

SUPPLEMENTAL REQUEST FOR PRECAUTIONARY MEASURES

to the

THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

of the

ORGANIZATION OF AMERICAN STATES

In the Case of

THE TRADITIONAL AUTHORITIES OF THE RIO YAQUI PUEBLOS

on behalf of

**THE RIO YAQUI COMMUNITIES AND THE YAQUI PEOPLE OF THE RIO YAQUI
VALLEY**

against

MÉXICO

MC 19 11

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I. Introduction

1. The Traditional Authorities (hereinafter the petitioners) appear before the Inter-American Commission on Human Rights (the Commission) in the matter of MC-19-11 seeking interim relief in the form of two urgent precautionary measures. The petitioners respectfully submit that the precautionary measures requested herein are very reasonable, timely and appropriate given the seriousness of the situation in and around the Rio Yaqui Pueblos. The substantive aspects of this request are consistent with similar findings, observations and urgent recommendations issued for Mexico by the United Nations Committee on the Elimination of Racism and Discrimination (UN CERD) in 2012¹. Indeed, much of the language in the proposed precautionary measures borrows heavily from the UN CERD recommendations.

2. The Traditional Authorities submit that following the filing of the petition in January 2011 (P79-06), and the subsequent investigation into the request for precautionary measures by the Commission (MC-19-11), the overwhelming conclusion drawn from the facts presented herein and having regard to the facts derived from the ongoing investigation is a clear and pressing basis for Mexico to take immediate actions that will ensure consultations and effective participation on (1) data collection and inventory regarding Yaqui community health with particular emphasis on infant mortality and (2) preparation and implementation of a sustainable water plan for the eight Rio Yaqui Pueblos given the ongoing drought, water contamination, separation and removal of the Rio Yaqui proper, and the trans-boundary basin transfer of the Rio Yaqui basin through the El Novillo Aqueduct project.

3. This request has two parts: (1) a description of the precautionary measures; (2) the basis for issuing precautionary measures within the ongoing investigation: (a) as it concerns irreparable harm to the health, welfare, and safety of Yaqui infants and Yaqui mothers; and (b) as it concerns survival of the Rio Yaqui Pueblos and their need to access water for Yaqui consumption and use.

¹ Concluding observations of the Committee on the Elimination of Racial Discrimination on the 16th and 17th Periodic Reports of Mexico, CERD/C/MEX/CO/16-17, April 4, 2012 (English) and March 9, 2012 (Original in Spanish) at << http://www2.ohchr.org/english/bodies/cerd/docs/CERD.C.MEX.CO.16-17_sp.pdf >>. Attached herein as Annex 1.

II. A Description of the Precautionary Measures:

4. The petitioners seek the following precautionary measures:

(A) The State must take immediate action to ensure:

In close cooperation and consultation with the Traditional Authorities, a comprehensive and culturally sensitive community health impact assessment strategy to ensure that Yaqui infants and mothers receive quality health care and that the strategy in and around the Rio Yaqui Pueblos is guaranteed by a sufficient allocation of resources. The State must ensure that the implementation of the Rio Yaqui health impact assessment strategy emphasize culturally appropriate collection and retention of environmental and community health indicators that contribute to high Yaqui infant mortality rates in and around the Rio Yaqui Pueblos.

The State must ensure that the receipt and disclosure of culturally sensitive data on Yaqui infant mortality is done with the utmost respect and prior consent of the surviving Yaqui parents and or guardians and is carried out in accordance with the customary norms of the Traditional Authorities and the Rio Yaqui Pueblos that govern infant deaths and cultural practices. Working at all times in close cooperation with the Traditional Authorities, the State must take all necessary measures to provide clear data on Yaqui infant mortality and life expectancy in and around the Rio Yaqui Pueblos through this strategy. The assessment must ensure that transparent recommendations are widely publicized in and around the Rio Yaqui Pueblos.

(B) The State must take immediate action to ensure:

In close consultations and effective participation with the Traditional Authorities to safeguard and protect the human rights of Traditional Authorities and the Yaqui people to water and in so doing, the State must assist in developing and implementing a clear plan to preserve, conserve, and deliver water in a manner consistent with Yaqui customary use and water consumption. The objective of this cooperative plan is to ensure that the eight Rio Yaqui Pueblos can use and consume clean, accessible, and safe drinking water; and likewise that effective participation and consultations be implemented by the State to promote, safeguard, and protect the economic subsistence, viability, and cultural identity of the eight Rio Yaqui Pueblos as it pertains to water; that the State carry out its obligations through transparent, good faith, and effective measures and in particular, to ensure that these standards are applied in close coordination with the Traditional Authorities and recognize the customary norms in regard to Yaqui principles on water use within the Yaqui territory.

This measure of relief recognizes that the State is under a positive to duty to ensure that consultations and effective participation is carried with the Traditional

Authorities on behalf of the Rio Yaqui Pueblos in regard to the urgent water crisis in and around the eight Rio Yaqui Pueblos; that the State is under a positive duty to actively promote and engage in good faith meaningful cultural forums with the Traditional Authorities; that the State must ensure that these discussions **lead to concrete, viable and verifiable agreements that can be properly implemented**; and also encourage the use of culturally appropriate methods of dispute resolution in line with international standards in the field of human rights and the rights of indigenous peoples;

III. The Basis for Requesting the Precautionary Measures

5. Precautionary measures in this instance are necessary in light of the serious irreparable harms and omissions caused by Mexico in extracting, developing, and utilizing resources within the traditional Yaqui territory. The ongoing nature of these irreparable harms continue and are the cause of a severe and irreparable public health crisis in the Rio Yaqui Pueblos. The public health crisis is characterized by and includes the following irreparable harms (the list is not exhaustive):

- disproportionately high Yaqui infant deaths of 164 infant deaths per 1000 live births; a figure that the State has confirmed in the 2005 census report on indigenous populations and has been independently verified for its reporting accuracy according to Mexico's own national and international reporting standard and is consistent with other State reports on high indigenous infant mortality rates²;

² See for example La Poblacion Hablante de Lingua Indigena de Sonora, 2005, Instituto Nacional de Estadística, Geografía e Informática, at page 35, "Porcentaje de hijos fallecidos de las mujeres de 12 y más años hablantes de las principales lenguas indígenas, 2000.", Yaqui infant deaths are reported as 164 infant deaths per 1000 live births; available at << http://indigenousgovernance.files.wordpress.com/2012/03/anexo_para3_2005_poblacion_indigena_sonora.pdf >>; likewise, 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. This means that it is an approximation of the number of infant deaths per 1,000 infants born over the course of 12 months. Mexico applies this same international standard for all nonindigenous infant mortality research. For example, infant mortality in the poorest areas of the City of Hermosillo is collected and reported as 20.4 while Sonora's average is 22.3 infant deaths per 1,000 live births; See Francisco Lara-Valencia, PhD, Gerardo Álvarez-Hernández, PhD, Siobán D Harlow, PhD, Catalina Denman, PhD, Hilda García-Pérez, PhD, "Neighborhood socio-environmental vulnerability and infant mortality in Hermosillo, Sonora", salud pública de méxico / vol. 54, no. 4, julio-agosto de 2012, at 369, Table 1: Infant mortality and selected social and urban indicators. Hermosillo, Sonora, Mexico, 2005; available at << http://indigenousgovernance.files.wordpress.com/2012/03/alvarez_hermo.pdf >>; * Professor Hopkins has confirmed the standard of infant mortality reporting with every major research institution cited including most recently in March 2013, the Departamento de Medicina y Ciencias de la Salud, Universidad de Sonora. Hermosillo, Sonora, México. The assessment of the 2005 Yaqui infant mortality rate of 164 was viewed as conservative or underestimating such variables as (a) outward Yaqui migration, i.e., that of pregnant Yaqui women in and around the traditional Yaqui territory who die and or their infants die; (b) the prevalence of undocumented Yaqui births within the Rio Yaqui Pueblos combined with; (c) Yaqui infants births in Obregon and Hermosillo that are recorded

- the catastrophic effects arising from the removal of the Rio Yaqui proper from the traditional Yaqui territory immediately south of the Oviachic Reservoir (established in 1952) going all the way to the foreshore;³ since 1997 this has resulted in the loss of 100 percent of all clean surface water sources for the Rio Yaqui Pueblos – they drink toxic drainage canal water or contaminated groundwater; the ensuing catastrophic impacts to Yaqui health resulting from the extinction of all traditional food sources dependent on the Rio Yaqui including all traditional sources of freshwater and foreshore marine life and in particular the extinction of all trans-boundary freshwater Yaqui fish species such as the Yaqui shiner, the Yaqui chub, and the Yaqui catfish – now predominately located in the upper Yaqui basin within the State of Arizona – all being listed as an endangered species and within the collecting waters of the Rio Yaqui; e.g. the Rio San Bernardino, Sonora;⁴
- Yaqui freshwater fish consumption in the traditional Yaqui territory consists of capturing and eating contaminated freshwater fish that pool behind the Oviachic reservoir and swim through the drainage canal systems;
- a further catastrophic impact resulting from the removal of the Rio Yaqui is the extinction of the traditional Yaqui forest ecosystem, known by ecologists and specialists in woodland riparian systems as a Sonoran riparian cottonwood-willow forest;⁵ perhaps in an act of pathetic fallacy or defiance, the dried hulk of a giant cottonwood stands directly upon the infamous knife point to the 1997 annexation of the Rio Yaqui from the traditional Yaqui territory immediately south of the Highway 15;⁶
- additional irreparable harms include severe droughts and the persistent absence of clean and safe drinking water for the Rio Yaqui Pueblos;

as non-Yaqui and or do not have a death certificate issued. It is because Mexico chooses to report indigenous infant deaths in a manner that deliberately misrepresents the severity of the situation that a lay person would not immediately conclude the urgent and irreparable public health situation for indigenous communities like the Rio Yaqui Pueblos. This was the basis for the urgent UN CERD time limited recommendations on indigenous infant mortality data implementation; see *supra* note 1, paragraph 19.

³ See Monica Ilija Ojeda, Alex S. Mayer, Barry D. Solomon, Economic valuation of environmental services sustained by water flows in the Yaqui River Delta, *Ecological Economics* 65 (2008) 155-166; the researcher provide maps, tables, and a chilling account of the transformation of the lower Yaqui Delta at 156-158.

⁴ For an early study on these species see, Dean A. Hendrickson, W.L. Minkley, Robert R. Miller, Darrel J. Siebart, Patricia Haddock Minckley, Fishes of the Rio Yaqui Basin, Mexico and the United States, *Journal of Arizona-Nevada Academy of Science*, Vol. 15, No. 3 (1980) pp. 65-106; for a more recent account of the endangered transboundary status of these species see, Fishes of the Rio Yaqui Recovery Plan, U.S. Fish and Wildlife Service, 1995 available at <<http://indigenousgovernance.files.wordpress.com/2012/11/yaquifishes.pdf> >

⁵ J.C. Stromberg, Cottonwood-Goodding Willow Riparian Forests: A Review of Their Ecology, Threats, and Recovery Potential, *Journal of the Arizona-Nevada Academy of Science*, Vol. 27, No. 1 (1993), pp. 97-110.

⁶ 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.

- the contamination and collapse of the groundwater supply stored in the foreshore aquifer of the Rio Yaqui Valley due to over reliance by Conagua on irrigation groundwater pumping and saltwater intrusion;⁷
- systemic Yaqui poverty and the absence of public infrastructure such as housing, water delivery, waste and sewage treatment;
- the omission and overt negligence by the State in regard to environmental protection and enforcement by Mexico as it concerns the sale, use, and disposal of agro-chemicals including (a) fertilizers (i.e., Cosmocel high concentrate nitrogen product), (b) arsenal herbicides (Velsamix, Quiantor), and (c) persistent organophosphates (i.e., Lorsban 480 EM) and other insecticides (i.e. Syngenta brand Tandem);
- environmental toxicology leading to the reduction and lowering of Yaqui health and life expectancy that is both (a) cumulative – for instance the bioaccumulation across the Yaqui population and Yaqui environment for exposure to persistent organophosphates (COPs) – and (b) immediate – for instance, the permanent and recent removal of all available surface water supplies for human use and consumption in the Yaqui traditional territory; and
- racially discriminatory practices condoned and carried out by the State with regard to false promises and unfulfilled and abandoned commitments that purport at first blush to benefit the Yaqui people concurrent with the State’s ongoing acquisition and development of resources on Yaqui lands.⁸

⁷ G. Schoups, C. Lee Addams, and S. M. Gorelick, Multi-objective calibration of a surface water-groundwater flow model in an irrigated agricultural region: Yaqui Valley, Sonora, Mexico, *Hydrology and Earth System Sciences*, 9, 549–568, (2005) at 551; the authors summarize the Yaqui Coastal Aquifer in the Rio Yaqui Valley as constituting three permeable layers; note, the Rio Yaqui Pueblos are on “shallow” wells; meaning they access the most polluted groundwater supplies in the first shallow layer between 10-20 m below the surface where there is little natural screening. Saltwater intrusion occurs when the natural process of groundwater recharge is stressed and depleted with the resulting exposure and breach of ocean water seepage into the confining sublayers that would otherwise retain the vertical collection of groundwater drainage.

⁸ The UN CERD, *supra* note 1, recommended at paragraph 17(b) for the State to ensure that discussions with indigenous peoples “lead to concrete, viable and verifiable agreements that are properly implemented”; by contrast, on 25 May 2012, then President Calderon summoned over seventy delegates from the Rio Yaqui Pueblos to attend a special breakfast wherein the President and federal officials presented the Yaqui delegates with a document to sign that purports to commit the parties to consultation and reconciliation. The numerous requests made by the Traditional Authorities for copies of (a) the alleged 1997 dismissal of an amparo application in favor of the Zedillo Decree and annexation which to date has never been disclosed by the State; and (b) a basic statement of account by FIFONAFE in regard to alleged compensatory funds held in trust for the 1997 annexation which to date the State has never disclosed despite having twenty years to do so. In addition, the Traditional Authorities requested that their counsel attend to which the request was denied. Moreover, requests by counsel to Mexico on behalf of the Traditional Authorities were ignored as is the consistent practice of the State to deny the Traditional Authorities legal representation and independent advice. See letters from Professor Hopkins to the Office of President Calderon May 22-25, 2012. None of the commitments made by the State, including the lining of the drainage canal and the return of the Rio Yaqui have been addressed. That same week, another indigenous group denounced the State for conducting the same tactic of hosting a group for breakfast with the President to procure a force majeure agreement. Moreover, the State’s position and representation is in complete contradiction to their refusal to allow surface water into the Yaqui Pueblos as was raised in a letter filed by the Traditional Authorities almost a year earlier on 26 May

6. In specific reference to recent surface water removal, Mexico permanently removed the Rio Yaqui proper from the Yaqui traditional territory in 1997; the State diverted all downstream flow in favor of (a) the City of Obregon and (b) irrigation districts and canals that serve wealthy non-Yaquis growers. As previously indicated, in both 2010 and 2011, Conagua, on behalf of the National Water Commission affirmatively rejected and denied an urgent request by the Traditional Authorities for water on behalf of the Rio Yaqui Pueblos.

7. In August 2013, Mexico will permanently remove the perennial flow of the Rio Yaqui from the lower Yaqui basin south of El Novillo – a dam and drainage point in the middle Yaqui basin: in 2012 Mexico successfully diverted the Rio Yaqui in the middle Yaqui basin at El Novillo and the State has since completed the capital infrastructure to transfer west an undisclosed volume of surface water from the Rio Yaqui. Under the auspices of a highly controversial project known as the El Novillo Aqueduct, the 1 billion dollar (US) water project is the single largest cross-border trans-boundary basin transfer system in this history of North America; with a drainage area that reaches north of Douglas, Arizona to the base of the Chirachua Mountains in New Mexico and Arizona, El Novillo Aqueduct includes a massive 150 kilometers of water pipelines to carry west the Rio Yaqui and its collecting waters from the U.S.-Mexico border over and across the middle Sonora basin to the City of Hermosillo.

8. Without prejudice to the human rights of the Yaqui people, the petitioners in this matter are addressing the human rights of the Yaqui people to water on an urgent and pressing basis and in a manner that is consistent with the 2012 UN CERD recommendations for Mexico. The petitioners seek consultations to preserve the existing groundwater supplies and to secure the necessary flow of surface water to avoid to relocation and resettlement.

9. The petitioners submit that this request for precautionary measures is made all the more reasonably because the need for water in the harsh climate of Sonora is essential to the subsistence of Yaqui means of survival, the viability of Yaqui lands and resources, and speaks to the foundation of Yaqui cultural identity which is under dire and irreparable harm due to the pattern of Yaqui infant death, drought, contaminated groundwater, and the removal of all forms of Yaqui traditional foods, fish, and plants that the Rio Yaqui once supported.

2011, and in response to the explicit rejection by Conagua, dated 17 February 2011 in favor of third party water appropriators including mining companies in the middle Yaqui basin.

10. It is submitted that a dialogue on public and water can be the platform through which the 2011 and 2012 field research done by the petitioners in regard to widespread deaths of Yaqui infants can be disclosed in a culturally appropriate manner. In reference to previous submissions on this matter, direct video evidence and witness statements have been provided to the Commission involving first-hand accounts of Yaqui women survivors who lost their infants at or shortly after birth. In addition, direct video evidence of the Yaqui mid-wives who themselves are survivors has also been submitted.

11. The field research conducted by the petitions documented 70 deceased Yaqui over the course of 2012 in the western part of the traditional Yaqui territory and in and around Pueblo Potam, which serves as a hub. Note, the deceased Yaqui may have spent a considerable amount of their lives in the eastern Yaqui territory and close lineal ties exist in and amongst the eight Rio Yaqui Pueblos. Particularly significant are the names of 20 deceased Yaqui infants in addition to 5 deceased Yaquis –boys and girls –below the age of eighteen. The circumstances surrounding their deaths are consistent with the body of research on environmental contamination in and around the Rio Yaqui Pueblos and its impact on the Yaqui population. The petitioners previously submitted two unpublished peer reviewed research projects by Dr. Maria Mercedes Meza Montenegro of the Obregon-based ITSON and her colleagues.⁹ As well, a 2008 Report previously submitted to the Commission makes important reference to transplacental COP from pregnant females to their infants.¹⁰ This was carried out by a team of Mexican-based team of experts; members of this team subsequently produced the 2010 and 2011 research that the State has yet to publish, but includes blood testing.

⁹ See: Ana Paola Balder rama-Carmona, Pablo Gortáres-Moroyoqui, Cristóbal Chaidez-Quiroz, Luciano Castro-Espinoza, Iram Mondaca- Fernández, José de Jesús Balderas-Cortés, A-C T L-6, E V A L U A C I Ó N C U A N T I T A T I V A D E R I E S G O S P O R C r y p t o s p o r i d i u m p a r v u m Y G i a r d i a i n t e s t i n a l i s E N A G U A D E P O Z O / Q U A N T I T A T I V E R I S K A S S E S S M E N T O N C r y p t o s p o r i d i u m p a r v u m A N D G i a r d i a i n t e s t i n a l i s I N W E L L W A T E R, at page 157 [sic.] of IV Congreso Internacional de Ciencias, Artes, Tecnología y Humanidades 2011 – México IV International Congress of Sciences, Arts, Technology, and Humanities 2011 - Mexico Jun. 29-July 2, 2011, Querétaro, Querétaro, México, citing to Castro-Espinoza, L., Gortáres-Moroyoqui, P., Mondaca-Fernández, I., Meza-Montenegro, M.M., Balderas-Cortez, J.J., López-Cervantes, J., Lares-Villa, F. 2009. Patógenos emergentes como restricción para el reuso de las aguas residuales municipales tratadas de Cd. Obregón, Sonora. *Revista Latinoamericana de Recursos Naturales*. 5:9- 21.; and see also, Orduño Valenzuela R., 1Meza Montenegro M. M., 2Valenzuela Quintanar A. I., 1Cantú Soto 1E.U., Félix Fuentes A., 1Balderas-Cortés J. J., 1Aguilar-Apodaca M. G., NIVELES DE EXPOSICIÓN DE PLAGUICIDAS ORGANOCOLORADOS EN NIÑOS DE LA COMUNIDAD DE PÓTAM, SONORA Y EVALUACIÓN DE POSIBLES RUTAS DE EXPOSICIÓN at 137 [sic.] of VIII CONGRESO MEXICANO DE TOXICOLOGÍA MEMORIAS INSTITUTO TECNOLÓGICO DE SONORA Departamento de Biotecnología y Ciencias Alimentarias Sociedad Mexicana de Toxicología, A.C. Cuerpo Académico de Ambiente y Salud 13 al 15 de Octubre de 2010 Cd. Obregón, Sonora México.

¹⁰ See: For published research see also, Dirección General de Investigación sobre la Contaminación Urbana y Regional Dirección de Investigación sobre Sustancias Químicas y Riesgos Ecotoxicológicos, Diagnóstico de contaminantes orgánicos persistentes (COP) en el Valle del Yaqui, REPORTE FINAL, Numero de registro: INE/A1-006/2008 at page 17 see, “Estudio de las principales fuentes de contaminación por plaguicidas en neonatos lactantes residentes en Pueblo Yaqui, Sonora, México.”

12. Based on the foregoing, the petitioners respectfully request the urgent and immediate precautionary measures requested herein. The measures are consistent with the State's requirement to coordinate and implement its human rights obligations under the Constitution as revised and international human law.