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International Legal Developments Year in Review: 2022

Introduction
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Americas
Canada
Food, Agriculture & Cannabis
Latin America and Caribbean
Mexico

Asia/Pacific
South Asia/Oceania & India

Contracts, Transportation, Energy & Environment
International Contracts
International Energy and Environmental Law
International M&A and Joint Ventures
International Transportation

Corporate & Supply Chain
International Anti-Money Laundering
International Tax

Cyber, Art & Technology
International Art and Cultural Heritage Law

Dispute Resolution
International Arbitration
International Courts and Judicial Affairs
International Litigation

Diversity & Inclusion
Women's Interest Network

Europe/Eurasia/Middle East/Africa
Africa
Europe
Middle East
Russia

Finance
International Investment and Development

Human Rights & Corporate Social Responsibility
Immigration and Naturalization
International Family Law
International Human Rights
International Refugee Law

Trade, International Organizations & Regulatory Practices
Customs Law
Customs and Trade Law
Export Controls and Economic Sanctions
International Animal Law
National Security Law
This article surveys significant legal developments in Mexico in 2022.

I. Notable Decisions from the Mexican Supreme Court of Justice

In 2022, the Mexican Supreme Court addressed the constitutionality of three high-profile energy, criminal detention, and immigration policies. The decisions in these cases substantively alter Mexico’s legal system, economically and politically impacting the country’s public life.

A. Electric Industry Law Amendments

In April 2022, the Mexican Supreme Court upheld the constitutionality of amendments to the Mexican Electric Industry Law (LIE),\(^1\) which prioritize the dispatch of electricity produced by the Federal Electricity Commission (CFE) to the electrical grid—regardless of cost or fuel source.\(^2\) The amendments also revise current power purchase agreements with


\(^{2}\) Adopted in 2014, the LIE codifies the electricity industry’s administrative structure, promoting private sector competition and encouraging foreign direct investment in Mexico’s
independent power producers, increasing CFE’s overall market participation.¹

After receiving Congressional approval, the amendments proposed by President López Obrador were quickly challenged in court by various institutions and political actors for allegedly violating citizens’ right to a healthy environment and the energy sector’s right to free market competition.⁴ At the same time, various industry participants individually challenged the amendments in lower federal courts, which resulted in a nationwide injunction on antitrust grounds.⁵

The Supreme Court ultimately did not reach the two-thirds supermajority necessary to declare the amendments unconstitutional.⁶ This was, in large part, because, as Supreme Court President Arturo Zaldívar explained, “Economic competition is not the only value to protect.”⁷ While the amendments are now “in effect,” the ongoing individual lawsuits leave the reform susceptible to new challenges.⁸ In July, for example, a federal judge ruled the amendments unconstitutional and issued a new injunction that enforces the pre-2021 LIE.⁹

B. MANDATORY PRETRIAL DETENTION

Second, the Supreme Court failed to vote on proposals to declare Article 19 of Mexico’s Constitution unconstitutional, or rather inconsistent with the generation and wholesale power markets. See generally Kelsey Quigley et al., Mexico, 56 ABA/ILS YIR 21, 22-26 (2022).

3. See Decreto por el que se Reforman y Adicionan Diversas Disposiciones de la Ley de la Industria Eléctrica, Diario Oficial de la Federación [DOF] 09-03-2021.


5. See Rafael Llano et al., Energy Investors Face Mexico Risks in the Electricity and Lithium Sectors.

6. See id.


rest of a citizen’s constitutional rights. Article 19 requires that judges impose “automatic preventive detention” on all persons accused of specific crimes, including some that are nonviolent. The challenge against Article 19 argued that such preventative detention violates Mexico’s human rights obligations under international law and the Mexican Constitution—especially as Mexico counts nearly 100,000 people in jail without a conviction, many waiting beyond the two-year legal limit for mandatory pretrial detention.

Nonetheless, in September 2022, some of the justices opined that the Court lacks the authority to nullify Article 19. And although the Court has treated international treaties as equally binding as the Constitution since 2011 (applying whichever protects human rights more stringently), the Court clarified that an exception applies when the Mexican Constitution has expressly restricted the exercise of a certain right. The Court is likely to revisit the matter soon, as a new proposal is set to be introduced.

C. IMMIGRATION STOP-AND-SEARCH

Lastly, ruling on a case originally filed by indigenous Mexican citizens, the Supreme Court declared unconstitutional immigration checkpoints in locations without international transit. The resolution explicitly

11. Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014 (Mex.).
14. See id.
15. See Copeland, supra note 12.
16. Press Release, Suprema Corte de Justicia de la Nación, El Procedimiento de Revisión Migratoria Que Se Efectúa en Lugares Distintos al de Tránsito Internacional es Inconstitucional Por Aplicarse a Personas Nacionales y Extranjeras Sin Distinción Alguna:
condemned checkpoints that allow police to stop and search individuals to ascertain their immigration status as racist and discriminatory, finding that the lack of objective criteria has disproportionately impacted Black and Indigenous Mexicans and allowed agents to wield power based on assumptions of ethnicity, skin color, and language. The Court also held that such checkpoints violate a person’s constitutional right to free movement and travel through Mexico—regardless of nationality.

II. Energy Policy Under Dispute

A. Background

On July 20, 2022, Canada and the United States submitted notices to Mexico, formally requesting a consultation procedure regarding the recent energy policies adopted by the administration of President Andres Manuel López Obrador. The move came in response to Mexico’s perceived breach of several obligations under the USMCA, a free trade agreement between the three countries that entered into force in July 2020 (the Treaty).

B. Disputed Energy Policy Measures

Although their claims were not identical, both the U.S. and Canada generally argued that, with the president’s energy reforms, Mexico provides preferential treatment to its state-owned energy companies, specifically the Federal Electricity Commission (CFE) and Mexican Petroleum (PEMEX). The U.S. and Canada both claimed that this preferential treatment harms their interests in Mexico.

The Mexican energy reforms have included significant modifications to the electricity sector’s so-called order of dispatch, that is, the hierarchy by which generation plants inject produced electricity into the system for...
Before the disputed reforms and beginning in 2013, when Mexico’s energy sector first opened to private participation, the order of dispatch was determined by economic criteria. Electricity was purchased via auction from participants who offered the best price, whether from CFE or from the private sector. Notably, the lowest prices almost always came from companies engaged in producing clean and renewable energies.

Today, under the disputed reforms, the order of dispatch is to proceed as follows: first, all electricity produced by CFE, regardless of whether it comes from fossil fuel sources; then, energy generated by private national and foreign companies. It is their last-place ranking in the order of dispatch, behind the state-run electricity monopoly, that the United States and Canada complain violates several protection principles in the USCMA.

In addition, both the U.S. and Canada argue that Mexico has purposely hindered the ability of private Canadian and U.S. companies to operate in the Mexican energy market. Specifically, the U.S. and Canada accuse Mexico of delaying, denying, or simply ignoring requests for new permits or permit modifications; revoking or suspending existing permits; and blocking private companies from building and operating their facilities, storing fuel, and importing energy.

The U.S. also complains that Mexico has enacted policies that limit the use of government infrastructure for natural gas transportation to only those who acquire the energy from the State, affecting the importation of U.S. natural gas. Additionally, Mexico granted an extension for complying with
certain diesel-sulfur-content regulations only to PEMEX, a move disputed by the United States.\(^3\)

C. Consultations, the First Step

Article 31.4 of the USMCA provides for consultations, which are non-contentious negotiating mechanisms for settling trade disputes under the Treaty.\(^3\) Under this provision, in the consultation process, parties must submit all information necessary for a full analysis of the disputed measures, as well as the reasons why said measures—here, energy policies—may or may not violate the USMCA.\(^3\)

If, after consultations, the countries cannot reach a mutually agreeable solution, the complaining party may request that an independent panel be constituted to decide whether the measures at stake violate the Treaty.\(^3\)

D. Possible Implications

Once an independent dispute resolution panel is formed, the countries have a right to be heard, asserting their respective arguments under the Treaty for the panel to prepare its final report.\(^3\) If the panel determines that the disputed measures constitute a violation, the opposing countries have forty-five days to resume dialogue and reach a mutually satisfactory solution.\(^3\) The solution can include eliminating the measure and establishing compensation or enacting any other solution that the countries agree will settle the conflict.\(^3\)

But if no agreement is reached within forty-five days, the complaining party is entitled to suspend benefits and impose tariffs on the exports of the respondent for an amount equivalent to the damage caused by the disputed

\(^3\) See Comisión Reguladora de Energía, Resolución de la Comisión Reguladora de Energía que Otorga a Pemex Transformación Industrial una Ampliación al Plazo para el Cumplimiento de la Especificación de Contenido de Azufre en el Diésel Automotriz, Previsto en la Norma Oficial Mexicana NOM-016-CRE-2016, Especificaciones de Calidad de los Petrolíferos, Resolución Num. RES/1817/2019 (Dec. 18, 2019), https://drive.cre.gob.mx/Drive/OttenerResolucion?id=YzQ0YmNmYmMtMzEyY3U0ZDi5LTE5NjYzLTg5NTZm%20NjYgYQ== [https://perma.cc/U62F-PYPK]; Office of the United States Trade Representative, supra note 27.

measures, either in the affected sector or in any other sector, and until a
solution is found. Any trade dispute with the United States and Canada—
critical Mexico trading partners—would have serious economic
consequences for Mexico.

III. The United States - Mexico Relationship

A. BACKGROUND

Historically, the relationship between Mexico and the United States has
been strong and solid. The North American Leaders’ Summit, usually held
in November featuring the leaders of Canada, Mexico, and the U.S., will
address some of the challenges of maintaining that relationship.

The most recent summit, at the time of this writing, was hosted by U.S.
President Joe Biden in November 2021. The 2022 meeting is to be hosted
by Mexican President Andrés Manuel López Obrador in Mexico City—
likely in late 2022. President Biden, President López Obrador, and Prime
Minister Justin Trudeau have been discussing, and are almost certainly
poised to continue discussing, migration and security—two flashpoints in
the relationship between the countries.

B. MIGRATION

The political and economic upheaval across Central and South America
continues to drive a new wave of migration across the southern border of the
United States and Mexico, representing a critical security threat and a
humanitarian catastrophe for the vulnerable people involved.

The number of individuals who have fled their country attempting to
cross the U.S. border increased in an unprecedented way. During 2022
alone, U.S. border authorities encountered and arrested more than two
million migrants trying to cross the border. This is partly attributable to
the emergency public health policy issued by then-President Trump in

38. Id. art. 31.19.
39. See generally Press Release, The White House, Fact Sheet: Key Deliverables for the 2023
statements-releases/2023/01/10/fact-sheet-key-deliverables-for-the-2023-north-american-
leaders-summit/ [https://perma.cc/G47U-FGKZ].
40. See id.
41. Carolina Pulice, Next North American Leaders’ Summit Set to Happen in December in
Mexico, REUTERS (June 10, 2022), https://www.reuters.com/world/americas/next-north-
american-leaders-summit-set-happen-december-mexico-2022-06-10/ [https://perma.cc/AV58-
6AEZ].
42. See generally Key Deliverables for the 2023 North American Leaders’ Summit, supra note
39.
43. See Priscilla Alvarez, US Border Encounters Top 2 Million in Fiscal Year 2022, CNN (Oct. 22,
index.html [https://perma.cc/WU8P-YQP8].
44. See id.
March 2020, at the start of the COVID-19 pandemic, known as “Title 42.”

The emergency regulation enables federal agents to prohibit the entry of individuals into the U.S. if they note “the existence of a serious danger on the introduction of a disease into the territory,” which means migrants can be rapidly expelled back to Mexico or other countries.

Title 42 has had wide-reaching effects. The number of arrests at the border has increased due to a significant number in repeated crossings at the border. Families of migrants have been separated indefinitely. Discriminatory policies have run rampant. And the chaos at the border has exacerbated cartel violence and insecurity. In addition, the deficient immigration policies of the Mexican government have left people stranded and vulnerable as the massive backlog of immigration and asylum applications grows.

In short, North America is facing a humanitarian crisis, which should be addressed by both the U.S. and Mexican governments in order to implement strategies designed to ensure fair, orderly, and humane systems for managing migration and tackling the complex root causes of forced migration, such as poverty, conflict, and violence.

C. SECURITY

In recent years, Mexico has sought to implement public security policies to combat the illegal trafficking of firearms. An event that drew attention in recent history occurred during the government of President Felipe Calderon, when the “Fast and Furious” program was implemented. This program consisted of the United States introducing more than 2,000 weapons (with chips incorporated) into Mexican territory, aiming to track and monitor their location in order to identify those responsible for the


48. Id.

49. See id.

50. See id.


trafficking of weapons that would later end up in the hands of drug traffickers; however, the operation was ultimately a failure.\footnote{See Talk of the Nation, Why Operation Fast and Furious Failed, NPR (June 12, 2012), https://www.npr.org/2012/06/21/155513757/why-operation-fast-and-furious-failed [https://perma.cc/L5XF-Y923].}

In addition, the Mexican federal government is currently suing the United States’ eleven primary firearm manufacturers, claiming they facilitated the provision of weapons to various criminal groups in Mexico.\footnote{See Mary Beth Sheridan & Kevin Sieff, Mexico Sues U.S.-Based Gunmakers Over Flow of Arms Across Border, WASH. POST (Aug. 4, 2021), https://www.washingtonpost.com/world/the_americas/mexico-guns-us-lawsuit/2021/08/04/181f1dbaa-f52d-11eb-a636-18cac59a98dc_story.html [https://perma.cc/UXP6-G3EA].} As the plaintiff, the Mexican government claims that around half a million weapons have crossed their border with the United States illegally.\footnote{See id.}

The United States also has security topics to raise with Mexico. For example, the U.S. has noted publicly that Mexico is the main supplier of fentanyl in its territory.\footnote{Veronica Stracqualursi, US Report Finds Mexico Is Dominant Source of Fentanyl Trafficked Into US, CNN (Feb. 8, 2022), https://edition.cnn.com/2022/02/08/politics/fentanyl-commission-report/index.html [https://perma.cc/VPN6-YG8W].} Together, these migration and security topics will provide North American leaders with much to talk about in the upcoming international fora.

IV. The USMCA: Fulfilling Objectives?

A. Background


Two years after its entry into force, some sectors affected by the Treaty have received special attention, like the energy and automotive sectors. But other considerations have not received special international attention. This
article analyzes those areas that have enjoyed less media prominence, namely investment and gender parity.

B. INVESTMENT

The Treaty has offered significant opportunities for international companies to expand their operations in Mexico, even in the face of negative factors such as the pandemic and increasing global supply chain costs.60 Accordingly, Mexico has been an attractive option for Asian and European companies, offering essential benefits such as a wide network of trade agreements, well-developed infrastructure, and various tax incentives.61 The Treaty also allows nearshoring, through which foreign companies can operate in Mexico but remain foreign—thereby benefitting from Mexico’s geographic position, while still complying with the Treaty’s strict rules of origin.62

Undoubtedly, the Treaty has encouraged direct investment in Mexico, a major objective of Mexico in signing the Treaty.63 During the first half of 2022, for example, direct investment in Mexico increased twelve percent from the first half of 2021,64 compared to a 4.2 percent increase in direct investment in Mexico from 2018 to 2019.65

C. GENDER PERSPECTIVE

It is not widely known that the Treaty includes innovative gender parity measures. In Chapter 23, the Parties established the objective of eliminating discrimination in employment and occupation, as well as the goal of promoting equality of women in the workplace.66 And in Chapter 25, the Treaty sets out the intention of the Parties to collaborate on different activities to promote small and medium enterprises owned by underrepresented groups.67

61. See id.
62. See id.
63. See id.
66. See Agreement between the United States of America, the United Mexican States, and Canada, supra note 32, art. 23.1.
67. Id. at art. 25.1.
Despite these lofty aims, now two years after the Treaty’s entry into force, questions remain about what has been achieved.\(^\text{68}\) In Mexico, between September 2020 and September 2022, the economic participation rate of women has increased; women comprise 45.32 percent of the Mexican workforce, up from the 40.18 percent they represented two years ago. But there is still a clear gender gap, as even today, a woman earns eighty-five pesos for every one hundred pesos earned by a man on average.\(^\text{69}\) Indeed, there remain barriers of inequality for the participation and permanence of women in the labor market.

V. Immigration

The U.S. immigration regime is not known for being particularly helpful or inviting for foreign-born entrepreneurs.\(^\text{70}\) But recent changes in U.S. policies have vastly improved options for Mexican nationals seeking visas and green cards to expand their careers and businesses within the U.S., creating immigration options that are much more useful for long-term career growth and stability in the U.S.\(^\text{71}\)

A. E-Visas for US Investment & International Trade

In August 2020, the validity of E-visas granted to Mexican people based on international trade (E-1) or investment in a U.S. business (E-2) was extended from one to four years.\(^\text{72}\) Both visa types were created under NAFTA and continue under the Treaty, though the extension from one to four years reflected a change in U.S. policy.\(^\text{73}\)

Although Mexican entrepreneurs have long been able to enjoy both the E-1 International Trade visa and the E-2 Investor visa, both previously only valid for one year, many chose not to apply for these visas because the arduous task of applying for the visa and then moving their life and family to a new country were not worth only a year of guaranteed immigration.

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\(^{68}\) See #MujerEnLaEconomía, Mexican Inst. For Competitiveness (IMCO), [https://imco.org.mx/monitor/mujeres-en-la-economía/][https://perma.cc/D4RR-UBN8].

\(^{69}\) See id.

\(^{70}\) See Amy Feldman, *Why the U.S. is Losing Immigrant Entrepreneurs to Other Nations*, FORBES (June 3, 2022) [https://www.forbes.com/sites/amyfeldman/2021/06/03/why-the-us-is-losing-immigrant-entrepreneurs-to-other-nations/?sh=13d5e59f50b][https://perma.cc/C74Z-S2L2].


\(^{72}\) Id.

\(^{73}\) Each party named the agreement differently, with the U.S. calling it the USMCA and Mexico calling it the Tratado entre México, Estados Unidos y Canadá (T-MEC). See Agreement between U.S., Mexico, and Canada, supra note 32.
status. But today, Mexican nationals with approved E-visas can now enjoy four years in the U.S. before renewal.

The U.S. Consulate in Ciudad Juarez, Chihuahua was initially the only place in Mexico that would process E-visas. But in January 2021, the U.S. Embassy in Mexico City began processing E-visas as well. The ability of Mexican entrepreneurs to process their visas in the nation’s capital is a welcome change that aligns more closely with the professional reality of most E-2 applicants, who often come from central Mexico.

B. TN Visa for Mexican Professionals

A TN visa is available to Mexicans whose profession appears on the NAFTA professionals list and who receive a qualifying job offer from a U.S. company. The TN visa can often be faster and easier to acquire than an E-visa, such that many Mexican entrepreneurs are re-examining their intersecting professional and immigration options.

Much like the E-visa, TN visas were historically available in one-year increments, making them a tedious and risky option for both U.S. employers, understandably hesitant to hire an employee who may not be able to work more than a year, and for employees, hesitant to quit their jobs, uproot their entire lives, and move under a one-year visa with no guarantee of renewal.

On June 15, 2022, the U.S. Department of State announced that all newly issued TN visas would be valid for up to four years for Mexican professionals. In the two years since the E-visa validity period was increased, my practice has seen a huge increase in interest for E-visas for Mexican entrepreneurs. And a similar trend has emerged for TN visas in the short time that the four-year term has been in effect.

75. See id.
77. See id.
80. See 8 C.F.R. § 214.2(b)(4).
C. GREEN CARDS FOR MEXICAN ENTREPRENEURS: SPEEDY OPTIONS

Self-sponsoring a green card is never a simple process, but the experience becomes even more tenuous and frustrating when long processing times are involved.82 Mexican entrepreneurs have extremely limited options for self-sponsoring a green card.83 Two popular options many entrepreneurs use include (1) the EB-1C Green Card for multinational managers84 and (2) the EB-2 Green Card with a National Interest Waiver.85 Until recently, neither of these self-sponsored green card options could be filed with premium processing, meaning that adjudication could take two years or longer.86

But in June 2022, USCIS announced that both the EB-1C and EB-2 National Interest Waiver categories would now be eligible for premium processing.87 The program is being rolled out in phases, starting with already filed cases which may be upgraded to premium processing. Once premium processing is selected, USCIS must respond within forty-five calendar days.88 While this policy change will not resolve the entire case in one to two months, the selection of premium processing at this stage can reduce the processing times by several years for Mexican entrepreneurs seeking to self-sponsor their own green cards in the EB-1C or EB-2 National Interest Waiver categories.89

Being able to receive a quick answer instead of waiting in limbo for years is a huge benefit, not just to Mexican entrepreneurs but also to the U.S. economy and U.S. workers, who benefit from their activities in the country.90

88. See id.
89. See id.
D. U.S. IMMIGRATION POLICY – AN EVER-CHANGING LANDSCAPE

While U.S. immigration law is not always agile for the foreign-born entrepreneur, Mexican nationals have benefited from a host of recent policy changes that make the U.S. a more inviting and productive environment for business growth. These changes will no doubt serve to further strengthen the important business and cultural ties between the U.S. and Mexico, by empowering Mexican entrepreneurs to grow their careers and their businesses in the U.S.

VI. President Andrés Manuel Obrador’s Proposed Electoral Reform

A. BACKGROUND

Mexico’s democracy stagnated during most of the past century, due to a single-party rule that lasted for seventy-one years until an opposition party finally gained the presidency in 2000.91 The democratic transition that led to the current electoral system was the result of several far-reaching electoral constitutional amendments.92 In this context, Mexican President Andrés Manuel López Obrador (AMLO) recently proposed aggressive electoral modifications to amend the Mexican Constitution (CPEUM).93 This article will analyze some of the most relevant and controversial points of these proposed reforms.

B. NATIONAL ELECTORAL INSTITUTE (INE) AND THE FEDERAL ELECTORAL TRIBUNAL (TEPJF)

Today, the Instituto Nacional Electoral (INE)94 is the autonomous institution in charge of organizing elections in Mexico, which it does along with local agencies (Organismos Públicos Locales or OPL) in each state throughout the country.95 The general council of the INE is its governing body and is composed of ten members and a president, each of whom is
nominated, evaluated by an interdisciplinary council, and elected by a two-thirds majority for nine-year term.\textsuperscript{96}

AMLO’s amendments propose to replace INE with a new Instituto Nacional Electoral y de Consultas (INEC).\textsuperscript{97} INEC would be composed of members according to the following procedure: every six years the President, Congress, and Supreme Court nominate twenty candidates each, among which, only seven shall be elected by popular vote.\textsuperscript{98} The seven members of the Federal Electoral Tribunal’s Upper Chamber—\textsuperscript{99} an electoral judiciary body—would be selected in the same manner.\textsuperscript{100} In addition, the reform would eliminate each of the state OPLs, instead centralizing electoral power in the federal authority.\textsuperscript{101}

C. HOUSE OF REPRESENTATIVES, SENATE, LOCAL LEGISLATURES, AND MUNICIPAL AUTHORITIES

Mexico has a bicameral parliament\textsuperscript{102} made up of two chambers: the Chamber of Deputies, composed of 500 members\textsuperscript{103} (300 elected by relative majority\textsuperscript{104} and 200 elected by proportional representation\textsuperscript{105}), and the Senate, composed of 128 members\textsuperscript{106} (sixty-four elected by relative majority, thirty-two elected by first minority, and thirty-two by proportional representation).\textsuperscript{106}

The constitutional amendment proposed by AMLO reduces the number of deputies from 500 to 300, reduces the number of senators from 128 to ninety-six, and removes all members of Congress elected by relative

\textsuperscript{96} See id.
\textsuperscript{101} See Mariscal et al., supra note 98.
\textsuperscript{102} Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 51–56, 60, 63, 116, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 18-11-2022.
\textsuperscript{103} Id. art. 50.
\textsuperscript{104} Id. art. 52.
\textsuperscript{107} Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 56, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 18-11-2022.
majority—instead assigning proportional representation. \(^\text{109}\) In addition, AMLO’s proposal reduces the number of members allowed in the local legislatures and city councils. \(^\text{110}\)

D. **Political Parties**

AMLO’s proposal maintains public financing for only the campaign expenses of political parties. \(^\text{111}\) But other ordinary expenses would have to be covered by supporters and other funding sources. \(^\text{112}\)

The proposals also make changes to advertising allocation for political parties. Today, each radio station and television channel airs forty-eight minutes of state content per day. \(^\text{113}\) These forty-eight minutes are distributed in the following manner: INE receives seven, eighteen, or twenty-four minutes, depending on whether it is an ordinary period, a pre-campaign period, or inter-campaign or campaign period; the remaining time is given to political parties. \(^\text{114}\) Under the proposed reforms, the state will grant electoral authorities and political parties only thirty minutes per day in each radio station and television channel, of which only three minutes will be distributed to the electoral authorities, the rest given to the political parties. \(^\text{115}\)

E. **Conclusions**

The ruling political party, MORENA or Movimiento de Regeneración Nacional, founded by AMLO, controls the executive power, twenty of thirty-two state governorships, 50.2 percent of the Chamber of Deputies, 47.24 percent of the Senate, and has appointed four of eleven justices on the Supreme Court. It is, therefore, highly likely that AMLO’s proposed amendments would allow MORENA to consolidate political control of the country, gaining control of the electoral authorities and processes. Additionally, the elimination of the OPL—and centralization of all electoral power—risks jeopardizing the efficiency and impartiality of local electoral processes. \(^\text{116}\)

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111. Id. art. 41, ¶¶ I-III. See Mariscal et al., *supra* note 98.

112. See id.


114. See id.

115. See Echeverría, *supra* note 100.

116. See *Historia Morena, MORENA: LA ESPERANZA DE MÉXICO*, https://morenasonora.org.translate.goog/historia-morena/?_x_tr_sl=ES&_x_tr_tl=EN&_x_tr_hl=EN&_x_tr_pto=SC.
As for the amendments related to financing, such reforms would disproportionately affect opposition parties, forcing them to find other non-public sources of financing. And with the changes in radio and television air-time rules, INE would be inhibited in its ability to educate the public about democracy-building initiatives.\textsuperscript{117}

Given Mexico's history of hampered democracy, AMLO's proposed reforms should be viewed with skepticism. Otherwise, we run the risk of returning to the past that our country fought so hard to overcome.

\section{VII. Use of the Mexican Armed Forces and Executive Orders}

\subsection*{A. Introduction}

Mexico is known for its “mañana” philosophy: “all that can be done tomorrow should wait until tomorrow.” While this philosophy may be appealing to the millions of tourists that visit Mexico every year to relax, it is a heavy burden on productivity and the timely execution of projects. In this context, the Mexican armed forces are unique in their discipline and ability to execute.

This piece discusses some of the tasks that previous federal administrations have conferred upon the Mexican Army (Ejército Mexicano), the Mexican Navy (Marina Armada de México), and the Mexican Air Force (Fuerza Área) (jointly referred to herein as the “Mexican Armed Forces”). This piece also discusses additional functions assigned to the Mexican Armed Forces by the current federal administration through constitutional amendments, legal reform, and executive orders.

\subsection*{B. Deployment of the Mexican Armed Forces by Previous Administrations}

Under the Mexican Constitution, the President is the Commander in Chief of the Mexican Armed Forces, which can be deployed for preserving internal security and for external defense.\textsuperscript{118} The Army and Air Force fall under the Ministry of National Defense (Secretaría de la Defensa Nacional), while the Navy exists in its own separate naval agency (Secretaría de Marina).\textsuperscript{119}
The administrations of President Felipe Calderon (2006-2012) and of President Enrique Peña Nieto (2012-2018) deployed the Mexican Armed Forces to conduct police functions and fight organized crime in a direct confrontation with drug cartels. In doing so, these administrations relied on binding 1996 precedent from the Mexican Supreme Court, which upheld the constitutionality of the Mexican Armed Forces supporting the internal security role of police forces.

C. DESIGN OF AN INSTITUTIONAL FRAMEWORK FOR CONTINUED DEPLOYMENT

On May 24, 2022, President Andres Manuel López Obrador issued an executive order conferring authority over customhouses to the Mexican Armed Forces: the Mexican Army now enjoys control over inland customhouses and the Navy over those in ports. This executive order aligns with the legal reform of Mexican Ports Law, which took effect in June 2021 and turned over all customs authority at ports to the Mexican Navy; before this law, this responsibility belonged to the Ministry of Communications and Transportation. The rationale behind this increased authority granted to the Mexican Armed Forces was purportedly security, citing the increasing influx of synthetic drugs and chemical precursors for supplying the domestic and U.S. drug markets.

More recently, on October 12, 2022, amendments to the Constitution were passed to provide for the deployment of the Mexican Armed Forces to participate in internal security for the next nine years, i.e., through 2031. Again, the stated underlying rationale was security: specifically, to allow for the full-fledged development of the structures, capabilities, and territorial outreach of the National Guard (Guardia Nacional)—a nationwide police force created in 2019 by the Mexican Congress and a majority of state
legislatures; the National Guard is formally directed by non-military civil servants, though its ranks were sourced from the Mexican Armed Forces.126

D. BEYOND INTERNAL SECURITY

Although the stated goals of the expanded power of the Mexican Armed Forces center on public security, the current federal administration has expanded far beyond this underlying rationale. President López Obrador’s administration has used the Mexican Armed Forces in a host of government-sponsored projects that are far removed from internal security.127 He has charged the Mexican Army with the construction and operation of a new airport for serving Mexico City, the construction of the Maya Train project in the Yucatan Peninsula, and the construction of a railroad bypass in Nogales, Sonora.128

The intervention of the Mexican Armed Forces in these arenas inhibits transparency.129 Federal public works and procurement laws do not require public tenders for projects run by the Mexican Armed Forces, so contracts may be awarded directly to the Mexican Armed Forces.130 And the involvement of the Mexican Armed Forces leads to the non-public classification of those projects for the purposes of freedom of information laws.131 In line with this, in November 2021, President López Obrador issued an executive order allowing for the non-public classification of federal infrastructure projects.132

E. CONCLUSIONS

The debate about “militarization” in Mexico has become very heated in recent months.133 At the heart of the debate is a delicate balancing act of public policy: while blazing drug wars may warrant the intervention of the

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126. See id.
127. See id.
129. See Mexico: Extending Military Policing Threatens Rights, supra note 125.
Mexican Armed Forces in internal security, the use of the Armed Forces in government-sponsored projects may be more questionable.\textsuperscript{134} In the latter function, the opacity of information and placing the Mexican Armed Forces in the way of corruption may not ultimately counter the reputation of the Mexican Armed Forces for getting the job done.\textsuperscript{135}

### VIII. Ayotzinapa: Developments in the Search for Truth and Justice

#### A. Background

The disappearance of forty-three students from the Ayotzinapa Rural Teachers’ College in Iguala, Guerrero has been one of the most notorious atrocities in Mexico’s history.\textsuperscript{136} Eight years after the tragedy, the students’ families have been unable to access truth and justice despite wide national and international attention.\textsuperscript{137} This article aims to analyze the progress achieved in the case so far.

In 2015, just four months after the disappearance, the administration of former President Peña Nieto offered a “historical truth” of the case, affirming that the students were killed after being mistaken as cartel members and subsequently incinerated at a trash dump.\textsuperscript{138} Said “truth” was later scientifically disproven by independent analyses\textsuperscript{139} and dismantled by a federal court ruling,\textsuperscript{140} which concluded that the investigation had been neither effective nor impartial.\textsuperscript{141}

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\textsuperscript{134}. See id.
\textsuperscript{135}. See id.
\textsuperscript{137}. See id.
\textsuperscript{141}. See id.
B. RECENT DEVELOPMENTS

When President Andrés Manuel López Obrador took office in 2018, he vowed to resolve the case, creating the Commission for Truth and Access to Justice in the Ayotzinapa Case (COVAJ), promising to finally show results.142

With few developments and just two years left in government, the investigation advanced in early 2022 with the discovery of several communications purportedly sent in 2014 by individuals involved in the disappearance, including members of criminal organizations, government officials, and military officials.143 In June 2022, President López Obrador announced a soon-to-be published definitive report on what transpired the night of the disappearance.144 The announcement followed the issuance of dozens of arrest warrants. Among those arrested were military personnel, indicating progress.145

Later in August 2022, President López Obrador released the findings of the COVAJ investigation, which concluded a “crime of state,” confirming that government authorities from different agencies and levels, including the Mexican Army, conspired with criminal organizations in the disappearance.146 The report also determined that the Peña Nieto administration, and especially its attorney general Jesús Murillo Karam, were involved in the fabrication of the so-called “historic truth,”147 pointing to Murillo Karam as the highest-profile individual responsible for the forced disappearance.148

147. See id.
148. See id.
In the weeks that followed, Murillo Karam was arrested and over eighty additional arrest warrants were issued. These actions reflected real progress and showed that the students’ families were closer to truth and justice than ever.

But the case against Murillo Karam was eventually dismissed and more than a dozen arrest warrants canceled, citing deficient evidence. A team of international investigators also questioned the authenticity of the communications that laid at the center of the COVAJ report. Even then, prosecutors claimed to have enough authentic evidence supporting their conclusions.

In a country where justice is often used as a political tool and after eight years of uncertainty, the students’ families need closure and not just propaganda ahead of the general elections in less than two years. A lack of due diligence on the part of Mexican authorities leaves victims, their families, and the public with the perception that the government tolerates or is complicit in the disappearances, thereby contributing to a climate of pervasive impunity. As such, success can only be achieved through an effective, impartial, and comprehensive investigation that provides access to truth and justice.

IX. Protection of Environmental Defenders in Mexico

According to environmental watchdog Global Witness, Mexico was the deadliest country in the world for environmental activists in 2021. Fifty-
four environmental or land activists were killed in Mexico during the year—
representing twenty-five percent of the 200 activists killed worldwide. 155
Mexico’s ratification of the Escazú Agreement, and its subsequent entry into
force in April 2021, provides a mechanism for protecting the rights of
environmental defenders in the coming years. 156

A. CASE STUDY: AYOTITLÁN COMMUNITY

This year witnessed continued violence against land defenders in the
Ayotitlán Community in Jalisco, Mexico. A decades-old dispute between the
Ayotitlán Community and the Benito Juárez Peña Colorada mining
operation over indigenous communal lands has led to repeated
confrontations, disappearances, and violence, including during this year.157
In April 2021, for example, José Santos Isaac Chávez, an indigenous leader,
lawyer, and vocal opponent of the Peña Colorada mine, was found
murdered. 158 Other members of the Ayotitlán Community report that they
have experienced forced disappearances, intimidation, death threats, illegal
arrests, and deprivation of liberty in retaliation for environmental
activism. 159 Community members also report that other defenders have
been killed. 160 The ongoing violence creates an atmosphere of fear that
chills defenders’ environmental protection efforts.

The local government has not taken action to investigate or bring to
justice the perpetrators of violence against the Ayotitlán Community. 161 Nor
has Mexico’s federal Mechanism for the Protection of Human Rights
Defenders and Journalists, which receives requests for protection, been able
to protect the defenders. 162 As the United Nations Special Rapporteur on
the Situation of Human Rights Defenders recognized in March 2021,
impunity for killings is a key driver for additional murders. 163 Defenders
believe that the local government’s failure to act is driven in part by its

155. See id.
156. See id.
157. See, e.g., Hines, supra note 154; Juan Carlos Flores & Juan Carlos G. Partida, Chocan
158. Hines, supra note 154.
159. See, e.g., Comunicado de Prensa DGC/116/2021, LA COMISIÓN NACIONAL DE LOS
tos/2021-04/COM_2021_116.pdf [https://perma.cc/K8U6-QE6W].
160. See id.
161. See Hines, supra note 154; See, e.g., Comunicado de Prensa DGC/116/2021, supra note 159.
162. Cf. Mecanismo de Protección para Personas Defensoras de Derechos Humanos y Periodistas,
GOBIERNO DE MEX., https://www.gob.mx/defensorasyperiodistas [https://perma.cc/58FW-
V4FC] (last visited Nov. 22, 2022).
Killings of Human Rights Defenders Remains a Key Driver for More Murders, Special
Rapporteur on the Situation of Human Rights Defenders Tells Human Rights Council (Mar. 5,
defenders-remains-key-driver-more-murders#:~:text=Impunity%20for%20killings%20
connections with organized crime—the Jalisco Nueva Generación Cartel has reportedly established an interest in illegal mining in the area, which contributes to the violence against the indigenous community.

Corruption is known to be prevalent in Mexico, which Transparency International ranked 124th out of 180 countries on its annual corruption index.

Given the reports of violence and the local failures to act, in April 2021, Mexico’s National Human Rights Commission (CNDH) urged the National Guard to safeguard the life, security, and wellbeing of the Ayotitlán land defenders.

B. Escazú Agreement

On January 22, 2021, Mexico acceded to the world’s first legally binding treaty to guarantee the rights of environmental defenders. The Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean (known as the Escazú Agreement) subsequently entered into force on April 22, 2021—International Earth Day. Secretary-General of the United Nations António Guterres lauded the agreement, emphasizing it aims “to guarantee the rights of every person to a healthy environment and to sustainable development.”

A key component of the Escazú Agreement is its protection for environmental defenders. Article 9 of the agreement obligates Mexico and the other party states to “guarantee a safe and enabling environment . . . so that [environmental defenders] are able to act free from threat, restriction, and insecurity.” This article also requires party states to “take adequate and effective measures to recognize, protect and promote all the rights of human rights defenders in environmental matters” and “take appropriate,
effective and timely measures to prevent, investigate and punish attacks, threats or intimidations against environmental defenders. 

Civil society groups have called upon the Mexican government to promptly and effectively implement the protections of the Escazú Agreement.