



The YEAR IN REVIEW

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International Legal Developments Year in Review: 2022

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Mexico

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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

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1. See Kate Brown de Vejar, et al., *Mexican Supreme Court Dismisses Unconstitutionality Action Against Electricity Industry Law Reform*, DLA PIPER (Apr. 7, 2022), <https://www.dlapiper.com/en/insights/publications/2022/04/mexican-supreme-court-dismisses-unconstitutionality-action-against-electricity-industry-law-reform> [https://perma.cc/5N4Y-5QRG].

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

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independent power producers, increasing CFE's overall market participation.³

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.

4. *See id.* The CFE's energy production relies primarily on hydroelectric and fossil fuel sources whereas the deprioritized independent producers were relying on renewables such as wind and solar energy. Critics have similarly argued that the shift towards fossil fuels and CFE-control of the electricity sector violates Mexico's obligations under the USMCA. *See* Oscar Lopez, *Mexico Sees Its Energy Future in Fossil Fuels, Not Renewables*, N.Y. TIMES (Aug. 19, 2022), <https://www.nytimes.com/2022/08/17/world/americas/mexico-president-renewable-energy.html?searchResultPosition=6> [<https://perma.cc/G28L-DUTL>]; Rafael Llano et al., *Energy Investors Face Mexico Risks in the Electricity and Lithium Sectors*, WHITE & CASE (July 19, 2022), <https://www.whitecase.com/insight-alert/energy-investors-face-mexico-risks-electricity-and-lithium-sectors> [<https://perma.cc/9QNF-PPT7>].

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

6. *See id.*

7. *See* Dave Graham, *Mexico's Top Court Upholds Changes to Power Law in Win for President*, REUTERS (Apr. 7, 2022), <https://www.reuters.com/world/americas/mexico-supreme-court-upholds-key-element-change-power-law-2022-04-07/> [<https://perma.cc/36N2-9GZ9>].

8. *See* Oscar Lopez, *Mexico Sees Its Energy Future in Fossil Fuels, Not Renewables*, N.Y. TIMES (Aug. 19, 2022), <https://www.nytimes.com/2022/08/17/world/americas/mexico-president-renewable-energy.html?searchResultPosition=6> [<https://perma.cc/G28L-DUTL>].

9. *See* César Arellano García, *Juez Gómez Fierro Concede Amparo Contra Ley de la Industria Eléctrica*, LA JORNADA (July 25, 2022), <https://www.jornada.com.mx/notas/2022/07/25/politica/juez-gomez-fierro-concede-amparo-al-cemda-contra-lie/> [<https://perma.cc/54YH-9SMN>].

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rest of a citizen's constitutional rights.¹⁰ Article 19 requires that judges impose “automatic preventive detention” on all persons accused of specific crimes, including some that are nonviolent.¹¹ 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.¹²

Nonetheless, in September 2022, some of the justices opined that the Court lacks the authority to nullify Article 19.¹³ 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.¹⁴ The Court is likely to revisit the matter soon, as a new proposal is set to be introduced.¹⁵

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.¹⁶ The resolution explicitly

10. See Beatriz Guillen, *La Suprema Corte Retira sus Proyectos Sobre la Prisión Preventiva Oficiosa*, EL PAÍS (Sept. 8, 2022), <https://elpais.com/mexico/2022-09-08/la-suprema-corte-retira-sus-proyectos-sobre-la-prision-preventiva-oficiosa.html> [<https://perma.cc/EPL9-WVT9>]; Acción de Inconstitucionalidad 130/2019 y su Acumulada 136/2019, https://www.scjn.gob.mx/sites/default/files/proyectos_resolucion_scjn/documento/2022-08/AI%20130-2019%20Proyecto.pdf [<https://perma.cc/NJX4-47HD>].

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.).

12. See Cody Copeland, *Mexico Supreme Court Justice Proposes New Reform to Mandatory Pretrial Detention*, COURTHOUSE NEWS SERVICE (Oct. 25, 2022), <https://www.courthousenews.com/mexico-supreme-court-justice-proposes-new-reform-to-mandatory-pretrial-detention/> [<https://perma.cc/PM7H-778K>]; Beatriz Guillén, *La Suprema Corte Aplaza la Decisión Final Sobre la Prisión Preventiva Oficiosa en Pleno Pulso con el Gobierno*, EL PAÍS (Sept. 6, 2022), <https://elpais.com/mexico/2022-09-06/la-decisiva-sesion-sobre-la-prision-preventiva-oficiosa-mantiene-el-pulso-del-gobierno-con-la-suprema-corte.html> [<https://perma.cc/88X2-7LRY>]; Press Release, U.N. Human Rights Office of the High Comm'r, Mexico Should Overturn Mandatory Pre-Trial Detention: UN Experts (Sept. 5, 2022), <https://www.ohchr.org/en/press-releases/2022/09/mexico-should-overturn-mandatory-pre-trial-detention-un-experts> [<https://perma.cc/PD85-3Z4C>].

13. See Cody Copeland, *Mandatory Pretrial Detention Ruling Revives Questions Over Power of Mexico Supreme Court*, COURTHOUSE NEWS SERVICE (Sept. 6, 2022), <https://www.courthousenews.com/mandatory-pretrial-detention-ruling-revives-questions-over-power-of-mexico-supreme-court> [<https://perma.cc/K9LK-Y5NG>].

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:

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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.¹⁷ The Court also held that such checkpoints violate a person's constitutional right to free movement and travel through Mexico—regardless of nationality.¹⁸

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.¹⁹ 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).²⁰

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).²¹ The U.S. and Canada both claimed that this preferential treatment harms their interests in Mexico.²²

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

Primera Sala, Comunicado de Prensa No. 184/2022 (May 19, 2022), <https://www.internet2.scjn.gob.mx/red2/comunicados/noticia.asp?id=6906> [<https://perma.cc/CE3K-A5SP>] [hereinafter SCJN Immigration Checkpoint Press Release].

17. *See id.*; Tyler Mattiace, *Mexico's Supreme Court Bans 'Random' Immigration Checks*, HUM. RTS. WATCH (May 26, 2022), <https://www.hrw.org/news/2022/05/26/mexicos-supreme-court-bans-random-immigration-checks> [<https://perma.cc/7JAY-29HN>].

18. *See* SCJN Immigration Checkpoint Press Release, *supra* note 16.

19. *See* Press Release, Office of the U.S. Trade Representative, United States Requests Consultations Under the USMCA Over Mexico's Energy Policies (July 20, 2022), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/united-states-requests-consultations-under-usmca-over-mexicos-energy-policies-0> [<https://perma.cc/75TP-BTES>]; *see also* Statement by Minister Ng on Canada launching Canada-United States-Mexico Agreement Consultations on Mexico's New Energy Policies (July 21, 2022); <https://www.canada.ca/en/global-affairs/news/2022/07/statement-by-minister-ng-on-canada-launching-canada-united-states-mexico-agreement-consultations-on-mexicos-new-energy-policies.html> [<https://perma.cc/36XZ-44CG>].

20. *See id.*

21. *See generally id.*

22. *Id.*

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distribution and use.²³ 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.²⁴ 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.²⁵

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.²⁶ 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 USMA.²⁷

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.²⁸ 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.²⁹

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.³⁰ Additionally, Mexico granted an extension for complying with

23. See Llano et. al, *supra* note 5.

24. See Ley de la Industria Eléctrica, Diario Oficial de la Federación [DOF] 11-08-2014, últimas reformas DOF 11-05-2022.

25. See Press Release, Secretaría de Energía, En la tercera Subasta Eléctrica Mexicana se Obtuvo uno de los Precios más Bajos Internacionalmente: PJC, Boletín de prensa 111 (Nov. 22, 2017), <https://www.gob.mx/sener/prensa/en-la-tercera-subasta-electrica-mexicana-se-obtuvo-uno-de-los-precios-mas-bajos-> [<https://perma.cc/3ZBD-7GRB>].

26. 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; see also Llano et. al, *supra* note 5.

27. See Press Release, Office of the U.S. Trade Representative, United States Requests Consultations Under the USMCA Over Mexico's Energy Policies (July 20, 2022), <https://ustr.gov/about-us/policy-offices/press-office/press-releases/2022/july/united-states-requests-consultations-under-usmca-over-mexicos-energy-policies-0> [<https://perma.cc/75TP-BTES>].

28. See David E. Bond, *United States and Canada Request Consultations Over Mexico's Energy Policies Under USMCA*, WHITE & CASE (July 20, 2022), <https://www.whitecase.com/insight-alert/united-states-and-canada-request-consultations-over-mexicos-energy-policies-under> [<https://perma.cc/9S72-YS26>].

29. See Jon Martín Cullell, *Avisos Ignorados y Trabas Constantes: las Claves tras la Disputa Energética Entre EE UU y México*, EL PAÍS (July 21, 2022), <https://elpais.com/mexico/2022-07-22/avisos-ignorados-y-trabas-constantas-las-claves-tras-la-disputa-energetica-entre-ee-uu-y-mexico.html> [<https://perma.cc/5TR3-L8GF>].

30. See ACUERDO de la Comisión Reguladora de Energía que Modifica la Norma Oficial Mexicana NOM-016-CRE-2016, Especificaciones de Calidad de los Petrolíferos, con

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certain diesel-sulfur-content regulations only to PEMEX, a move disputed by the United States.³¹

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.³² 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.³³

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.³⁴

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.³⁵ 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.³⁶ The solution can include eliminating the measure and establishing compensation or enacting any other solution that the countries agree will settle the conflict.³⁷

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

Fundamento en el Artículo 51 de la Ley Federal Sobre Metrología y Normalización, Diario Oficial de la Federación [DOF] 26-06-2017, https://dof.gob.mx/nota_detalle.php?codigo=5488031&fecha=26/06/2017#gsc.tab=0; Office of the United States Trade Representative, *supra* note 27.

31. 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/ObtenerResolucion/?id=YzQ0YmNmYmMtMzEyYS00ZDI5LTE5NjYzLTg5NTZm%20NjFIOTg4YQ==> [<https://perma.cc/U62F-PYPK>]; Office of the U.S. Trade Representative, *supra* note 27.

32. See Agreement between the United States of America, the United Mexican States, and Canada, July 1, 2020, art. 31.4, <https://ustr.gov/trade-agreements/free-trade-agreements/united-states-mexico-canada-agreement/agreement-between> [<https://perma.cc/LW6G-U95C>].

33. *Id.* art. 31.4, ¶ 6(a).

34. *Id.* art. 31.6.

35. *Id.* art. 31.17.

36. *Id.* art. 31.18.

37. *Id.*

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measures, either in the affected sector or in any other sector, and until a solution is found.³⁸ Any trade dispute with the United States and Canada—critical Mexico trading partners—would have serious economic consequences for Mexico.³⁹

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 2021.⁴⁰ The 2022 meeting is to be hosted by Mexican President Andrés Manuel López Obrador in Mexico City—likely in late 2022.⁴¹ 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.⁴²

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.⁴³

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.⁴⁴ 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 North American Leaders' Summit (Jan. 10, 2023), <https://www.whitehouse.gov/briefing-room/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, 2022), <https://edition.cnn.com/2022/10/22/politics/border-encounters-migrants-2022/index.html> [<https://perma.cc/WU8P-YQP8>].

44. See *id.*

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March 2020, at the start of the COVID-19 pandemic, known as “Title 42.”⁴⁵ 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.⁴⁶

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.⁴⁷ Families of migrants have been separated indefinitely.⁴⁸ Discriminatory policies have run rampant.⁴⁹ And the chaos at the border has exacerbated cartel violence and insecurity.⁵⁰ 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.⁵¹

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.⁵² 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

45. See Suspension Of Entries and Imports from Designated Places to Prevent Spread of Communicable Diseases, 42 U.S.C. § 265; Uriel J. Garcia, *Here's What You Need to Know About Title 42, The Pandemic-Era Policy That Quickly Sends Migrants to Mexico*, TEX. TRIB. (Apr. 29, 2022), <https://www.texastribune.org/2022/04/29/immigration-title-42-biden/> [https://perma.cc/7LC9-VVEJ].

46. See Suspension of Entries and Imports from Designated Places to Prevent Spread of Communicable Diseases, 42 U.S.C. § 265.

47. See *A Guide to Title 42 Expulsions at the Border*, AM. IMMIGR. COUNCIL (Oct. 15, 2021), <https://www.americanimmigrationcouncil.org/research/guide-title-42-expulsions-border> [https://perma.cc/B4JC-9F8H].

48. *Id.*

49. See *id.*

50. See *id.*

51. See Taylor Bayly, *In Focus: Migrants Languish in Mexico's Chaotic Immigration System*, CRONKITE NEWS (Sept. 22, 2022), <https://cronkitenews.azpbs.org/2022/09/22/tapachula-migrants-protest-mexico-immigration-policies/> [https://perma.cc/3NVU-SSZ5].

52. See Nathaniel Parish Flannery, *Why is Mexico's Security Strategy Failing?*, FORBES (Sept. 27, 2022), <https://www.forbes.com/sites/nathanielparishflannery/2022/09/27/why-is-mexicos-security-strategy-failing/?sh=61a31fc76ecd> [https://perma.cc/X8YX-YYSM].

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trafficking of weapons that would later end up in the hands of drug traffickers; however, the operation was ultimately a failure.⁵³

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.⁵⁴ As the plaintiff, the Mexican government claims that around half a million weapons have crossed their border with the United States illegally.⁵⁵

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.⁵⁶ 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

Effective July 1, 2020, the United States-Mexico-Canada Agreement (USMCA or the Treaty) represented a major opportunity to renegotiate the terms of the North America Free Trade Agreement (NAFTA).⁵⁷ The resulting Treaty is an instrument that aims to meet the challenges of a contemporary North American economy.⁵⁸ The successful implementation of the Treaty has required close coordination among its three signing members.⁵⁹

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

53. 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].

54. 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/2021/08/04/181fdbaa-f52d-11eb-a636-18cac59a98dc_story.html [https://perma.cc/UXP6-G3EA].

55. See *id.*

56. 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-TG8W].

57. See Andrew Chatzky et al., *NAFTA and USMCA: Weighing the Impact of North American Trade*, COUNCIL ON FOREIGN RELS. (July 1, 2020), <https://www.cfr.org/backgrounder/naftas-economic-impact> [https://perma.cc/HS97-GW9H].

58. See *USMCA Automotive Sector: Executive Summary*, U.S. DEPT. OF COM., INT'L TRADE ADMIN., <https://www.trade.gov/usmca-auto-report> [https://perma.cc/VTK4-ZYLH] (last visited May 6, 2023).

59. See Claudia Ruiz Massieu, *USMCA in 2023: Opportunities and Challenges*, BROOKINGS (Feb. 28, 2023), <https://www.brookings.edu/blog/up-front/2023/02/27/the-usmca-in-2023-opportunities-and-challenges/> [https://perma.cc/QHZ8-NSU3].

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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

60. See *México: Es Ahora Más Atractivo en el Comercio Internacional, Dice Experto del TMEC*, INVESTING.COM (Nov. 11, 2022), <https://mx.investing.com/news/economy/mexico-es-ahora-mas-atractivo-en-el-comercio-internacional-dice-experto-del-tmec-2441586> [<https://perma.cc/7R4P-4MZK>].

61. See *id.*

62. See *id.*

63. See *id.*

64. Comunicado No. 052, Secretaría de Economía, México Registra 27,511.6 Millones de Dólares de IED en el Primer Semestre de 2022, (Aug. 22, 2022), <https://www.gob.mx/se/articulos/mexico-registra-27-511-6-millones-de-dolares-de-ied-en-el-primer-semester-de-2022-312017> [<https://perma.cc/BA92-ZCC8>].

65. Comisión Nacional de Inversiones Extranjeras, Informe Estadístico Sobre el Comportamiento de la Inversión Extranjera Directa en México (2019), https://www.gob.mx/cms/uploads/attachment/file/545898/Informe_Congreso-2019-4T.pdf [<https://perma.cc/9AFP-LGTZ>].

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.

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Despite these lofty aims, now two years after the Treaty's entry into force, questions remain about what has been achieved.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.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.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.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.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.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

^{68.} See *#MujerEnLaEconomía*, MEXICAN INST. FOR COMPETITIVENESS (IMCO), <https://imco.org.mx/monitor/mujeres-en-la-economia/> [<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=13d5e59f5f0b> [<https://perma.cc/C74Z-S2L2>].

^{71.} See generally *E2 Visa: Mexicans now Eligible for Longer-Validity E2 & E1 Visas*, DAVIES & ASSOCS., LLC (Aug. 31, 2020), <https://www.usimmigrationadvisor.com/immigration-blog/e2-visa-mexicans-now-eligible-for-longer-validity-e2-e1-visas/> [<https://perma.cc/JA74-DNQT>].

^{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.

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status.⁷⁴ But today, Mexican nationals with approved E-visas can now enjoy four years in the U.S. before renewal.⁷⁵

The U.S. Consulate in Ciudad Juarez, Chihuahua was initially the only place in Mexico that would process E-visas.⁷⁶ But in January 2021, the U.S. Embassy in Mexico City began processing E-visas as well.⁷⁷ 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.⁷⁸ 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.⁷⁹

Much like the E-visa, TN visas⁸⁰ 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.⁸¹ 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.

74. See Daniel Waldron & Sanwar Ali, *E1 Visa and E2 Visa Validity Increased For Mexican Nationals*, WORKPERMIT.COM (Aug. 13, 2020), <https://workpermit.com/news/e1-visa-and-e2-visa-validity-increased-mexican-nationals-20200813> [<https://perma.cc/SWE3-U4AX>].

75. See *id.*

76. See U.S. Mission to Mex., *E-2 Visa Instruction*, U.S. EMBASSY & CONSULATES IN MEX. (May 26, 2022), <https://mx.usembassy.gov/e-2-visa-instructions/> [<https://perma.cc/68DN-XC66>].

77. See *id.*

78. See *Visas for Canadian and Mexican NAFTA Professional Workers*, U.S. DEPT. OF STATE – BUREAU OF CONSULAR AFFS., <https://travel.state.gov/content/travel/en/us-visas/employment/visas-canadian-mexican-nafta-professional-workers.html> [<https://perma.cc/PKB3-LBKK>].

79. See *TN Visas for Canadian and Mexican Entrepreneurs*, CURRAN, BERGER, & KLUDT, <https://cbkimmigration.com/employment-based-immigration/tn-visas-for-citizens-of-canada-mexico/tn-visas-for-canadian-and-mexican-entrepreneurs/> [<https://perma.cc/6M7Z-K3QP>].

80. See 8 C.F.R. § 214.2(b)(4).

81. U.S. Embassy in Mexico (@USEmbassyMex), TWITTER (June 15, 2020), <https://twitter.com/USEmbassyMEX/status/1537099451176828928> [<https://perma.cc/MAY2-7NQZ>].

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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

82. See *generally Self-Sponsored Employment Based Legal Permanent Residency*, YALE UNIV. – OFF. OF INT’L STUDENTS & SCHOLARS, <https://oiss.yale.edu/immigration/us-permanent-residence/self-sponsored-employment-based-legal-permanent-residency> [<https://perma.cc/AM86-R95J>].

83. See *Green Card for Employment Based Immigrants*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/green-card/green-card-eligibility/green-card-for-employment-based-immigrants> [<https://perma.cc/9ZT9-8A2>].

84. *Employment-Based Immigration: First Preference EB-1*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-first-preference-eb-1> [<https://perma.cc/W8LW-FT6H>].

85. *Employment-Based Immigration: Second Preference EB-2*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://www.uscis.gov/working-in-the-united-states/permanent-workers/employment-based-immigration-second-preference-eb-2> [<https://perma.cc/K922-KRZT>].

86. See *Historical National Median Processing Time (in Months) for All USCIS Offices for Select Forms by Fiscal Year*, U.S. CITIZENSHIP & IMMIGR. SERVS., <https://egov.uscis.gov/processing-times/historic-pt> [<https://perma.cc/H94R-4WWL>].

87. See U.S. CITIZEN AND IMMIGR. SERVS., <https://www.uscis.gov/forms/all-forms/how-do-i-request-premium-processing> (last visited Mar. 25, 2023) [<https://perma.cc/2BKZ-L7TK>].

88. See *id.*

89. See *id.*

90. *White House Fact Sheet: 2022 U.S.-Mexico High-Level Economic Dialogue*, THE WHITE HOUSE (Sept. 12, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/09/12/fact-sheet-2022-u-s-mexico-high-level-economic-dialogue/> [<https://perma.cc/9RYL-3C5W>]; Edward Alden, *U.S. Immigration Has Become and Elaborate Bait and Switch*, FP.COM,

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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 Andres 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

(Oct. 27, 2022), <https://foreignpolicy.com/2022/10/27/us-immigration-green-cards-biden-congress-reform-midterm-elections-india-china-canada/> [https://perma.cc/TFQ2-YELS].

91. See Valerie Wirtschafter & Arturo Sarukhan, *Mexico Takes Another Step Toward its Authoritarian Past*, BROOKINGS (Mar. 16, 2023), <https://www.brookings.edu/blog/order-from-chaos/2023/03/16/mexico-takes-another-step-toward-its-authoritarian-past/> [https://perma.cc/P5KM-CGK4].

92. This includes the 1977, 1986, 1989, 1993, 1994, 2007 and 2014 electoral amendments. See generally Constitución Política de los Estados Unidos Mexicanos, CP, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

93. Gutiérrez Luna, Sergio Carlos, "Iniciativa del Ejecutivo Federal," Gaceta Parlamentaria, vol. XXV, num. 6012-XI, 28 de abril 2022.

94. See Constitución Política de los Estados Unidos Mexicanos, CPEUM, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

95. See *id.*

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nominated, evaluated by an interdisciplinary council, and elected by a two-thirds majority for nine-year term.⁹⁶

AMLO's amendments propose to replace INE with a new Instituto Nacional Electoral y de Consultas (INEC).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.⁹⁸ The seven members of the Federal Electoral Tribunal's Upper Chamber⁹⁹—an electoral judiciary body—would be selected in the same manner.¹⁰⁰ In addition, the reform would eliminate each of the state OPLs, instead centralizing electoral power in the federal authority.¹⁰¹

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

Mexico has a bicameral parliament¹⁰² made up of two chambers:¹⁰³ the Chamber of Deputies, composed of 500 members¹⁰⁴ (300 elected by relative majority¹⁰⁵ and 200 elected by proportional representation¹⁰⁶), and the Senate, composed of 128 members¹⁰⁷ (sixty-four elected by relative majority, thirty-two elected by first minority, and thirty-two by proportional representation).¹⁰⁸

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

96. *See id.*

97. *See* Adriana Barrera et al., *Mexico Passes Electoral Overhaul that Critics Warn Weakens Democracy*, REUTERS (Feb. 22, 2023), <https://www.reuters.com/world/americas/mexicos-senate-approves-electoral-reform-bill-2023-02-23/> [<https://perma.cc/E393-RS8X>].

98. *See* Nicolás Mariscal et al., *What Would AMLO's Election Reforms Mean for Mexico?*, THE DIALOGUE: LATIN AMERICA ADVISOR (May 13, 2022), <https://www.thedialogue.org/analysis/what-would-amlos-election-reforms-mean-for-mexico/> [<https://perma.cc/JA4X-M4PZ>].

99. *See* Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 99, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 10-02-2014.

100. *See* Mauro Echeverría, *What AMLO's Electoral Reform Spells for Democracy*, IMPUNITY OBSERVER (Nov. 14, 2022), <https://impunityobserver.com/2022/11/14/what-amlos-electoral-reform-spells-for-democracy/> [<https://perma.cc/T5ZN-MBSM>].

101. *See* Mariscal et al., *supra* note 98.

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.

103. *Id.* art. 50.

104. *Id.* art. 52.

105. *See* *Plano Distrital Seccional*, INSTITUTO NACIONAL ELECTORAL, <https://cartografia.ife.org.mx/sige7/?mapoteca=Planos&pds> [<https://perma.cc/7K9X-NFVF>] (last visited Apr. 13, 2023).

106. *See* *Mapa Electoral de la República Mexicana con División de Circunscripciones Plurinominales*, INSTITUTO NACIONAL ELECTORAL, <https://cartografia.ife.org.mx/sige7/?mapoteca=Planos&mrn> [<https://perma.cc/M42L-X9F8>] (last visited Apr. 13, 2023).

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.

108. *Id.*

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majority—instead assigning proportional representation.¹⁰⁹ In addition, AMLO's proposal reduces the number of members allowed in the local legislatures and city councils.¹¹⁰

D. POLITICAL PARTIES

AMLO's proposal maintains public financing for only the campaign expenses of political parties.¹¹¹ But other ordinary expenses would have to be covered by supporters and other funding sources.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.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.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.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.¹¹⁶

109. See Echeverría, *supra* note 100. Initially, the election by proportional representation was incorporated into the Mexican political system through the electoral amendment of 1977 in order to generate counterweights in the legislative system. See *Mexico Has Opened Up Its Political System*, N.Y. TIMES (July 21, 1988), <https://timesmachine.nytimes.com/timesmachine/1988/07/21/261088.html?pageNumber=24> [<https://perma.cc/DT58-E4WJ>].

110. See Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 115-16, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 18-11-2022.

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

112. See *id.*

113. See Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 41, ¶ III, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 18-11-2022.

114. See *id.*

115. See Echeverría, *supra* note 100.

116. See *Historia Morena*, MORENA: LA ESPERANZA DE MÉXICO, https://morenasonora-org.translate.google/historia-morena/?_x_tr_sl=ES&_x_tr_tl=EN&_x_tr_hl=EN&_x_tr_pto=SC

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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.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.

VII. Use of the Mexican Armed Forces and Executive Orders

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.

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.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).¹¹⁹

[<https://perma.cc/GVS7-97HW>] (last visited Apr. 13, 2023); Vanessa Buschschlüter, *Mexico's Governing Party Captures Four More States*, BBC (June 6, 2022), <https://www.bbc.com/news/world-latin-america-61711398> [<https://perma.cc/X5XG-42UP>]; Kimberly Breier et al., *Mexico's New Congress*, COVINGTON: GLOBAL POLICY WATCH (Sept. 2, 2021), <https://www.globalpolicywatch.com/2021/09/mexicos-new-congress/> [<https://perma.cc/H2PE-VJCW>].

117. See Constitución Política de los Estados Unidos Mexicanos, CPEUM, art. 41, Diario Oficial de la Federación [DOF] 05-02-1917, últimas reformas DOF 18-11-2022.

118. See *id.* art. 89.

119. See *id.* art. 76.

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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.¹²⁰ 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.¹²¹

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.¹²² 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.¹²³ 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.¹²⁴

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 2031.¹²⁵ 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

120. See Iñigo Guevara Moyano, *Mexico's National Guard: When Police are Not Enough*, WILSON CENTER (Jan. 2020), <https://www.wilsoncenter.org/sites/default/files/media/uploads/documents/Mexico%27s%20National%20Guard.pdf> [<https://perma.cc/94T5-VWEU>].

121. *Mexico High Court Upholds Keeping Military on Police Duties*, ABC NEWS (Nov. 29, 2022), <https://abcnews.go.com/International/wireStory/mexico-high-court-upholds-keeping-military-police-duties-94175642> [<https://perma.cc/6HPP-B7LE>].

122. See Diego Ore, *Mexico gives Army control of National Guard, sparks clash with U.N.*, REUTERS (Sept. 9, 2022), <https://www.reuters.com/world/americas/mexican-congress-backs-army-taking-control-national-guard-2022-09-09/> [<https://perma.cc/H7XA-SLZ9>].

123. See *What's at Stake in Putting the Navy in Charge of Mexico's Ports?*, BNAMERICAS (Sept. 23, 2020), <https://www.bnamericas.com/en/news/whats-at-stake-in-putting-the-navy-in-charge-of-mexicos-ports> [<https://perma.cc/S5BX-HTX2>].

124. See Julian Resendiz, *Navy Takes Control of Mexican Seaports to Stem Flow of Synthetic Drugs, Precursor Chemicals*, BORDER REPORT (Jan. 11, 2021), <https://www.borderreport.com/regions/mexico/navy-takes-control-of-mexican-seaports-to-stem-flow-of-synthetic-drugs-precursor-chemicals/> [<https://perma.cc/N92X-NEDU>].

125. See *Mexico: Extending Military Policing Threatens Rights*, HUM. RTS. WATCH (Aug. 26, 2022), <https://www.hrw.org/news/2022/08/26/mexico-extending-military-policing-threatens-rights> [<https://perma.cc/Q4VE-EWNY>].

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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

126. *See id.*

127. *See id.*

128. *See Mexican President Expropriates Land for Construction of Mayan Train*, REUTERS (Aug. 1, 2022, 5:59 PM), <https://www.reuters.com/world/americas/mexican-president-expropriates-land-construction-mayan-train-2022-08-01/> [<https://perma.cc/8QMF-WXH5>].

129. *See Mexico: Extending Military Policing Threatens Rights*, *supra* note 125.

130. *See Exemptions to Competitive Bidding*, BAKER MCKENZIE, <https://resourcehub.bakermckenzie.com/en/resources/public-procurement-world/public-procurement/mexico/topics/7-exemptions-to-competitive-bidding> [<https://perma.cc/PM2Q-PNLQ>] (last visited Apr. 13, 2023).

131. *See* Sergio Chagoya D. & Elías Zaga Belzer, *Defence & Security Procurement in Mexico*, LEXOLOGY (Jan. 16, 2019), <https://www.lexology.com/library/detail.aspx?g=21e70e36-51c7-4473-8289-b2dc43cbf5d3> [<https://perma.cc/XZ2W-KY45>].

132. *See* Cassandra Garrison et al., *Mexican President Defends Move to Expedite Public Works*, REUTERS (Nov. 23, 2021), <https://www.reuters.com/markets/deals/mexican-president-defends-move-expedite-public-works-2021-11-23/> [<https://perma.cc/PJP2-LKGC>].

133. *See* Sonja Wolf, *Is Mexico's Security Policy Backfiring?*, AMERICAS Q., (Sept. 8, 2022) <https://www.americaquarterly.org/article/is-mexicos-security-policy-backfiring/> [<https://perma.cc/7V4E-8DH4>].

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Mexican Armed Forces in internal security, the use of the Armed Forces in government-sponsored projects may be more questionable.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.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.¹³⁶ Eight years after the tragedy, the students' families have been unable to access truth and justice despite wide national and international attention.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.¹³⁸ Said "truth" was later scientifically disproven by independent analyses¹³⁹ and dismantled by a federal court ruling,¹⁴⁰ which concluded that the investigation had been neither effective nor impartial.¹⁴¹

134. *See id.*

135. *See id.*

136. *See* Oscar Lopez, *Mexico Says Disappearance of 43 Students Was a 'Crime of the State'*, N.Y. TIMES (Aug. 20, 2022) <https://www.nytimes.com/2022/08/18/world/americas/mexico-students-disappearance.html> [<https://perma.cc/7WDJ-HB7W>].

137. *See id.*

138. *See* Olivia Mozdierz, *The Ayotzinapa Case at Seven Years: A Political and Moral Test for Mexican President López Obrador*, YALE J. OF INT'L AFFS. (Jan. 12, 2022), <https://www.yalejournal.org/publications/the-ayotzinapa-case-at-seven-years-a-political-and-moral-test-for-mexican-president-lpez-obrador> [<https://perma.cc/JC9X-DU3T>].

139. *See A la Opinión Pública*, EQUIPO ARGENTINO DE ANTROPOLOGÍA FORENSE (Apr. 2, 2016), [https://ymlp.com/ze\]7Fb](https://ymlp.com/ze]7Fb) [<https://perma.cc/6FBC-5C8D>]; Maureen Meyer, *Mexico's Government Claims the 43 Ayotzinapa Students Were Incinerated in a Trash Dump. Here's How They're Wrong*, WOLA (Apr. 23, 2016), <https://www.wola.org/analysis/mexicos-government-claims-the-43-ayotzinapa-students-were-incinerated-in-a-trash-dump-heres-how-theyre-wrong/> [<https://perma.cc/E3AR-GD2A>].

140. Ximena Suarez-Enriquez, *The New Investigative Commission for the Ayotzinapa Case*, WOLA (June 28, 2018), <https://www.wola.org/analysis/investigative-commission-ayotzinapa-case/> [<https://perma.cc/7C4T-HFCD>].

141. *See id.*

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B. RECENT DEVELOPMENTS

When President Andres 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

142. See Secretaría de Gobernación, *Comisión para la Verdad y Acceso a la Justicia en el Caso Ayotzinapa*, GOBIERNO DE MEX. (Jan. 15, 2019), <https://www.gob.mx/segob/es/articulos/comision-para-verdad-y-acceso-a-la-justicia-en-el-caso-ayotzinapa?idiom=ES> [<https://perma.cc/MK86-E3BJ>].

143. See Gloria Leticia Díaz, *GIEI Desconoce Contenido de 467 Capturas de Pantalla en Informe de Ayotzinapa; Pide Acceso a Pruebas*, PROCESO (Aug. 22, 2022), <https://www.proceso.com.mx/nacional/2022/8/22/giei-desconoce-contenido-de-467-capturas-de-pantalla-en-informe-de-ayotzinapa-pide-acceso-pruebas-291934.html> [<https://perma.cc/5E27-L8KW>].

144. See Pedro Villa y Caña & Luis Carlos Rodríguez, *AMLO Asegura que este Año Quedará Resuelto Caso Ayotzinapa; “Ya Sabemos lo que Sucedió,” Dice*, EL UNIVERSAL (June 30, 2022), <https://www.eluniversal.com.mx/nacion/amlo-asegura-que-este-ano-quedara-resuelto-caso-ayotzinapa-ya-sabemos-lo-que-sucedio-dice> [<https://perma.cc/7E93-ETVD>].

145. See Kevin Sieff, *Mexico Arrests Army General in Students’ Disappearance*, WASH. POST (Sept. 15, 2022), https://www.washingtonpost.com/world/2022/09/15/mexico-missing-students-ayotzinapa-general-arrested/?itid=LK_inline_manual_5/ [<https://perma.cc/ZET3-FBVW>].

146. See *Informe de la Presidencia de la Comisión para la Verdad y el Acceso a la Justicia del Caso Ayotzinapa*, COMISIÓN PARA LA VERDAD Y EL ACCESO A LA JUSTICIA DEL CASO AYOTZINAPA (Aug. 18, 2022), http://www.comisionayotzinapa.segob.gob.mx/work/models/Comision_para_la_Verdad/Documentos/pdf/Informe_de_la_Presidencia_PARA_WEB.pdf [<https://perma.cc/3U6R-ALTU>].

147. See *id.*

148. See *id.*

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In the weeks that followed, Murillo Karam was arrested and over eighty additional arrest warrants were issued.¹⁴⁹ 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.¹⁵⁰ A team of international investigators also questioned the authenticity of the communications that laid at the center of the COVAJ report.¹⁵¹ Even then, prosecutors claimed to have enough authentic evidence supporting their conclusions.¹⁵²

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.¹⁵³

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 2021.¹⁵⁴ Fifty-

149. See Oscar Lopez, *Mexico Arrests Top Prosecutor in Case of Missing Students and Issues 80 Warrants*, N.Y. TIMES (Aug. 20, 2022), <https://www.nytimes.com/2022/08/20/world/americas/mexico-arrests-jesus-murillo-karam.html> [https://perma.cc/9JJV-XZ5W].

150. See Mary Beth Sheridan & Alejandra Ibarra Chaoul, *Prosecutor Quits Case of 43 Missing Mexican Students Amid New Turmoil*, WASH. POST (Sept. 27, 2022), <https://www.washingtonpost.com/world/2022/09/27/mexico-ayotzinapa-missing-students-prosecutor/> [https://perma.cc/8WWK-7E7R]; Manuel Espino, *Concede a Murillo Karam Suspensión Definitiva contra Vinculación a Proceso; Continuará en Prison*, EL UNIVERSAL (Sept. 29, 2022), <https://www.eluniversal.com.mx/nacion/conceden-murillo-karam-suspension-definitiva-contravinculacion-proceso-continuar-en-prision> [https://perma.cc/3C29-UP9E].

151. See *Conferencia de Prensa del Grupo Interdisciplinario de Expertos Independientes*, FACEBOOK (Oct. 31, 2022), https://www.facebook.com/CDHCMX/videos/872312774150017/?extid=CL-UNK-UNK-UNK-IO5_GK0T-GK1C&ref=Saring [https://perma.cc/68CS-84XW]; John Gibler, *La Investigación del Caso Ayotzinapa se Desmorona desde Adentro*, WASH. POST (Nov. 3, 2022, 7:00 AM), <https://www.washingtonpost.com/es/post-opinion/2022/11/03/filtracion-43-estudiantes-ayotzinapa-giei-investigacion/> [https://perma.cc/Y33J-MTR8]; García, *supra* note 9.

152. García, *supra* note 9.

153. See León Krauze, *Mexico Needs Justice and Fairness, Not Politics, to Heal from Ayotzinapa*, WASH. POST (Aug. 30, 2022, 5:16 PM), <https://www.washingtonpost.com/opinions/2022/08/30/mexico-ayotzinapa-attorney-general-amlo-justice-fairness/> [https://perma.cc/NBW2-TRK].

154. See Ali Hines, *Decade of Defiance: Ten Years of Reporting Land and Environmental Activism Worldwide*, GLOBAL WITNESS (Sept. 29, 2022), <https://www.globalwitness.org/en/campaigns/environmental-activists/decade-defiance/> [https://perma.cc/XE2G-Z92P].

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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 deprivations 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 nabuas, policías y mineros; 11 lesionados*, LA JORNADA (July 24, 2015), <https://www.jornada.com.mx/2015/07/24/estados/026n1est>. [<https://perma.cc/RUQ2-HU75>].

158. Hines, *supra* note 154.

159. *See, e.g.,* *Comunicado de Presna DGC/116/2021*, LA COMISIÓN NACIONAL DE LOS DERECHOS HUMANOS (Apr. 27, 2021), https://www.cndh.org.mx/sites/default/files/documentos/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 Presna 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).

163. Press Release, United Nations Human Rights, Office of the High Comm’r, Impunity for 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, 2021), <https://www.ohchr.org/en/press-releases/2021/03/impunity-killings-human-rights-defenders-remains-key-driver-more-murders#:~:text=Impunity%20for%20killings%20>

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connections with organized crime¹⁶⁴—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.¹⁶⁵ Corruption is known to be prevalent in Mexico, which Transparency International ranked 124th out of 180 countries on its annual corruption index.¹⁶⁶

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.¹⁶⁷

B. ESCAZÚ AGREEMENT

On January 22, 2021, Mexico acceded to the world’s first legally binding treaty to guarantee the rights of environmental defenders.¹⁶⁸ 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.¹⁶⁹ 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.”¹⁷⁰

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.”¹⁷¹ 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,

remained%20a,prosecute%20perpetrators%20fuelled%20further%20killings [https://perma.cc/6Q9T-BSK2].

164. See *Comunicado de Prensa DGC/116/2021*, *supra* note 159.

165. See Hines, *supra* note 154.

166. *Our Work in Mexico*, TRANSPARENCY INTERNATIONAL, <https://www.transparency.org/en/countries/mexico> (last visited Nov. 14, 2022) [https://perma.cc/V9N8-4Z5P].

167. See *Comunicado de Prensa DGC/116/2021*, *supra* note 159.

168. See Press Release, Foreign Ministry & Environment Ministry, Mexico Makes History: Its Ratification of the Escazú Agreement Ensures Its Entry into Force (Jan. 22, 2021), <https://www.gob.mx/sre/prensa/mexico-makes-history-its-ratification-of-the-escazu-agreement-ensures-its-entry-into-force?idiom=EN> [https://perma.cc/NU54-5PLT]; see also *Escazú Agreement Takes Effect, Enshrining Right to Sustainable Development*, IISD (Apr. 26, 2021), <https://sdg.iisd.org/news/escazu-agreement-takes-effect-enshrining-right-to-sustainable-development/> [https://perma.cc/83PP-UJZE].

169. See *Escazú Agreement Takes Effect*, *supra* note 168.

170. See Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Foreword, Sept. 27, 2018, 3397 U.N.T.S. 195.

171. *Id.* art. 9.

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effective and timely measures to prevent, investigate and punish attacks, threats or intimidations” against environmental defenders.¹⁷² Civil society groups have called upon the Mexican government to promptly and effectively implement the protections of the Escazú Agreement.¹⁷³

172. *Id.*

173. See, e.g., Hines, *supra* note 154; Citlalli Gonzalez Chacon et al., *Report on the Situation of Environmental Human Rights Defenders, Individuals and Communities, in Mexico, 2021*, CENTRO MEXICANO DE DERECHO AMBIENTAL (Mar. 2022), https://www.cemda.org.mx/wp-content/uploads/2022/04/CEMDA_INFORME2021_INGLES.pdf [<https://perma.cc/Z7E8-S8FH>].