

SLIDE 1

GOOD AFTERNOON, I'M PRISCILA RODRIGUEZ, DIRECTOR OF EARTH DEFENDERS, NGO BASED IN WASHINGTON DC. WE ARE DESIGNING AND IMPLEMENTING STRATEGIC LITIGATION ON NATIONAL AND INTERNATIONAL COURTS, WITH THE GOAL OF CREATING LEGAL PRECEDENTS TO PROTECT ENVIRONMENTAL RIGHTS. AFTER DECADES OF WORKING WITH VULNERABLE GROUPS, WE DECIDED TO FOCUS ON CHILDREN. IT'S THE TIME FOR CHILDREN TO FIGHT FOR THEIR RIGHTS TO CONTINUE LIVING ON A SUSTAINABLE PLANET.

SLIDE 2

SO, THIS PRESENTATION WILL COVER:

1. A GENERAL OVERVIEW OF TWO CASES WHERE CHILDREN ARE DEFENDING THEIR RIGHTS RELATED WITH THE CONSERVATION OF WETLANDS AND MANGROVES, BOTH IN MEXICO.
2. THE REMEDIES AVAILABLE FOR CHILDREN, ANALYZING WHETHER THEY ARE EFFECTIVE OR NOT.
3. SOME CONCLUSIONS BASED ON OUR EXPERIENCE.

SLIDE 3

OUR FIRST CASE IS LOCATED IN THE STATE OF MEXICO, WHERE THE CONSTRUCTION OF A HIGHWAY ON THE "WETLANDS OF LERMA" IS BEING IMPOSED BY THE GOVERNMENT. WHAT IT'S A STAKE HERE IS PROBABLY THE LARGEST BASIN IN THE AREA. ITS CONSERVATION IS FUNDAMENTAL BECAUSE OF ITS PROVISION OF WATER FOR THE REGION, INCLUDING MEXICO CITY. THESE WETLANDS ARE A RAMSAR SITE. THE BIGGEST REMAINING IN CENTRAL MEXICO, AS I QUOTE FROM RAMSAR "SPREADING OVER MORE THAN 3,000 HA AND THREE LAKES WHICH ARE WHAT REMAINS FROM THE 27,000 HA WETLAND PRESENT AT THE END OF THE 19TH CENTURY".

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THE CONSTRUCTION OF THE HIGHWAY AFFECTS ALSO THE INDIGENOUS PEOPLES OF XOCHICUATLA, THE COMMUNITIES' WELLS, CEREMONIAL SITES AND THEIR ACCESS TO WATER AND, PARTICULARLY CHILDREN'S HEALTH AND DEVELOPMENT.

DESPITE A VEREDICT IN THEIR FAVOR, THE STATE HAS IMPOSED THE PROJECT BY FORCE, CAUSING THE CHILDREN SEVERE TRAUMA.

IN APRIL THIS YEAR, THE STATE AND THE CONTRACTOR ILLEGALLY DEMOLISHED DULCE'S HOUSE (A 17 YEAR OLD GIRL) WITH HER BELONGINGS INSIDE AND VIOLENTLY EVICTED HER FAMILY.

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AFTER THIS EVENT, WE FILLED 2 TWO FEDERAL TRIALS (WRIT OF AMPAROS).

1. ONE ON BEHALF OF DULCE (THIS GIRL WHO ALSO LOST HER HOUSE)
2. OTHER ON BEHALF OF 12 CHILDREN FROM THE COMMUNITY.

BOTH CASES ARE AGAINST PRESIDENT OF MEXICO ENRIQUE PENA NIETO, ALONG WITH DOZENS OF AUTHORITIES MORE, FOR FAILING TO PROTECT AND GUARANTEE CHILDREN'S RIGHTS, UNDER CRC AND THE MEXICAN CONSTITUTION, PARTICULARLY THEIR RIGHT TO LIVE ON A HEALTHY AND PEACEFUL ENVIRONMENT, RIGHT TO HEALTH AND DEVELOPMENT, AS WELL AS JUDICIAL GUARANTEES.

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ON SEPT. 05, THIS YEAR, THE 12 CHILDREN PLAINTIFFS GOT A FEDERAL INJUNCTION, WHICH ORDER TO STOP THE PROJECT ON THEIR TERRITORY, UNTIL THE CASE IS DECIDED. THE STATE HAS APPEALED THIS DECISION SO WE ARE IN THE MIDDLE OF THIS BATTLE.

SADLY IN THE CASE OF DULCE, THE JUDGE CONSIDERED THAT SHE DIDN'T DEMONSTRATE HER DAMAGE, WHICH IS RIDICULOUS BECAUSE HER DAMAGE PROBABLY IS THE MOST CLEAR, SINCE SHE HAS ALREADY LOST HER HOUSE.

THIS DIFFERENCES IN DECISIONS REFLECT THE BROADER JUDGE'S DISCRETION EVEN WHEN IRREFUTABLE EVIDENCE OF DAMAGE IS BEING SUBMITTED.

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BESIDES THE WRIT OF AMPARO, THE COMMUNITY GOT THE PROTECTION OF THE INTER-AMERICAN COMMISSION ON HUMAN RIGHTS (IACHR) THROUGH A PRECAUTIONARY MEASURE, ORDERING THE PROTECTION OF 539 COMMUNITY MEMBERS, INCLUDING CHILDREN. THIS MEASURE HAS NOT BEEN IMPLEMENTED BECAUSE OF MEXICO'S LACK OF INTEREST. SO FAR THIS REMEDY HAS NOT BEEN EFFECTIVE AT ALL.

AND WE HAVE THE SUBMISSION OF ADMINISTRATIVE CLAIMS BEFORE THE ENVIRONMENTAL PROSECUTOR AND THE MINISTER OF THE ENVIRONMENT, TO NO AVAIL. THE ADMINISTRATIVE REMEDIES DON'T HAVE POSITIVE RESULTS BECAUSE THE SAME AUTHORITIES THAT GRANT THE PERMITS ARE THOSE WHO REVIEW ITS LEGALITY.

SLIDE 8

NOW, LETS TAKE A LOOK AT THE TAJAMAR CASE. IN 2015 AND 2016 MEXICAN GOV'T ALONG WITH INVESTORS CLEARED THIS MANGROVE LOCATED IN THE CENTER OF THE CITY OF CANCUN, TO BUILD A DEVELOPMENT PROJECT AUTHORIZED BY THE FEDERAL GOVERNMENT.

THIS ACTION BESIDES DAMAGING THE HOME OF CROCODILES, BIRDS, IGUANAS, ETC, AND THE SPECIES ITSELF, COMPROMISES THE COASTAL ECOSYSTEM INCLUDING THE MESOAMERICAN CORAL REEF SYSTEM, THE 2ND BIGGEST IN THE WORLD.

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THE CONTRACTORS CLEARED THE PLACE BY FORCE AT NIGHT, USING THE POLICE AGAINST THE POPULATION, INCLUDING CHILDREN. WHO WERE CAMPING AT THE PLACE TO PROTECT THE MANGROVE. IN THE OPERATION THERE WAS NO RELOCATION OF FLORA OR FAUNA LIVING IN THE MANGROVE.

THE CHILDREN WERE CRYING OUT ASKING THE POLICE TO STOP THE WORKERS. THE POLICE DID NOTHING BUT PROTECT THE PERPETRATORS OF THE DEVASTATION.

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AGAINST THIS ACT, 113 CHILDREN FILLED A WRIT OF AMPARO. NO INJUNCTION WAS GRANTED, THOUGH THE JUDGE AFFIRMED THE IMPORTANCE OF A MANGROVE FOR THE ENJOYMENT OF CHILDREN'S RIGHT TO ENVIRONMENT, HE CONDITIONED THE STOP ORDER ON A MILLION US DOLLARS BOND, TO GUARANTEE THE POTENTIAL DAMAGE CAUSED TO THE INVESTORS. CHILDREN APPEALED AND LOST. THE WRIT IS STILL PENDING FOR FINAL RESOLUTION.

THE MOVEMENT ALSO FILLED A CLAIM BEFORE THE ENVIRONMENTAL PROSECUTOR, WHICH FINAL DECISION STATES THE CLEARING AND THE DEVELOPMENT ARE LEGAL. APPLICANTS APPEALED AGAINST THIS, ARGUING THEIR JUDICIAL GUARANTEES WERE VIOLATED, BECAUSE THE PROSECUTOR DIDN'T CONSIDER THE EVIDENCE SUBMITTED BY CIVIL SOCIETY DEVASTATING THE MANGROVE, SHOWING FOR EXAMPLE THAT THERE WAS NO RELOCATION OF ANIMALS BY THE TIME OF THE CLEARING.

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- BESIDES THE REMEDIES I JUST MENTIONED BEFORE, MEXICO HAS TWO DIFFERENT ACTIONS THAT CAN ACTUALLY BE USED TO GET A REMEDY IN FAVOR OF CHILDREN'S RIGHT TO THEIR ENVIRONMENT. THE FEDERAL LAW OF ENVIRONMENTAL LIABILITY AND CLASS ACTIONS.
- IN 2010 THERE WAS A MAJOR CONSTITUTIONAL REFORM WHICH ALLOWED CLASS ACTIONS IN MEXICO. I WAS PART OF THE WORKING GROUP AND IN THOSE DAYS THE TENDENCY TO PUSH THIS REFORM WAS MORE DERIVED BY CONSUMER ACTIVISTS. I DON'T BELIEVE THIS LAW CREATES TRUE CLASS ACTIONS, AS IT REQUIRES PEOPLE TO OPT IN RATHER TO OPT OUT.
- THOUGH THE OFFICE OF THE FEDERAL ATTORNEY FOR ENVIRONMENTAL PROTECTION (PROFEPA) IS PART OF THE FEDERAL AUTHORITIES WITH STANDING TO SUE. AFTER 5 YEARS OF THE

REFORM, THERE IS NO EVIDENCE OF THIS AUTHORITY SEEKING TO OBTAIN ANY TYPE OF REMEDIE UNDER THIS LAW, WHICH IS A SHAME BUT NOT A SURPRISE.

- IN THEORY CHILDREN COULD FILE A COMPLAINT, THOUGH THERE IS NO PRECEDENT YET.
- LIKE IN ANY LAWSUIT, EXPENSES ARE KEY. THERE IS A POSSIBILITY FOR SOCIAL INTEREST CASES TO USE A PUBLIC FUND TO COVER ALL EXPENSES, WHICH IS AN ADVANTAGE IN THE POTENTIAL USE OF THIS ACTION BY CHILDREN.
- FINALLY, THOUGH CHILDREN ARE AMONG OTHERS, A “NATURAL” GROUP OF USERS (BECAUSE THEY REPRESENT A GROUP). THERE’S BEEN ZERO CLASS ACTIONS SUBMITTED BY CHILDREN.

SLIDE 12

IN 2013, THE FEDERAL LAW OF ENVIRONMENTAL LIABILITY ENTERED INTO EFFECT. IT REGULATES ENV’T LIABILITY CREATED BY DAMAGE, BASED ON POLLUTERS PAYS PRINCIPLE AND POTENTIAL CRIMINAL LIABILITY.

IT GIVES LEGAL STANDING TO AFFECTED PEOPLE, NGO’S, PROFEPA.

THE PRESCRIPTION OF THE ACTION IS 12 YEARS

IT CREATES A PUBLIC FUND TO RESTORE THE ENVIRONMENT AND TO PAY STUDIES AND RESEARCH,

IT GIVES THE POSSIBILITY TO INHABITANTS AFFECTED BY UNLAWFUL ACTS DEEMED VICTIMS OF CRIMES AGAINST THE ENVIRONMENT.

WHEN DAMAGING THE ENVIRONMENT BY INTENTIONAL OR RECKLESS ACTIONS THERE IS A POTENTIAL CRIMINAL LIABILITY.

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AT THIS POINT, THOUGH THE CRC WAS ENTERED INTO FORCE ALMOST 20 YEARS AGO, THERE ARE NO PRECEDENTS OF CHILDREN’S RIGHT TO ENVIRONMENT USING THESE REMEDIES. SO IN THEORY, THE WRIT OF AMPARO AND CLASS ACTIONS COULD BE THE BEST REMEDIES TO PROTECT CHILDREN’S RIGHTS BECAUSE OF:

1. THE POSSIBILITY TO APPLY INTERNATIONAL HUMAN RIGHTS STANDARDS AND NORMS TO THE LOCAL CASES.
2. THE WRIT OF AMPARO WAS MADE TO DEFEND PEOPLE AGAINST HUMAN RIGHTS VIOLATIONS.

3. THERE IS AN OBLIGATION FOR ANY JUDGE DECIDING CHILDREN'S CASES TO FOLLOW A SPECIAL PROTOCOL WHICH PROMOTES THE BEST INTEREST OF THE CHILD AND SO MANY OTHER PROTECTIVE STANDARDS.
4. CHILDRENS CAN ARGUE THEIR BEST INTEREST TO OBTAIN A SUSPENSION OF A PROJECT.

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AFTER EXPLORING AN LITIGATING CHILDREN'S RIGHTS IN COURT, WE CONCLUDE:

1. THE PROVISIONS OF THE CRC ARE INTERNAL LAW. SO IT CAN BE ENFORCED BY NATIONAL COURTS.
2. IF YOU LOSE YOUR CLAIM, REGIONAL COURTS OF HUMAN RIGHTS ARE POTENTIAL VENUES TO APPEAL.
3. RELEVANT TO ANY CASE TO LOOK AT IS TO WHAT DEGREE AUTHORITIES ARE COMPLYING WITH THE PRINCIPLE OF BEST INTEREST TAKING AS A RIGHT ITSELF BUT ALSO AS A CONSIDERATION FOR INTERPRETING OTHER RIGHTS.

PROCEDURAL PROBLEMS:

- UNEVEN BATTLE NOT FAVORING THE CHILDREN. LITIGATING AGAINST THE STATE AND COMPANIES REQUIRES A LOT OF EFFORT, MONEY AND TIME.
- JUDGES ARE NOT FAVORING THE BEST INTEREST OF THE CHILD AT LEAST IN THE TWO CASES WE REVIEWED.
- THE LACK OF RULE OF LAW PERMEATES MANY COUNTRIES, THIS IS THE BIGGEST CHALLENGE TO OVERCOME.

THANK YOU FOR YOUR ATTENTION,