

MEXICO

It is urgent to protect human rights from corporate abuses and end impunity rather than continue to promote private investment without environmental, social and human rights requirements

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In Mexico it is urgent to protect human rights from corporate abuses and end impunity rather than continue to promote private investment without effective environmental, social and human rights requirements. The national context favours the promotion of business but not sustainable development or human rights: legal reforms that give priority to energy projects over any other activity, lax and outdated environmental regulations, and a State that is indifferent to business abuses affecting civil, political, economic, social, cultural and environmental human rights of the population. In short, Mexico is a State that ignores its obligation to protect human rights from its violation by non-state actors.

Since the National Voluntary Review of Mexico at the High Level Political Forum in July 2016, little progress has been made in initiating the implementation of the 2030 Agenda for Sustainable Development in our country: there is still no national implementation plan and the structural obstacles against which we warned in the previous Report remain.²

The path taken by the government has been delayed and is far from the proposals presented by the civil society network for the follow-up to the 2030 Agenda in Mexico³, including the national implementation plan, indicators to measure progress and an institutionalized participation mechanism. On April 26, 2017, the President of the Republic set up the National Council of the 2030 Agenda for Sustainable Development and announced the upcoming drafting of a "National Strategy for the Implementation of the 2030 Agenda".⁴ Even if the Council is created, as claimed, "as an instance to relate the Federal Executive to local governments, the private sector, civil society and the academy for the design, execution and evaluation of strategies, policies, programmes and actions for the fulfillment of the 2030 Agenda",⁵ it is not a real

Development 2016, available at:
<http://www.socialwatch.org/es/node/17280>

3 Of which DECA Equipo Pueblo is part.

4 <https://www.gob.mx/presidencia/articulos/acciones-para-la-puesta-en-marcha-de-la-agenda-2030>

5 Official Gazette of the Federation of 26 April 2017, Decree establishing the National Council of the 2030 Agenda for Sustainable Development, available at:
http://www.dof.gob.mx/nota_detalle.php?codigo=5480759&fecha=26/04/2017

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2 "Without a human rights approach and sustainability the 2030 Agenda is not feasible" Mexico Chapter of the Spotlight Report on Sustainable

mechanism of national coordination but a federal body that, "according to the nature of the issues to be discussed" may invite, with voice but no vote, the actors mentioned to its sessions.⁶

Although the government committed to incorporate the 2030 Agenda criteria into the budget proposal for 2018, and to amend the Planning Law so that the Sustainable Development Goals (SDGs) become a benchmark in the coming years, and announced the first phase of the National Platform to Follow-up the Sustainable Development Goals (<http://agenda2030.mx/>), there is still concern about the lack of discussion and participatory review of the measurement system and its indicators.

1. In addition, despite the assurance of the president of the Business Coordinating Council that the private sector is committed to the objectives of the 2030 Agenda,⁷ the negative impact that companies have had on human rights in our country makes the prospect of the private sector being part of the means of implementation a matter of concern rather than trust. As more than 100 civil society organizations, human rights movements and communities detailed in the report prepared for the United Nations Working Group on Business and Human Rights for its Mission to Mexico from August 29 to September 7, 2016, there remain patterns of violation and abuse of human rights by the State and companies in the energy, extractive, infrastructure, tourism, real estate, agroindustrial and textile sectors. Specifically, we are concerned about the following problems:⁸
2. Corporate capture of the State: situations of complicity, corruption and impunity that weaken

the rule of law and processes of protection and compliance with human rights;

3. Proliferation of megaprojects of private or public-private investment--especially mining, energy and infrastructure-- in which there was no prior, free, informed and culturally adequate consultation and consent of peoples and communities;
4. Lack of corporate due diligence;⁹
5. Obstacles to access to justice and remediation for victims of corporate abuses: imbalance of power between actors, delays in the judicial process, burden of proof on victims, lack of suspension for business activities; breach of rules and judgements;
6. Intimidation, threats and abuses against human rights defenders, many of whom are environmental defenders in their communities facing business projects, or people demanding their labour rights;
7. Structural reforms that weaken or contradict the State's human rights obligations.

The legal framework of human rights protection advanced with the constitutional reform of June 2011 is challenged by other constitutional and legal reforms promoted by the federal government, especially that of the energy sector, the commitment of which "is purely economic, far from the vision of sustainable development and harmful in terms of human rights".¹⁰ The constitution was reformed in 2013 to allow national and transnational private sector participation in the exploration and exploitation of hydrocarbons,

6 Ibid., Article 4.

7 <http://www.efe.com/efe/america/mexico/mexico-instala-consejo-nacional-de-la-agenda-2030-para-desarrollo-sostenible/50000545-3249350>

8 The Compendium of Information presented by the Coalition of Civil Society Organizations to the UN Working Group on Corporations and Human Rights, Mexico, 29 August 2016, is available at: https://business-humanrights.org/sites/default/files/documents/Informe_Mx_Empresas_DD_HH_68_0.pdf

9 Principle 17 of the Guiding Principles on Business and Human Rights: Implementation of the United Nations Framework for "Protection, Respect and Remedy", contained in the Report of the Special Representative of the Secretary-General for human rights and transnational corporations and other corporations issues, John Ruggie (A/HRC/17/31 of 21 March 2011)

10 Report on Human Rights Violations to Drinking Water and Sanitation in Mexico (DHAyS Report), May 2017, p. 54. Available at: <http://www.comda.org.mx/informe-sobre-violaciones-a-los-derechos-humanos-al-agua-potable-y-al-saneamiento-en-mexico/>

and the Hydrocarbons Law of 2014 grants these activities "preference over any other that implies the exploitation of the surface and the subsoil of the land assigned to them",¹¹ imposing legal or administrative easements of hydrocarbons, even if the owners of the land do not want to authorize a project for fear of damage. Such provisions appear to invite companies to disregard their responsibility for human rights, where the Guiding Principles state that States "must protect against human rights violations committed in their territory and/or their jurisdiction by third parties, including companies. To that end, they should take appropriate action to prevent, investigate, punish and remedy such abuses through appropriate policies, regulatory activities and submission to justice".¹² They must also ensure that "other laws and regulations governing the creation and activities of companies do not restrict, but promote, respect for human rights by companies".¹³

The Public Private Partnerships Act was also amended in 2014, eliminating the prohibition on oil activities, and "the first contract that PEMEX¹⁴ contests and wins along with a large-scale oil company: Chevron" was settled on 5 December 2015.¹⁵ According to the government this is a "beneficial partnership"; however, the transnational corporation record of human rights violations and negative environmental impacts that remain in impunity raises considerable alarm.

In March 2017, the Ministry of Finance and Public Credit presented the Strategy to Promote Public Private Partnership projects (PPP Strategy)¹⁶ with a maximum annual amount of 32,622 million pesos authorized by the Chamber of Deputies and announced Block I with 12 road and hospital infrastructure projects,¹⁷ while Block II was announced in May with 18 projects for six hospitals, six roads, and works to improve hydraulic structures, educational centres and security.¹⁸ Road and hydraulic infrastructure projects will have to be monitored as works can be developed with no respect for human rights.

The Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico¹⁹ recognizes several of the problems reported by civil society organizations in 2016, such as: "the inadequate exercise by the Government and the business enterprises of human rights due diligence in the design and implementation of large-scale projects ... in the mining, energy, construction and tourism sectors, which often affect indigenous communities". The Report concluded: "The urgency of attracting investment, insufficient safeguards and lack of capacity to enforce existing legislation create an environment in which human rights can be violated with impunity."²⁰

11 Article 96 of the Hydrocarbons Law, available in the Official Gazette of the Federation of 11 August 2014, Evening Edition: <http://www.dof.gob.mx/index.php?year=2014&month=08&day=11&edicion=VES>

12 Principle 1 of the Guiding Principles on Business and Human Rights.

13 Ibid., Principle 3 section b.

14 Petróleos Mexicanos, the State-owned petroleum company

15 "Mexico has and wants more energy", Interview with Pedro Joaquín Coldwell, Secretary of Energy of Mexico, in Energy, special supplement of the Grupo Milenio, April 2017, p. 5

16 <http://www.gob.mx/shcp/acciones-y-programas/estrategia-proyectos-app>

17 <http://expansion.mx/economia/2017/03/09/hacienda-anuncia-inversion-de-22-000-mdp-en-asociaciones-app>

18 <http://www.radioformula.com.mx/notas.asp?Idn=687545&idFC=2017>

19 Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises on its mission to Mexico, Document A/HRC/35/32/Add.2, of 27 April 2017, to be submitted to the Human Rights Council at its thirty-fifth session from 6 to 23 June 2017, available at:

http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/35/32/Add.2

20 Ibid., paragraph 7.

The Working Group met with a number of private and public enterprises, some of which indicated that they were not responsible for consulting affected communities. But the Working Group stresses that “companies have the responsibility to respect human rights, regardless of the ability or willingness of States to fulfill their own human rights obligations. Companies should proceed with due diligence in the field of human rights,”²¹ which “requires not only consultations with indigenous peoples ... but also consultations with all other affected communities,”²² as well as “assessing real and potential effects and trying to prevent or mitigate the negative consequences for these rights.”²³

The Guiding Principles clearly state that corporate responsibility does not reduce the obligations of the State.²⁴ The problem in Mexico lies not only in the lack of business due diligence, but in the omissions of the State that fails to make the necessary efforts to regulate and control the companies. The Working Group identified limitations and inefficiencies of the Federal Environmental Protection Agency (Profepa), which is responsible for inspecting and supervising 200,000 potentially polluting companies, but which only has 300 inspectors who do not have the means to conduct efficient inspections. It concludes, then, that “it is likely that the activities of companies in Mexico are not adequately supervised”.²⁵

Among other cases, the Working Group was able to learn about the greatest environmental disaster in the history of the country's mining industry: that of the Sonora River, which occurred in August 2014 when Buenavista del Cobre, a subsidiary of Grupo Mexico, poured 40,000 cubic meters of sulfate copper and heavy metals in a stream that flowed into the Bacanuchi and Sonora rivers, directly affecting about 22,000 people, cattle and crops,

and indirectly, 250,000 more people from seven municipalities along the Sonora River. Although a fine was imposed and the company agreed to install 28 water treatment plants and to build a clinic, the Working Group found that, almost three years after the disaster, the company had failed to comply. The case was again denounced by civil society during the Mission to Mexico of the Special Rapporteur on human rights to safe drinking water and sanitation, 2-12 May 2017, highlighting widespread uncertainty and distrust regarding the quality of water that authorities guarantee communities but without appropriate studies. Moreover, the Official Mexican Standard NOM-127-SSA1-1994 has not been brought up to date in line with the highest standards of the World Health Organization. If this emblematic and visible case remains unresolved, there is little hope that others will be resolved.

The Working Group also recognized the alarming situation of violence against human rights defenders,²⁶ in a context characterized by widespread cases of intimidation and harassment suffered by community leaders who protest against certain projects and business operations, stating: “it appears that some of these cases of intimidation and violence are perpetrated by employees of those same companies or by those who have commercial relations with them.”²⁷

Finally, the Working Group recommends that the Mexican government ensure prior and informed consultations with communities affected by development projects and business operations, strengthens Profepa's capacity to monitor compliance with environmental standards, and ensure that writ of amparo²⁸ concessions and other judicial decisions and suspensions are respected and implemented.²⁹

21 Ibid., paragraph 39.

22 Ibid., paragraph 43.

23 Ibid., paragraph 56.

24 Guiding Principles on Business and Human Rights, Principle 11.

25 Report of the Working Group, paragraph 58.

26 Ibid., paragraph 82.

27 Ibid., paragraph 84.

28 Designed for the protection of constitutional rights.

29 Ibid., paragraph 108.

The Working Group recommends that private and State enterprises apply the Guiding Principles and make it clear that intimidation and aggression against defenders and investigative journalists who raise alerts about business activities are unacceptable and will not be tolerated; ensure that potentially affected individuals and communities will be consulted on the proposed projects; and accept that such consultation processes can lead to changes in the project.³⁰

The perspective of private participation in the strategy for and implementation of sustainable development in Mexico raises many questions and concerns, particularly with regard to the major infrastructure and energy works currently being promoted in the context of energy reform, lax and outdated environmental regulations, and a State that is indifferent to multiple corporate abuses; and that disregards its obligations to respect, protect, fulfil human rights, and prevent, investigate, punish and repair their violations. Accepting the recommendations of the Working Group should be an indisputable step rather than continuing to promote private investment without environmental, social and human rights requirements.

³⁰ Ibid., paragraph 109.