

# Indigenous Peoples' Rights to Exist, Self Determination, Language and Due Process in Migration

Submission to the United Nations  
Universal Periodic Review of

United States of America

Third Cycle

36<sup>th</sup> Session of the UPR

Human Rights Council

May 2020



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The **Indigenous Alliance Without Borders / Alianza Indígena Sin Fronteras** is organized to affirm and protect our rights as Indigenous peoples, our rights to self-determination, collective human and civil rights, the rights of sovereignty and the protection of sacred sites, and the free unrestricted movement across international borders.

The **International Mayan League** is a Maya organization whose purpose is to promote, preserve, and transmit the cosmovision and worldview, culture, history, and contributions of our ancestors and the values of our traditional knowledge and stewardship of the earth into solutions and actions against current threats and violations affecting our peoples, the earth, and humanity.

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# **Indigenous Peoples’ Rights to Exist, Self Determination, Language and Due Process in Migration<sup>1</sup>:**

## **I. Summary**

1. The Indigenous Alliance Without Borders / Alianza Indígena Sin Fronteras (AISF) and the International Mayan League (IML) submit and author this report as two historical grassroots Indigenous Rights organizations with decades of commitment to Indigenous peoples’ human rights. This report demonstrates the failure of the United States government to recognize Indigenous peoples in forced migration and to respect their human rights within the immigration system. It details how Indigenous peoples’ right to exist as distinct peoples free from discrimination and the right of self-determination, including the right to due process in immigration, are violated through the nexus of language, identity, and racism. Indigenous peoples are vulnerable precisely because of their Indigenous identity. Indigenous language rights are violated at multiple points throughout the immigration system. Several reports here indicate that close to 20% of Original Peoples arriving to this North American territory (Southern Arizona) are Indigenous and speak their Indigenous language. A groundbreaking study of asylum seekers in Tucson, AZ, migrant shelters from 2014-2017 demonstrates 60% were from Guatemala and of those, 30 % were primarily speakers of Maya languages.<sup>2</sup>

2. Indigenous peoples are denied both due process and their identity through language exclusion coupled with their erasure as distinct peoples through statistical omission and erroneous Latino or Hispanic categorization. The violations are commonplace and cumulative throughout the immigration system, compounding the violations of national and international laws and conventions. Original peoples of these territories, specifically the O’odham and the Yoeme have also experienced violations of their rights to peace and security because of living in militarized zones that actively deny these rights. The ultimate consequence has been the deaths of Indigenous children under the custody of U.S. Customs and Border Protection (CBP) as a result of violating this internationally sanctioned right.<sup>3</sup> The U.S. government has legal obligations under domestic and international law to protect the human rights of all Indigenous peoples and migrants.

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<sup>2</sup> Gentry and Richardson. August 2019. Referred to here as the Indigenous Language Office, 2019 study, Tucson, AZ. (Citation updated 10/16/19.)

<sup>3</sup> “The Rights of Indigenous Peoples Rights in the Context of Borders, Migration and Displacement, Study of the Expert Mechanism on the Rights of Indigenous Peoples.” (July 2019). <https://www.undocs.org/a/hrc/emrip/2019/2>

## II. Reporting Organizations

3. The Alianza Indígena Sin Fronteras includes members and allies from the peoples of the Hopi, O'odham, Yoeme, Zuni, Navajo, Cherokee, Kickapoo, Macehual, Maya, Nahua, Zapotec, Xicano, and Apache, many of whom have origin stories that speak to the importance of migration and movement in the development of original peoples of Turtle Island. We form our arguments through experience working with asylum seekers in Arizona, decades of advocacy work, and expertise in the issues of Indigenous rights. We include Native elders, Indigenous rights activists and advocates, human rights lawyers and researchers and Indigenous leaders, many of whom have 40 years of experience in Indigenous rights, particularly related to the rights of mobility of Indigenous peoples. As the Original Peoples of this land base known as the United States, we are the original authorities over who has rights to reside in these lands.

4. The International Mayan League is a grassroots, Indigenous women led Maya organization founded in 1991 by Maya refugee men and women with allies from the Sanctuary Movement. Our work and priorities are guided by the vision and practices of our spiritual and traditional leaders, elders, and authorities. We work to promote, preserve, and transmit the culture and contributions of the Maya to create solutions against current threats and violations affecting Indigenous peoples in Mesoamerica and the United States. The Mayan League works to address the immigration crisis at the border, throughout the U.S. and Indigenous Peoples' human rights. In partnership with AISF and Ama Consultants, we developed Indigenous language resources and assessed the scope of the needs of our Indigenous relatives at the border and nationally.

## III. Background: Continued Denial of Indigenous Peoples' Right to Exist, the Right of Self Determination and Due Process in Violation of Domestic and International Human Rights Law

5. The current administration cannot effectively protect the wellbeing of those lawfully seeking asylum in the U.S., in particular members of Indigenous Nations. The U.S. government has legal obligations under domestic and international law to protect the human rights of all Indigenous peoples and migrants. Indigenous peoples' migration experience is characterized by unique vulnerabilities, which stem from our Indigenous identity and **the intersection of discrimination, racism, and language**. In the United States, the original peoples of the Americas are mislabeled as Latino or Hispanic. In this way, Indigenous identities are erased throughout the U.S. immigration system, leading to violations of our right of self-determination.<sup>4</sup>

6. For Indigenous peoples, borders are meeting places, places of convergence, where peoples, ecosystems, sacred sites, and thousands of years of history weave together across a contiguous space. As Indigenous peoples continue their migration across the Americas, international border

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<sup>4</sup> Committee on the Elimination of Racial Discrimination (1997).

policies and the lack of enforcement of domestic and international human rights laws deny the enjoyment of, and violate, Indigenous human rights and civil rights.

7. The number of people attempting to migrate to the U.S. is rising rapidly especially from Guatemala, El Salvador, and Honduras. In fiscal year 2019, 28,694 Guatemalan unaccompanied children were apprehended at the border<sup>5</sup> and Guatemalan family units soared to 177,142, the highest for all the Central American countries.<sup>6</sup> Acknowledging that there are twenty-two distinct Maya Nations plus the Xinka and Garifuna peoples and that Indigenous peoples are the majority in Guatemala; and that Indigenous peoples live in every country in Mexico and Central America, we remain concerned that hundreds of thousands of Indigenous peoples are not being accounted for because there is no disaggregated data on Indigenous peoples within migration.

8. In Guatemala alone, twenty-two distinct Maya languages are spoken--in addition to Xinka, Garifuna, and Spanish--making the country multilingual. Many Indigenous peoples in Guatemala are monolingual and only speak their Indigenous language. They do not read or speak any Spanish, let alone English. At the U.S.-Mexico border and throughout the U.S. immigration system, Indigenous peoples' rights to due process are violated because they cannot communicate their reasons for fleeing, nor their basic or urgent medical needs in Spanish or English. These human rights violations can contribute to their deaths.

9. Though we applaud the U.S. government's efforts to meet its human rights obligations, we remain concerned that in the area of immigration, the escalating situation at the U.S.-Mexico border and the ensuing humanitarian crisis has led to human rights violations. There has been a disproportionate impact of human rights violations to Indigenous peoples, particularly Indigenous children, and in the most extreme cases has led to their deaths.<sup>7</sup>

10. We support previous recommendations accepted by the U.S. government for the implementation of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and removal of legal barriers that hinder the respect of Indigenous rights (322-324, 326). While progress has been made in this regard, the rights of Indigenous peoples within forced migration continue to be violated and there has been little to no implementation of recommendations previously accepted to protect migrants, in particular migrant women, or review of migration policies (329-331, 340). Further, we encourage the full acceptance of previous recommendations regarding "the right to family reunification of migrants held in detention" (328), "due process for all immigrants in immigration proceedings...especially in the case of families of unaccompanied children" (339).

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<sup>5</sup> <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>

<sup>6</sup> Ibid.

<sup>7</sup> International Mayan League. 2019. "Protecting the Rights of Indigenous Children." Submitted to National Congress of American Indians.

#### IV. Framework and Factors Contributing to the Violations of Indigenous Peoples Rights in Migration Processes in Violation of Domestic Human Rights Obligations

**11.** There have been serious limitations to the advancement of human rights within the U.S immigration system including the right to exist as distinct peoples free from discrimination and the right of self-determination including the right to due process as expressed in the following ways:

- a) Indigenous people(s) are not being identified as Indigenous. Indigenous identities are erased on an official level when governments misclassify them generally as Latinos or Hispanic, specifically as only nation-state citizens (e.g., Guatemalan or Mexican, rather than Mam or O’odham, respectively), or the identity-erasing designation, “other.”
- b) Language exclusion: Indigenous peoples of the Americas are denied cultural, spiritual, and political rights through Indigenous language exclusion at multiple points throughout the immigration system.
- c) Because of large-scale language exclusion at the initial point of contact in the immigration system, Indigenous peoples do not have meaningful access or due process in the justice system through immigration and asylum hearings, and criminal prosecution.
- d) Language needs are not systematically assessed in U.S. agencies, and data that could help identify and detail the scope of the need is not collected leading to language resource gaps.
- e) Indigenous children are especially vulnerable in cases of language exclusion which in one case, was connected to the death of a Maya child.<sup>8</sup>

**12.** Language exclusion in U.S. immigration is a common practice in violation of federal policy. Title VI of the Civil Rights Act of 1964 (Title VI) prohibits recipients of federal financial assistance from discriminating against individuals who seek their services.<sup>9</sup> In 2000, Executive Order 13166<sup>10</sup> directed US agencies to implement measures for the inclusion of Limited English Proficiency (LEP) speakers.<sup>11</sup> An accurate picture of language exclusion in the U.S. immigration system remains unmeasured. The Department of Homeland Security (DHS), the Department of Justice (DOJ), and the Department of Health and Human Services (HHS) have not complied with federal policy regarding Indigenous language speakers, resulting in discrimination on the basis of

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<sup>8</sup> Statement by family of Jakelin Caal:

<https://www.facebook.com/AnnunciationHouse/photos/a.628223083887678/2072099572833348/?type=3g>

<sup>9</sup> 42 U.S.C.A. § 2000d

<sup>10</sup> 65 FR 50, 121.

<sup>11</sup> 65 FR 50, 123-24 (Aug. 16, 2000).

national origin. The burden of both documentation and addressing the needs of Indigenous language speaking migrants has fallen largely on Indigenous and migrant rights organizations<sup>12</sup>.

**13.** As a federal-level policy, inclusion of LEP speakers applies to the entire U.S. immigration system of enforcement, detention, and the immigration legal proceedings. The compliance failure has been reported by the Expert Mechanism on the Rights of Indigenous Peoples (EMRIP) (2019), the Organization of American States (2019),<sup>13</sup> Beck (2017), Gentry (under review), GUAMAP (2014), AMA consultants (2015), the Office of Refugee Resettlement (ORR),<sup>14</sup> Florence Immigrant and Refugee Rights Project (2009), and DOJ (2016). Overall, these reports have found that languages are not assessed, interpreters are either not provided or there are not enough, children and families are retraumatized when their rights to communicate in their primary languages are denied, and civil rights based on national origin are violated.<sup>15</sup>

**14.** Notably, in these circumstances, the U.S. government cannot comply with the Violence Against Women Act, which includes protections for immigrant females who are victims of violent crimes, sexual assault or sex trafficking.<sup>16</sup>

**15.** An independent 2015 report found that the federal LEP programs' inadequate implementation yields "inequitable outcomes" for Indigenous language speaking immigrants, leading to "exclusionary practices" and the denial of Indigenous language speakers' rights to communicate in their primary languages.<sup>17</sup> DHS is obligated under LEP policy to monitor CBP and ICE language assessments of immigrants. DHS' LEP Policy has failed adult individuals in immigration proceedings, and, "as a class of vulnerable immigrants, it is the largest population to experience exclusionary language contacts in the United States' immigration system."<sup>18</sup> A 2010

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<sup>12</sup> Beck, (2017); Gentry, under review

<sup>13</sup> [http://www.oas.org/en/iachr/media\\_center/PReleases/2019/228.asp](http://www.oas.org/en/iachr/media_center/PReleases/2019/228.asp)

<sup>14</sup> Gentry (2015).

<sup>15</sup> In a 2014 report by the Guatemala Acupuncture and Medical Aid Project, "Deprivation not Deterrence", which examined violations of migrant rights in short term detention in Southern Arizona: Of the 33 immigrant families interviewed, 37 % were Indigenous Maya from Guatemala while 29% of adults spoke an Indigenous language. Sixty-one % of adults stated that they were not apprised of their right to call their consulate, while 47 % of adults reported being denied a call to a family member and half of adult migrants reported that they did not receive an explanation of the legal papers issued to them in a language they understood.

<sup>16</sup> <https://www.americanimmigrationcouncil.org/research/violence-against-women-act-vawa-provides-protections-immigrant-women-and-victims-crime>

<sup>17</sup> Gentry (2015) p. 35. Para 4

<sup>18</sup> Ibid.

Government Accounting Office's review of the DHS' LEP Policy found serious structural problems with its implementation.<sup>19</sup>

**16.** In 2013- 2017, the Executive Office of Immigration Review (EOIR) listed three Maya languages (Mam, Q'anjob'al, and K'iche') in the top twenty-five frequently spoken foreign languages under initial case completion,<sup>20</sup> and 32% of unaccompanied minors migrate from Guatemala.<sup>21</sup> Though these statistics are important, they reflect that the insufficient language data that does exist comes too late in the immigration process, does not provide concrete numbers for Indigenous peoples as distinct peoples, and offers a deficient analysis of the scale of the issue. Lastly, it does not provide any clarity on the provision of interpretation or translation resources for Indigenous language speakers in compliance with Executive Order 13166.

**17.** Internationally recognized rights of due process,<sup>22</sup> as well as other due process rights are routinely violated in Operation Streamline proceedings. According to a May 10, 2019 testimony by Blake Gentry delivered to the U.S. Commission on Civil Rights public comment session on the conditions of immigration detention centers and the status of treatment of immigrants:

“The U.S. Criminal Court under Jurisdiction of the US Dept of Justice is engaged in the denial of due process for Indigenous immigrants in "Streamline" Federal Criminal Court in Tucson, Arizona. The court denies, by refusing to provide or hire interpreters for Indigenous Maya and Indigenous Mexican speaking immigrants, their primary language use - *as is legally required in Executive Order 13166*. The Court also does not count them as Indigenous peoples, but rather as "Hispanics." The court is effectively, by these two combined actions, denying their most basic human right, their right to identity.”

**18.** The failure of DHS to collect and disaggregate data specific to Indigenous peoples is having a profound impact on Indigenous peoples' human rights. There is a deep misconception and confusion about Indigenous peoples due to the lack of recognition that we are distinct peoples with our own cultures, languages, and histories. The misconception has led to lack of disaggregated data collection leading to a critical gap in needed language services and culturally appropriate resources specific to the needs of our people<sup>23</sup>

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<sup>19</sup> “Exclusion of Indigenous Language Speaking Immigrants (ILSI) In the US Immigration System, a technical review,” (2015). p. 11; US Government Accounting Office (2010).

<sup>20</sup> US Department of Justice, Executive Office for Immigration Review. 2018. “Statistics Yearbook Fiscal Year 2017.” <https://www.justice.gov/eoir/page/file/1107056/download%0A%0A>.

<sup>21</sup> Gentry (under review).

<sup>22</sup> ICCPR Art 14 and 27

<sup>23</sup> Notably, the UN International Covenant on Civil and Political Rights [UNICCPR] (1976) Article 14 recognizes the right to an interpreter “To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.” (See <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> accessed 22 July 2019.)

## V. Current Obligations of International Human Rights

**19.** The UN Declaration on the Rights of Indigenous Peoples (UNDRIP) Articles 1, 2, 3, affirms our right to exist and self-determination, and Articles 13 and 36 affirms that states shall take measures to ensure border-related rights.<sup>24</sup>

**20.** The United States is a party to the International Covenant on Civil and Political Rights (ICCPR)<sup>25</sup>, however, its negligence in providing Indigenous immigrants with interpretation in their Native languages and the further proposal to end court interpreters<sup>26</sup>, violates Article 14, which guarantees equal treatment in legal proceedings, including being informed in a language they understand (Art. 14 (3a)). Additionally, articles 14 (3f) and 27 guarantee free language assistance in court and that people shall not be denied the use of their own languages.<sup>27</sup>

**21.** The U.S. is a party to the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) which calls for “equal treatment before the tribunals and all other organs administering justice and the right to security of person and protection by the State against violence or bodily harm.”<sup>28</sup>

**22.** We remain concerned that though the U.S. has endorsed the UNDRIP and ratified the ICCPR and is a party to the ICERD, there is severe negligence in the treatment of indigenous migrant children which clearly violates these human rights instruments. The 2018 Zero Tolerance policy and inhumane border conditions violate Indigenous human rights making the U.S. government complicit in the deaths of the six Indigenous children and youth at the U.S.-Mexico border

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<sup>24</sup> In Art. 1 of the UNDRIP, “Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights, and international human rights law.” Art. 2 of the UNDRIP, “Indigenous peoples and individuals are free and equal to all other peoples and individuals and have the right to be free from any kind of discrimination, in the exercise of their rights, in particular that based on their Indigenous origin or identity.” Art. 3 of the UNDRIP, “Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.” Indigenous peoples, in particular those divided by international borders, have the right to maintain and develop contacts, relations and cooperation, including activities *for spiritual, cultural, political, economic and social purposes*, with their own members as well as other peoples across borders (article 36, emphasis added). Indigenous peoples have the right to use and develop their languages and States must ensure “to protect this right, including through interpretation in political, legal and administrative proceedings” (Article 13).

<sup>27</sup> Article 14 (3a): “To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him.” ICERD Art. 14 (3f): Right “To have the free assistance of an interpreter if he cannot understand or speak the language used in court.” Additionally, under Article 27 “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.”

<sup>28</sup> ICERD, Art. 5 (a) (b) <https://www.ohchr.org/en/professionalinterest/pages/cerd.aspx>

between May 2018-May 2019.<sup>29</sup> The December 2018 death of 8-year-old Maya Q'eqchi' child Jakelin Caal while in CBP custody is indicative of the dire consequences of not enforcing Title IV protections.

## VI. Observations from the Field: Current Situation of Indigenous Peoples in Migration

**23.** Through the verification of Maya-led scoping delegations and Indigenous led research studies, we affirm that there are large percentages of people who self-identify as Indigenous and that current statistics do not reflect that possibly hundreds of thousands of Maya and other Indigenous children and families are seeking asylum and are part of the wave of forced migration to the United States. The nexus of forced migration and Indigenous peoples' human rights is closely tied to histories of colonization, structural inequality, racism and impunity. Forced migration of Indigenous peoples is a direct outcome of present-day marginalization, conflicts over lands and resources, climate change, extreme poverty, and lack of basic provisions for a dignified life. In the case of Guatemala, it is also the outcome of thirty-six years of internal armed conflict and genocide of the Maya which resulted in over 200,000 people killed or disappeared, and over 1.5 million forcibly displaced from their ancestral homelands.

**24.** The denial of Indigenous language rights begins when language is not assessed by CBP and Immigration Control and Enforcement (ICE), which results in the lack of disaggregated data of Indigenous peoples and languages. As a result, Indigenous peoples and their needs become lost in the immigration system, and the burden of both documentation and addressing the needs of Indigenous language speaking migrants falls largely on non-governmental Indigenous and migrant rights organizations. According to a 2015 technical review, Indigenous language speaking families experience more than a dozen occasions in which they experience language exclusion in the immigration system. Per AISF Indigenous migrant advocates in Tucson, AZ, both governmental and non-governmental agencies rely on phone interpretation or in video conferencing, and minimally translated materials. There is no language assessment process consistently applied across agencies.

**25.** As observed by AISF members who have volunteered at shelters that receive asylum seekers released by CBP, basic clerical errors are routinely made on paperwork of Indigenous asylum seekers, particularly spelling of their names. Name spelling errors can delay the process to locate Indigenous foreign nationals in detention centers or deny the ability by family members and consulate officials to access these individuals. The denial of interpretation and translation for Indigenous asylum seekers denies their right to effective communication. Of particular concern is insufficient interpretation and translation resulting in increased vulnerability for Indigenous

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<sup>29</sup> Sign-on: Open Letter from Mayab' Scholars in Diaspora to the United States, Mexican, and Guatemalan governments, 2019, <https://docs.google.com/forms/d/e/1FAIpQLSfWIVXR6QryaIGkzz3DyVhCxPqxaEq15I7oh0HNZPi1dVL9w/viewform>

women to sexual assault or abuse, and the inability to report the incidents at all or in a timely manner.

**26.** The Indigenous Language Office at Casa Alitas immigration shelter in Tucson, AZ, has worked with Maya language speakers, coordinating live interpretation and translation of key documents since opening in mid-February 2019. Maya advocates report encountering all twenty-two Maya languages among detainees in the immigration detention process. Data from 2017-2109 demonstrates more than a doubling of Indigenous language speakers in the Arizona border region, with Maya Indigenous language speakers constituting the greatest demographic increase.<sup>30</sup> For the 2017-2019 period, Indigenous families resettled across 42 U.S. states. The highest concentrations of resettlements occurred in the Atlantic Seaboard, Florida Peninsula, lower Appalachia, the West Coast, and Houston, TX.

**27.** Indigenous children are especially vulnerable. Guatemala, where a majority of the population is Indigenous, is the largest sender of unaccompanied children, over El Salvador and Honduras<sup>31</sup>. This means that thousands of Indigenous children are entering the U.S. but are unaccounted for in current data. Per a report by the ORR, no assessment tool is used to determine if a child is an Indigenous language speaker.<sup>32</sup> “Children who do not speak Spanish or English are unable to report neglect or abuse to authorities while in the care of persons who do not speak the child’s Indigenous language. The silence about the neglect of children reported by former staff of ORR contracted facilities was a harbinger for future neglect.”<sup>33</sup>

**28.** Rather than provide meaningful access to speakers of Indigenous languages, CBP and ICE routinely arrest, detain, and deport Indigenous peoples with limited English proficiency to Mexico or their home countries. This happens for several reasons, including: 1) Indigenous migrants do not understand the questions, charges, etc. when entering the immigration system, especially when interacting with CBP, ICE, and criminal court for illegal entry; 2) meaningful translation and interpretation are not provided in detention, leading to family separation, the inability to report violence, coercion, medical needs and prolonged incarceration as they wait for hearings; and 3) inadequate access to the justice system because they are unable to communicate in English, in clear violation of due process rights.<sup>34</sup>

**29.** Through a span of two weeks in July 2019, the IML conducted thirty-nine interviews in two immigrant shelters in Tucson, AZ. Data was collected to help determine the sub-population of

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<sup>30</sup> Gentry and Richardson, August 2019.

<sup>31</sup> U.S. Customs and Border Protection, <https://www.cbp.gov/newsroom/stats/sw-border-migration/usbp-sw-border-apprehensions>

<sup>32</sup> Gentry (2015).

<sup>33</sup> Gentry (2015) p. 42, paragraph 3.

<sup>34</sup> Gentry (2019); Beck (2017); EMRIP (2019).

Indigenous peoples, the language spoken, the experiences of the families, and to develop a preliminary demographic profile. This information helped us understand the scope of the Indigenous migrant population and to discover the untold story of the migration experience from the perspective of Indigenous persons and families.

**30.** Of the thirty-nine participants interviewed in two shelters, 59% of the respondents were female, and 43.6% of the total respondents spoke an Indigenous language. Mam speakers represented 41.18%, followed by K'iche' at 29.41%, and then 5.9% for Kaqchikel, Q'anjob'al, and Q'eqchi,' bilingual Kaqchikel/K'iche' speaker and Tol. The findings reflect previous trends from a 2015 Technical Review by Ama Consultants, in which “out of 33 immigrant families interviewed, 37% were Indigenous Maya from Guatemala while 29% spoke an Indigenous language.”<sup>35</sup> However, in the current study, we notice a trend toward an increase of Indigenous languages speakers within a sample size similar to that in the 2015 technical report.<sup>36</sup>

**31.** Given the large number of Indigenous language speakers, it was critical for us to examine the nexus of racism, language, and discrimination in various facets of their experiences in their journey and at the border. Findings indicate severely traumatized families because of forced migration due to violence, lack of jobs, and climate change as some of the most prominent factors in the urgency to migrate. Trauma is further inflicted through detention and abuse in custody of U.S. government agencies, as confirmed by various testimonies. One Maya Mam female detained for two days, said “Detention was hard. In detention, we had no food, just some crackers. There were about 100 people all in one room. People were sleeping on top of another.”<sup>37</sup>

**32.** Gender-based violence is common in government detention facilities as evidenced by various testimonies and witness accounts of harassment from CBP agents. A pregnant and distraught Maya Kaqchikel woman described her ordeal in detention, “We were taken to la hielera [icebox]. When she spoke to immigration, they told her she was not speaking the truth [about her pregnancy] and that she would be punished and placed her in a cold room. Those areas are ugly. They have cameras everywhere. There was a camera and I did not think it worked. So I stripped [to shower] and I realized after. I was combing my hair, I could see other women showering. I was so ashamed.”<sup>38</sup>

**33.** Further, discriminatory practices such as [Migrant Protection Protocols](#) which force asylum seekers to remain in Mexico during their immigration proceedings, place Indigenous women and

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<sup>35</sup> Gentry (2015).

<sup>36</sup> Gentry (2015).

<sup>37</sup> Maya Mam woman from San Marcos

<sup>38</sup> Maya Kaqchikel pregnant woman

girls in particular, at higher risk of rape and sexual violence. During our fact-finding mission, a Maya K'iche' woman said that her most pressing need was peace and to live without fear. She recounted what someone had told her in Mexico as a part of the daily discrimination she faced. "I hope they deport them the Indigenous people because we don't want them in their country (Mexico)" someone said about us. We encountered a lot of racism against us Guatemalans and Indians, there in Mexico. People along the way should receive us with love because we are all human."<sup>39</sup> Both women and men respondents said food and water, medical attention, and legal orientation including family reunification, were some of the most pressing needs for them and their families. When asked about the specific needs of Indigenous peoples, a Maya Kaqchikel female said, "Organizations need to have knowledge about the different cultures."<sup>40</sup> Another Maya Mam male said that organizations, "need to treat everyone well and especially the Indigenous community." A non-Indigenous male from Guatemala said, "For Indigenous friends, they don't know Spanish well. There was an Indigenous person who was unable to answer the border patrol because they did not understand Spanish. There weren't any translators."<sup>41</sup> Please refer to the appendix for more testimonies that reflect gender violence. Video testimonials are also included from Maya leaders and activists in the **Appendix**.

**34.** A preliminary demographic profile indicates a large presence of Indigenous peoples within forced migration, most are from Guatemala, and almost 50/50 split between male and female Indigenous language speakers. The trend that the largest number of detentions at the US-Mexico border are people from Guatemala further supports our concerns that potentially hundreds or thousands of Indigenous persons' rights are being violated. The aforementioned testimonies and facts highlight the arbitrary and harmful practices of the U.S. government's immigration system. Indigenous migrants do not receive equitable treatment because they are not recognized as part of Indigenous Nations with a right to communicate in their primary languages. Nor is there a language assessment mechanism to determine their status and needs. They remain obscured by the lack of language documentation by the federal government. There is no standardized way to assess Indigenous languages in long-term detention, in family and child detention, nor in Operation Streamline. The UN recognizes the right of Indigenous peoples to security of mind and body as well as legal security. The EMRIP concluded that the lack of disaggregated data compromises the ability to serve Indigenous peoples.<sup>42</sup>

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<sup>39</sup> Maya K'iche' woman from Quiche

<sup>40</sup> Maya Kaqchikel pregnant woman

<sup>41</sup> Male from Escuintla, Guatemala

<sup>42</sup>“51. For all migrants (Indigenous and non-Indigenous), border crossings are often locations of arbitrary arrest and detention, abuse, arbitrary and collective expulsion, racial profiling, extortion, kidnapping, drug trafficking, human trafficking, death, lack of access to adequate health services, food, water or shelter and an absence of due process rights or respect for rights (see A/HRC/39/17/Add.2). Detention may itself result in other cumulative forms of ill-treatment, including lack of interpretation, separation of children from parents, poor conditions, inedible food, verbal abuse, physical assaults and being stripped naked. If perpetrated at the hands of State agents or without the protection of the State, such treatment may amount to violations of their rights.” (EMRIP, 2019, para 51).

**35.** *Solutions* are found among the Indigenous advocates working on the ground with little to no resources. Tucson's Indigenous Language Rights Office is unique, as there is no other known initiative in shelters elsewhere. However, it is sorely underfunded and understaffed. Through this office, Maya asylum seekers also contribute their own knowledge and agency by providing written terms of anatomy, immigrant rights, and medical questions in their Indigenous languages. Yet others have interpreted in Achi, Akateka, Awakateka, Chuj, Ixil, Kaqchiquel, K'iche', Q'anjob'al, Q'eqchi', Mixteco Alto and Mixteco Bajo, Nahua, Jakalteka-Popti, Poqomchi', Poqomam, Tektiteka, Ch'orti', Uspantek, Itza, Tzotzil, Tzeltal, and Garifuna.<sup>43</sup> Additionally, organizations, such as the AISF and IML, are grassroots and volunteer run, and they are responding to the crisis as cultural and linguistic experts, with little to no funding.

## VII. Questions for the United States

**36.** A.) How does the United States plan to address the: a) erasure of Indigenous peoples' identity through statistical omission and or erroneous Latino or Hispanic categorization and; b) lack of disaggregated data of Indigenous languages leading to a critical language gap within the entirety of the immigration system? B.) What are immediate actions the US will take to protect the rights and wellbeing of Indigenous children in detention, those pending reunification, and what guarantees can be made to ensure that no Indigenous child was placed in foster care or illegally given for adoption? C.) What immediate action will the U.S. take to ensure that there is a thorough and transparent investigation of the deaths of all the Indigenous children at the border, and that these reports be made public and act to realign current policies and programs to prevent further deaths of any children, especially vulnerable children like Indigenous children?

## VIII. Recommendations

**37.** Establish an independent implementing and monitoring body, facilitated by EMRIP and including U.S., Maya, and other Indigenous experts that will: a) Conduct a thorough analysis of the human rights crisis facing Indigenous peoples at the border, in detention centers, and those impacted by aggressive immigration policies with a particular focus on Indigenous peoples and children; b) oversee the collection and analysis of disaggregated data on Indigenous peoples, in cooperation/agreement with Indigenous peoples, including on the basis of sex, age, disability and all those crossing borders (internal and international) in order to develop policies and programs<sup>44</sup>; and c) establish an Indigenous Languages advisory group comprised of Indigenous language and cultural experts to develop Indigenous language resources, train interpreters and translators in shelters and border patrol facilities, and immigration generally.

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<sup>43</sup> Gentry and Richardson, August 2019.

<sup>44</sup> EMRIP 2019, annex paras 9 and 10. This recommendation should also be considered: Indigenous peoples should be made aware of their rights under international human rights law, including the Declaration, and options for taking cases domestically, regionally and internationally.

**38.** In reference to the U.S. Government’s prior commitment to “being a leader in extending protection to refugees and asylum seekers,”<sup>45</sup> we call for the allocation of financial resources for immigration protection of Indigenous peoples through an educational component in Indigenous peoples rights for CBP agents, ICE, HHS staff, and third parties contracted to manage detention center staff in accordance with recommendation 176.74 accepted by the U.S. in 2015 to “Strengthen human rights education programmes and training for all civil servants, particularly for law enforcement and immigration officers, and combat impunity concerning abuses against defenseless persons (Costa Rica)”<sup>46</sup>

**39.** We call upon DOJ and DHS for a thorough, transparent and exhaustive investigation of unsolved murders at the U.S.-Mexico border and deaths of children, in particular Indigenous children while in U.S. government custody.<sup>47</sup> We request that all reports be made public.

**40.** We call on the U.S. to extend an invitation to UN Special Procedures, specifically the UN Special Rapporteurs for: The Rights of Indigenous Peoples; Human Rights of Migrants; Violence Against Women; to conduct an in-country visit and investigation into abuse and deaths at the border and in detention centers with a specific focus on Indigenous children and families.

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<sup>45</sup> National report submitted in accordance with .... United States of America, para. 62. (A/HRC/WG.6/22/USA/1)

<sup>46</sup> UNITED STATES Second Review Session 22 Review in the Working Group: 11 May 2015 Adoption in the Plenary:24 September 2015  
[https://www.upr-info.org/sites/default/files/document/united\\_states/session\\_22\\_-\\_may\\_2015/recommendations\\_and\\_pledges\\_usa\\_2015.pdf](https://www.upr-info.org/sites/default/files/document/united_states/session_22_-_may_2015/recommendations_and_pledges_usa_2015.pdf)

<sup>47</sup> Mayan League 2019 newsletter.

## Appendix

### Testimonies<sup>48</sup>

Nana Maria Teresa Lopez, Ajq'ij, Traditional Spiritual Elder and Ancestral Authority, Maya Mam Nation: [https://youtu.be/voxp\\_kEeK-I](https://youtu.be/voxp_kEeK-I)

Maria Solis: <https://youtu.be/YKbpbFLkVZo>

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Interviews present a trend specific to women's needs, such as personal feminine care products, care for pregnant women, security from sexual harassment and violence, and resources for babies and children. We found indications of sexual violence and sex trafficking. Per one woman from Guatemala, in "Tijuana, [we] did not have anything. At the San Isidro crossing, [there was] lots of mafia, they took away girls and women and sell them to prostitution." One woman from Honduras said, "She felt harassed (acosada). Her period was extremely heavy, likely because of the stress, 'but perhaps that is what saved me from being raped'." <sup>48</sup> She continued on when discussing pressing needs that, "As a woman, she was harassed constantly. Many women were raped, women need protection, such as women only shelters. She wasn't able to sleep out of fear."

[www.amaconsultants.org/uploads/Exclusion\\_of\\_Indigenous  
%20Languages\\_in\\_US\\_Immigration\\_System\\_19\\_June2015version\\_i.pdf](http://www.amaconsultants.org/uploads/Exclusion_of_Indigenous%20Languages_in_US_Immigration_System_19_June2015version_i.pdf)

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## Endnotes