

**The struggle of the Me'phaa indigenous community of Buena Vista  
for their right to education**



**Informative Note**

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## 1. Introduction

The following brief refers to the struggle led by the Me'phaa Community of Buena Vista in the Atlixac Municipality, Guerrero state, Mexico, to demand the guarantee to access to pre-school education for their children. This struggle is an emblematic vindication as the Community has decided to judicially demand their guarantee to the collective right to education, which has no precedent in the state nor in Mexico.

After more than 10 years of fruitless administrative procedures, on 21 June 2012, the Buena Vista Community presented an amparo lawsuit to demand the installation of an indigenous pre-school centre. On 29 June 2012, the lawsuit was admitted, initiating the trial 893/2012, under the First Judge of District in Chilpancingo, Guerrero.

The amparo presented by the Buena Vista Community is of high relevance, not only because it is the ultimate legal remedy for the children of the Community to access education but because it challenges the recent reforms on amparo and human rights to judicially demand social rights of indigenous communities.





## 2. Background: Access to basic education for indigenous people in Guerrero<sup>1</sup>



Guerrero is one of the states in Mexico with the highest backwardness on education. According with the National Council of Evaluation of Social Development Policies (CONEVAL), 57.98% of the 15 year old and more population in Guerrero live on marginalisation: 20% is illiterate; 38% has not concluded basic education. Numbers on education prove that access to education for indigenous people is more concerning; the illiteracy rate in indigenous population in Guerrero is of 41%, while for the non-indigenous is 13%.

According to the 2010 Census, the population of Atlixac Municipality in the region of the Montaña in Guerrero, is of 26,341 inhabitants; it has 106 schools of basic and secondary education, of which 41 are preschool and 48 elementary school; 34 out of these are for indigenous population. The census indicates that the average years of school of the 15 years old and more population is of 3.9 years. In this context, Atlixac is only over Cochoapa, Metlatonoc, Xalpatlahuac and Alcozauca, on the municipalities with the lowest rates of years of school. This number is even more disturbing if it is considered that the national average is of

8.6 years, and that there are municipalities with an average of 12.1 years of school, such as San Pedro Garza García, in the state of Nuevo León.

This alarming situation exists despite different diagnosis and recommendations, however, neither the federal nor the state government have designed or executed long term policies, designed with human rights approach to reverse this educational backwardness in the Montaña region, which especially affects the indigenous population. This sums to sustained administrative criteria which reproduces marginalisation in those communities highly isolated. Such as it was identified by the United Nations Special Rapporteur on Education on his latest visit to Mexico in 2010, one of the biggest obstacles for indigenous people to access education is the educational investment criteria based on a cost-benefit system, which conditions the installation of an academic institutions to the number of population, and population density, in order to the State to agree to install a school. This system does not take into account that over 70% of the rural communities have around 100 inhabitants,

<sup>1</sup> This section contains information gathered by the Observatory for Social Policy and Human Rights of *Incide Social* in the document "Overview of Education in Guerrero: approach through key indicators."

impeding many children and youths to access education<sup>2</sup>. Those who can access it must travel long journeys to go to school.

In municipalities such as Atlixac, where the Me'phaa Community of Buena Vista is based, this exclusion is systematic and reflects what was remarked by the Special Rapporteur on Education: "exclusion from academic opportunities in Mexico targets very precise population, which can be summed up in a phrase: poor population receive poor education"<sup>3</sup>.



### 3. The restless struggle of Buena Vista for education

The Me'phaa Community of Buena Vista has suffered the direct consequences of lack of access to education as the Community lacks pre-school and elementary school; the children must walk daily more than 6 km to receive education in Cacalotepec, the closest community. Thus, the traditional authorities and inhabitants of Buena Vista have carried out different administrative solicitudes since 2002, attempting to oblige the State to guarantee their children access to education; however, to date, all solicitudes have been ignored.

For almost 10 years the Buena Vista Community has presented several petitions to adequate authorities appealing for the installation of an Indigenous Preschool Centre, which has not been created until now<sup>4</sup>. However,

<sup>2</sup> Human Rights Council. Report of the Special Rapporteur on the Right to Education. Mr. Vernor Muñoz. Addendum. Mission to Mexico from 8 to 18 February 2010. 2 June 2010. UN Doc. A/HRC/14/25/Add.4 pa. 68 and 72

<sup>3</sup> Ibid. pa. 66

<sup>4</sup> On 25 September 2002, the then Municipal Delegate of the Buena Vista Community addressed an official communication

the Community has not cease on their struggle.

The absence of the pre-school centre affects 27 Me'phaa children, between 3 and 6 years old, who have to walk more than 6 kilometre per day, in a rugged terrain, in order to receive education in the closest preschool. In addition, during the rainy season, it is even more difficult to access education, given that adverse weather conditions prevent the boys and girls full access to school for several days.

The lawsuit of the Buena Vista Community is based on the facts that there are conditions to develop a centre for the children, given that the community has the land on which the Preschool Centre could be established and it built with their own resources and community work a premise where classes could be taught. The significant efforts of the Community, in order for children access preschool education have been diminished because the authorities have been

marked as 021/2002 to the Deputy Coordinator of Educational Services of the Montaña Alta region, in Tlapa de Comonfort, Guerrero, requesting the opening of a preschool centre. There was no response. Through their traditional authorities, the Buena Vista Community presented similar requests: on 4 April 2008, the Municipal Delegate addressed another official communication to the Minister of Education of Guerrero demanding the opening of the preschool centre; then, on 15 November 2009, the community addressed to the Director of the Indigenous Preschool Education, in Acatepec, Guerrero, to require preschool education in the community. Each one of these requests were ignored: the educational authorities of Guerrero did not respond to the community. After not receiving any response from the Ministry of Education of Guerrero, the Community went to the National Council for the Promotion of Education (CONAFE); on 29 November 2009 and 23 May 2010. The requests again were ignored. In this context, on 8 September 2010, following instructions from the Community Assembly, the then Municipal Delegate of the Community sent a new official communication to the new Secretary of Education of Guerrero, requesting again the foundation of an Indigenous Preschool Centre. Finally, the request was answered on 20 January 2011 (four months later), with a brief written letter by the Head of Planning Department of the Ministry of Education of Guerrero. In its letter, the public servant said the Planning Department would conduct a feasibility study and integrate the technical file, to make the corresponding feasibility analysis. He informed the community about a series of requirements related to the founding of the Indigenous Preschool Centre, for example it could only be established if it was shown that more than 20 children will attend. Despite the submission of this response, the feasibility study announced by the authorities never took place. Again, the community of Buena Vista, on 18 October 2011, addressed the Head of Planning Department of the Ministry of Education of Guerrero, to indicate that the feasibility study was never carried out and to request, once again, the foundation of the Indigenous Preschool Centre, emphasizing that there were 27 children in preschool age which did not enjoy the guarantee of this right. Once again, there was no answer.





remiss in founding the Indigenous Preschool Education Centre and appointing a teacher, despite the existing legal framework imposes on the State, a duty to take positive action to reverse the educational gap prevailing in mostly marginalised indigenous communities.

Given the flagrant breach of the right to education, on 12 February 2012, Buena Vista Community held an Assembly in compliance with their customs and tradition, in which it was discussed once again, the need to respect the right of children to access preschool education. During the Community meeting, a Committee was appointed, with the mandate to carry out all necessary actions, to demand access to education. In addition, the Assembly agreed to work with the Human Rights Centre Tlachinollan in the preparation and filing an *amparo* lawsuit.

#### **4. The relevance of the *amparo* lawsuit of Buena Vista: Do the new reforms on *amparo* and human rights open new paths to the vindication of indigenous people's rights?**

The lawsuit filed by the Buena Vista Community is of high relevance, not only because it is the ultimate legal remedy for the children of the Community to access education, but because it challenges the recent reforms on *amparo* and human rights to judicially demand social rights of indigenous communities, as mentioned below.

##### **1) The demand for Buena Vista argues that there is an aggravated duty to ensure access to education for indigenous communities.**

Article 3 of the Constitution recognises the right to education, including preschool. However, according to the Constitution, the content has particular overtones for indigenous people, based on the prohibition of discrimination under Article 1 of the Constitution and the rights recognised on Article 2 of the Constitution. This is what the lawsuit of the Buena Vista Community aims for the judiciary to recognise.

On one hand, as argued in the lawsuit, this is a consequence of the prohibition of ethnic discrimination in Article 1 of the Constitution, which shall be understood as

a principle that requires equals to be treated equally and unequals to be treated unequally; based on this premise, sometimes distinctions are forbidden, but others, it will be allowed or even constitutionally required, as it is the case of guaranteeing the rights of vulnerable individuals or groups. Such is the case of indigenous communities.

On the other hand, as presented in the *amparo* lawsuit, this is a consequence of Article 2, paragraph B, section II



of the Constitution, which establishes the obligation of the Mexican authorities to ensure and increase education levels, favouring, among other things, bilingual and intercultural education, literacy and basic education completion.

Thus, the Mexican state has an aggravated a duty for ensuring the rights of indigenous children to basic education, which includes the obligation to take positive action to ensure that these children are not discriminated against, because of their ethnic identity, in addition to, comprising the constitutional obligation to take action to increase levels of education through bilingual and intercultural education, literacy, and particularly the completion of basic education. This constitutional mandate has been further developed by secondary legislation, which has recognised the particular implications of the right to education, in relation to communities and indigenous people, especially children. This is derived from Article 11 of the General Law of

Linguistic Rights of Indigenous Peoples; Article 7, section IV, of the General Education Law; Articles 32 and 38 of the 158 Education Law for the State Guerrero; and Article 49 of Law of Recognition, Rights and Culture of Indigenous Peoples No. 701. In all these norms, additional requirements are set forth to the general obligation of the State to ensure access to basic education for all boys and girls when it comes to members of indigenous peoples.

By not ensuring access to education for children of Buena Vista, the educational authorities of Guerrero violate this legal framework, which can be corrected in the *amparo* trial.

**2) The *amparo* lawsuit of Buena Vista argues that the right to education must be understood in light of the contents of human rights international law, in the framework of the recent constitutional reform.**



In the lawsuit filed by the Community of Buena Vista is argued that the new Constitutional Article 1 provides that under the recent Constitutional reform all authorities are required to: 1) promote, respect, protect and guarantee human rights, 2) interpret those rights from the patterns of conformity hermeneutic interpretation and pro homine principle, and 3) apply the norms according to the principles of universality, indivisibility, interdependence and progressiveness.

In this sense, the *amparo* lawsuit remarks the recognition of the right to education in Article 13 of the International Covenant on Economic, Social and Cultural Rights; in paragraph 13 of the Additional Protocol to the American Convention on Human Rights on Economic, Social and Cultural Rights, among others. Consequently, it is pointed out that in international human rights law, the appropriated mechanisms have clarified the contents of the right to

education. Thus, the lawsuit recalls that the UN Committee on Economic, Social, and Cultural Rights, in its General Comment No. 13, identified as essential features of the right to education, the following: a) Availability; b) Accessibility; c) Acceptability, and d) Adaptability<sup>5</sup>.

The *amparo* of the Buena Vista Community, identifies especially the principle of accessibility, in regard to non-discrimination and physical accessibility<sup>6</sup>, given that according to the Committee on Economic Social and Cultural Rights, the right to education implies safe physical reach in terms of geographical location especially for the indigenous peoples and in accordance with the principle of non-discrimination.

**3) The lawsuit argues that it must be recognised the legitimate collective interest of the Me'phaa community to demand safeguard the right to education of children of Buena Vista by the *amparo* lawsuit.**

Finally, a relevant aspect of the *amparo* is that it was not only filed by the father of one girl whose right to education is being violated, but also by the Municipal Delegate of the indigenous community of Buena Vista, who along with other members of the community was commissioned by the Community Assembly of Traditions and Customs to demand this right.

Therefore, the Delegate, as municipal and traditional authority, requested the protection of the *amparo* trial representing a legitimate collective interest of the Buena Vista Community, as an indigenous community, on the

<sup>5</sup> The Committee on Economic, Social and Cultural Rights, on its General Comment No. 13, defines that education, in all its forms and at all levels, must have the characteristics of availability, accessibility, acceptability and adaptability, all these interrelated and essential. In terms of accessibility, the Committee states that the institutions and education programs must be accessible to all, without discrimination, consisting of 3 essential dimensions: non-discrimination, physical accessibility and affordability. As for physical accessibility Committee, "education has to be within safe physical reach, either by attendance at some reasonably convenient geographic location (e.g. a neighbourhood school) or via modern technology (e.g. access to a "distance learning" programme)". Economic and Social Council. Committee on Economic, Social and Cultural Rights, Implementation of the International Covenant Economic, Social and Cultural Rights. General Comment 13. The right to education (article 13). December 8, 1999. UN Doc.E/C.12/1999/10 pa. 6 and 7

<sup>6</sup> *Ibid.* pa. 6



respect of the right to education of their children, in terms of Fraction I of the recently amended Article 107 of the Mexican Constitution.

Thus, the lawsuit claims that in the Mexican legal framework, communities and indigenous peoples are rights holders, as foreseen in Article 2 of the Constitution. Moreover, it bases this claim on the provisions of the Law No. 701 of Recognition, Rights and Culture of Indigenous Peoples and Communities of the State of Guerrero, which in Article 8 recognises legal status to the indigenous communities.

This argument challenges the usefulness of recent constitutional reforms with regard to increase access to justice for indigenous communities for the protection of social rights, which are systematically violated to the detriment of those most excluded.

## 5. Conclusions

The struggle of the Buena Vista Community for the right to education, based on the determination of the community during ten years, reflects the recurrence of educational public policies, which far from ensuring positive action to reduce the educational gap on indigenous communities, reproduce discrimination and inequality.

Today, the struggle of the Community has reached a defining point by moving to the judicial arena. Access to preschool education for 27 Me'phaa children is already subject to an *amparo* trial to be resolved by the First Judge of District based in Chilpancingo. The resolution of the *amparo* will serve to assess the scope of the reforms on human rights and *amparo*, to bring justice to the most marginalised and excluded sectors of the Mexican population.

