary

<sup>16</sup> Committee on the Elimination of Racial Discrimination, General Recommendation XXIII, para. 3, Doc. A/52/18, Aug. 18, 1997.

<sup>17</sup> United Nations Declaration on the Rights of Indigenous Peoples, G.A. Res. 61/295, U.N. Doc. A/RES/61/295, Sept. 13, 2007, art. 26(1).

<sup>18</sup> *Id.* at art. 26(2).

<sup>19</sup> *Id.* at art 27.

<sup>20</sup> International Labour Organization (ILO), *Indigenous and Tribal Peoples Convention, C169*, 27 June 1989, C169, available at: <http://www.unhcr.org/refworld/docid/3ddb6d514.html>; ratified by Mexico on 05/09/1990.

<sup>21</sup> *Id.* at art. 7.

<sup>22</sup> *Id.* at art. 7(2) and 7(3).

<sup>23</sup> International POPs Elimination Project, *Fostering Active and Efficient Civil Society Participation in Preparation for Implementation of the Stockholm Convention* Country situation report on POPs in Mexico, “Red de Acción sobre Plaguicidas y sus Alternativas en México (RAPAM)”, México, April 2006 at 2, 16-17 [hereinafter “IPEN Report”].

schools in and around the fly ways for aerial pesticide spraying that occur within the immediate and adjacent fields. In summary, these cumulative and harmful factors are occurring due to efforts and omissions by Mexico without consultation and the necessary prior informed consent of the Yaqui people.

### **III. The Rio Yaqui Pueblos: a life and death struggle for survival**

#### **(a) Mexico's recognition and removal of of Yaqui land and water rights**

##### **(i) The Cardenas Decree of 1940**

The Traditional Authorities is the duly recognized governing body that represents the eight Rio Yaqui Pueblos of the Rio Yaqui Valley where the Yaquis have lived since time immemorial (“traditional territory”). The eight Rio Yaqui Pueblos are as follows: Vícam, Pótam, Tórim, Rahum, Bacum, Huirivis, Cócort, and Belem. The traditional territory of the Rio Yaqui peoples is intersected by, and is adjacent to, four municipalities within Sonora, Mexico: Guaymas, Cajeme, Bacum and San Ignacio Río Muerto. Spain and subsequently Mexico have dealt with the Rio Yaqui Pueblos as a distinct indigenous people who, having regard to their capacity for defending their territory and enduring prolonged brutal military campaigns by the State, were formally recognized by President Cardenas in 1937 and in 1940 the decree was formally promulgated in the federal diary.<sup>24</sup>

The Rio Yaqui traditional territory consists of, and includes, the natural resources of the traditional territory recognized in 1940 by the Cárdenas Decree, the Yaqui River, its tributaries, watersheds, all related hydrological and riparian systems that comprise the entirety of the Yaqui River system, and the rights to the foreshore and seabed of the coastline to the Sea of Cortez within the coastal boundaries of the traditional territory. The Cardenas Decree affirmed a smaller boundary of the traditional Yaqui territory, but it reserved 50 percent of the surface water to the Rio Yaqui Pueblos as a gesture of peace, good faith, and to usher in a new era of federal-indigenous relations with the Yaquis.

Dr. Rodolfo Stavenhagen observed that the imposition of agrarian reform during this period was characterized by a model of agricultural production that had immediate and catastrophic effects in the form of Yaqui land expropriation and rampant corruption.<sup>25</sup> By 1940, the landed gentry had mobilized against the redistribution of land and successfully lobbied changes to the Ejido Banking system who were responsible for financing and providing seeds to the Yaqui farmers. As Stavenhagen noted, “Corruption spread like wildfire”; power became concentrated in the hands of a few who could make significant profits by imposing finance terms on the Yaquis that quickly bankrupted their cooperatives, or as a means to survive force the Yaquis to rent their lands to private growers.<sup>26</sup>

---

<sup>24</sup> 1940 Cárdenas Decree, *supra* note 13.

<sup>25</sup> Rodolfo Stavenhagen, *Collective Agriculture and Capitalism in Mexico: A Way Out or a Dead End?*, Latin American Perspectives, Vol. 2, No. 2, Mexico: The Limits of State Capitalism (Summer 1975), pp. 146-163; and see Peter Singelmann, *Rural Collectivization and Dependent Capitalization: The Mexican Collective Ejido*, Latin American Perspectives, Vol. 5., No. 3, Mexico: The Limits of State Capitalism (Summer 1975).

<sup>26</sup> *Id.*, Stavenhagen at p. 155.

By 1962, the transfer and removal of Yaqui cooperative title to land was complete and Yaquis found themselves working as day laborers. In some instances, this occurred upon lands still technically owned by abandoned Yaqui ejidos that were encumbered with long term leases – a technical strategy widely employed by the Ejido Banks.<sup>27</sup> The goal of non-Yaqui landowners throughout this process was to maximize the availability of arable land to meet national and global demands for wheat. Professor Sterling Evans observed that from 1950 to 1957 wheat production in Mexico increased by 100 percent, making the Rio Yaqui Valley the most significant producer in addition to sorghum, soybeans, flax, and cotton.<sup>28</sup> Likewise, cotton production doubled between 1958 and 1974.<sup>29</sup>

Today, the Rio Yaqui Pueblos sit near or upon the empty riverbank of the Rio Yaqui and bear tragic witness to the environmental costs of the green revolution. Swelling in poverty and irreparable ecological toxicology, the traditional environment and habitat of the Rio Yaqui Pueblos is permanently damaged and the Yaqui people are entirely without access to surface water. Instead, they rely on wells that draw from polluted aquifers that are collection points for agri-chemicals that seep downward from the canals that drain the irrigated fields. The legal title to both Yaqui land and water has been stolen from them by Mexico and a paradox of tragic proportions exists wherein Yaqui workers tend to the fields their parent's generation once lived upon in a sustainable and culturally relevant manner. Their marginal wages contribute to staggering wealth disparity that benefits private landowners who control the underlying titles and who can afford to pay for surface water irrigation.

## **(ii) The Cortines Decree of 1955: Mexico removes Yaqui water rights**

Water is a scarce and valuable commodity in the Sonora desert. The Yaqui River is the primary water source for the State of Sonora. Tributaries to the Yaqui River include the Aros, Bavispe and Moctezuma rivers.<sup>30</sup> The Aros and Bavispe converge at Limones to form the Yaqui River while the Moctezuma flows in 110 km downstream.<sup>31</sup> The total approximate Yaqui River basin area is 95,000 Km<sup>2</sup>. 75,000 km<sup>2</sup> of the basin is located to the north of Limones with 4,000 km<sup>2</sup> located in Arizona and New Mexico, north of the U.S. / Mexico border. The remaining 20,000 km<sup>2</sup> is located to the south of Limones. The majority of agricultural land is located downstream from Limones.

Transforming the desert into the world's most productive wheat belt requires vast amounts of surface and ground water. Beginning in 1937, Mexico implemented dam and irrigation systems with a view to removing over 90% of river water to non-Yaqui settlers outside Yaqui territory.<sup>32</sup>

---

<sup>27</sup> *Id.*

<sup>28</sup> Sterling Evans, *Yaquis vs. Yanquis: An Environmental and Historical Comparison of Coping with Aridity in Southern Sonora*, Journal of the Southwest, Vol. 40, No. 3 (Autumn, 1998), pp. 363-396 at p. 385 [hereinafter “*Yaquis vs. Yaquis*”].

<sup>29</sup> *Id.* at p. 386.

<sup>30</sup> See Figure 1: Map of the Rio Yaqui Basin, *infra* note 34.

<sup>31</sup> *Id.*

<sup>32</sup> *Yaquis vs. Yaquis*, supra note 28 at 384; Professor Evans notes that 75% of the water was removed when La Angostura was completed. The subsequent construction of Oviachic – the Obregon Reservoir – and El Novillo has resulted in the complete drainage of the lower basin of the Rio Yaqui where the eight Rio Yaqui Pueblos are located.

Specifically, the La Angostura Dam, completed in 1942, and the El Oviachic Dam, completed in 1952 (the “Obregon reservoir”), were both constructed for this purpose. A third project, the El Novillo Dam, was completed in 1962 and it sits between its predecessors on the Rio Yaqui. These three dams combined have removed over 95% of the water flowing from the Yaqui River.<sup>33</sup>

**Figure 1: Map of the Rio Yaqui Basin**



**Source:** Anthony Munoz-Hernandes, “Drought in Northern Mexico”, paper presented at Drought Research Initiative Annual Workshop, 2010, Winnipeg, Canada: Selected Reports on Droughts in other parts of the World, 12-14 May 2010 at page 5.<sup>34</sup>

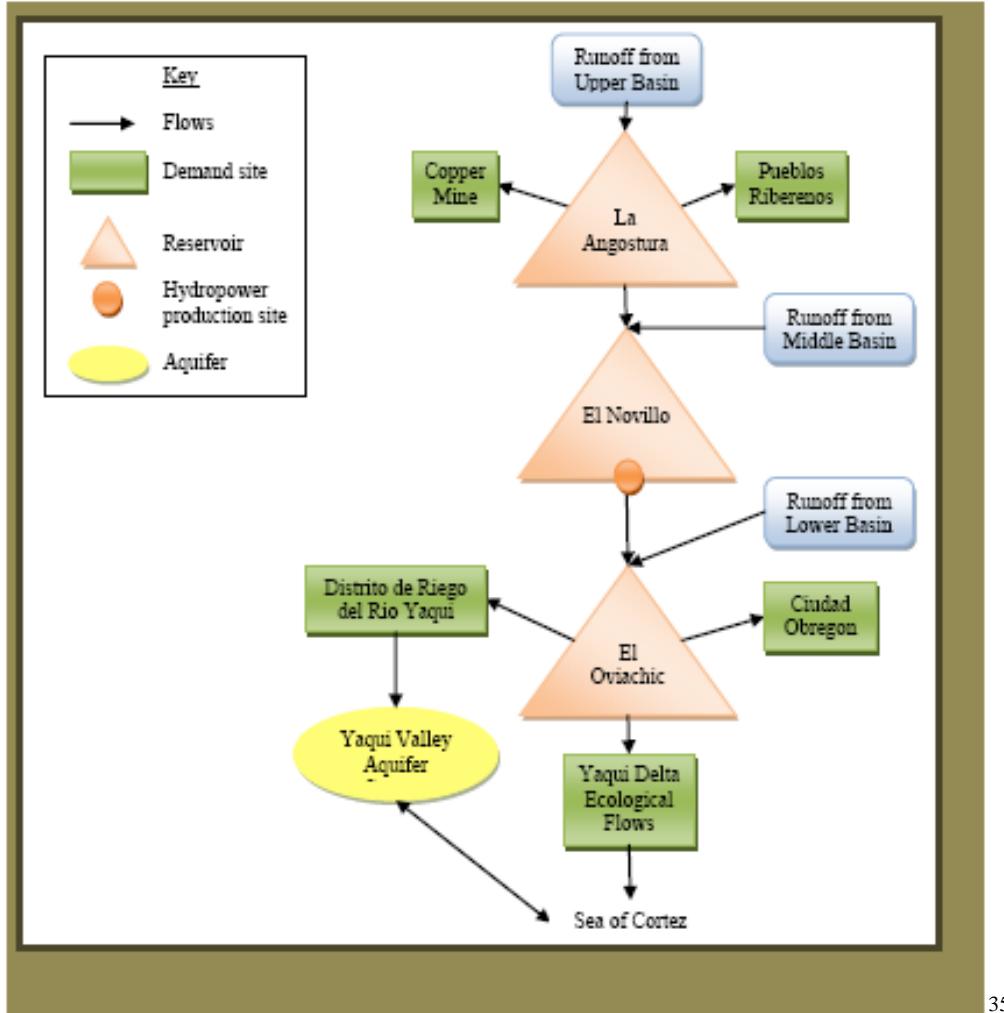
---

Only during periods of surplus run off from the Obregon Reservoir will the Rio Yaqui flow with its headwaters into the Sea of Cortez. However, drought and overuse only saw this event occur for several weeks in 2010.

<sup>33</sup> Sterling Evans, “Damming Sonora: An Environmental and Transnational History of Water, Agriculture, and Society in Northwest Mexico” paper (forthcoming book) presented at the University of Georgia 25 March 2011, at page 2 [hereinafter “Transnational History of Water, Agriculture, and Society in Northwest Mexico”].

<sup>34</sup> Source; [hereinafter “Drought in Northern Mexico”].

**Figure 2: Diagram of the Hydro-electric dams north of the Rio Yaqui territory**



35

In 1955, Mexico began to void and nullify Yaqui surface water rights by creating new water districts, diverting water away from the Rio Yaqui Pueblos, and extinguishing Yaqui claims in areas that were key to the federal water district – Conagua – vision of an expanding water empire. At this time, President Cortines issued a decree that removed Yaqui land and water rights immediately within the El Oviachic, or Obregon reservoir region.<sup>36</sup> In addition, flooding caused from the swell of the Obregon reservoir resulted in significant diminishment of Yaqui land in a particularly fertile area with an additional 10,000 hectares disappearing into the reservoir itself.<sup>37</sup>

<sup>35</sup> *Id.* at 7.

<sup>36</sup> Adolfo Ruiz Cortines, *Acuerdo que Establece el Distrito de Riego del Río Yaqui, Sonora y que Declara de Utilidad Pública la Construcción de las Obras que lo Forman*, 16 de Noviembre de 1955, Diario Oficial de la Federación, Diciembre 16, 1955.

<sup>37</sup> See map of the Yaqui Territory.

**(iii) The 1997 Zedillo Decree: the knife edge**

Mexico's most recent annexation of Yaqui land and water rights occurred in 1997 when President Zedillo issued a decree that would later become known as the "knife edge"; a description attributed in part to the vital Rio Yaqui corridor immediately east of the City of Obregon.<sup>38</sup> This section of the Rio Yaqui was removed entirely from the Yaqui traditional territory – contrary to the Cardenas decree - and also the removal of Pueblo Cocorit and Pueblo Bacum.

Mexico effectively cut the Yaqui territory from the Rio Yaqui leaving the eight Rio Yaqui Pueblos land locked south of a new toll highway – revenues of which were promised to the Rio Yaqui Pueblos by Mexico given its pathway through the territory, but to date no such revenues have been forthcoming. The highway 15 has, however, brought with it drugs, prostitution, and a never ending column of 50 foot long tractor trailers that transport vegetables, grains, and other products to other parts of Mexico and the United States.

With regard to the knife edge, in 1997 President Ernesto Zedillo expropriated 431 hectares of Yaqui land on behalf of six *ejido* groups without consulting the Rio Yaqui Pueblos.<sup>39</sup> The expropriation process had become confusing and complex: the *ejido* grant, related to a presidential resolution adopted in 1939, was published in 1942, partially executed in 1944, and fully executed in 1952 on behalf of the Ejido San José.<sup>40</sup>

Concurrent with the decree, Mexico fortified surface water rights for the City of Obregon and the adjoining water district by upgrading a concrete lined canal that continues to run at full capacity parallel to the empty Rio Yaqui territory. Because the Zedillo decree removed the Rio Yaqui, the Yaqui Pueblos on the eastern embankment - Pueblo Cocorit and Pueblo Bacum – were abandoned as Yaqui families relocated to the western side of the empty river bed. Loma de Guamochil – a village immediately south of the highway 15 – is now the new Pueblo Cocorit. Likewise, Pueblo Bacum emerged from a smaller village southeast of Loma de Guamochil. The impact of the knife edge is acknowledged by Google Earth which illustrates how the Yaquis created two new Pueblos:

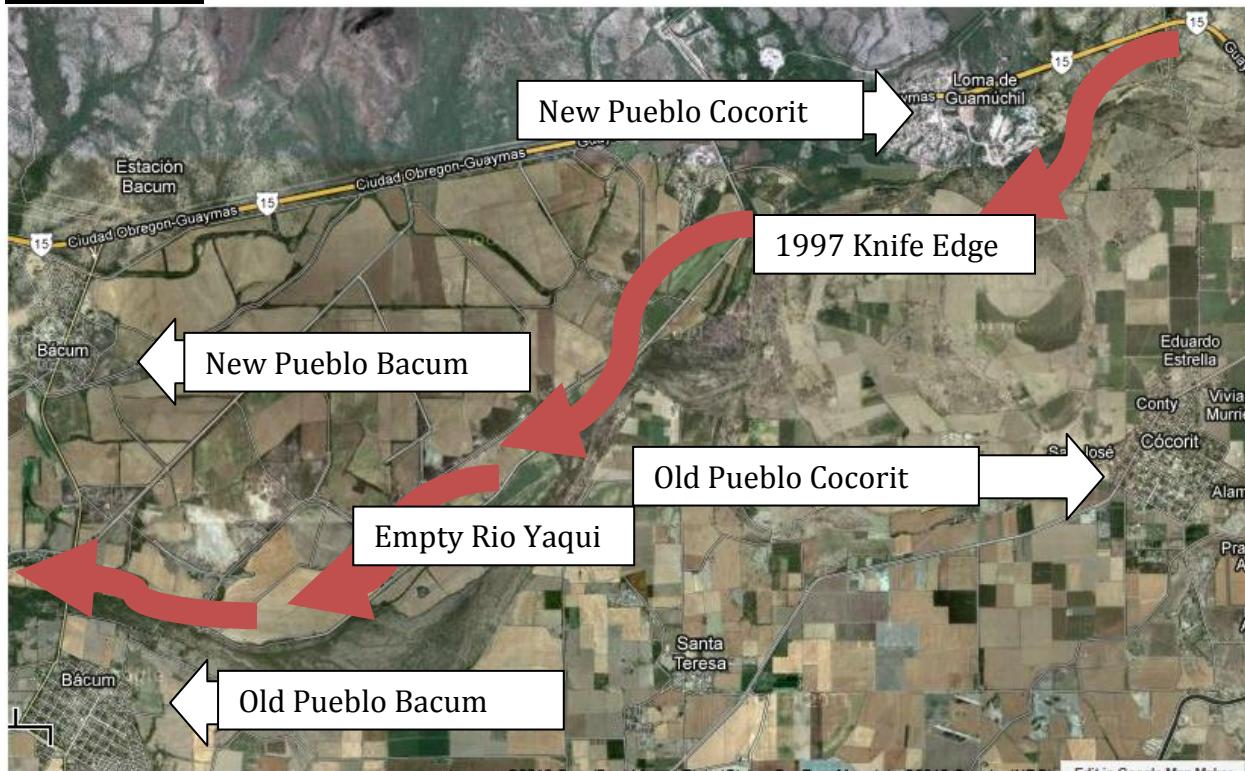
---

<sup>38</sup> Ernesto Zedillo Ponce de León, *Decreto Presidencial Por El Que Se Expropia Por Causa De Utilidad Pública Una Superficie De 2,688-48-35.89 Hectáreas De Riego Y Agostadero De Uso Común, Propiedad De La Comunidad Tribu Yaqui, Ubicada En Los Municipios de Cajeme, Guaymas y Bácum, Son.* (Reg. - 0212), Oficial Gazette, January 10, 1997.

<sup>39</sup> *Id.* Para 4.

<sup>40</sup> *Id.* Para 3.

**Figure 3: Diagram of the 1997 Knife Edge Removal of Yaqui Pueblo Cocorit and Yaqui Pueblo Bacum**



Mexico defends its actions by claiming that it has placed a compensation fund into public trust through FIFONAFE. Mexico has never issued a statement of account to the Traditional Authorities – a basic entitlement to any beneficiary in a trust relationship. The Traditional Authorities wholly reject any notion that the Rio Yaqui is for sale and view the 1997 knife edge as an abuse of power by Mexico that is against international human rights law. Mexico claims that it has the power of eminent domain and all acquisitions of Yaqui territory have been made lawfully with the support of the courts including a failed amparro action by the Traditional Authorities in 1997. This 1997 court decision is surrounded in mystery. The lawyers for the Traditional Authorities disappeared after the decree and have never been seen again. The judgment dismissing the injunction has never been released to the Traditional Authorities and has never been made public or available despite repeated and specific requests to numerous agencies.

In addition, Mexico demands that the Rio Yaqui Pueblos pay Conagua market-based water fees for potable water. The payment schedule is approximately .85 cents to 1 U.S. dollar per gallon. The impact of this fee structure is obvious: the Yaquis continue to drink contaminated groundwater whose water quality has been described by Mexico's own researchers as akin to sewers.<sup>41</sup> This occurs while the Yaquis remain on less than 1/3 of the habitable land they once had prior to 1937.

<sup>41</sup> Félix-Fuentes, A., Meza-Montenegro, M.M., Cantú-Soto, E.U., Leal-Almanza, J., Aguilar-Apodaca, M.G. y Balderas-Cortés, J.J. EVALUACIÓN DE LA CALIDAD MICROBIOLÓGICA DEL AGUA DE HUMANO DE LA COMUNIDAD DE PÓTAM, RÍO YAQUI, SONORA.CONSUMO, at 51, the researchers

#### IV. History repeats itself: Acueducto Indpendica 2012

Beginning in 2007, the Traditional Authorities made several requests for water to Conagua. The last request was in July 2010. Conagua replied in 2011 denying their request which amounted to 15,000 hectares of water from the Rio Yaqui. Among the reasons, Conagua stated that there was no water available. And yet, in July 2010 the National Water Commission authorized Conagua to release of 50,000,000 cubic meters of Rio Yaqui surface water to the City of Hermosillo as part of a billion dollar aqueduct project referred to as “El Novillo”. The water project is part of Sonoar’s vision to obtain water independence and provide 50 percent of the tap water in Hermosillo from the Rio Yaqui. The pipeline is like a giant straw extending from this City and in the summer of 2012 will connect to the base of the El Novillo dam. The El Novillo pipeline will consume 75,000,000 cubic metres per annum of surface water from the Rio Yaqui.<sup>42</sup>

The Rio Yaqui Pueblos have not been consulted in this process. Mexico, through the Agriculture Secretariat, purports to operate an inter-jurisdictional dispute resolution committee, but to date has not disclosed the legal authority for this entity. At the same time, Conagua has extended water rights to the non-Yaqui district in and around Obregon. The result of Mexico’s actions will be to effectively starve the Yaqui people of water and assimilate them in a final wave of environmental degradation and toxicology.

With regard to the public health situation, according to Mexico’s own data on infant mortality, Yaqui infant deaths are recorded as 16.4 per live 100 births, suggesting a deliberate omission by Mexico in regard to the tabulation of indigenous infant mortality along a metric that produces a lower number than what would otherwise emerge if Mexico had not deviated from the standard mortality metric of 1000 live births.<sup>43</sup> The United Nations Statistics Division shows the Mexico’s national infant mortality rate is 17 deaths per 1000 live births, which suggests that Mexico excluded indigenous infant mortality rates from the non-indigenous data set as in some instances, indigenous groups such as the Náhuatl in the State of Guerrero have infant mortality rates of 213 deaths per 1000 live births.<sup>44</sup> Again, the critical factor is that Mexico removed a zero for the underlying unit of measurement only in the case of indigenous infant deaths so it could shift the decimal point over to the left; thereby appearing to have a number similar to the national average but failing to highlight what the underlying unit value (e.g., 100 vs. 1000).

This was confirmed in three separate census reports published by Mexico as it concerns indigenous infant mortality all of which raises issues with respect to transparency in the production of data and the challenges indigenous peoples in Mexico must deal with on a daily

---

concluded (translated into English): Well wáter in Potam is unfit for human consumption due to the presence of fecal matter and coliform.

<sup>42</sup> For a summary by Mexico of the project, see:

[http://sonorasi.mx/descargas/FACTIBILIDAD\\_AMBIENTAL\\_ACUEDUCTO\\_INDEPENDENCIA.pdf](http://sonorasi.mx/descargas/FACTIBILIDAD_AMBIENTAL_ACUEDUCTO_INDEPENDENCIA.pdf)

<sup>43</sup> La Poblacion Hablante de Lingua Indigena de Sonora, 2005, Instituto Nacional de Estadística, Geografía e Informática, page 35. The United Nations Statistics Division defines infant mortality rate as the total number of infants dying before reaching the age of one year per 1,000 live births in a given year. It is an approximation of the number of deaths per 1,000 children born alive who die within one year of birth. For country statistics including Mexico – see <http://unstats.un.org/unsd/demographic/products/socind/health.htm#tech>

<sup>44</sup> See for example, La Poblacion Hablante de Lingua Indigena de Guerrero, 2005, Instituto Nacional de Estadística, Geografía e Informática, page 30.

basis.<sup>45</sup> For example, in a 2005 national report on the indigenous population, infant mortality was compared to non-indigenous infant mortality by each state. The percentage for non-indigenous mortality – in the case of Sonora – was simply the result of dividing the total number of infant deaths into the total number of live births, however, in Sonora there were almost 2,000,000 live births in the year reported.<sup>46</sup> Mexico reported the data using 100 as the baseline to compare it with indigenous infant mortality, however, the reader fails to appreciate that Yaqui infant mortality is occurring in a population that is significant smaller (e.g., 60,000). Therefore, 164 deaths per 1000 live Yaqui births casts an entirely different picture than the non-indigenous rate in Sonora of 81.5. While both are equally tragic numbers, the ability of the Yaqui population to cope with such high infant deaths is completely overlooked in Mexico's reporting system.

The lack of access to medical care is magnified by numerous studies that have confirmed the bioconcentration of organophosphates, organochlorines, herbicides, related pesticides, and fertilizers many of which are found in utero (during pregnancy) and within the breast milk of Yaqui mothers. Using Mexico's own data, one of the first English written reports on Yaqui neurological impairment amongst Yaqui children was published by Dr. Guillette and her co-authors who ran comparative motor skills tests between Yaqui children in the Valley against those who were not exposed to DDTs.<sup>47</sup> Her findings revealed the following:

**Table 1. Concentrations of pesticides (mean ± standard deviation) in cord blood at time of birth and in mother's milk 1 month post partum from Pueblo Yaqui, Sonora, Mexico**

Pesticide	Cord blood (ppm) (n = 19)	Milk (ppm)
		corrected for fat (n = 20)
α-HCH	0.030 ± 0.03	0.8599 ± 2.75
β-HCH	0	0.3791 ± 1.08
Lindane	0.084 ± 0.06	0.6710 ± 0.59*
Δ-HCH	0.0039 ± 0.1	0.4432 ± 0.84
Heptachlor	0	1.269 ± 1.65*
BHC	0.003 ± 0.002	0.6270 ± 0.66*
Aldrin	0	0.2363 ± 0.59*
Dieldrin	0.159 ± 0.12	0.0487 ± 0.08
Endrin	0.022 ± 0.02	0.5238 ± 1.1*
p,p' DDE	0.03 ± 0.03	6.31 ± 5.9
ΣDDE	0.0434	6.52*

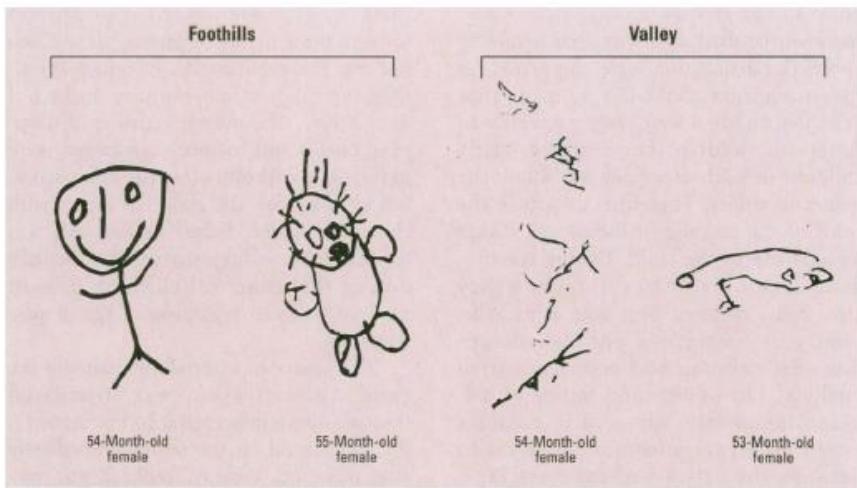
Abbreviations: HCH, hexachlorocyclohexane; BHC, benzene hexachloride. Data from Garcia and Meza (26).

\*All exceed Food and Agricultural Organization/World Health Organization established limits.

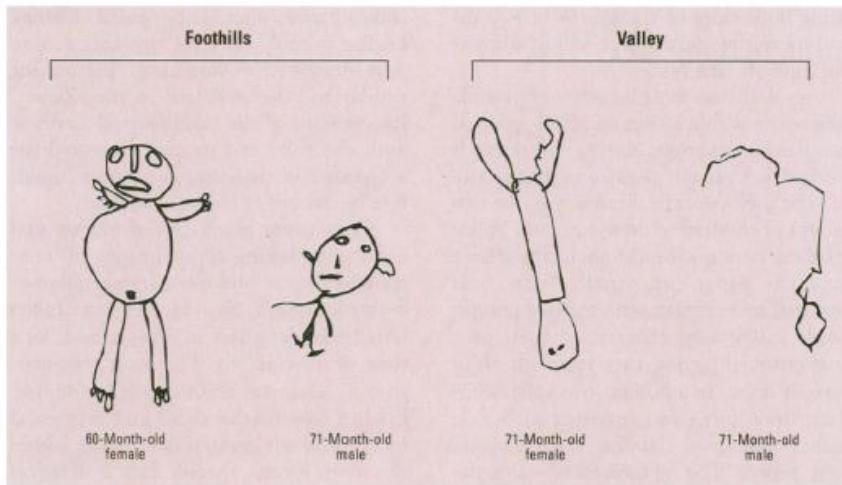
<sup>45</sup> See, supra note 42 and 43; and see La Poblacion Indigena en Mexico, 2005, Instituto Nacional de Estadística, Geografía e Informática, page 35 and 37. All three reports use 100 as the baseline to record live indigenous births.

<sup>46</sup> Indices, Mortality, INEGI. XII Censo General de Población y Vivienda 2000. Síntesis de resultados. Sonora.

<sup>47</sup> Elizabeth Guillette, et al., *An Anthropological Approach to the Evaluation of Preschool Children Exposed to Pesticides in Mexico*, in Environmental Health Perspectives, Vol. 106, N° 6, June 1998, pp. 347-353.



**Figure 1.** Representative drawings of a person by 4-year-old Yaqui children from the valley and foothills of Sonora, Mexico.



**Figure 2.** Representative drawings of a person by 5-year-old Yaqui children from the valley and foothills of Sonora, Mexico.

## V. Conclusion and Recommendations

As the situation of the Rio Yaqui Pueblos illustrates, Mexico is failing to meet its international obligations to respect the human rights of the Yaqui people including their rights to property, economic and cultural rights, rights to life, liberty, and security, and has failed to provide a mechanism for the demarcation and titling of Yaqui lands and rights to precious resources including surface water. One cannot stress the centrality of water to the life of the Rio Yaqui Pueblos and without it, they will fade and disappear in the very near future as a distinct people who once lived in a sustainable and harmonious lifestyle along its now empty banks.

The State of Sonora will soon open a Yaqui tourist centre where 40 foot high statues of post-modern deer dancers will appear with hulking frames and non-traditional attire. This project was done without any consultation and has been viewed by the Yaquis as culturally offensive. It is

respectfully submitted that the Yaquis are, in the mind and conscience of Mexico, fading into history and have become celebrated icons – a fixture to the State seal or license plate - despite their steadfast determination to remain on their lands as they have done since time immemorial.

In light of the seriousness of this situation, it is requested that the Committee urge Mexico to:

Establish mechanisms to provide effective remedies to recognize and protect indigenous title and rights in Mexico including rights to natural resources;

Cease its policy of assimilation and extinguishing indigenous rights and rights to land and instead pursue modern self-governing agreements that would confer canton styled powers of self-governance upon indigenous communities;

In the case of the Rio Yaqui Pueblos, the Committee could request that Mexico:

Demarcate Yaqui lands and Yaqui rights to water and establish laws to recognize the legal personality of the Yaqui government; and cease all development projects until free, prior, and informed consent is obtained;

Engage immediately in the construction of a Yaqui reservoir to save future generations of Yaquis from the misery and short life expectancy resulting from the ecological toxicology of the Rio Yaqui Valley;

To provide the necessary resources for the relocation of several neighborhoods within several Yaqui Pueblos and the resources necessary to access safe drinking water and water for cultural and spiritual use;

To enact federal laws that recognizes the inherent authority of the Rio Yaqui Pueblos to self-govern as a distinct legal entity and for the purposes of obtaining a bank account and line of credit;

To endorse and support the newly recognized Government of the Rio Yaqui Pueblos before multi-lateral development banks and NGOs in an effort to rebuild the collapsed public water system in the Rio Yaqui Pueblos;

That Mexico at all times act in good faith and consult with a view to obtaining free, prior, and informed consent throughout the traditional territory.

Provide any other recommendations the Committee considers appropriate.